Babu Tripurari Chakravarti
with the best regards of the author.
A.K. Ghose

University Extension Lectures for 1925

PUBLIC ADMINISTRATION IN INDIA

[Historical, Structural and Functional]

BY
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To

The Memory of

my

FATHER and MOTHER

The great question is to discover, not what governments prescribe, but what they ought to prescribe, for no prescription is valid against the conscience of mankind.

Lord Acton—History of Freedom.

PREFACE

This book is a version, amplified and recast, of a series of Extension Lectures delivered before the University of Calcutta in the winter of 1926 at the instance of Sir Ewart Greaves, its Vice-Chancellor. It is intended to be a systematic discussion of the features and functions of the Government of India, the more salient features of which have been sought to be presented from a fresh point of view, and in the light of a fresh analysis of the character and operation of constitutional Government in India. It is hoped, that it will be thought, for this reason, to be serviceable in the clarification of our views as to the policy and practice of the Government under which we live.

Sixty-two years have elapsed since Sir George Chesney completed his work on 'Indian Polity,' and thirty-two since Sir Courtenay Ilbert published his work on the 'Government of India.' In three editions Sir George brought his book down to Lord Cross' Indian Councils Act and in two editions Sir Courtenay brought his down to the Morley-Minto Reforms. The supplement that he brought out purported to bring the historical summary up to the Government of India Act of 1919.

At the present day, when topics relating to the constitution and administration of India occupy so prominent a place in the public mind of India and England, and when events and changes of such far-reaching consequence to the peace, prosperity and well-being, not only of India, but of the British Empire in general, are

looming on the horizon, a study of the principles of her government, which cannot yet be said to be "broad-based on the people's will," may serve to be of peculiar and absorbing interest. And again, year after year the mass of materials for a new statement of the Government of India as it is constituted has increased; new lights have been thrown on events and characters, and old errors have been corrected. It is believed that the time has come when the advance which has been made by and in the knowledge of the Government of India as a whole should be laid before the public in a work of fairly adequate size. Such a book should be founded on independent thought and enquiry, and should at the same time be written with a full knowledge of the works of the best modern historians and writers of constitutional politics, and with a desire to take advantage of their teaching wherever it appears sound. And in such a work as the present, there appears to be a special need of securing a comprehensive and many-sided consideration of the various topics included. Impressed with the difficulty of realising this unaided, the author allowed himself, in seeking comments and corrections from others, to encroach on the leisure and to profit by the indulgence of some friends whose counsel has made, the preparation of this study an inspiration and whose knowledge of Indian administrative process he values, to an unusual extent, though it must be admitted that what is written here commits, of course, nobody but the author himself who scarcely hopes that any reader will agree with everything in this book. He should, however, like to think that every reader will feel that the book is the outcome of honest and candid enquiry, and that its author is as free from party bias as any man, even an active politician, can be expected to be.

Some of the questions dealt with in this book are in their nature controversial. It has, therefore, been the author's purpose to discuss and not to decide them. He has tried faithfully to interpret the deliberate and sober judgment of the Indian people on the constitution for those who seek light on the subject. He realises all the same that a book which covers so wide and controversial a field as this offers many temptations to critics of different and unfriendly views.

The writer cannot possibly overestimate the debt he owes to certain works, other than of Chesney and Ilbert, on the Government of India. Some of these have been his guides but he does not think it necessary in such a book as this, which is a work of description and enquiry rather than of reflection or research, to make constant references to those or other printed sources in footnotes which serve only to encumber without offering any corresponding benefit.

In pursuing the course of his study and enquiry the author could not dismiss from his mind the well known advice of Mr. Asquith (afterwards Earl of Oxford and Asquith) delivered to his countrymen through the House of Commons on the 24th of November, 1920. Speaking of Ireland the great statesman said, " to my mind the real seriousness of this matter, from a large and public point of view, is that you cannot expect the Irish people, always distrustful of an Executive in the appointment of which they have little or no voice, to overcome that traditional distrust and to replace it by anything in the nature of whole-hearted confidence if the Executive at a time of crisis like this deliberately pursues methods which confound the innocent and the guilty. But there is a more serious consideration still, which I commend to the judgment both of the Government and the House. The effect of this misguided and perverted policy has

been to a degree which it is almost impossible to over-estimate, to poison the atmosphere. The opinions of moderate Nationalists, who hate crime and who have no sympathy even with extreme aspirations, still less with anarchic and terrorist methods, have been driven and are being driven, day by day, and more and more, to an attitude if not of sympathy, at any rate of supine indifference."

The point the author desires to make is that the policy which is being pursued in the stubborn refusal to completely overhaul the frame of the Government which is worn out, to bring it up to the model of a modern state, has alienated the sympathy and friendship of Modern Nationalist opinion in India, and is not far from driving the Nationalists, much against their will, into an attitude not only of despondency but of despair in some, and of resentment in others.

In the meantime, a remarkably true and faithful picture of the attitude of the official mind towards introduction of any administrative and constitutional reforms in India has been recorded in what is known as the late Mr. Montagu's diary. The author regrets that this record of singular freshness and insight was not available to him when the present work was in the Press. Proper use could undoubtedly have been made of it. In fact, the text had all been in print when Mrs. Montagu decided to make those who are interested in Indian affairs better informed and wiser by the publication of the diary of the late statesman, who breathed the inspiration of a Burke and had the prophetic vision of a Bright, and who warned the Grenvilles of the "Steel frame" against creating a perilous position. He felt that his countrymen stood upon a pinnacle before the

face of the world, and if they did their duty as became them, they would receive the approbation of their own conscience, the applause of an enlightened and honourable community and the admiration of civilised nations. He was prepared to stand or fall by his measure which he considered so important to the tranquillity, the safety, and the happiness of the country whose destiny he was called upon to regulate and of which, by his industry, studies and devotion, ever since his undergraduate days at Cambridge, he had made himself the best informed and the most honest-intentioned critic, whether in the public or private life of England. He was not an opportunist, no matter what his traducers, detractors or little-minded political opponents may say. He played with his cards on the table, and by his honest and genuine convictions roused to white heat the passions of his indifferent, misguided and misled countrymen such as Burke, and Fox, and Sheridan did nearly a century and half ago, or a century later, as Bright and Fawcett and Bradlaugh did. There is a Prime Minister in office who holds the commission held by Canning and Grey, Peel and Derby, Palmerston and Disraeli, and Gladstone and Asquith. He will be honest. Will he be strong? There is a Secretary of State for India now who holds the seal held by Halifax and Stanley, Salisbury and Morley, and Chamberlain and Montagu. He will certainly be honest. Will he be strong such as Montagu was or would have been in the present crisis? A noble Viceroy, bearer of a great name in Indian history, whose sympathy with the aspirations of the people is genuine and undoubted, will soon be, to the great regret of the people, leaving these shores after five years of strenuous service and devotion to duty. There is a new Viceroy looming before the country. Will he be strong and firm to inaugurate, for all the coming

generations, a government of the people, by the people, and for the people?

For assistance, encouragement and suggestions the thanks of the author are due to Sir Tej Bahadur Sapru, M.A., LL.D., K.C.S.I., who gave the work in manuscript the rare benefit of a close revision; to Dr. Beni Madhab Barua, M.A., D.Lit., Head of the Department of Pali and Ancient Indian Culture in the University of Calcutta; to Mr. J. C. Mitra, M.A., B.L., late Accountant-General, Bengal; to Mr. Sachin Sen, M.A., B.L., of the British Indian Association, to Mr. J. C. Chakravorty, M.A., Offg. Registrar of the University, and to Mr. A. C. Ghatak, M.A., the Superintendent of the Calcutta University Press. The suggestions of Babu Kalipada Das, B.A., have often been invaluable. To him, as to Babu Abanikumar Mookerjee, both of the University Press, the author owes a debt which may hardly be repaid. There are other friends who have been kind enough to read through the proofs relating to the subjects in which they are interested and of which they have special knowledge. These are names which would carry weight, but since their comments and suggestions were given him in confidence the author does not name them, but rests content with the most grateful acknowledgment of help that he received from them—remaining nevertheless responsible for any error of judgment and fact.

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November, 1930.

A. K. GHOSH.

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PUBLIC ADMINISTRATION IN INDIA

THE ARRANGEMENTS OF GOVERNMENT

CHAPTER I

The Direction and Control from England

Part I

The India House.

Introductory.

Strictly speaking the constitution of India is one which has been made and built by the English, and, as time went on, has been gradually expanded by them into what it is now. The origin of this constitution is to be found in a series of statutes of the Imperial Parliament, which has always been responsible for the Government of India. Unlike the English constitution, the British Indian constitution has come into being without a revolution or any violent political upheaval. The innovations which it has introduced into the body politic as it existed in pre-British days, are due to the acumen and foresight of British Statesmen, and their study of the needs, the temperament, the passions and prejudices of the Indian people. And the British Indian constitution has kept pace in its growth with the rising aspirations of the people to be associated with the Government of their country, and to take their legitimate share of responsibility in regard to its future. As is to be expected the student would undoubtedly observe a resemblance between the externals of the British Political

Origin of the British Indian constitution.

It is the result of human thought, not of evolution.

System and of the Indian Political System, modified here and there, but fast tending to take on the shape of what is known as the Dominion System of Government, founded upon the ideal of English polity.

(a) *The Early Charters.*

Beginning of the Empire.

The story of from a company of traders chartered in 1600 A.D. to trade in the East to the development of a vast Empire, the most comprehensive the world has ever seen, is a matter of common knowledge, on which we need not dilate here, beyond recording the fact that it reads more like romance than history. To the trading corporation was gradually vouchsafed the permission to acquire territories, erect forts and employ troops for defensive purposes only, the march from which to the position of the master of the destiny of India's millions, was neither long nor tedious. These Charters were renewed from time to time with certain modifications until the one of 1752, was granted by George II. The modifications were mostly in the direction of changes in the authority and control of the Company who at last were authorised to raise troops, to carry on war, and to occupy territories in India and the Eastern waters.—You cannot have failed to notice that the first Parliamentary recognition of such a thing as British India was by the Statute of George III (the Regulating Act, 1773), which brought into existence a Governor-General in Council at Calcutta, called the Governor-General in Council at Fort William in Bengal. This Act however was not complete and is said to have been deliberately left incomplete, for, it in no way touched the administration of the Company at home where things went on as they had been. The Regulating Act did not affect the general system of administration. It only revised the

Charters were modified from time to time.

Appearance of the Governor-General in Council.

voting qualifications of the Proprietors, and the terms under which the Directors thereafter were to hold office. The labours of Sir Philip Francis, to expose the brutal unfairness of the Company's administration, had convinced the better minds of England that things in India were not what they should be. The fearful controversy that raged round the administration of Warren Hastings and his subsequent impeachment, left English statesmen in little doubt, as to the necessity of a supervision and control of Indian affairs by the State. Pitt's Bill of 1784 (24 Geo. III. c. 25), called the Regulating Bill which enforced this healthy governmental principle, may therefore, be regarded as the earliest attempt on the part of the Parliament, to exercise their functions of control over the affairs of the dominions, acquired, no matter how, by the subjects of the King. The power legitimately belonged to them and for the first time they became alive to it.

The Revolt of Philip Francis.

First Parliamentary attempt to introduce control and check.

(*b*) *The Regulating Act.*

The Regulating Act brought into existence a Board of Control consisting of not more than six Privy Councillors, of whom one was to be a principal Secretary of State, and another the Chancellor of the Exchequer, and the rest were to be nominated by the King and holding office during his pleasure. The whole number of Secretaries of State in 1784 was two, Home and Foreign, and Sir George Chesney is of opinion that both of them besides the Chancellor of the Exchequer were to have been on the Board. I venture to think that this is incorrect having regard to Section I of the Bill. The Board was formally styled "Commissioners for Indian affairs," with a President of its own who, as time went on, and the Board gradually came to be reduced in num-

Board of Control-creature of the Regulating Act.

Board styled "Commissioners" became autocrats.

ber, monopolised to himself all its legitimate powers, eventually becoming practically the autocrat. We may observe here that the President of the Board of Control was the predecessor in office of the Secretary of State for India. By this Bill ample powers were given to the Board to control the administration of the Company in India. The Court of Directors were reduced to a mere transmitting body, receiving the orders of the Board and transmitting them to their officers in India to be faithfully and intelligently carried out. Naturally the chagrin of the Directors was not a little for they found, that they had been made an impotent authority in respect of Indian administration, having neither the power to do good nor to do evil, without laying themselves open to serious charges before Parliament, in that there was not a shred of document or record or correspondence which they could keep back from the Board of Control the members of which were empowered to inspect anything they choose. Every despatch of the Court before being sent out to India had to be submitted to the Board for its approval, and any amendment made therein by the latter, was binding upon the Court, who, in addition, had a duty cast upon them to despatch to their officers in India as from them, all such communications and instructions which the Board of its own initiative required them to send in their name.

Court of Directors deprived of their authority.

Secret Committee of the Court of Directors.

The Court were given a Secret Committee composed practically of the Chairman and the Deputy Chairman, who were entrusted with the function of communicating to the Company's Government in India, all communications of a secret and confidential nature, emanating from the Board, without the other members of the Court knowing anything about them, and similarly transmit to the Board all such communications received from India. The authority with which the Board was invested was so

full that they could direct and control every matter of civil and military administration in India, including the revenues thereof, namely, "to superintend, direct, and control all acts, operations, and concerns which in any wise relate to the civil or military government or revenues of the British territorial possessions in the East Indies." The Court were to have no voice whatsoever on any matters relating to war and treaties. The policy of annexation which Warren Hastings had inaugurated was reprobated but ineffectively, or else, we should not have seen the political ebullition in India after Dalhousie. From the point of view of the people of India however, the most important clause in the Bill was that which required every officer of the Government of India, to submit to the Board upon his return to his native country, a schedule of properties acquired by him while in office, with an explanation of how they were acquired, —an effective method of securing the purity of administration indeed, but it failed to achieve the desired result.

The Court were to have no voice in certain matters.

(c) *The Bill and its effect. Fox and Pitt in conflict.*

The effect of the Bill, as will be seen, was to remove all power from the Company, and transfer it to Parliament, leaving to the Court of Directors only the external pageant of a large establishment. Fox's Bill of the year before contemplated the extinction of all this show. Pitt was a great favourite of the Company and had assisted them in various ways. Fox was not, and when he found that there was considerable dissatisfaction in the country, he, with the assistance of Lord North at the head of the 'coalition ministry' of which he was the *de facto* leader, brought forward a Bill for the suspension of the Company's Charter for a period of four years, during which the Government of India was to be carried

The two conflicting India Bills—that of Fox, *V.* and that of Pitt.

on by seven Commissioners all nominees of Parliament. Matters of trade were to have been managed by nine Assistant Commissioners nominated by the Court of Proprietors. The Zamindars whose status was one of great doubt and dispute, until Lord Cornwallis finally settled the question, by securing to them and their families, hereditary ownership in the soil, were to be recognised as hereditary proprietors of the soil. This Bill passed the Lower House, and before it was sent up to the House of Lords, the King sent down a mandate to throw it out, the Company all the time strenuously opposing it. The Bill as anticipated was thrown out and the Coalition Ministry retired.

Plan of Fox's Bill.

Pitt's Bill was fashioned to suit the desire of the Company, and it was passed with a triumphant majority. The President of the Board of Commissioners became the real despotic Governor of India. This despotic rule was begun by Mr. Dundas, a Parliamentarian of note and weight, as the first President of the Board of Control.

Plan of Pitt's Bill.

Slight modifications both in the constitution and in the qualifications of the Commissioners under Pitt's Act, were made by the Act of 1793 (33 Geo. III, ch. 52). The India Act of 1833 (3 and 4 Will. IV, ch. 85) made no mention of the number required, although a later Act prescribed the appointment of only one Commissioner, namely, the President, and henceforth it became a one-man Board with Lord Ellenborough who had held office on two previous occasions under old conditions, in office. Lord Ellenborough was subsequently sent out as Governor-General of India in 1842. It may be noticed here that although the Court of Directors as a governmental authority, not a commercial body, had not the power to appoint a Governor-General or a Governor, or a Commander-in-Chief without the approval of

the Crown, evidently had the power to remove them, in spite of the Board of Control. Lord Ellenborough was recalled by the Court of Directors notwithstanding the disapproval of the Board of Control. While it is true, that the Court had the right to nominate persons for these high offices, subject to the approval of the Crown, their patronage for all civil and military appointments of a lower order was unlimited, a fact which accounts for the shameful scramble that used to take place amongst the members of the Company for a seat on its Board. Once appointed, promotions rested with them, not with the Board of Control, and in order to put a stop to back-stairs influences operating prejudicially against the interests of those who were really deserving, the Act provided that, all such appointments and preferments thereafter should be reported to Parliament. The Court of Proprietors became an effete body having lost all their power of revoking or modifying any proceedings of the Court of Directors, which had been submitted to and received the approbation of the Board of Control. Obviously this was to prevent the repetition of any monstrosity such as they were guilty of when they overruled the resolution of the Court of Directors for the recall of Warren Hastings.

Power of the Court of Proprietors and of the Crown in conflict.

Court of Proprietors became an effete body.

In spite of all this the ways of the Court of Directors were neither fair nor straight, so as to fully justify the vehement observation of Sir George Chesney that there "is no instance on record of the Court collectively awarding a single nomination to the relative of a public servant in recognition of his merits, and the bestowal of nominations naturally followed the order of value; sons and nephews were appointed to the Civil Service, or if they were not clever enough to pass even the very limited test of qualification laid down for that service, then to the well-paid Cavalry. Next in value came direct ap-

How appointments were made to the Company's services.

pointments to the Infantry, and lastly for those, who had the least personal claims, nominations to the Company's Military College at Addiscombe, the cadets from which supplied the Artillery and Engineers-services in which promotion was exceptionally slow; while the cadets who failed to come up to the standard for those services were appointed to the Infantry.' Such was the procedure through which the young Englishman passed into the service of the Company in India. What was Addiscombe to the youth ambitious of or, by force of circumstances consequent upon insufficiency of influence and interest in the Court, compelled to choose, a military career, Haileybury was to the youth more fortunately situated, and therefore, preferred a career in the civil administration of the country. The Addiscombe boys were neglected and ill-cared for, while boys of the Haileybury College were fed, pampered and reared up as the spoilt children of fortune, but to their credit, it must be said, that it is from this class that India had her Lawrence and Metcalfe, Napier and Elphinstone.

Addiscombe and Haileybury.

(d) The Regulating Act and Subsequent Development.

As early as 1773, Parliamentary control began to be visible, and the establishments in Bengal, Madras and Bombay directly responsible as they were to the East India Company, were independent of one another. By the Regulating Act, the Governor of Bengal was appointed the Governor-General with a Council to control and supervise the administrations of Madras and Bombay. It was a great day for Warren Hastings, originally a clerk in the service of the Company, when in 1774 he was appointed the first Governor-General under what may be termed the first constitutional charter for India, which was amended eleven years later in 1784, by the

The Regulating Act, 1774.

introduction of a Board of Control with a President at the head, over the Company's officers in India. It was not until 1813, that the Company was deprived of its activities as a trading concern except in China. Twenty years later in 1833, they were stripped of their commercial functions altogether. The Charter Act of 1853, introduced various reforms into the methods of the Indian Government, chief of which were the throwing open to competition the Indian Civil Service which had hitherto been kept a close preserve for the patronage of the Members of the Board of Directors and the inauguration of direct Parliamentary control. The step raised vehement protest from interested quarters, and by none was it opposed with greater fury than by John Stuart Mill. In his Memorandum on the Administration of India, the great political philosopher condemned it in unmeasured terms as a system in which the deciding voice belonged to Her Majesty's Government who " are in the fullest sense accountable for all that has been done, and for all that has been foreborne or omitted to be done—to believe that the administration of India would have been more free from error had it been conducted by a Minister of the Crown without the aid of the Court of Directors, would be to believe that the Minister, with full power to govern India as he pleased, has governed ill because he has had the assistance of experienced and responsible advisers." The Company however, suffered a death blow by the Act of 1853, the executive administration of the country being finally merged in the Crown in 1858, as a consequence of and sequel to the Indian Mutiny which broke out the year before. With the vesting of the Government of India in the Crown, the East India Company was finally abolished and with it, its Court of Directors and all other appendages including the Board of Control, in whose place was

Subsequent development.

Mill's imprecations.

set up an authority supreme over the Government of India, called the Secretary of State for India, with a seat in the Cabinet, as one of the five principal Secretaries of State under the British constitution. He is aided by a Council which is mainly deliberative and advisory. In other words the old President of the Board of Control was substituted by the Secretary of State and the Board itself by his council called the India Council. The Act of 1858, laid out a scheme of Government which became further extended mainly by the Indian Councils Acts of 1861, and 1892, and the Government of India Act of 1909, and finally by that of 1919.

Transfer of the Government to the Crown.

India Council in place of the Board of Control.

In this scheme of Government the Parliament of the United Kingdom is, of course, supreme over India; but the supremacy such as it is, is enforced by means of ministerial responsibility rather than by direct legislation. All the enactments relating to India are virtually in the nature either of constitutional enactments or financial provisions.

Secretary of State in relation to the Cabinet.

Part II

The India Office.

(a) *British India and Autonomous India.*

The dependency of India is divided mainly into British India, and India under the Princes and Ruling Chiefs. These are the two main divisions. There are further French India and Portuguese India, but these comprise very small tracts of country. British India is directly under the administration of British Officials and the India of the Princes is under the rule of the respective Chiefs, more or less under the supervision and control of the paramount power.

Divisions of India.

(b) *Proposals to bring India under the Crown.*

It is well known that the rule of the Company was not all that could be desired. On previous occasions, when circumstances of serious importance had arisen to cause discussions in Parliament on Indian questions, there had been manifest a strong feeling that the acquisitions of the East India Company would be better governed, if the management of affairs was vested entirely in the Crown and the Parliament. As early as 1784, Pitt, then Prime Minister, had declared his conviction that such a course would be fraught with advantage to both the English and the Hindus. It may be well imagined therefore, what strong feeling against the rule of the Company had been aroused in England by the terrible events of 1857 and 1858. Great was the satisfaction in the public mind when in December, 1857 the Prime Minister of England (Lord Palmerston did not vacate office until February 1858 for Mr. Disraeli to come in), announced that a Bill to effect the desired change was in course of preparation and had made considerable progress. Early next year the Court of Directors entered a solemn but emphatic protest to Parliament against the proposal of the Prime Minister. In a calm and dignified spirit they sought to lay their case before the country, but the voice of the people was peremptory and would brook no further sophisticating from them. The Bill was submitted, its principle was discussed with vehemence and even bitterness, and the first reading was carried after a debate extending over three nights.

Pitt's conviction that India should be governed by the Crown.

Palmerston's announcement of the transfer of the Government to the Crown.

On the 19th of February, 1858, the Liberal Government of Lord Palmerston was superseded by a Conservative Cabinet headed by Lord Derby with Mr. Disraeli as the Chancellor of the Exchequer to whom it fell to frame a new Bill which provided, that the Govern-

Fall of the Palmerston Cabinet and the coming in of the Derby Cabinet with a Bill.

ment of India should be vested in a Council of eighteen members. They were to be appointed in the following manner. Nine were to be the representatives of the various services in India, civil and military, four retired Anglo-Indian officials and five to represent the Anglo-Indian Mercantile community. This Bill to which Lord Palmerston applied one of his smartest Irish witticisms, where, in the words of the Spanish boy to Don Quixote, he said, "that whenever you see two persons in fits of laughter you may be sure they are discussing the Government of India Bill," shared the fate of its predecessor, and was not carried through. Indeed it was so fantastic in its conception no less than its frame that it had to be dropped without much ado. Lord Stanley's Bill, practically upon the lines of Disraeli's, but with several desirable alterations, was however, more fortunate. This Bill brought in the principle of the Government of India being vested in a Secretary of State, and a Council of fifteen appointed partly by the Directors and partly by the Crown, the arrangement being that the first Board should be formed of seven members elected by the Company from among their own Directors and eight nominated and appointed by the Crown, inclusive of the Secretary of State who was to be *ex-officio* President with a casting vote, and afterwards on each successive vacancy, the Crown and the Company were alternately to elect and appoint a member of the Council. While providing for the Secretary of State in Council having absolute control in all Indian affairs, the Bill did not lose sight of salutary changes that had to be introduced in the internal management of the Company. Thus the Bill passed through all the different stages of its career in the two Houses of Parliament, and on August 2nd, 1858, received the Royal assent to become law. The East India Company as an engine of administrative op-

Quixotic plan of the Derby Bill.

Introduction of the Secretary of State and the Council of India.

Government of India Bill becomes Law.

pression ceased to exist and the Empire of the Moguls became a part of the Empire of the King of England, and if Mr. Gladstone had accepted the office of President of the Board of Control which was offered to him by Lord Derby in May previous to the passing of the Bill, and elected to serve under the Derby flag along with Benjamin Disraeli, later the Earl of Beaconsfield, the one political opponent whose shibboleths any more than his integrity never could arouse any enthusiasm in him, but always drove him to the bitterest opposition, India might have started upon her career under the Crown with the great Statesman as her first Secretary of State.

Gladstone declines to be Secretary of State.

As I have noticed before that public opinion in England had ever since the impeachment of Warren Hastings,—for which bare act of justice the debt of gratitude of India to Burke, Fox and Sheridan, a trio of statesmen of unassailable integrity throughout the history of England, will never be exhausted,—been preparing itself for the change, namely, the transfer of the Government of India to the Crown. As evidence of this fact I might draw your attention to the Charter Act, the Act which for the last time renewed the Charter of the Company of 1853, which expressly provided for the continuance of the privileges of the Company 'until Parliament shall otherwise provide,' in place of one for a term of twenty years, a practice which had hitherto obtained. The Sepoy Revolt accentuated the transfer, and the people of India felt satisfied that thenceforth the Sovereign was to stand forth as the only source of Government which must be carried on in her name. They felt gratified that thenceforth they could look to the august personality of the Crown of England for the redress of their grievances and that they would not be sent from pillar to post, the order of things which prevailed under the Company. The Act styled the Government of India Act (21

Change of opinion in England.

The effect of the Mutiny on the transfer.

and 22 Vic. c. 106) provided, that the Secretary of State for India in Council was to be the direct agent of the Sovereign for the Government of India, and was to be responsible to Parliament in exactly the same way as the principal secretaries, in charge of the different parts of the Empire or departments of the Government, are. It was but natural, that those who were associated with the Secretary of State in the Government of the Empire should be men of experience and integrity, and hence the Act, instead of leaving it to the discretion of the Secretary of State, laid down that the majority of his Councillors must have been in the service of the Indian Government or resided in India, for at least a period of ten years, and must not have left India more than ten years before their appointment. They were not qualified to sit in Parliament and entitled to hold office during good behaviour only, but removeable on an address by both Houses of Parliament. No member of the Council had the power of independent action and they could not act otherwise than as a Council. Their deliberations which were to be embodied in despatches or communications to the Government of India were all to be signed by or transmitted in the name of the Secretary of State who was left to be the sole recipient of all communications and despatches from the Government of India. The old order of things with regard to communications of a secret and confidential nature was maintained only with this difference that, under the old regime the Secret Committee was composed of the Chairman and the Deputy Chairman of the Court of Directors, while under the Statute (21 and 22 Vic. ch. 106), the Secretary of State was constituted the sole authority for such business which the Committee transacted. The Act further provided that the Secretary of State was entitled to overrule his Council on any question delibera-

The reason why servicemen were preferred as Councillors.

Functions of the Secret Committee—old and new.

ted upon by them, but in such a case both he and those members of his Council who differed from him could record their differences with reasons therefor in writing. The constitutional position which the Act may be said to have given to the Secretary of State as a Minister of the Crown must be due to the fact that Her Majesty the Queen herself insisted in a Memorandum, dated the 4th of September, 1858, that it must be clearly defined as that equal to and identical with that of the other existing Ministers of the Crown and was to be founded upon the practice obtaining in the Foreign Office, namely, that despatches to and from the India Office should have to be submitted to her, the one on receipt, for her information, and the other for her approval before being sent out. The Queen further desired that all appointments to high judicial or executive offices in India must abide by her pleasure, quite as much as important measures with which the new Secretary as such should be concerned, must be brought to her notice and discussed with her before the Council was called upon to consider them. This injunction of course, did not relieve the Secretary of State of his responsibility to Parliament whose power to superintend and control, particularly in matters of high policy, in modes described hereafter, remained unabated. This practice of the Foreign Office method was adhered to for close upon a quarter of a century when it fell into desuetude except in matters relating to the Indian States and India's transfrontier relations.

Constitutional position of Secretary of State over the Council of India.

Important matters to be laid before the Crown.

The transfer thus effected for the better Government of India, did not fail to receive the anathemas of otherwise advanced political thinkers in England, and none of them was so prominent and aggressively and obtrusively prophetic in his declaration as John Stuart Mill whose advocacy of political reforms of a radical nature related to all parts of the British

John Stuart Mill on the transfer.

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Empire save India, in his opinion "a semi-barbarous dependency." It is no intention of mine to endeavour to repudiate all that he has said about our country and our countrymen, indeed the limitation on my subject precludes my doing so. It may however, be observed that his assertions stand self-condemned, and are not attached any weight to even by illiberal and intolerant Englishmen of our day. An erstwhile servant of the Company like his father, he appeared in the role of an apologist and characterised the transfer as an " ill-considered one " and " a folly " and " a mischief." " It has been," he said, " the destiny of the Government of India to suggest the true theory of the Government of a semi-barbarous dependency by a civilised Government, and, after having done this, to perish. It would be a singular fortune if, at the end of two or three more generations, this speculative result should be the only remaining fruit of our ascendency in India : if posterity should say of us, that, having stumbled accidentally on better arrangements than our wisdom would ever have devised, the first use we made of our awakened reason was to destroy them, and allow the good which had been in course of being realised to fall through and be lost from ignorance of the principles on which it depended." This is what we read in the " Memorandum of the Improvements in the Administration of India during the last 30 years, and the Petition of the East India Company to Parliament, 1858," of which the great philosopher was the author. John Stuart Mill himself, if he were alive today, would be the last person to hesitate to record that the experience of generations then unborn does not justify any of his gloomy forecasts. Philosophers of the type of John Stuart Mill are not far-sighted enough, and trifling with the philosophy of the history of a nation without knowing much about its genius, past and

John Stuart Mill in the role of an apologist.

His apology.

present, from which the possibilities of its future are deduced, is a dangerous pastime. The improvements effected in the Government of India, let us take, since 1860, not only outnumber the entire list of those effected by the Company whether with or without the Board of Control, but surpass in importance any of those which had preceded under the regime of the company except of course the Permanent Settlement of Lord Cornwallis. Even the apologist of the Company who more than any other Englishman of his time could twist and turn a point to his advantage, and in his favour, could not give us a respectable list of momentous reforms in the administration of India by the Company. The progress, intellectual and moral, that India has made since the transfer of the Government to the Crown, cannot fail to draw the admiration of the most fastidious critic. The resources of the country are being fast developed; matters of education, sanitation, communications and general commerce have progressed so far, and are progressing so vigorously and successfully, that the question of self-government under British overlordship in India has come to be recognised as within the sphere of practical politics,—unmistakeably to be realised sooner or later. There is no doubt about the fact that the Government by the Crown has achieved far better results for the people of the country, which after all was the object of the transfer, than those which could be credited to the account of that which it replaced.

Reforms introduced by the Crown.

Moral and material progress.

(c) *The Secretary of State for India.*

At the head of the Indian Administration in England is the Secretary of State for India, who subject to the

rights of the India Council, and the powers reserved to itself by Parliament, inherits all the powers and duties of the old Board of Control, and the East India Company, including the Board of Directors and the Court of Proprietors with respect to the Government and revenues of India. Appointed like the other Secretaries of State in the English Cabinet by the delivery of the seals of office he is the constitutional adviser of the Crown in all matters connected with India. Being, as noticed above, a part of the English Cabinet, and not apart from it, the rule that obtains in the English constitution as to one Secretary being able to discharge the duties of another, applies to him also. The division that exists in the Secretariate is for administrative convenience only. His position however is not exactly identical with that of his colleagues in the Cabinet, for while they are administrative heads of departments in their individual capacity, he is not so in respect of quite a number of items of Indian administration, in regard to which, he has a Council to assist him. This Council, as a statutory body, is entitled to be consulted by the Secretary of State in some matters, while in others he must act with it. Save this there is no other distinction whether in pay or position. They all receive a salary of £5,000 a year and obtain the assistance of two Under-Secretaries, of whom one is designated Parliamentary Under-Secretary with a salary of £1,500 a year going in and out of office with his party, and the other the permanent Under-Secretary receiving more, namely £2,000 a year. In this connection it is as well to mention here, that the old order of things under which the establishment of the Secretary of State for India was a charge on the revenues of India has changed for one which makes all charges of the India Office, except "agency charges," to be paid out of moneys to be

Secretary of State's appointment by delivery of seals of Office.

Secretaries may interact.

Their authority contrasted.

Salary of the Secretary of State-in-Council.

His salary no longer a charge on Indian Revenue.

provided by Parliament. This rule has been followed since the 1st of April, 1920.

As the supreme authority over the administration of India, the Secretary of State is empowered to superintend, direct and control all acts and operations and concerns which relate to the Government of India or the revenues thereof. All grants of salaries, gratuities and allowances of whatever nature, and all other payments out of the revenues of India, or charges on them must likewise lie under his direction and control, but as a matter of everyday practice, one would think he should hardly ever interfere with the discretion of the Government of India, unless the action taken by them upon any particular question was of so gross or flagrant a nature as not to be tolerated by public opinion in England. As a matter of fact the interference of the Secretary of State with the affairs of the Government of India is excessive, just as the influence of the Indian Civil Service is overwhelming, so that between the India Office and the Civil Service, no Viceroy, unless he is of the calibre of a Curzon or a Hardinge, can do much. It has been said that, the personality of the Secretary of State for India is what ultimately counts, not the opinion or feelings of the country whose destinies are placed in his hands. Indeed it has been acknowledged to be so and the reason put forward is, that as the democratic chief of a bureaucratic and centralised organisation, he has primarily to serve the political party in England to which he belongs, and which subsists only so long as the electorate or the force of public opinion pleases to keep it in power. Notwithstanding all this, the Secretary of State, if he is a man who knows his mind, is found not unoften to exercise a democratic influence upon the India Office as upon the bureaucratic Government of India.

His powers of Superintendence, direction and control.

Power exercised every day.

Party behest and democratic instinct.

(d) *Powers and Position of the Secretary of State.*

As a member of the British Caninet of the first rank, the Secretary of State for India seldom has more than an academic knowledge of the country for whose proper administration he is responsible to Parliament, a fact which cannot be ignored as one of the chief sources of the weakness of the Government of India, who do their best to secure popular support by popular measures, and avoid a conflict with popular opinion except under powerful circumstances. There is hardly anyone in the India Office save a couple of Indian Councillors, who has a direct knowledge of the India of to-day. The Secretary of State also represents the supreme authority of Parliament in all matters relating to India. As such he comes in and goes out of office with the ministry in England. No expenditure from the revenues of India is legal unless sanctioned by him and a majority of his Council so that, no Indian money can be frittered away by anybody however powerful he may be. The general conduct of business relating to the Government of India is entrusted to the Secretary of State by and with the advice of his Council. Indian Government business in England is carried on at the India Office, and every Indian measure runs in the name of the Secretary of State whose salary is now a charge upon the British estimates, and is along with the rest of his colleagues in the Cabinet, voted annually by Parliament, thus enabling the House of Commons to discuss all live questions of Indian administration in committee of supply. This is a distinct gain for which India had been systematically urging for forty years. He has the authority to overrule in certain matters. He may also act on his own authority in all matters of a secret nature, such as the determination of the foreign policy or the

Powers of the Secretary of State.

His control over expenditure.

Control of Parliament.

affairs of the Indian States. Generally he is a man of eminence in English public life, who comes with a fresh mind to the India Office, and does the best he can according to his light to better the condition of the people of India and to improve the system of Government.

(e) *Position of the Secretary of State.*

Of the powers of the Secretary of State it is necessary that we should know something. He has wide powers and duties some of which he has to exercise and perform with his Council. The law specifies certain powers which he must exercise in Council, that is to say, matters in respect of which they are proposed to be exercised must be placed before the Council. It does not matter whether the Council or the majority of them are with him or not. But there are others in connection with which he must have the majority of the Council with him. In matters of finance, his authority is freely exercised, and in matters of principles of Government, occasionally.

Powers and duties of the Secretary of State.

In respect of the obligation of the Secretary of State to follow in certain matters the dictates of the majority of his council it may be noted that, the principal may be said to be the appropriation of the revenues of India or other property coming into his possession, by virtue of the Government of India Act; sale and mortgage of property for the time being vested in His Majesty for the purpose of the Government of India; contracts for the purposes of the Government of India Act; and leave and furlough rules; power to make rules as to Indian military appointments; power to appoint non-civilian Indians to posts reserved for the Indian Civil Service; power to make provisional appointments to offices reserved to members of the Indian Civil Service and the

Control of the majority of the Council.

issuing of securities for money. In every other case the interference of the Council is of the least importance for, either he is not bound to consult them or, where he is not bound to do more, and is moreover entitled to overrule them. Where he does overrule them, and such instances are rare for, it is a matter of record that they, the Secretary of State on the one hand and the members of the Council on the other, try to accommodate one another as far as possible in order not to bring about any discord in the harmonious working of the administration, the member dissenting has to content himself with recording only a minute of disagreement. In other words they agree to differ. Of such a state of affairs two divergent views have been taken; one by the friends, and the other by the critics of the Government; neither indicative of approval of the exercise of his power to overrule and the system that prevails. The former is disposed to condemn the power to overrule as arbitrary, and the latter that a body which is effete, to say the least of it, should no longer be maintained at a high cost to the prejudice of the finances and good government of India. While it is true that the authority of the Council is coterminous with that of the Secretary of State in certain matters, directions or instructions in the form of despatches, to the Government of India never bear the seal of their authority for, in that domain, he and none else is responsible for what emanates from the India Office, so that if there has been any divergent opinion in the Council on the subject matter of the despatch, none outside it, not even the Government of India, is any the wiser for it, unless the Secretary of State chooses to communicate the same. It will be observed that the rule differs from what obtains in the Government of India whose every official communication with their constitutional chief must bear the signature of every member of

Secretary of State may overrule them.

Utility of the Council of India.

the Governor General's Executive Council, irrespective of whether there prevailed agreement or disagreement. In the event of disagreement only the dissentient is entitled to append his own note, which the Governor General is not empowered to withhold. In matters of expenditure the Secretary of State in Council exercise every control by virtue of Sections 2 (2) and 21 of the Government of India Act. Section 2 (2) is in the following terms : " the Secretary of State may, subject to the provisions of this Act or rules made thereunder, superintend, direct and control all acts, operations and concerns which relate to the Government or the revenues of India, and all grants of salaries, gratuities and allowances, and all other payments and charges out of or on the revenues of India."

Sections 2 (2) and 21 of the Government of India Act.

We have practically a repetition of these terms in Section 21 of the Act which runs as follows :—

> "Subject to the provisions of this Act, and rules made thereunder the expenditure of the revenues of India, both in British India and elsewhere shall be subject to the control of the Secretary of State in Council, and no grant or appropriation of any part of those revenues, or of any other property coming into the possession of the Secretary of State in Council by virtue of the Government of India Act, 1858, or this Act, shall be made without the concurrence of a majority of votes at a meeting of the Council of India."
>
> " Provided that a grant or appropriation made in accordance with provisions or restrictions prescribed by the Secretary of

Expenditure controlled by the Council.

> State in Council with the concurrence of a majority of votes at a meeting of the Council shall be deemed to be made with the concurrence of a majority of such votes."

It will be seen that unless in matters of expenditure the Secretary of State can carry his Council with him, there might be a deadlock. Either of them could prevent the other from incurring any expenditure, necessary or otherwise, though impacts such as we are thinking of have been so rare, that it may safely be suggested that they exist only in theory. In practice, where the Council finds that the political chief is reluctant to sanction an expenditure for which the Council is prepared, and in fact considers it legitimate and necessary, it has submitted to the will of the Secretary of State, if only to avoid the deadlock, or else there is no power in the administrative arrangement which can be employed to bring in the assent of the Council or enable the Secretary of State to override its decision.

Possible deadlocks.

(f) *Other Duties of the Secretary of State.*

Apart from his functions whether in Council or out of it the Secretary of State has other duties not dissimilar to those of his colleagues in the Cabinet, such as submissions of petitions to the King, recommendations for high appointments, and advice for the exercise of the Royal Prerogative of mercy or pardon. The Prerogative of pardon however has, since 1916, been delegated to the Viceroy and forms part of the terms of his appointment by Royal Warrant. Royal Prerogative is always Royal Prerogative, and its delegation notwithstanding, the right of the subject in India to petition His Majesty when the Viceroy has not seen fit to entertain a

The Secretary of State and the Crown.

petition, cannot be and has not been impaired. The Secretary of State is always a party to all covenants entered into with members of the Indian Civil Service and other services founded upon contracts, wherein there is always a provision which empowers him to put an end to the contract, in the event of the employee being found to be guilty of disobedience or misconduct or incapable of discharging the duties of his office with judgment and prudence. And as the predominant party to the contract, it is not unnatural that he in Council should claim and possess the right of final decision upon such questions. Not the least important among his functions is his right to bring actions and defend them where he is a party, and to this there is no bar, for, "Every person," as Ilbert says, "has the same remedies against the Secretary of State in Council as he might have had against the East India Company if the Government of India Act, 1858, had not been passed."

Right of Council to final decision.

(g) *Financial Control of the Secretary of State.*

Now, under Section 33 of the Act the powers of superintendence, direction and control vested in the Secretary of State, which are delegated to the Governor-General, are considerably relaxed. To this, I shall refer later. But the financial control of the Secretary of State now differs, as between Reserved and Transferred subjects, and, as matters stand, in relation to transferred subjects, is reduced to nothing, beyond (*a*) the creation of any new or the abolition of any existing permanent post, or to the increase or reduction of the pay attached to any permanent post, if the post in either case is one, which would ordinarily be held by a member of an all-India service, or to the increase or reduction of the cadre

Varying degree of control according as the subject is reserved or transferred.

of an all-India service; (*b*) the creation of a permanent post on a maximum rate of pay exceeding Rs. 1,200 a month, or the increase of the maximum pay of a sanctioned permanent post to an amount exceeding Rs. 1,200 a month; (*c*) the creation of a temporary post with pay exceeding Rs. 4,000 a month, or to the extension beyond a period of two years of a temporary post with pay exceeding Rs. 200 a month; (*d*) the grant to any officer of an allowance, pension, or gratuity which is not admissible under rules made, or for the time being in force under Section 96B of the Act.

Any expenditure on the purchase of imported stores or stationery, otherwise than in accordance with such rules as may be made in this behalf by the Secretary of State in Council, requires the previous sanction of the Secretary of State in Council. In order that the Government of India may have their say upon all provincial applications for sanction of the Secretary of State on any of the subjects mentioned above and others noticed later on, it is ruled that, they shall in the first instance, be addressed to the Governor-General in Council whose duty it is to forward the same to the Secretary of State, with such recommendations, observations or explanations as they may deem fit, although increase of pay in any individual case or creation of a temporary post may be, and as a matter of fact is, sanctioned by the Governor-General on behalf of the Secretary of State, by virtue of the delegated power, unless he (the Governor-General), has sufficient reason to dissent from the conclusion arrived at by the local Government. In such a case, the course followed is that prescribed for all such applications, namely, to submit the same for the orders of the Home authority with their own observations thereon. While on the reserved side, the control of the Secretary of State is fuller, in that, the previous

All applications for additional expenditure must be submitted to the Secretary of State through the Government of India.

The Governor-General exercises only delegated power.

sanction of the Secretary of State for India in Council is necessary for the creation, as in the other case, of any new or the abolition of the existing permanent post, but also for the increase or reduction of the pay *drawn by the incumbent,* of any premanent post, if the case is otherwise on all fours with the conditions prevailing in (*a*) namely, that the post in either case is one which would ordinarily be held by a member of an all-India service, or *by an officer holding the King's commission,* or to the increase or reduction of the cadre of an all-India service. As in the case of transferred subjects, previous sanction is required to the creation of a permanent post carrying a maximum salary of Rs. 1,200 a month, and *in the province of Burma of Rs. 1,250 a month,* or an increase of the same beyond Rs. 1,250 in Burma, and Rs. 1,200 in the rest of the provinces, and similarly, to the creation of any temporary post on a pay of Rs. 400 a month, or the extension beyond a period of two years or, *in the case of a post for settlement operations of five years,* of a temporary post on *deputation* on pay exceeding Rs. 1,200 a month, or *in Burma Rs. 1,250 a month,* as well as to the grant to any Government servant or, to the family or other dependants of a deceased Government servant of an allowance, pension or gratuity which is not admissible under rules made or, for the time being in force under section 96B of the Government of India Act, except in the following cases :—

Control on the reserved side is fuller.

Some details.

(*a*) "*Compassionate gratuities to the families of Government servants left in indigent circumstances, subject to such annual limit as the Secretary of State in Council may prescribe,*" and

(*b*) "*pensions or gratuities to Government servants wounded or otherwise injured*

while employed in Government service or the families of Government servants dying as the result of wounds or injuries sustained while employed in such service, granted in accordance with such rules as have been or may be laid down by the Secretary of State in Council in this behalf.''

While on the question of incurring expenditure on the purchase of imported stores and stationery, the control of the Secretary of State is alike, whether they have relation to the transferred or reserved subjects. Where there is some little difference between the two, I have taken care to indicate by italicising, but here practically the point of divergence between the two begins, for, the reserved side has no authority to increase any capital expenditure upon irrigation and navigation works, including docks and harbours, and upon projects for drainage, embankment for water storage and the utilization of water power, (*a*) where the project materially affects the interests of more than one local Government, and (*b*) where the original estimate exceeds 50 lacs of Rupees, or (*c*) where a revised estimate exceeds by 15 per cent. on the original estimate sanctioned by the Secretary of State in Council, and (*d*) where a further revised estimate is proposed, after one revised estimate has already been sanctioned by the Secretary of State in Council. The previous sanction of the Secretary of State, moreover, is a condition precedent to the reserved side undertaking a revision of permanent establishment involving additional establishment charges exceeding Rs. 5 lacs a year, but not where the legislative council has passed a resolution recommending the increase of such charges up to Rs. 15 lacs a year, and to any increase of the con-

Limit of power to increase expenditure.

Responsibilities of the reserved side.

tract. Similarly, previous sanction is necessary for all sumptuary or furniture grants of a Governor including all expenditure upon original works on the residence of a Governor exceeding Rs. 50,000 in a year, the decision whether a particular work is of an original character or not resting with the Governor-General in Council. Similarly, such sanction is necessary also to any expenditure upon railway carriages or waterborne vessels, specially reserved for the use of high officials, otherwise than in connection with the maintenance of such carriages or vessels, already set apart with the sanction of the Secretary of State in Council, for the exclusive use of a Governor. The manner in and the channel through which these applications are submitted to the Secretary of State, does not differ from that prescribed for submission of applications from the transferred side and which we have already noticed.

Where previous sanction necessary.

Manner in which the Secretary of State's sanction is to be sought.

(*h*) *As Custodian of Indian Revenues.*

Not less important is the duty cast upon the Secretary of State, as the custodian of the Indian revenues, to see that in the apportionment of financial charges between England and India, no unfair encroachment is made upon them. Naturally there is a conflict of interests; the trustees of the departments of the Home Government on behalf of the British exchequer pulling one way, and the Secretary of State on behalf of India pulling the other, and unless he is a commanding personality of influence in the Cabinet, of which he is a member, India is sacrificed, a fact which the honest and just Lord Ripon had to deplore in one of his letters to the then Secretary of State for India, Lord Kimberley. And that in respect of one for whom he had the most devoted ad-

Financial responsibility of the Secretary of State.

miration and whose life-long supporter he was. "The question," wrote the Viceroy, "of what expenditure ought to be thrown upon Indian revenues is the only subject on which Gladstone is quite deaf to the voice of justice." True Mr. Gladstone's general sympathy with Indian aspirations was genuine, for we find him in 1892 (during Lord Cross' regime), cordially extending his support to the expansion and liberalising of the Legislative Council, but with regard to India's financial claims on the British Treasury he held very rigid and illiberal views. It may therefore be safely suggested that much of the safeguarding of the interests of the Indian Exchequer in a conflict with the British Exchequer depends very much, if not wholly, upon the attitude, sympathetic or otherwise, of the First Lord of the Treasury and the Chancellor of the Exchequer.

Mr. Gladstone's sympathy with Indian aspirations and antipathy to give financial relief.

(i) *Relaxation of Power and Control.*

But so far about the aspect of financial control of the Secretary of State which hitherto had been unlimited, as indeed on the reserved side, it remains but very slightly altered. What then about the relaxation of the power of superintendence, direction and control vested in the Secretary of State for India? The old order of things has changed in favour of the transferred subjects and of the Ministers in charge of them. The Secretary of State has been deprived of much of his original powers, in consonance with the spirit of the reforms, and now has to remain content with his right of interference in respect of transferred subjects (his superintendence remaining unaltered on the reserved side), in matters which have for their object, (*a*) the safeguarding of the administration of the central subjects; (*b*) the deci-

Relaxation of control over expenditure.

sion of questions arising between two provinces in the event of their being unable to come to an agreement: (*c*) the safeguarding of Imperial interests; (*d*) the determination of the position of the Government of India in respect of questions arising between India and other parts of the British Empire; and (*e*) the safeguarding of the due exercise and performance of any powers and duties possessed by or imposed on the Secretary of State or the Secretary of State in Council, under or in connection with or for the purposes of the following provisions of the Act, namely, Sections 29A, 30 (1A), 96B, 96C and 96D, or of any rules made by or with the sanction of the Secretary of State in Council. I will place the sections before you.

Secretary of State deprived of certain powers.

[96B.] "(1) Subject to the provisions of this Act and of rules made thereunder, every person in the civil service of the Crown in India holds office during His Majesty's pleasure, and may be employed in any manner required by a proper authority within the scope of his duty, but no person in that service may be dismissed by any authority subordinate to that by which he was appointed, and the Secretary of State in Council may (except so far as he may provide by rules to the contrary) reinstate any person in that service who has been dismissed.

The civil services in India.

" If any such person appointed by the Secretary of State in Council thinks himself wronged by an order of an official superior in a governor's province, and on due application made to that superior does not receive the redress to which he may consider himself entitled, he may, without prejudice to any other right of redress, complain to the governor of the province in order to obtain justice, and the governor is hereby directed to exa-

mine such complaint and require such action to be taken thereon as may appear to him to be just and equitable.

" (2) The Secretary of State in Council may make rules for regulating the classification of the civil services in India, the methods of their recruitment, their conditions of services, pay and allowances, and discipline and conduct. Such rules may, to such extent and in respect of such matters as may be prescribed, delegate the power of making rules to the Governor-General in Council or to local governments, or authorise the Indian legislature or local legislatures to make laws regulating the public services :

" Provided that every person appointed before the commencement of the Government of India Act, 1919, by the Secretary of State in Council to the civil service of the Crown in India shall retain all his existing or accruing rights, or shall receive such compensation for the loss of any of them as the Secretary of State in Council may consider just and equitable.

" (3) The right to pensions and the scale and conditions of pensions of all persons in the civil service of the Crown in India appointed by the Secretary of State in Council shall be regulated in accordance with the rules in force at the time of the passing of the Government of India Act, 1919. Any such rules may be varied or added to by the Secretary of State in Council and shall have effect as so varied or added to, but any such variation or addition shall not adversely affect the pension of any member of the service appointed before the date thereof.

" Nothing in this section or in any rule thereunder shall prejudice the rights to which any person may, or may have, become entitled under the provisions in rela-

tion to pensions contained in the East India Annuity Funds Act, 1874.

"(4) For the removal of doubts, it is hereby declared that all rules or other provisions in operation at the time of the passing of the Government of India Act, 1919, whether made by the Secretary of State in Council or by any other authority, relating to the civil service of the Crown in India, were duly made in accordance with the powers in that behalf, and are confirmed, but any such rules or provisions may be revoked, varied or added to by rules or laws made under this section.

Public service commission.

[96C.] "(1) There shall be established in India a public service commission, consisting of not more than five members, of whom one shall be chairman, appointed by the Secretary of State in Council. Each member shall hold office for five years, and may be re-appointed. No member shall be removed before the expiry of his term of office, except by order of the Secretary of State in Council. The qualifications for appointment, and the pay and pension (if any) attaching to the office of chairman and member, shall be prescribed by rules made by the Secretary of State in Council.

Financial control.

"(2) The public service commission shall discharge, in regard to recruitment and control of the public services in India, such functions as may be assigned thereto by rules made by the Secretary of State in Council.

[96D.] "(1) An auditor-general in India shall be appointed by the Secretary of State in Council, and shall hold office during His Majesty's pleasure. The Secretary of State in Council shall, by rules, make provision for his pay, powers, duties, and conditions of employment, or for the discharge of his duties in the case of a temporary vacancy or absence from duty.

"(2) Subject to any rules made by the Secretary of State in Council, no office may be added to or withdrawn from the public service and the emoluments of no post may be varied, except after consultation with such finance authority as may be designated in the rules, being an authority of the province or of the Government of India, according as the post is or is not under the control of a local government.

Rules under these Sections.

[96E.] "Rules made under this Part of this Act shall not be made except with the concurrence of the majority of votes at a meeting of the Council of India."

Section 29A has reference to the appointment of the High Commissioner for India whose acquaintance we shall make in the last part of the present Chapter and 30 (1*a*) relates to the power of the local government to raise money on the security of revenues allocated to it under the Act, a subject the discussion of which we shall defer till we arrive at the provincial stage.

It remains to be seen whether by a stretch of interpretation encroachments will be made where there is a capable and masterful Secretary of State for India over the head of an incapable and affable Governor-General with an obstinate provincial understudy to manage him, as has not infrequently happened in the past.

The Secretary of State has the power of giving orders to every officer in India, including the Viceroy, but all such orders, unless they are urgent or unless they deal with matters of a secret nature, must first be communicated to his council. In his capacity as a member of the Privy Council he advises the Sovereign on all matters relating to India, in which he gets the support of the entire ministry who share his responsibility on the basis of the principle of ministerial responsibility. The work of the Secretary of State consists mainly, in approving the decisions of the several questions of Indian

All officers are under the control of the Secretary of State.

administration, and it depends more upon the character and temperament of the person holding the appointment as to the amount of interest he feels inclined to take in his charge. The lively and energetic interest which Sir Charles Wood, afterwards Lord Hallifax, during his tenure of office, as the first Secretary of State for India, under the Crown, took in Indian affairs mainly, in the direction of educational reforms, has perhaps been excelled fifty years later by Lord Morley, who was followed soon after by a still more energetic and broadminded statesman, Mr. Montagu, both of whom devoted their best energies towards political and administrative reforms, gradually leading India to responsible Government after the dominion model, in the long roll of Secretaries of State for India.

Hallifax, Morley and Montagu, three largest benefactors of India among Secretaries hitherto.

(j) *Authority of the Secretary of State.*

The authority vested in the Secretary of State in Council by the Statute is great, but instead of abstaining from direct interference in the administrative details of the Government of India he has taken full advantage of it. To their credit however, it must be said that there have been eminent English politicians, though not quite a succession of them, who by their administrative policy have laid down the rule that the function of the Secretary of State in Council is to review the administration as conducted by the Government in India, and to lay down broad principles of administration, leaving the details to be formulated and carried out by the local authorities, except in very important matters, where his approval of them must be obtained before they can be promulgated and carried out or enforced. The observation made by John Stuart Mill of the Home Government in the time of the East India Company is as

Functions of the Secretary of State-in-Council.

John Stuart Mill's obser-

vations *re* dual administration applies to-day.

applicable to the functions of the Council of India to-day, as it was to the Board of Control before the transfer of the Government from the Company to the Crown. "It is not," said he, "so much an executive as deliberative body. The Executive Government of India is and must be, seated in India itself."

Explanation offered.

In the pre-Mutiny days no dougt, that was the rule and the explanation offered for the *volte face* has merit in it. When we go through the list of Governors-General on the one hand and the Presidents of the Board of Control on the other we find that the eminence of the former invariably prevailed over that of the latter. While since 1858, we have had such a galaxy of brilliant men, eminent by character as by talents, such as Lord Hallifax, the Duke of Argyll, the Marquis of Salisbury, Sir Stafford Northcote, the Marquis of Hartington, Lord Randolph Churchill, Lord Morley, Sir Austen Chamberlain, Mr. Edwin Samuel Montagu and Mr. Wedgewood Benn, that it is difficult to say that the viceregal list will not suffer in comparison. Clive and Warren Hastings, Cornwallis and Shore, Wellesley and Minto, Lord Hastings and Bentinck, Metcalfe and Auckland, Hardinge and Dalhousie and Canning are names which will illuminate the pages of Indian history when judged from the administrative, apart from the Imperial and political point of view. I can recall no name among the occupants of the presidential chair equally illustrious with those with whose work in India we are familiar. Cannon Row produced only mediocrities, Whitehall men of outstanding merit. The explanation may be still further amplified by the fact that it has been in the period after the Mutiny that the duration of transmission between India and England has been considerably reduced, India has been brought nearer to England and the cable was laid and opened making it possible for the Secretary of

Balance of talent

and of advan-

State to be in hourly touch with the Governor-General who, as Lord Ripon opined, ought to be made the head of the "real executive of that country," while, "the functions of the Home Government should be restricted in practice within narrow limits" and that, if the true state of affairs had been known to him he was not sure that he would have come out at all. tages of communication.

The principal function of the Home Government is not to direct the details of administration, but to scrutinise and revise the past acts of the Indian Government; "to lay down principles and issue general instructions for their future guidance, and to give or refuse sanction to great political measures which are referred home for approval." That in a nut-shell ought to have been the function of the Secretary of State for India in Council, and from the principle involved in the rule, seldom should any departure have been made, unless in cases of exceptional stress and importance. Sir John Strachey, who served as member of the Government of India for nine years under successive Viceroys, and afterwards for ten years as a member of the Council of India, authoritatively lays it down that "the increased facilities of communication, the establishment of telegraphs, the greater interest in India taken by the British public and by Parliament, the growth of the business of the Home Government in consequence of the large investments of British capital in India, and other causes have made the relations between the two countries far more intimate than was formerly necessary or possible and have made more frequent the cases in which final orders cannot be passed in India: but it is an error to suppose that the Secretary of State is constantly interfering in the ordinary work of Indian administration." This however cannot be accepted as a correct statement Interference of the Secretary of State in the administration of India. Interference because of larger investments.

Sir John Strachey's view incorrect and misleading.

of facts. Sir John Strachey, brilliant and distinguished administrator though he was, in days when India was not familiar with a Ronaldshay or a Goschen, suffered from the malady inherent in every Anglo-Indian administrator, of seeing things in British Indian administration through rosy glasses. A higher authority gives us a different account of the amount of interference exercised by the one and tolerated by the other. It is almost a weekly interference of which Lord Curzon in the stately pages of his work the "British Government in India" says that:—"Early in the twentieth century, a fresh departure from the constitutional practice excited a good deal of public attention, and at a later date was made the subject of official investigation, and rebuke." Allusion has been made to the practice by which the Viceroy and the Secretary of State exchange weekly letters which are treated as confidential, although passages are sometimes communicated to their colleagues. This correspondence is supplemented by the interchange of telegrams between them, the bulk of which relating to public affairs are circulated to the members of Council whether in India or in London. Any portion, which is in the nature of secret correspondence between the two heads of the Government need not be divulged to the colleagues of either. These relate more particularly to the conduct of foreign affairs or the personal relations of the two correspondents. In the time of Lord Morley, however, and Lord Minto, it was found that private and secret correspondence passing between the Secretary of State and the Viceroy without the knowledge of their respective Councils, and uncommunicated to them, had been carried to a point which amounted to an usurpation of the powers laid down, and was inconsistent with the constitutional basis of the Indian Government. Lord Morley, who combined

Lord Curzon's testimony.

Lord Morley's departure from the official rule.

with an austere but flexible radicalism, an irresistible personal charm, and the most despotic of tempers, was an impassioned apostle of personal rule. He was apt in Parliament, to speak of himself as the Viceroy, as though the Government of India was conducted by a sort of private arrangement between these great twin brethren upon whom no sort of check ought to be placed by irresponsible critics and incompetent outsiders. This is a position which Lord Morley took upon himself to vindicate with all the resourcefulness of his genius and the power of his pen in the pages of the *Nineteenth Century and After*, for February, 1911, in a paper called "British Democracy and Indian Government," to which the student may turn with profit. The tendency was carried to an even further extent in a later regime, under which, it took the form not merely of undue use of the private wire between London and Simla, but of the practical supersession of the Council in India by the independent action of the Viceroy and the Commander-in-Chief, acting as though they and they alone were the Council, a quite unconstitutional action. This procedure came to a head in the case of the Mesopotamian campaign of 1915, and succeeding years, and was made the subject of severe animadversion by the Royal Commission appointed under the Chairmanship of an ex-Secretary of State, of high authority and experience, Lord George Hamilton, to enquire into the charges brought against the conduct of the War in that area. As evidence of this fact we need only turn to the pages of Lord Morley's "Recollections." He was an apostle of personal rule and, left to himself, would even carry on correspondence with the subordinates of the Governor-General and would also issue direct instructions to them such as Lord Salisbury did for a brief period, until resented by Lord Northbrook in the following words:—

Vehement vindication of his view by Lord Morley himself.

Further pleading by Lord Morley.

Government by correspondence started by Salisbury

and later supported by Morley.

"Nothing to my mind," wrote the Viceroy, "is so disagreeable as the suspicion that a backstairs correspondence is going on between one's own subordinates and officials of high rank belonging to some other department, with the chief of which one is himself in direct official and private correspondence. I believe endless harm has been done by this....." Lord Morley's weekly letters to Lord Minto disclosed the fact that the author of "Compromise" could not endorse this view even when he was reminded by the Viceroy of the correct interpretation of the statute that the Secretary of State's "supreme control must be taken together with the powers given to the Government of India by various Acts of Parliament, which evidently intended that the direct administration of India should be entrusted to the Government of India, always of course, subject to the supreme control of the Secretary of State. But the present Secretary of State does not read the Acts in that way, and claims his right to interfere with and command every individual in India —direct. Legally his position may be sound, but constitutionally it is impossible." It is strong comment, but it sums up the situation that exists to-day.

Lord Northbrook's denunciation.

Lord Minto's denunciation.

There is another aspect of the case also, namely, that there are advantages derived from the Secretary of State having the supreme control. No doubt the Indian Councils Act and the Indian High Courts Act of 1861, were suggested by Canning and accepted by Sir Charles Wood, but the Indian Councils Act of 1869 was that of the Duke of Argyll. To Lord Cross and to Lord Morley respectively, are due the credit of having given India the Indian Councils Act of 1892 and the Indian Councils Act of 1909, the latter better known as the Minto-Morley reforms. But the greatest of all are Lord Crewe's Durbar despatch and the Montagu reforms of 1919. These were

Advantages of the Secretary of State being held supreme.

not conceived by the Government in India, nor, when conceived, whole-heartedly supported in India. Be that as it may, no small part of the duty of the Secretary of State consists in answering references made to him by the Government of India. Not that it is imperative upon them to make such references except upon questions of great political or financial importance. When a fundamental principle of policy, educational, municipal, local self-Government, financial, revenue, commercial, military or foreign as laid down and accepted, is proposed by the Government of India to be departed from, it becomes of course a duty with them to consult the Secretary of State before putting their hand to the plough. References, when made, must be subject to the direction of the Secretary of State whose decision as to the line of action to be adopted is final and shall have to be carried out to the letter having regard, of course, to the needs and conditions of the country. If these require a departure, however slight, to be made in the work of the actual carrying out of the policy, a representation to that effect would have to be made to that authority again. The references increase or decrease in volume according as the Governor-General and his Council are strong or weak. Some Viceroys have been known to have taken upon themselves responsibilities which others among their predecessors or successors would hesitate to undertake.

Reference to the Secretary of State imperative.

References made to the Secretary of State.

PART III.

THE INDIA COUNCIL.

(a) *The Council of India.*

The Council of India: number of members and their qualification.

The Secretary of State is assisted and supported by a Council called the Council of India, composed of not less than 8, and not more than 12, members selected for a term of five years from among Englishmen and Indians of experience and knowledge of Indian affairs, who have distinguished themselves in one or other of the various services in India or in the public life of the country. The condition that at least one half of them shall have served or resided in India, for a period of not less than ten years previous to their appointment, is a *sine qua non* for membership of the Council of India. Parliament no doubt recognises the fact that India is progressing in rapid strides or else it should not have prescribed an absence of five years from the country immediately preceding the appointment as a positive disqualification for membership, no matter what the other qualifications may be. It is the Secretary of State who decides whether the number of councillors shall be the minimum or the maximum, or a number between the two, and once appointed by the Secretary of State, they are irremoveable for five years, the statutory period of their tenure of office, except by the Crown, and like the Judges, upon an address from both Houses of Parliament. Any one or more of them may for special reasons of public advantage be re-appointed for a further term provided the reasons of re-appointment are laid before both Houses of Parliament, for them to be satisfied as to the validity and wisdom thereof. Members of

Term and tenure of their office.

Number fixed by the Secretary.

the Council of India receive a salary of £1,200 a year, only those among them who are of Indian domicile receiving at the rate of £1,800, it being thought equitable to extend to Indians holding office in England the principle of "overseas allowance" established for Englishmen in the service of the Government of India. The equity of the principle is outbalanced by the economy of the situation for, while there are three Indians serving in England, there are thousands of Englishmen serving in India, drawing 'overseas allowance,' *all* from the Indian revenues. Be that as it may, the Councillors are disqualified from sitting or voting in Parliament, and are commissioned to discharge such duties as are entrusted to them,—all in relation to the Government of India. One of them, usually the senior member, is the Vice-President of the Council of which the Secretary of State is the President. Meetings of the Council are held as often as may be necessary, or as often as the Secretary of State may direct, but never less than one meeting a month and, except in matters which require the decision of the majority for the Secretary of State to take action upon, his opinion is final even if he should be in the minority. And no business transacted at a meeting of the Council from which he is absent is to be deemed as having been accepted for final action, unless his approval of it in writing is signified. For facility of business the Council of India is divided into several committees, each in charge of one or more branches of public business, and the rule is that the decision of the committee is to be regarded as the decision of the Council, unless the Secretary of State otherwise directs. The committees are of Finance, of Political and Secret affairs, of Military affairs, of Revenue and Statistics, of Public Works, of Stores and of Judicial and Public affairs. In the discharge

The salary of members.

Councillors may not sit in Parliament.

Vice-President of the Council.

Ordinary meetings of the Council.

Business transacted in the absence of the Secretary from the Council.

Committees of the Council.

of their duties the councillors suffer from the same anomalous condition which unfortunately is a permanent feature of the Government of India and of the Provincial Governments, and from which, experience of the actual working of the administration tells us, much of the troubles even under the reformed constitution arise. It is the right of direct access to the Chief which the departmental Secretaries have over the heads of the members themselves. And in the Council of India, the members are in a far worse position than their confreres are, either in the machinery of the Government of India or of the Provincial Governments, in that, in India, they are, or have a right to be, in full possession of the facts of the matters referred directly to the administrative head by the Secretaries. In the India Office they are not, for, the members of the Council of India have no right to know more about a case than what pleases the Secretary of State to place before them. The Secretary of State moreover has the power to refuse to submit any particular case before the Council, while carrying it on with the help of the departmental Secretaries who, as executive officers have the right of initiation, a privilege denied to members. The Council of India therefore, is an advisory body, and though, even as a permanent part of the machinery of the Government of India at home, it may be neglected as a political entity. It has a constitutional importance all its own, and plays so important a part in the direction of the administrative policy of the country, that it has often been asserted that the sooner it is abolished the better it is for the Government and people of India. But after all, the Secretary of State must be said to exercise a great influence over his Council. Without taking recourse to means which may be politically justifiable, he may always place himself in a position to command their sup-

Position of members as opposed to departmental Secretaries.

Right of initiation.

India Council—an advisory body.

Council—an anomaly.

port if he is so minded, as is evident from the fact that Secretaries of State of such divergent political views as Lord Birkenhead, a self-sufficient and impetuous politician whose conservatism amounts almost to indiscretion and policy to exploitation and dictation and Mr. Wedgewood Benn, a Socialist leader irretrievably wedded to the administrative policy of the greatest good of the greatest number, from which he may not deviate without stultifying himself or the great party to which he belongs could, in succession to each other carry on the duties of their office with the aid of the same Council. The only other possible explanation, rather an unkind one, is that the members of the Council care more for their pay and position and less for the function of their office. They all appear to be in political agreement with the Secretary of State to encourage him to appoint or re-appoint them, and put them in a position of security for the statutory period of tenure of their office. In the result, the country likewise is as often as not kept in as much light or darkness as it may suit the Secretary of State or the Cabinet to which he belongs, to keep it, and that is why we have been constrained to remark that the theoretical ultimate control of the British electors is more a shadow than substance.

Council—a flexible body, or the Secretary manageable.

(b) *The Council of India.*

The object with which the Council of India was brought into being was that it could advise the Secretary of State, composed as it was, and as it has been, of men of long experience of Indian administration and of wide and intimate knowledge of Indian problems, though not recent. This is the assumed purpose of the Council of India, but the time of life, usually between 55 and 60,

Object and composition of the Council of India.

at which its members are called upon to serve on it, is considered by recognised authorities to be no longer capable of adapting themselves to the altered conditions of English political life, from the ideals of which after all. India draws her inspiration and to which, in her political aspirations, she is making a rapid advance,—almost day by day. Distinguished public servants they are. but fatally prone to be obstructive in their attitude towards progress and reform. They see the spectre of administrative collapse and danger in every departure, however trivial, from the narrow groove of officialism they have been brought up to, and of which for 30 or more of the best and most impressionable years of their life they have been prominent figures. The utility of the Council, however, might come in, if the services of its members were taken advantage of at the proper time, when they still possess the virility of their intellect and are capable of imbibing progressive ideas. But the real object with which the Council was formed and imposed upon the constitution of India is often lost sight of. It was to put a curb upon the power of the Secretary of State for India whose acquisition of strength from association with the Cabinet, helped him gradually to dissipate all feelings of apprehension away, until the Council came to be recognised as no more than a consultative body without any of the attributes of a controlling body. As such again it is an appendage whose utility India has outgrown.

Composition, an anachronism.

The real object of the formation of the Council.

(c) *Committees of the Council.*

The Council of India, as I have observed, is divided into several committees, each having four members, according to their presumed knowledge of the subjects likely to be referred to them so that, each one of them may

have to, and as a matter of fact does, serve upon one or more of its several committees. The departmental Secretary is Secretary to the Secretary of State in Council, in the particular department he represents, and not in any sense, Secretary to the Council of which the Secretary is the Assistant Under-Secretary of State. The procedure followed is this. An order is contemplated to be sent out to India. The Secretary to the department within whose province the subject matter of the order lies, collects all papers and information connected with it, with the aid of subordinates and assistants in his department. The order then is drawn up by himself in the form of an official letter, or reply to the Government of India, and the draft so made is submitted by the Secretary himself along with all the papers and information collected beforehand, to the Secretary of State for his inspection and approval. It is not an unusual thing for the Secretary of State himself to redraft the whole correspondence in the manner he desires to put the matter to the Government of India, though usually he either approves of the draft submitted to him as it is, or settles it. This draft is then placed before the Committee of the department. Should the Committee happen to have any misgiving about the draft they subject the same to criticism and suggest alterations. They might even have prepared draft despatches themselves, if it were possible for a committee to do so, while seated round a table. In practice, however, instead of taking it upon themselves, to redraft the despatch, the Committee leave it to the Secretary of the department to do it for them in the light of their suggestions. The power of initiative belongs to the Secretary of State and not to his Council or its Committee. There is no individual responsibility attached to any one member, opinions being expressed collectively both in the Committee and in the

Departmental Secretary is Secretary not to the Council but to the Secretary of State.

Procedure of public business followed in the Secretariate.

Power of initiation in the Secretary of State.

Council. No secret despatches received or sent out by the Secretary of State are placed before them. They are removed from the view both of the Council and of the Committee. The Council of India is an advisory or a deliberative, not an executive body, such as Lord Palmerston desired it to be, in order that the experience and mature judgment of retired but able-bodied Indian Officials might be taken advantage of, and turned to good account.

(*d*) *Utility of the Council of India.*

Joint Committee on the utility and retention of the Council.

For sometime past a considerable controversy has arisen round the question of the retention of the Council of India, with the only result so far, that the Joint Committee have, for a time at any rate, set the matter at rest and have definitely declared themselves against the abolition of the Council of India. "They think," says their report, "that at any rate for sometime to come, it will be absolutely necessary that the Secretary of State should be advised by persons of Indian experience, and they are convinced that, if no such Council existed, the Secretary of State would have to form an informal one if not a formal one. Therefore, they think it much better to continue a body which has all the advantages behind it of tradition and authority, although they would not debar the re-adjustment of its work so as to make it possible to introduce what is known as the portfolio system. They think, also, that its constitution may advantageously be modified by the introduction of more Indians into it and by shortening of the period of the service upon it, in order to ensure a continuous flow of fresh experience from India and relieve Indian members from the necessity of spending so long a period as seven

years in England." As against these arguments, cannot the Indian politician ask, "Do we not stand sandwiched between officials in India and officials in England?" Thirty years ago one of the most powerful speakers that ever stood upon an Indian platform or before a Judge in any of our High Courts, Mr. Eardley Norton, reminded us "that the Council members were swayed by the same official interest, trained in the same official career, steeped in the same official prejudices as the men out here, who, also with the best of intentions, are resolutely endeavouring to thwart and obstruct the the moral, material and political reforms of India." From the observations of the Joint Committee it is quite apparent, that it is the Secretary of State who is controlled by the Council. If that is so, abolish the Secretary of State and let the Council rule. And if as the Act suggests it is the Secretary of State who controls the Council, why then keep alive a moribund appendage? From a political point of view the Council of India cannot be said to have acquitted itself honourably. It was made the butt end of ridicule in one of Mr. Gladstone's famous Midlothian speeches. "Suddenly in the dark," said Mr. Gladstone, "in the privacy of the Council chamber, I believe in answer to a telegram, without the knowledge of Parliament, without the knowledge of the country, a law was passed, totally extinguishing the freedom of the native press. I think a law such as that is a disgrace to the British Empire." This has reference to the Vernacular Press Act of Lord Lytton, the father of a recent Governor of Bengal, which was passed at a single sitting. Perhaps Mr. Gladstone turned in his grave when the Press Act of 1910 was passed, aided in the piloting as it was, by one of India's ablest sons. And what would Gladstone have said of the deeper disgrace of the Rowlatt Act, on the recommendation of a Judge of the English

Indian case against the continuance of the Council of India.

The Council, an effete and mischievous body in the opinion of Mr. Gladstone.

High Court? But the latest testimony of the futility of the Council of India comes from one who has been a member of it for over three years, Mr. Surendranath Mullick, C.I.E., a man, honoured and respected in his own country and having genuine intentions of co-operating with the Government to render service to India. In his evidence before the joint Free Conference (in fact the conference was neither joint nor free) in connection with the Statutory Commission over which Sir John Simon presides, Mr. Mullick is reported to have said that he could quote instances from the diary which he had kept from the day of his appointment here (in London), how Indian interests had been sacrificed by the India Council. Virtually, the Military and Political departments were dictators, and could get done whatever they wanted. The Secretary of State did not know the Indian members and once Lord Birkenhead called him (Mr. Mullick) 'Dr. Paranjpye.' When questioned why he did not protest against his views not being listened or being treated unceremoniously, Mr. Mullick said, that he had done so in the beginning but the Secretary of State dismissed him with the curt reply that he could not carry out an individual member's behests. Since then he (Mr. Mullick) had kept his peace.

Testimony of members of the Council of India.

And worse still was the solemn declaration of another colleague of Mr. Mullick, that upon occasions the Council of India met for " half a minute only;" it dispersed before even the members took their seats. He also narrated an occasion when the Secretary of State desired to felicitate a new member whom he met for the first time at a meeting of the Council, and to do so he went up and " actually shook hands to congratulate one who had been a member of the Council for nearly three years," not the person whom he desired to congratulate. The Secre-

tary of State did not even know all the members of his Council.

PART IV.

THE SUPREME AUTHORITY OF THE INDIA OFFICE.

(a) *The Home Government and the Principle of Subordination.*

With regard to measures of administration the powers of the Government of India are more or less absolute, subject only to the control of the British Parliament. That control is exercised by the Secretary of State for India, who, as we have noticed before, forms one of the chief British Executive. His control therefore, is the control of the British Executive, called the Cabinet. In theory, the people of England hold him responsible for all that happens in India. He has got to render through Parliament an account of the revenue and expenditure of India. He must explain to them the laws and regulations passed or undertaken in India. It is his duty to submit to Parliament, at regular intervals, a report of the moral, and material progress of the country and of the people in his charge. In fact he has to place the whole administration of India before the British people for review. The law allows him sufficient power to recall any officer in India, even the Viceroy himself, the only qualification being that, in case of recall of officers whose appointments are approved by His Majesty the King, it

The Home Government.

Secretary of State's accountability to Parliament.

His power of control.

cannot take place otherwise than by his sanction. In short, the law invests him with enormous powers over Indian matters of which he takes full advantage. The control of the British electors is more imaginary than real, for the Secretary of State directs the affairs of India far more closely than is commonly known or supposed. The common belief that the Government of India has the right of initiative, and that the function of the Secretary of State extends to the control, in the sense of checking the administration of India, is therefore unfounded.

Power of the Government of India.

The question was really mooted for the first time in 1861, when Sir Charles Wood was still the Secretary of State for India, but it was brought to a head by the Earl of Mayo claiming, as Viceroy, legislative independence, and protesting against being required by the then Secretary of State, the Duke of Argyll, to pass bills the shape of which had been approved by him. These were the Indian Contract Bill and the Indian Evidence Bill from the provisions of which as accepted by the Indian Law Commissioners, the Secretary of State would not permit any departture to be made in India, even at the cost of liberty of action of the legislative council. The Duke of Argyll did not mince matters when he said among other things that the principle upon which the Government in India is founded, " is that the final control and direction of the affairs of India rest with the Home Government, and not with the authorities appointed and established by the Crown, under Parliamentary enactment, in India itself." His Grace said further, that the Government established in India is, from the nature of the case, subordinate to the Imperial Government at home, and no Government could be subordinate, unless it was within the power of the superior Government to order what was to be done or left undone, and to enforce on its officers, through the ordinary and constitutional means, obe-

Government of India a subordinate Government.

dience to its directions as to the use which they were to make of official position and power in furtherance of the policy which had been finally decided upon by the advisers of the Crown.

(b) *Re-assertion of the Principle.*

The next case that arose was under Disraeli when Lord Northbrook attempted to assert the independence of his Government in fiscal matters. "It is not open to question," said the Marquis of Salisbury, the Secretary of State for India, "that Her Majesty's Government are as much responsible to Parliament for the Government of India as they are for any of the Crown Colonies of the Empire. It may even be said that the responsibility is more definite, in that the powers conferred are, in the case of India, armed with a more emphatic sanction." It necessarily follows that the control exercised by His Majesty's Government over financial policy must be effective also. There is much to be said in favour of the argument that they cannot defend in debate, measures of which they do not approve; nor can they disavow all concern in them, and throw the responsibility for them upon a Government situated ten thousand miles away. It was then asserted, that all important measures should first be communicated to the Secretary of State for an expression of his opinion, for the simple reason as urged by Lord Salisbury that, "in scrutinizing the control exercised over the Government of India by Her Majesty's Government, and the grounds for maintaining that control, it must be borne in mind that the superintending authority of Parliament is the reason and the measure of the authority exercised by the responsible Ministers of the Crown; and that if the one

Northbrook and Salisbury in conflict.

Lord Salisbury's opinion.

power is limited the other must be limited at the same time."

(c) *Further Affirmation of the Principle.*

The Secretary of State never misses an opportunity to remind the Government of India that in their administration as in their legislative action, they are subordinate to the Government at home. The trouble over the cotton duties in 1894, is yet another occasion on which the issue was raised, when Sir Henry Fowler laid it down that, " this principle, which guides the Imperial Cabinet, applies equally to administrative as to legislative action; if in either case a difference has arisen, members of the Government of India are bound, after recording opinions, if they think fit to do so, for the information of the Secretary of State in the manner prescribed by the Act either to act with the Government or to place their resignations in the hands of the Viceroy. In any case, the policy adopted is the policy of the Government as a whole, and as such, must be accepted and promoted by all who decide to remain members of that Government." Thirty-five years later, it was reserved for Lord Curzon, a former Viceroy of India, who, in spite of strenuous and angry protests against the " subordinate " theory of Mr. Brodrick, now Viscount Middleton, the Secretary of State for India, in a controversy between himself and the masterful personality of Lord Kitchener, on a question of great constitutional importance could not save his own discomfiture and eventual fall from Viceroyalty in 1905, as Secretary of State for Foreign Affairs, to authoritatively declare and lay it down on behalf of the English Cabinet, that the Indian Government under the Secretary of State for India was a " subordinate branch " of the English administra-

Legislative action subject to control.

Lord Curzon's resentment and approval thereafter, when in power.

tion. This was in connection with an incident which led to the disappearance of Mr. Montagu from the Coalition Cabinet, leaving Lord Reading, an astute statesman, to take care of himself at the head of the Government of India, though, to the credit of Lord Hardinge, it must be said, that he, as the personal representative of the King Emperor, and as Governor-General in Council —*i.e.*, as the head of the Government of India, always maintained an attitude of independence. But they are not all as able, as statesmanlike, as patient, as strong and as firm as he was against Whitehall.

Montagu pushed out by the force of the agency theory.

(*d*) *The Doctrine of the "mandate."*

The most disappointing instance of subservience to the behest, right or wrong, of the Secretary of State was furnished by Lord Elgin who laid down the famous doctrine of the "mandate." He took the incorrect view that the Government of India exist as the nominees of the Home Government, and are bound to carry out orders conveyed to them by the Secretary of State. On the 16th of January, 1896, in moving the adoption of the Cotton Duties Bill, Sir James Westland, the Finance Member of the Government of India said, that "the Government have given very careful consideration to this measure, first of all carefully weighing the principle on which they have based it, and afterwards striving sufficiently to meet the claims of Manchester, while doing ample justice to the claims also of the Indian Mills;" and in winding up the debate on the Bill, Lord Elgin, the Viceroy, from his place in the Council added, that "so far as we are concerned, who hold our commission from the Queen Empress, we are bound, as the Hon'ble Finance Member has pointed out, to weigh carefully the

Lord Elgin—a weak Viceroy.

The ruling voice was that of Manchester.

circumstances of the case, as here other interests as well as purely Indian interests are involved." The policy of 'let alone the man on the spot,' governing a large part of their official relation, particularly in matters executive, does not find favour with modern Secretaries of State, who are imbued with autocratic because imperialistic ideas of more or less pronounced type. In the next lecture, we shall discuss why it is for the benefit of the State that greater independence of action should be vouchsafed to the Government of India, a principle which has the support of public opinion in India at its back. The Government of India may not yet be responsible but it is unquestionably responsive, to the will of the people, which a Minister of the Crown living thousands of miles away from his charge, and not being in direct, immediate and living touch with public opinion in the country itself can hardly be expected to be.

Responsive if not responsible.

(e) *India and the British Parliament.*

Until a few years ago, theoretically speaking, the Government of India was subject to the will of the British people expressing themselves through the House of Commons. This authority was more indirect and, as a matter of everyday practice disappeared, when there was a strong Government in England with a strong Secretary of State for India. And when with them was associated a strong and capable Viceroy of outstanding position in English public life, India could be governed without regard or reference to public opinion in England. The question has sometimes been asked, how does Parliament exercise that control over the Government of India. The methods by which that is done are carefully summarised by Prof. Kale. " (1) It may legislate for

Parliamentary control over Government of India.

India in common with other parts of the Empire in such matters as Merchant Shipping or Copyright. Specific legislation for India has reference to the amendment of its constitution and loans raised by the Secretary of State. (2) It may require its approval of rule made under legislation allowed to be passed in India and may control that legislation itself through the Secretary of State. (3) It may control the revenues and expenditure of India, but in practice it does not do so except indirectly and in the matter of military expenditure beyond the Indian frontiers directly. (4) Like every popular law-making body, it may exercise control over the executive by the usual means of interpellations, amendments, resolutions and motions of adjournments." To this list I would add that a very powerful weapon in the hands of Parliament is a vote of want of confidence in the Secretary of State for India in the event of his making an attempt to flout its authority and control. All that has now changed, if not quite changed, has become obsolete and of academical interest by the mere fact that the salary of the Secretary of State for India is, by the Government of India Act of 1919, a charge upon the British estimates, a circumstance which enables the British elector to have a direct hold upon the ultimate Indian authority for whose services he is called upon to pay. In that sense the House of Commons, the ultimate court which sanctions the estimates, has now a direct control over Indian affairs. And imagine how opinion changes from year to year, for, what was voted down in the House of Commons in 1906, the inclusion of the salary of the Secretary of State in the British estimates, lest it should bring the Indian administration into party politics, became an accomplished fact in 1920, for, as foreshadowed by Mr. Montagu, it " will enable any live questions of Indian administration to be discussed by

Parliament may legislate for India.

Salary of the Secretary of State—a charge upon British estimates.

Firmer hold of the House of Commons on

the Government of India as represented in it by the Secretary of State.

the House of Commons in Committee of Supply." The inclusion of the salary of the Secretary of State in the British estimates replaces what used to be known under the Act of 1858 as the annual "budget debate" in the House of Commons. It was however, a misnomer, for, strictly speaking, Parliament was never asked by the Secretary of State when he made his explanatory statement to accept or reject an Indian budget, or even to approve of a proposed expenditure, but was only informed of the state of accounts of the year just closed, and of the revised estimates of the year ahead. The procedure gave the members an opportunity to raise a debate upon any question affecting India on the motion that the House do go into committee, to consider the Indian financial statement, so that this offered an opportunity for a Parliamentary review of Indian affairs. "Since 1919," says a competent authority, "the discussion on the Secretary of State's salary has replaced the budget debate. Of course, apart from the annual discussion and debate on actual Indian Bills, either House can at any time, if it wishes, discuss Indian affairs." Sir Malcolm Seton, further observes that, "such debates have been more frequent in the House of Lords, which usually contains more members with personal knowledge of India, and in which a question may be put to a Minister in an explanatory speech and may give rise to a long discussion. But the variety and scope of Parliamentary questions about India keep the India Office busy during session, and add appreciably to the revenues of the cable companies and the expenditure of India, since they constantly necessitate telegraphic consultation with the Government of India." As an example of a day's work, I might recall the fact that the Parliamentary spokesman of the India Office was called upon to answer questions about child mortality, proposed railway extensions,

Former method of exercising the control.

More frequent discussion of India in the Lords than in the Commons.

India Office

Indianisation of the army, facts connected with a recent riot in India, treatment of prisoners in jails, salaries of certain officials, qualifications of others, growth of an Indian mercantile marine, the intentions of the Government as to forthcoming legislation, and the export of live monkeys. Fairly representative these enquiries are, and they were made at a time when nothing unusual was happening. These questions at times have been carried to such lengths that as late as on the 15th of June, 1925, the Speaker of the House of Commons had to remark: "I have observed a tendency to put in the House questions which have already been put in the National or one of the Provincial Assemblies in India. I would ask Hon'ble members to remember that we have delegated certain questions in India, and to use their discretion in accordance with the general rule." So long however, as the Secretary of State remains responsible to Parliament for the general conduct of affairs in India, there is not likely to be any diminution in the extent of the variety of subjects on which he shall be called upon to furnish information.

called upon at times to answer most fantastic questions.

(f) *The Present Arrangement.*

The existing arrangement may be described in the words of the Crewe Committee who observed:—"We understand that it is the intention of His Majesty's Government that the salary of the Secretary of State should, like that of all other Ministers of the Crown, be defrayed from Home revenues and voted annually by Parliament. Our main principles have already led us to distinguish political and administrative duties of the Secretary of State, acting as a Minister, from the agency business conducted in the India Office on behalf of the Indian authorities. It appears to follow as a general

Recommendations of the Crewe Committee.

conclusion that charges incidental to the former should be met from British revenues. They form a normal part of the cost of Imperial administration, and should in equity be treated similarly to other charges of the same nature,.....charges on account of agency work would naturally continue to be borne by India, in whose interests they are incurred. The exact apportionment is clearly a matter of detail which is best left for settlement between the India Office and the Treasury. The principle that we would lay down is that, in addition to the salary of the Secretary of State, there should be placed on the Estimates (*a*) the salaries and expenses (and ultimately pensions) of all officials and other persons engaged in the political and administrative work of the office, as distinct from agency work; (*b*) a proportionate share determined with regard to the distinction laid down in head (*a*), of the cost of maintenance of the India Office; the exact sum payable under heads (*a*) and (*b*) to be determined by agreement between the Secretary of State and the Lords Commissioners of the Treasury from time to time. Any arrangement made under this scheme would supersede the adjustment agreed to between the India Office and the Treasury as a result of the recommendations of the Royal Commission on Indian Expenditure, over which Lord Welby presided. The India Office building and site and other similar property paid for in the past by Indian revenues, and now held by the Secretary of State for India in Council would continue to be Indian property."

Crewe Committee lays down certain principles.

(*g*) *Parliamentary Standing Committee.*

A further device for direct Parliamentary control is to be found in the introduction of the Standing Com-

mittee on Indian affairs, elected each session, of 22 members, each House of Parliament electing 11 members from among their number, and representing various political views, which has been established to take the place of the Joint Select Committee to whose catholicity, the present Indian constitution owes so much, whether in the domain of the Act itself or of the rules framed under it. This Committee is empowered to consider all Acts not acceded to by the legislature but accepted by the Governor or the Governor-General as the case may be, by means of the special power vested in him, as expressed in the certificate procedure which we shall discuss later on. To this Committee is also submitted for approval all amendments in, or modifications of the Rules made under the Government of India Act, necessity for which is suggested by the actual working of the constitution of India, which in its nature is novel and may be developed or perfected according to experience gained.

Standing Committees on Indian affairs and further parliamentary control devised under the Reforms.

Standing Committee scrutinises statutory rules and their amendments.

PART V.

AGENCY WORK ON BEHALF OF INDIA.

The High Commissioner for India.

Under the new constitution the powers and authority of the Secretary of State are no longer centralised

but are divided with the High Commissioner for India, an officer of very high dignity. He has some important powers of making contracts for and on behalf of the Government of India, and multifarious other duties by delegation, previously exercised or discharged by the Secretary of State or the Secretary of State in Council. This dignified office has been brought into being in fulfilment of the recommendation of the Committee of Home Administration of Indian affairs, otherwise known as Lord Crewe's Committee who observed that, the time had "come for a demarcation between the agency work of the India Office and its political and administrative functions, and that the step would commend itself to all classes of opinion in India as marking a stage towards full Dominion status." They accordingly recommended the transfer of all agency work as a preliminary step to a High Commissioner for India as the Government of India's representative in London. In carrying out the proposal the Stores Department has already been and the Accountant-General's Department, shorn of work connected with higher finance, is soon likely to be transferred to the High Commissioner, provision for whose appointment, pay, pension, powers, duties and conditions of employment have been made by His Majesty by order in Council, as laid down in Section 29A of the Government of India Act in the following terms: "His Majesty may by Order in Council make provision for the appointment of a High Commissioner for India in the United Kingdom, and for the pay, pension, powers, duties, and conditions of employment of the High Commissioner and of his assistants; and the Order may further provide for delegating to the High Commissioner any of the powers previously exercised by the Secretary of State or the Secretary of State in Council, whether under this Act or otherwise, in relation to making con-

Government represented in London by the High Commissioner.

High Commissioner for India.

tracts, and may prescribe the conditions under which he shall act on behalf of the Governor-General in Council or any local government." Needless to say that the Order contemplated in the statute may prescribe the delegation of other powers hitherto exercised by the Secretary of State or the Secretary of State in Council, particularly in relation to making contracts. Such delegation has already been made and the Order is a comprehensive one. It also prescribes the conditions under which the High Commissioner shall act on behalf of the Governor-General in Council or any local Government. Though eligible for re-appointment he holds his office ordinarily for five years, and is entitled to a salary of three thousand pounds a year, payable out of the revenues of India, but not to any pension in respect of services rendered as High Commissioner for India. Notwithstanding delegation of powers made to him whether by the Secretary of State or the Secretary of State in Council, the Secretary of State continues to exercise unrestricted powers of superintendence, direction and control vested in him under the provisions of the Government of India Act or otherwise, which includes the power of overruling the High Commissioner in the event of an appeal against his order concerning one on his establishment but drafted from that of the Secretary of State.

Conditions imposed upon the High Commissioner.

Subject to the provisions of the Government of India Act the duties of the High Commissioner are :—

(*a*) to act as the Agent of the Governor-General in Council in the United Kingdom ;

(*b*) to act on behalf of the local Government in India for such purposes and in such cases as the Governor-General in Council may prescribe ; and

The duties of the High Commissioner.

(*c*) to conduct such business relating to the Government of India hitherto conducted in the office of the Secretary of State in Council, as may be assigned to him by the Secretary of State in Council.

The position and dignity however, of the High Commissioner should not be mistaken for those of the High Commissioners, otherwise called High Commissioners and Agents-General of the Dominion Governments, who combine in their offices, in addition to the commercial agency, the functions of a Consul and in their political aspect those of a resident Ministry, the consummation of which their respective Governments are consistently endeavouring to push forward with a view to establish the constitutional principle of the Agents-General serving as links between the Colonial and Imperial Governments, thus making the office of the Secretary of State for the Colonies an obsolete institution. In any event the Agent-General is an officer of high political importance whose ability to speak with authority for and on behalf of the Dominion he represents is undoubted, and is fully recognised. The High Commissioner for India performs for India functions of agency only, as distinguished from political functions analogous to those performed in the offices of the High Commissioners for the Dominions.

Agency work of the Government of India transferred to the High Commissioner

CHAPTER II.

PART I.

THE GOVERNMENT OF INDIA.

Introductory.

The East India Company Act of 1813 made no change in the constitution of the Government established by the Act of 1793, or in their powers. It however, achieved a thing of great historical importance in that, it put an end to the trading powers of the Company.

Trading Powers of the Company put an end to.

The respective objects of the two Acts are quite obvious from their title. The earlier Act is entitled "An Act for continuing in the East India Company for a further term the possession of the British territories in India, together with their exclusive trade, under certain limitations," while the latter Act is entitled "An Act for continuing in the East India Company for a further term the possession of the British territories in India, together with certain exclusive privileges, etc." These "exclusive privileges" related only to the China Trade of the Company. In the meantime, the Company had been so overwhelmed with the Governmental concerns of the territories under their rule, that they cannot have been at all sorry for such deprivation of their trading powers in the East, as was contemplated, and in fact effected by the Act of 1813.

Object of the Act of 1793.

Object of the Act of 1813.

(a) *The Governor-General of India.*

Charter Act of 1833 and the conversion of the Governor-General of Bengal into Governor-General of India.

By the thirty-ninth clause of the Charter Act of 1833 the Government of India came to be vested in the Governor-General of India in Council, hitherto the Governor-General in Council of Bengal, and he was empowered to superintend, direct and control the entire civil and military Government of all the territories and revenues of India. His position and dignity was raised, but he was not deprived of his charge of the Presidency of Bengal, for he still remained the "Governor-General of the Presidency of Fort William in Bengal," and his Council became the council of the Governor-General of India. His position was made supreme over the Presidency Governments in India and still more when we find it enacted that, both the "Governors and Governors in Council of Fort William in Bengal, Fort St. George, Bombay and Agra in all points relating to the Civil or Military administrations of the said Presidencies respectively, and the said Governors and Governors in Council shall be bound to obey such Orders and Instructions of the said Governor-General in Council in all cases whatsoever." The Governor-General was moreover empowered, as often as the exigencies of the Public Service may appear to him to require, to appoint a Deputy Governor of Bengal to whom he could delegate all his powers by virtue of which he was enabled to perform all the duties of the Governor of the Presidency of Fort William in Bengal. The Act however, limited his area of selection for the office of the Deputy Governorship to the ordinary Members of his Council, —a fact which was responsible for the installation of Lieutenant-Governorship in Bengal, until done away with and superseded by the system of Presidency Gov-

His position and dignity raised.

Presidency Governments brought under his control.

The Deputy Governorship

ernment in April, 1912. It will be noticed how the Governor-General in Council of Bengal became the Governor-General of India in Council, and having become Governor-General of India in Council, gradually receded from his charge of the Presidency of Fort William in Bengal. It will also be noticed from the sections of the Act of 1833, cited above, that along with Bengal he has receded from his charge of the Province of Agra, *i.e.*, of what is now known as the United Provinces of Agra and Oudh. Two years later, opportunity was taken to amend this last provision, and a Lieutenant-Governor was prescribed to be appointed for the Province of Agra as well.

Graduai retirement from the Bengal charge.

Lieutenant-Governor for Agra.

(*b*) *The Renewal of the Charter.*

At the renewal of the Charter, the constitution of the Government of India was subjected to various modifications, some of which were of the deepest importance, and have exercised no small influence on the character and popularity of the administration. The power of legislation was withdrawn from the Governor and Council at the Presidencies of Madras and Bombay, and lodged in the Legislative Council of India which was at the same time vested with authority both varied and extensive. It was empowered to legislate for the Crown Courts, which had prior to this period been always independent of, and occasionally opposed to the Company's Government. It was also entrusted with the delicate but necessary task of revising Acts of Parliament passed in reference to India, in every case in which they appeared to require modification. The Charter likewise placed the two minor Presidencies in a state of as complete subordination, on all political and financial questions,

Inauguration of Legislative Council in India.

Powers and duties entrusted to it.

Control of the Council over expenditure.

to the Supreme Council, as the Presidency of Fort William had been; and, it gave that Council a control over their expenditure, which has always been regarded by them as odious and a source of constant irritation between the two. By its provision, the Presidency of Bengal was detached from the Government of India, and broken up into two Divisions, those of Calcutta and Agra. The former embraced the Provinces of Bengal, Behar and Orissa; the latter, all the ceded and conquered provinces in the North-West; and these two divisions of the Presidency were to be administered, in the one case by a Lieutenant-Governor, in the other by a Governor, ordinarily the Governor-General without the aid of a Council, in imitation of the system obtaining in the Governments of Madras and Bombay. The unalterable seal of finality was given to this partition, by the establishment by Lord William Bentinck of a separate Court of Appeal at Allahabad, to deal with matters judicial belonging to the Agra Division,—a lesson which has been taken advantage of in our own time by Lord Hardinge when constituting Behar and Orissa as a Province separate from Bengal, and which was lost sight of by Lord Curzon, when enforcing his ill-advised measure of the Partition of Bengal in 1905.

Two divisions of the Presidency of Bengal.

Governor for one division and Lieutenant-Governor for the other.

Establishment of a Court of Appeal at Allahabad.

(c) *Government of India separated from the Government of Bengal.*

Final secession of India from Bengal.

But the final secession of the Governor-General of India in Council from the Government of Bengal did not take place until 1853, when the Court of Directors were empowered, should at any time they think fit, to direct the Governor-General of India in Council to cease to be the Governor of the Presidency of Fort

William in Bengal, and to declare that a separate Governor shall be appointed in his place in the manner provided in the Act of 1833. Along with this, the Governor-General was further authorised to cut up the Presidency of Bengal,—an authority which was given him by the Act of 1833, but suspended by that of 1835, under the control and direction of the Court of Directors at home, and, to appoint a Lieutenant-Governor for any part of the territories of the Company, and prescribe his authority. The same Act provided that, if a separate Governor was not appointed, a Lieutenant-Governor could be. The very next year saw the installation of the Lieutenant-Governor in Bengal, in place of a separate Governor, whose appointment was sanctioned under the Act of 1833, but was never given effect to. Bombay and Madras were released from the immediate control of the Governor-General of India in Council, and, they were permitted to legislate for themselves, except in matters directly under the supervision of the Government of India.

Governor-General authorised to cut up the Presidency of Bengal.

Bengal under Lieutenant-Governor.

It will have been noticed how the three governments of Bengal, Madras and Bombay, which were independent of one another, but under the control and supervision of the East India Company, were by the Regulating Act of 1783, gathered together and placed under the control and supervision of the Governor-General in Council of Bengal. It will have been noticed also, how in course of time, the Governor-General of Bengal in Council became the Governor-General of India, and gradually retired from the direct responsibilities of the administration of the Presidencies of Bengal, Madras and Bombay. The Regulating Act may well be styled the first constitutional document for India. We cannot fail to notice how and when the Board of Control was brought into being, and how, under that very Act

The three Governments gathered together.

Regulating Act—the first constitutional document.

of 1784, generally styled Pitt's Act, the administration of the three Presidencies of Bengal, Madras and Bombay was vested in a Governor with three councillors whose control was by the Act of 1793 further extended over Madras and Bombay. This provision however, remained for all practical purposes a dead letter, because of the difficulty of communication by reason of the enormous distance between the three places which were not connected either by rail, or by steamer. The fact of the loss of the trading monopoly of the East India Company in 1813, and the various reforms coming in its train, and introduced into the methods of Indian administration by the Act of 1833, may well be said to have prepared the ground for the fatal blow dealt to the East India Company by the Act of 1853.

Provision for a Governor of Bengal remains a dead letter.

The Charter Acts of 1813, 1833 and 1853.

(*d*) *Beginning of the End of the Company.*

The origin of this Act might be traced back to the last day of March 1853, when the Court of Directors of the East India Company, as represented by the two "Chairs," wrote to the President of the Board of Control, to ask what was the intention of His Majesty's Government, respecting the future administration of the Company's Indian Possessions. "Referring to the period," Sir John Hogg and Mr. Russell Ellice wrote, "fixed by law for the continuance of the Government of the British territories in India under the East India Company; and referring also to the statement made in Parliament of the intention of Her Majesty's Ministers to propose this session a legislative arrangement for the future Government of India, which although embracing modifications both in this country and in India, will be founded on the system now existing, we are requested by

The Company in a state of suspense and nervousness.

Company's letter to the Government.

the Court of Directors to express to you their anxious desire to receive as early a communication as possible of the modification which it may be intended to propose. We beg to add, on behalf of the Court of Directors, and we may confidently say also, on behalf of the Court of Proprietors, that any changes calculated to strengthen and invigorate the existing system and effectually to adapt it to the requirements of the people of India, and to the development of the resources of that country, cannot fail to secure the cordial concurrence of the East India Company." Her Majesty's Government had made up its mind about what to do with regard to the future administration of India. The Company's letter was a feeler, but it failed to serve its purpose, for, after a lapse of ten days the President of the Board of Control wrote a reply, the value and importance of which were bounded by the sheet of paper in which it was contained. It was curt and in fact, an absolute blank. Sir Charles Wood acknowledged the receipt of the Court's letter and then went on to say, "It is with the greatest satisfaction that I have received this assurance of the cordial co-operation of the Court of Directors and of the East India Company, in the promotion of the good government of our Empire in India, which must be the great object of our common exertions; and I can assure them that it will be my anxious desire to meet their very natural wish for an early communication of the intentions of Her Majesty's Government on this subject, as soon as it is consistent with my public duty to afford them this information." During the next two months the Court of Directors patiently waited for the promised revelation,—but all to no purpose, for the Minister gave no signs. It was announced in the House of Commons that after Whitsuntide, a statement of the Ministerial intentions would be made. The new Ministerial project for the future

The letter was a feeler.

Sir Charles Wood's reply to the Company was diplomatic.

Announcement of the inten-

tions of the Government in the House of Commons promised.

Government of India was to be unfolded on the 3rd of June. In the meantime, Sir Charles Wood, afterwards Lord Halifax, forwarded to the India House a "Memorandum of the heads of arrangement for the Government of India, which it appeared to Her Majesty's Government, after full and anxious deliberation, that it would be advisable to adopt." The memorandum ran as follows :—

Memorandum of Sir Charles Wood containing proposals for new arrangement.

1. "The Government of India to be continued in the East India Company, with all their existing powers and privileges, and subject to existing restrictions, until Parliament shall otherwise provide.

2. "All the provisions of existing Acts and Charters except in so far as they are altered by the Bill, to remain in force.

3. "The Court of Directors to consist of eighteen members, of whom twelve are to be elected by the proprietors, and six to be named by the Crown, out of persons who have served a certain time in India. In the first instance fifteen out of the present thirty Directors to be chosen by the Court, and three only to be named by the Crown, and, on the occurrence of the first three vacancies in the number of the elected Directors, three more to be named by the Crown, till the full number of six is attained.

4. "The privileges, qualifications and powers of all the Directors to be the same in all respects.

5. "One-third part of the Directors, both elected and nominated, to go out every second year, but to be eligible to immediate re-election or nomination.

6. "The appointment of students to Haileybury and Addiscombe and also of Assistant Surgeons, to be open to competition, under regulations to be framed by the Board of Control, from time to time, and laid before

Parliament. No alteration to be made as to other appointments to the Indian Service.

7. "A permanent Lieutenant-Governor to be appointed in Bengal.

8. "Power to create a fresh Presidency or Lieutenant-Governorship.

9. "The nomination of members of Council in India to be subject to the approbation of the Crown.

10. "An enlarged Legislative Council to be appointed in India. The Governor-General to have a veto on the acts of the Legislative Council.

11. "A temporary commission to be appointed in England to whom the reports of the Law Commission of India shall be referred for their report and suggestions, to be ultimately sent to the Legislative Council.

12. "Supreme Court and Sudder Court in each Presidency to be united, and an improved system of judicature to be introduced.

13. "Appointment of Advocate-General in each Presidency to be subject to the approbation of the Crown.

14. "The Commander-in-Chief of the Queen's forces in each Presidency to be Commander-in-Chief of the Company's forces.

15. "Present limit of the number of the Company's European forces to be enlarged.

16. "Salaries in India to be regulated.

17. "Furlough regulations to be amended."

(e) *The Party of Reforms.*

The Indian Reform Party.

The policy of the Indian Reform Party of which John Bright and Richard Cobden were the most notable figures, does not appear to have taken any very definite shape in their minds nor in those of their colleagues.

Despite a little vacillation in their course of action they had clearly determined upon their *tactics*. Their movements were to be regulated upon a system of distribution of labour. Mr. Phillimore was to undertake the judicial business; Mr. Blackett, the financial; Mr. Danby Seymour, the Rupert of the party, was to do the light skirmishing work to show himself in all parts of the field and to charge whenever occasion offered, with a rapid discourse *de omnibus rebus et quibusdem aliis*, everything possible about India, and something besides about the Caucasus and the Caspian. Bright, equal to either extreme, was to attack both principles and persons; he was to occupy the highest ground and the lowest; he was to deal in the loftiest generalities, and when he had exhausted them, he was to descend to undignified personalities! He led off with the former, and attacked the Double Government. His first speech on the 3rd of June, was a very clear one, and it told upon the House. Rising immediately after the Minister in charge, he failed to draw out, on the first evening of the debate the great advocate of the Company, Sir James Hogg. The bill however, sealed the fate of the Company. It brought in the Double Government as a visible force, enlarged the powers of the controlling Board and curtailed those of the Court of Directors. "The division of authority between the Board of Control and the Court of Directors, the large number of Directors, and the peculiar system by which measures are originated in the Court, sent for approval to the Board, and back again to the Court, and so on, render all deliverances very slow and difficult, and when a measure is discussed in India, the announcement that it has been referred to the Court of Directors, is often regarded as an indefinite postponement. In fact, it is evident that twenty-four directors in one place, and the Board of Control in another, are

Distribution of subjects among members of the party.

John Bright's part in the party.

Dual Government condemned.

Devious methods of the dual Government.

not very likely very speedily to write in one opinion upon any doubtful point.'' This is the deliberate opinion of no less a man than Sir George Campbell.

(f) *John Bright and the Double Government.*

Bright's famous attack of the dual Government, based on the opinion of Sir George Campbell and Sir John Kaye.

In his brilliant attack of the system of Double Government, John Bright made proper use of Sir George Campbell's opinion, no less than that of Sir John Kaye whose considered judgment was that, the '' Double Government had by this time fulfilled its mission. It had introduced an incredible amount of disorder and corruption into the State, and poverty and wretchedness among the people. It had embarrassed our finances and soiled our character, and was now to be openly recognised as a failure.'' Of the Double Government existing at home, he further said, '' In respect of all transactions, with foreign powers, all matters bearing upon questions of Peace and War, the President of the Board of Control has authority to originate such measures, as he and his colleagues in the Ministry may consider expedient. In such cases he acts presumably with the Secret Committee of the Court of Directors. That body is composed of the Chairman, Deputy Chairman, and Senior member of the Court. The Secret Committee sign the despatches which emanate from the Board; but they have no power to withhold or alter them. They have not even the power to record their dissent. In fact, the functions of the Committee are only those, which, to use the words of a distinguished member of the Court of Directors (the late Mr. Tucker), who deplored the mystery and the mockery of a system which obscures responsibility and deludes public opinion, could as well be performed by a Secretary or a Seal!'' India depended less upon the

Characterised as a mockery and a delusion.

twenty-four gentlemen in Leadenhall Street, than the caprice of one man, who is here to-day, and gone to-morrow, knocked over by a gush of Parliamentary uncertainty, the mistaken tactics of a Parliamentary leader, or the negligence of an inefficient whipper-in. "The past history of India," Bright on behalf of the Indian Reform Party argued, "is a history of revenue wasted, and domestic improvements obstructed by war." Nobody could deny the right of the East India Company to complain of many things which had been done by the Board of Control, and if the two bodies were left to point each other we should come to an accurate representation of what they really were. "The Company charged the Board of Control with having made unnecessary wars and squandered the revenues which they collected." The system of Double Government, it will be seen, was on its trial, and the prevailing opinion was whether the future system of Government was to be a single or a double one, and whether the East India Company was fit to form a part of it.

Bright's denunciation.

Board of Control accused of having squandered revenues upon unnecessary wars.

(g) *The Transfer of the Government.*

Transfer of the Government from the Company to the Crown.

The final stroke however, was dealt by the Government of India Act of 1858, which vested the executive administration of the Government of India directly in the Crown of England, whereupon the Governor-General of India in Council, as representing the Crown, came to be known as the "Viceroy," for which term there is no statutory authority or recognition, although, the seal of royal sanction is upon it in that, the Queen in her Royal Proclamation to the people of India described him as "Our Viceroy and Governor-General." In it Lord Canning who had been Governor-General of India was

designated the "first Viceroy and Governor-General of India," a unique designation in the long roll of Viceroys we have had, for, none of his successors has in his warrant of appointment been referred to as such. It is therefore, a ceremonious title, more than one imparting any authority over and above what he possesses as Governor-General of India. I need not discuss the Act which effected the transfer of the Government of India from the Company to the Crown, beyond noticing the fact that the form of Government brought into being by the Act was hotly debated in Parliament when Mr. Bright, in a speech of remarkable force, lucidity and illumination put forward a scheme of federation for India to which we are gradually but surely drifting.

Canning the first 'Viceroy' representing the Crown.

Bright returns to the Charge.

(*h*) *The Scheme of Federation.*

"It may be asked," said Bright, "what I would substitute for the Governor-Generalship of India. Now, I do not propose to abolish the office of the Governor-General of India this session. I am not proposing any clause in the Bill, and if I were to propose one to carry out the idea I have expressed, I might be answered by the argument, that a great part of the population of India was in the state of anarchy, and that it would be most inconvenient, if not dangerous, to abolish the office of Governor-General at such a time. I do not mean to propose such a thing now; but I take this opportunity of stating my views, in the hope that when we come to 1863, we may perhaps be able to consider the question more in the light in which I am endeavouring to present it to the House. I would propose that we should have Presidencies, and not an Empire. If I were a Minister, which the House will admit is a bold figure of speech,

Bright's scheme of Government.

Proposes Federal Government.

and if the House were to agree with me,—which is also an essential point,—I would propose to have at least five Presidencies in India, and I would have the Governors of these Presidencies perfectly equal in rank and in salary. The capital of these Presidencies would probably be Calcutta, Madras, Bombay, Agra and Lahore. I will take the Presidency of Madras as an illustration. Madras has a population of 20,000,000. We all know its position on the map, and that it has the advantage of being more compact geographically speaking, than the other Presidencies. It has a Governor and a Council. I would give it a Governor and a Council still, but would not confine all their duties to the Presidency of Madras, and I would treat it just as if Madras was the only portion of India connected with the country. I would have its finance, its taxation, its justice and its police departments, as well as its public works and its Military departments, precisely the same, as if it were a state having no connection with any other part of India, and recognised only as a dependency of this country. I would propose that the Government of every Presidency should correspond with the Secretary for India in England, and that there should be telegraphic communication between the office of the noble Lord (Lord Stanley) and every Presidency over which he presides. I shall no doubt be told that there are insuperable difficulties in the way of such an arrangement, and I shall be sure to hear of the Military difficulty. Now, I do not profess to be an authority on Military affairs, but I know that Military men often make great mistakes. I would have the army divided, each Presidency having its own army, just as now; care being taken to have them kept distinct; and I see no danger of any confusion or misunderstanding, when an emergency arose in having them all brought together to carry out the views of the Govern-

His plan of executive arrangement.

Units to be in touch with the Secretary of State.

ment. There is one question which it is important to bear in mind, and that with regard to the Council in India. I think every Governor of a Presidency should have an assisting Council, but differently constituted from what they now are. I would have an open Council. The noble Lord, the Member for London used some expressions the other night which I interpreted to mean that it was necessary to maintain in all its exclusiveness the system of the Civil Service in India. In that, I entirely differ from the noble Lord. (Lord John Russell here indicated dissent.) The noble Lord corrects me in that statement, and therefore I must have been mistaken. What we want is to make the Governments of the Presidencies, the Governments of the people of the Presidencies, not to exist for the Civil Servants of the Crown, but for the non-official mercantile classes from England who settle there and for the 20,000,000 or 30,000,000 of Natives in each Presidency. I should propose to do that which has been done with great advantage in Ceylon. I have received a letter from an officer who has been in the service of the East India Company, and who told me a fact which has gratified me very much. He says :—

Council in India.

Government to exist for the people, not for the Civil Service.

'At a Public Dinner at Colombo, in 1835 to the Governor Sir Wilmot Horton, at which I was present, the best speech of the evening was made by a Native nobleman of Candy, and a member of the Council. It was remarkable for its appropriate expression, its sound sense, and the deliberation and ease that marked the utterances of his feelings. There is no repetition of useless phraseology or flattery and it was admitted by all who heard him to be the soundest and neatest speech of the night.'

Anglo-Indian testimony of Ceylonese ability.

This was in Ceylon. It is not, of course, always the best man who can make the best speech; but if what is said in the letter, continued Mr. Bright, could be

What is true of Ceylon is

true of India.

said of a native of Ceylon, it could be said of thousands in India. We need not go beyond the walls of this House to find a head bronzed by an Indian sun equal to the ablest heads of those who adorn its benches. And in every part of India we all know that it would be an insult to the people of India to say that it is not the same. There are thousands of persons in India who are competent to take any position to which the Government may choose to advance them. If the Governor of each Presidency were to have in his Council some of the Officials of his Government, some of the non-official Europeans resident in the Presidency, and two or three at least of the intelligent natives of the Presidency in whom the people would have some confidence, you would have begun that which will be of inestimable value hereafter, you would have begun to unite the Government with the Governor; and unless you do that, no Government will be safe, and any hurricane may overturn it or throw it into confusion. Now, suppose the Governors equal in rank and dignity, and their Council constituted in the manner I have indicated, is it not reasonable to suppose that the delay which has hitherto been one of the greatest curses of your Indian Government would be almost altogether avoided? Instead of a Governor-General residing in Calcutta or at Simla, never travelling over the whole of the country, and knowing very little about it, and that little only through other official eyes, is it not reasonable to suppose that the action of the Government would be more direct in all its duties, and in every department of its service than has been the case under the system which has existed until now? Your administration of the law, marked by as much disgrace, could never have lasted so long as it has done if the Governors of your Presidencies had been independent Governors. So with regard to matters of police, education

Indians quite fit to rank with Englishmen.

Bright's proposal of Indian association with Government.

Direct action of Government.

Introduction of a spirit of rivalry in the Presidencies.

public works, and everything that can stimulate industry, and so with regard to your system of taxation, you would have in the Presidency a constant rivalry for good. The Governor of Madras, when his term of office expired would be delighted to show that the people of that Presidency were contented, that the whole Presidency was advancing in civilization, that roads and all manner of useful public works were extending, that industry was becoming more and more a habit of the people, and that the exports and imports were constantly increasing. The Governors of Bombay and the rest of the Presidencies would be animated by the same spirit, and as you would have all over India, as I have said, a rivalry for good; you would have placed a check on that malignant spirit of ambition which has worked as much evil; you would have no Governor so great that you could not control him or who might make war when he pleased; war and annexation would be greatly checked, if not entirely prevented; and I do in my conscience believe you would have laid the foundation for a better and more permanent form of Government for India than has ever obtained since it came under the rule of England. The Presidency of Madras, for instance, having its own Government, would in fifty years, become one compact State, and every part of the Presidency would look to the City of Mardas as its capital, and to the Government of Madras its ruling power. If that were to go on for a century or more, they would have their five or six Presidencies in India built up into so many compact States; and if at any future period the sovereignty of England should be withdrawn we should have so many Presidencies built up and firmly compacted together, each able to support its own independence and its own Government; and we should be able to say we had not left the country a prey to that anarchy and discord, which I believe to be

Harmonious development of all branches of Governmental activity and promotion of healthy rivalry.

Bright lays down other principles of rule.

Warning to England against being selfish in her rule.

inevitable if we insist on holding those vast territories with the idea of building them up into one great empire. But I am obliged to admit that, mere machinery is not sufficient in this case, either with respect to my own scheme or to that of the noble Lord (Lord Stanley). We want something else than mere clerks, stationery, despatches, and so forth. We want what I shall designate as a new feeling in England, and an entirely new policy in India. We must in future have India governed, not for a handful of Englishmen, not for that Civil Service whose praises are so constantly sounded in this House. You may govern India, if you like, for the good of England, but the good of England must come through the channel of the good of India. There are but two modes of gaining anything by our connection with India. The one is by plundering the people of India, and the other by trading with them. I prefer to do it by trading with them. But in order that England may become rich by trading with India, India itself must become rich, and India can only become rich through the honest administration of justice and through entire security of life and property. Now, as to this new policy, I will tell the House what I think the Prime Minister should do. He ought, I think always to choose for his President of the Board of Control or his Secretary of State for India, a man who cannot be excelled by any other man in his Cabinet, or in his party, for capacity, for honesty, for attention to his duties, and for knowledge adapted to the particular office to which he is appointed. If any Prime Minister appoint an inefficient man to such an office, he will be a traitor to the throne of England. That officer, appointed for the qualities I have just indicated, should with equal scrupulousness and conscientiousness, make the appointments, whether of the Governor-General, or should that office be abolished, of

What is necessary is not change of machinery but of spirit and policy of rule.

Choice between plunder and trade.

Best man of the Cabinet to be at the head of Indian affairs.

Duty to send out the best man to India.

the Governors of the Presidencies of India. These appointments should not be rewards for old men simply because such men have done good service when in their prime, nor should they be rewards for mere party service, but they should be given appointments under a feeling that interests of the very highest moment, connected with this country, depend on those great offices in India being properly filled up. The same principles should run throughout the whole system of Government; for, unless there be a very high degree of virtue in all these appointments, and unless our great object be to govern India well and to exalt the name of England in the eyes of the whole native population, all that we have recourse to in the way of machinery will be of very little use indeed."

Men should be appointed for merit.

Righteousness will exalt England.

(i) *Opposite view of Prof. Goldwin Smith.*

A no less competent critic however, Prof. Goldwin Smith took a different view from that enunciated by the "People's Tribune." He was for the emancipation of the Government of India, and, in a series of letters he maintained this view with great force and vigour,—not upon colonial principles but upon principles of Imperial rule. "Time will probably show,"—he held forth,—"that it is expedient to have the Government of the Indian Empire to be administered on the spot by the Governor-General with full powers for the proper exercise of which he will of course be held personally responsible by the Parliament of this country; if he proves incompetent the proper remedy is recall; if he abuses his authority the proper remedy is impeachment. The intermittent meddling of a bureaucratic officer in this country is of no use in either case. It can only dimi-

Goldwin Smith advocates emancipation of the Government of India on principles of Imperial rule, not on those of Colonial rule.

Head of Indian Government to be responsible before the bar of public opinion in England.

Head of administration to be an Emperor under the Imperial System.

nish responsibility, deaden the motives to vigorous exertion, and possibly afford a cloak for misconduct. It is not probable that had the Governor-General stood alone to answer personally at the bar of English public opinion for his own offences, he would have dared to enter into the Afghan War. (The allusion must be to the first Afghan war of Lord Auckland in 1840 and not to the iniquitous Second Afghan war of Lord Lytton in 1878, at the behest of the Earl of Beaconsfield, the Prime Minister, and the Marquis of Salisbury, the Foreign Secretary.) India is not a colony or a nation, but an Empire; and as I have said before, if you are to have an Empire, you must have an Emperor."

(j) *Want of foresight in Prof. Goldwin Smith's view.*

Goldwin Smith's proposition impracticable.

Professor Goldwin Smith was no doubt a political philosopher, not a seer which Bright was. His argument was to make India a separate Empire and to rule it with an autocratic nominee of the Crown. The proposition was a bold one, but as unfeasible as it was bold, and could only have been urged by one who was in despair of dealing with an untractable subject. A despot by a single act may do mischief so incalculable, that no future impeachment could atone for it. The act might be done in all good faith but what profit is there in making a man amenable to any, even the highest tribunal, when the mischief which he has caused is irremediable? What need of a despot when there are men at home well capable of understanding and managing Indian affairs;—when there exists for the guidance of the Indian Minister a body of men, chosen for their special knowledge and experience of those details on which their opinion is to be consulted;—when there are the representatives of the

Punishment after the mischief may not be an effective

nation to whom the Indian Minister is responsible for neglect or mal-administration? If only fit agents are employed, if more interest is shown by the public at large, and if Indian offices should no longer be regarded as an arena for party struggles, there seems no reason to dread the distance which separate the two countries, or the difficulties which may arise when there is room for diversity of views and policy. Every year lessens the period of communication between London and Delhi or Simla. The elements of a good and efficient Government are the command of England, and, under such a Government, India is bound to prove herself, as indeed she ought to be, the brightest jewel in the English Crown.

check upon misdeeds.

(*k*) *Council Government is Committee Government.*

The system of Council Government as established by the Regulating Act was nothing more or less than a Committee Government with undivided responsibilities, and it was inaugurated solely with a view to relieve the Governor-General of the pressure of daily increasing administrative work in India in the various branches of the administration. It was not like what was established in the Crown Colonies, a one man Government, with what was called an Executive Council without even having to execute anything but with functions which were mere advisory. Subsequent acts and regulations have always shown a marked tendency towards enlarging and strengthening that form of Government known to us as the Council Government, which the Councils with which we are familiar in the pre-Regulating Act period of the Government of the country, was of the type of Colonial Councils of which mention has just been made. There enactments are made and promulgated, in the name of

Object of the introduction of Committee Government in India.

Tendency to strengthen Committee Government.

the head of the administration without reference to his Council; here in India, they are declared to be the acts of the body known as the Governor-General and his Council. But the essential characteristics of a Committee Government have always been to adhere to the Council form of Government, composed as it has been of the heads of the great departments of State, whatever the object of the Indian constitution-makers may have been. Another reason which may be submitted why it was, and has, continued to be a Committee Government is that, in early period of the formation of the Legislative Council in India, and before that, the Governor-General in Council, by which must be understood his Executive Council, for Legislative Council existed then, was empowered, " to make and issue such rules, ordinances and regulations for the good order and civil Government of the Company's settlement at Fort William; and the subordinate factors and cities as should be deemed just and reasonable and should not be repugnant to the laws of the realm and to set, impose, inflict and levy reasonable fines and forfeitures for the breach and non-observance of such rules, ordinances and regulations." It was a limited power of law-making, but such as it was, no legislation or rules or orders decided upon by the Council assembled as a committee, was, or could be, discussed outside this Committee, before it received its final approval of the Governor-General. The legislative functions of the Governor-General in a legislative Council began only in 1861. We will reserve discussion of it for the present.

Government composed of heads of departments.

Governor-General in Council means Executive Council.

Law-making power of the Governor-General.

(*l*) *James Mill—the historian.*

" Wisdom rests with a multitude

The Committee Government in India was based upon the principle that in the multitude of Counsellors,

there is wisdom and that a "man seldom judges right, even in his own concerns, still less in those of the public, when he makes habitual use of no knowledge but his own, or that of some single advice," wrote James Mill in his monumental work—the History of India, while the later Council Government draws its inspiration from the principle that every executive function, whether superior or subordinate, should be the appointed and responsible duty of a given individual. of Counsellors."

(*m*) *John Stuart Mill's View.*

The fundamental difference in their constitution and functions is observable, though the tendency of their working has been in conformity with the leading features of a Committee Government. Years afterwards the great son of the historian described Council Government in India from the point of view of a speculative political philosopher. "The Council," he argued, "should be consultative, merely, in this sense, that the ultimate decision should rest undividedly with the Minister himself; but neither ought they to be looked upon, or to look upon themselves as ciphers, or as capable of being reduced to such at his pleasure. The adviser, attached to a powerful and perhaps self-willed man, ought to be placed under conditions which make it impossible for them, without discredit, not to express an opinion, and impossible for him not to listen to and consider their recommendations, whether he adopts them or not. The relation which ought to exist between a chief and this description of advisers is very accurately hit by the constitution of the Governor-General and those of the different Presidencies in India. These Councils are composed of persons who

John Stuart Mill's view.

Council should be consultative

Council to be composed of men having direct knowledge of India.

have professional knowledge of Indian affairs, which the Governor-General and Governors usually lack, and which it would not be desirable to require of them. As a rule, every member of Council is expected to give an opinion which is, of course, very often a simple acquiescence; but if there is a difference of sentiment, it is at the option of every member, and it is the invariable practice, to record the reasons of his opinion, the Governor-General or the Governors doing the same.

Decision of the Council to be according to the sense of the majority.

In ordinary cases the decision is according to the sense of the majority; the Council, therefore, has a substantial part in the Government, but if the Governor-General or the Governor thinks fit, he may set aside even their unanimous opinion recording his reasons. The result is that the chief is, individually and effectually, responsible for every act of the Government.

Councillors responsible only as advisers.

The members of the Council have only the responsibility of advisers; but it is always known, from documents capable of being produced, what each has advised, and what reasons he gave for such advice; while from their dignified position and ostensible participation in all acts of Government, they have nearly as strong motives to apply themselves to public business, and to form and express a well-considered opinion on every part of it, as if the whole responsibility rested with themselves.''

Mill's view in his "Representative Government" not applicable.

Having regard to the altered conditions of Indian administration it is doubtful whether the language used by Mill in his *Representative Government* would apply to the Government of India as at present constituted. Much of the ordinary administration of the country is carried on by the administrative departments, without the Governor-General individually or the Council collectively, having anything in particular to do in relation to them, so that, under the present system neither the Governor-General nor the Council can be said to be either individually or collectively and effectually responsible.

(n) *Tendency to centralise.*

Bright's idea fell flat upon his countrymen, particularly upon those who had such arrangement of Government as he suggested for the various provinces of India in their gift. The advantages of the system of Government which Bright would have introduced into India were evidently beyond the foresight and prudence of English statesmen of his time. "You will not make a single step," insisted the 'People's Tribune' with all the force and power of his eloquence, "towards the improvement of India unless you change your whole system of Government,—unless you give to each Presidency a Government with more independent powers than are now possessed by them. What would be thought," he went on with prophetic instinct and foresight, "if the whole of Europe were under one Governor who knew only the language of the Fiji Islands, and that his subordinates were like himself, only more intelligent than the inhabitants of the Fiji Islands are supposed to be. How long does England propose to govern India? No body answers that question and no body can answer it. Be it 50, or 100, or 500 years, does any man with the smallest glimmering of commonsense believe that so great a country, with its twenty different nations and its twenty languages can be bound up and consolidated into one compact and enduring empire? I believe such a thing to be utterly impossible. We must fail in the attempt, if even we make it, and we are bound to look into the future with reference to the point." Bright's idea, it is clear, was to knock on the head any centralised form of Government in India and raise in its place Presidency or Provincial Governments, each independent of the other, and directly responsible to the Government at home. He

Bright's idea sacrificed in favour of centralised Government.

Reductio ad absurdum.

Bright's plan of a federal basis.

gave an alternative also, namely, a Presidency or Provincial Government in each Province, autonomous and independent of all Central Governmental control except in matters involving high Imperial Policy, the very thing all parties whether in England or in India are now striving for. Neither was accepted and the Government of India Act was passed, the working tendency of which, for a long time after, was towards further centralisation, until Lord Mayo came upon the scene as Viceroy and Governor-General of India, and inaugurated a policy which experience has shown to be for the better and more efficient working of the administration of the country, and which with one or two notable exceptions, has received the general and cordial approval of successive Viceroys, some of them of great eminence and of exceptional statesmanlike outlook. The gradual dissipation of that tendency in the administrative history of India will be matters of consideration as we proceed from one aspect of the administrative arrangement of the Government of India to another.

Mayo the first apostle of decentralisation.

Supreme Government centred in the Governor-General in Council.

The supreme local administration of India, which was formerly distributed between the three co-ordinate Governments of Fort William in Bengal, of Fort St. David in Madras and of Bombay, is centred in the Governor-General in Council, the seat of the supreme Government being now at Delhi, but removable at the will of the Governor-General.

(*o*) *Government of India is the Direct Governing Authority.*

The Governor-General.

The Government of the whole country is carried on by this body called the Government of India, at the head of which is placed the Viceroy and Governor-General in

whom is vested the supreme authority, both executive and legislative. It is as well to mention here, that the term "Viceroy" has no statutory sanction, or any legal recognition. The term was originally used in the proclamation of the late Queen Victoria, on the transfer of the Government of India from the Company to the Crown in 1858. He is appointed on the recommendation of the Prime Minister, by the Crown, by warrant under the Royal Sign Manual, usually from among English statesmen of high rank though not infrequently from among those who have not had a recognised position in the public life of England. There has however been only one exception made to this rule and that is, that of Lord Lawrence a veteran member of the Indian Civil Service.

Designated "Viceroy."

His appointment.

PART II.

APPOINTMENT OF THE VICEROY.

(a) *Recruitment of the Viceroy.*

This opens up a very large question, the question of the relative merits of the two appointments, that of a civilian or that of one from the public life of England as Viceroy, and incidentally of the appointment of a Royal Viceroy. If Indian opinion was ever consulted it may be fully relied on that it would be most emphatically against the appointment of a civilian, brought up in an atmosphere not quite congenial to the cultivation of a feeling of mutual good will and friendly, cordial and un-

Relative merits of the appointment: civilian or from the governing class in England.

prejudiced relationship between themselves and the people of the country, and having a leaning towards the inviolability of the opinions and the sanctity of the intentions of his countrymen, more especially those of the service of which he might have won the prizes. This is a view which gains further strength when we take into consideration the additional grounds on which so eminent an Englishman as Lord Curzon declares himself against such an experiment being tried by reason of the fact that, "no member of the Civil Service can possibly have acquired that knowledge of public affairs of England, or that personal acquaintance with the governing class of England and notably the Government which he is serving that is so indispensable to a Viceroy. Further the trend of Indian public opinion is undoubtedly in the direction of attaching an increasing value to the appointment of Provincial Governors, and *a fortiori*, still more of the Governor-General from outside. The appointment of a civilian Viceroy will probably now be assailed by a chorus of condemnation in the native press." Nothing can be more revolting to think than that the Viceroy of India should be a service man, with all the passions, prejudices, failings and crochets of an Anglo-India ingrained in him and acquired through residence of a quarter of a century in an oriental country, subject to his rule, without any of the geniuses of the ruling class in a free country amenable to public opinion. You may thus get refined autocrats to mismanage things for you. But then anybody can mismanage them; you don't want a Viceroy for that purpose. That is the point we should have in view and that is a right upon which India must always insist.

Lord Curzon against civilian appointment.

Indian public opinion against such appointment.

By training and temper civilian unsuitable.

And upon dissimilar grounds would the appointment to the office of Viceroy of a member of the Royal family be taken exception to. In no country in the

world is Royalty held in higher veneration than in India, whose people from times prehistoric have regarded the constitutional principles, that the "King can do no wrong" or that the "King is the fountain of Justice" as inviolable, and not, what they, in European countries while pretending to lay great stress upon them, have done, as platitudinous; or as devices to embarrass Kingship by indirect means when occasion arises. From the Indian point of view, they do not go far enough, however sacred they may be to the European. To the Indian mind, the King is the representative of the Supreme being. He thinks of him in terms of the Almighty. His distribution of patronage and his management of public affairs is the dispensation of God. To such a mind, the idea of a Royal Viceroy is inconceivable and highly impolitic, inasmuch as the office of the Viceroy, constituted as it is, is closely identified with the policy of the government, that it would be impossible to dissociate him from the government of which he is the head. He will be brought under severe criticism if the policy of his government, which is necessarily his policy, happens to be unpopular; and if it is of a piece with the infamous Gilgit policy of Lord Lansdowne, or the outrageous Partition policy of Lord Curzon, or the atrocious repressive policy of Lord Minto, or worse still of Lord Chelmsford, it is likely to be vehement. We may be sure that not a small measure of criticism of such policy will be directed against him, necessarily bringing the dignity of royalty down, to the detriment of the prestige of the King-Emperor, to a level from where such condemnation must be tolerated, more in the future than hitherto, according to the growth of the self and political consciousness of the Indian people. The only thing that even so pronounced an Imperialist as Lord Curzon can suggest is that, "a day may come when provincial autonomy may have

Member of the Royal family as Viceroy.

King is the representative of the Supreme Being from Indian standpoint.

Governor-General from Royal family unsuitable.

Public criticism of his actions detrimental to Royal prestige.

Royal Viceroy only a ceremonial head.

reached a stage of development in which the nexus between the local Governments might be supplied by a Royal head of the State wholly dissociated from politics and charged with social and ceremonial duties alone; but such a situation will involve a complete transformation of the Imperial Government of India and not a consummation to be encouraged or desired."

(*b*) *The Regulating Act—the source of Administrative Authority.*

Secretary of State in Council successor to Court of Directors.

The earliest source of administrative authority in India undoubtedly lies deeply rooted in the Regulating Act which required and directed the Governor-General in Council to obey all orders he might receive from the Court of Directors. The Secretary of State in Council being the direct successor to the power and authority of the Court of Directors under the Act of 1858, has the power to require similar obedience to his orders. But wherever the origin may be, for all practical purposes, the authority remains vested in the Council of the Governor-General of India whose members have been styled by some European writers as "Cabinet Ministers." Each one of these Ministers has charge of one of the great departments of the State; their ordinary duties are those of administrators rather than of councillors, since each of these departments has a Secretary to itself who is the channel of communication between the department and the council. It is his duty to go through every matter coming up before him and relating to his department, and put it up before the Member-in-Charge, or the Governor-General with a note of his personal opinion. Should there be a difference of opinion between himself and the member, the whole matter must go before the

Member-in-Charge and Secretary.

Difference of opinion between the

Executive Council for decision, just as it should, in the event of a disagreement between himself and the Governor-General. But there are cases which are of such importance that neither the member of the Council, nor the Governor-General, would like to take the responsibility of passing the final order on, without taking either the Council or the Governor-General into his confidence. Such matters are usually sent up by him with his note to the Governor-General whose approval of the order of the Councillor gives it the seal of finality, and disapproval renders it necessary for the matter to be put up before the Council. The responsibility of the departmental Secretary does not cease with the sending up of a file to the Member-in-Charge for, upon him is imposed the duty of bringing every important matter to the notice of the Governor-General. It has been argued therefore, that because the method adopted is that followed by the English Cabinet, the members of the Council of the Governor-General of India are "Cabinet Ministers." You will realise in the course of these lectures that the reforms touched the Central Government but very gently. In fact beyond making the show of a few concessions, all more or less trivial and inconsequential in their nature, they left the Imperial Government precisely where it stood with all its powers autocratic, arbitrary and discretionary.

Governor-General and Member-in-Charge.

Matters before the Council.

What matters go up to the Governor-General.

(c) *The Viceroy in Office.*

The tenure of office of the Viceroy is for a period which is not legally defined, but is in practice limited to five years during which he enjoys a statutory remuneration of Rs. 2,56,000 a year. There have, however, been two notable exceptions to the rule in recent years. Lord Curzon's return to India in 1904, was not in extension

Tenure of office of the Viceroy.

of his five years' tenure of office between 1899 and 1905, but a reappointment after a short interregnum. The stay of Lord Hardinge for a few months after 1915, was indeed an extension. A recent enactment however, enables the Governor-General as well as the Provincial Governors to avail themselves of a short holiday by way of leave of absence out of India during their five years' tenure of office, a privilege of which they had hitherto been deprived. The Viceroy and the Governor of Burma, immediately took advantage of the new enactment. In such a case, the rule followed is, that the senior Presidency Governor is invited to act for the Governor-General, his place being taken by the senior member of his Executive Council. It appears that the latter is not an invariable rule, for it has been followed in Burma but not in Bengal, whose Governor went up to Simla to hold the reins of administration for one of the greatest Governors-General in British Indian history. Could the departure from the rule of the senior member acting for the Governor in Bengal have been on account of the fact that he happened to have been an Indian? The entire province protested against the departure on principle, not because it involved the rejection of one in whom the people had an overdose of confidence. But the Government had the pulse of the country in its hands and knew full well that adherence to the principle followed in Burma would in no way meet with the approval of the people. It was not unknown to the Government that the person in question had completely forfeited the confidence not only of every educated and cultured man in the country, but of his co-religionists who assembled in December (1925), in league, to declare open defiance of the crude, coarse, unrefined and uncultured sentiments of their own President whose ambitions, quite disproportionate to his abilities, to play the part of the greatest

Absence from the country.

Acting appointments.

Senior member acting for the Governor is not an invariable rule.

Rule not followed in Bengal when Lord Lytton went up to Simla to act as Viceroy.

Indian Moslem patriot and intellectual of the last century was only exceeded by his imprudence, nay impudence. Here was a discredited man and a deviation was therefore justifiable.

(d) Ceremony of the Viceregal Installation.

The installation of the Viceroy.

In this connection, I propose to bring to your notice the very interesting ceremony that takes place on the assumption of office of the Governor-General. It will reveal to you the secrets of how that part of the Government, the top begins to be at work. When the members of the Executive Council and the staff have ranged themselves on either side of the throne and the new Governor-General in morning dress and with his stars and badges on, has entered the room, and has taken his stand on the crimson and gold carpet under a rich canopy, the Home Secretary advances and asks His Excellency's permission to read the Royal Warrant which is as follows :—

George R. I. George V. by the Grace of God of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the seas, King, Defender of the Faith and Emperor of India.

To Our right trusty and right well-beloved cousin and Councillor, Victor Alexander George Robert, Earl of Lytton, Knight Grand Commander of the Most Eminent Order of the Indian Empire, Governor of Our Presidency of Fort William in Bengal in India.

Whereas Our Secretary of State in Council has under the provisions of the Government of India Act granted leave of absence to Our right, trusty and right well-beloved cousin and Councillor Rufus Daniel, Earl of Reading, Knight of the Grand Cross of Our most honourable Order of the Bath, Grand Master of Our most Ex-

alted Order of the Star of India, Grand Master of Our most Eminent Order of the Indian Empire, Knight of the Grand Cross of Our Royal Victorian Order, Our Governor-General of India;

And whereas it is enacted by the said Act that where leave is so granted to Our Governor-General, a person shall be appointed by Us by Warrant under Our Royal Sign Manual to act in the place during his absence;

Now know that We reposing especial trust and confidence in the fidelity, prudence, justice, and circumspection of you, the said Victor Alexander George Robert, Earl of Lytton, have nominated and appointed, and by these presents do nominate and appoint you, the said Victor Alexander George Robert, Earl of Lytton, to act as Governor-General of India, and of all Our lands, territories, countries, places and provinces which now are or shall from time to time be subject to or under Our Government in India, in the place of the said Rufus Daniel, Earl of Reading, and to execute all and every the powers and authorities committed, continued or given to Our Governor-General of India by or under or in virtue of the Government of India Act, and by or under or in virtue of any other Act or Acts of Parliament now in force, to take upon you, hold and enjoy the said office upon and from the departure on leave of the said Rufus Daniel, Earl of Reading, Governor-General of India, and to hold and execute the said office until the return to duty of the said Rufus Daniel, Earl of Reading, or if he does not return until a successor arrives, subject nevertheless to such instructions and directions as you, the said Victor Alexander George Robert, Earl of Lytton, shall as holding and executing the office of Governor-General of India or Governor-General in Council from time to time receive under Our Royal Sign Manual, or under the hand of

one of Our Principal Secretaries of State, or as may be or may have been so issued to the Governor-General of India for the time being, and We do hereby authorise and empower and require you, the said Victor Alexander George Robert, Earl of Lytton, to execute and perform for the time being all and every the powers and authorities to the said office of Governor-General of India appertaining, and We do hereby give and grant unto you the said Victor Alexander Robert, Earl of Lytton, while acting as Governor-General of India and your Council as the Governor-General of India in Council the superintendence, direction and control subject to the provisions of the said Government of India Act, and of any rules lawfully made thereunder of the Civil and Military Government of all Our said territories in India with full power and authority, but subject as aforesaid, to superintend and control the Governors and Local Governments of all Our presidencies and provinces in British India in the due administration of such presidencies and provinces and also with all such powers and authorities jointly, severally and respectively and subject to all such restrictions and conditions as are given to them respectively or created by, or under, or in virtue of the Government of India Act or any other Act or Acts of Parliament now in force, and We do hereby order and require all Our servants, officers, and soldiers in India and all the people and inhabitants of the territories under Our Government and also all Our Governors and Local Governments of Our respective presidencies and provinces in British India, to conform, submit and yield due obedience unto you, the said Victor Alexander George Robert, Earl of Lytton, as Acting Governor-General of India and your said Council accordingly.

Given at Our Court at Buckingham Palace, this eleventh day of March, in the year of Our Lord one

thousand nine hundred and twenty-five, and in the fifteenth year of Our reign.

By His Majesty's Command.

BIRKENHEAD.

The ceremonial part.

Then follows the ceremony of the administration of oaths administered by the highest judicial authority of the province where the assumption of office takes place.

The Chief Justice in full wig and robes of scarlet and black then advances and administers the Oath of Allegiance which runs as follows :—

" I.....do swear that I will be faithful and bear true allegiance to His Majesty, King George the Fifth, Emperor of India, His Heirs and Successors, according to law, So help me God."

The Oath of Office is next administered and the Governor-General says, " I.....do swear that I will well and truly serve our Sovereign King, George the Fifth, Emperor of India, in the Office of Governor-General of India, and that I will do right to all manner of people after the laws and usages of India without fear or favour, affection or ill will, So help me God."

At the conclusion of each oath the Viceroy kisses the Bible.

The Home Secretary then asks His Excellency whether it is his order that his assumption of office be issued and published in the *Gazette of India*, that it be read at the headquarters of the troops in the various garrisons and military stations under a salute of 31 guns and be communicated to all Government departments,

and local Governments. His Excellency signifies his desire that this should be done.

His Excellency then leaves the Chamber in procession and the ceremony is at an end.

The Viceroy's flag is unfurled from the big mast in the Viceregal grounds and a Royal Salute of 31 guns announces to the Imperial City that a new Viceroy has commenced to rule in the land. But rule he must on the basis of the Instrument of Instructions he receives from His Majesty at the time of his appointment under Royal Warrant.

(e) *The Instrument of Instructions to the Governor-General of India.*

George R.I. :—

Instructions to Our Governor-General of India given at our Court at Buckingham Palace this 15th day of March, 1921. Instructions to the Governor-General upon appointment.

Whereas by the Government of India Act it is enacted that the Governor-General of India is appointed by Warrant under Our Royal Sign Manual, and We have by Warrant constituted and appointed a Governor-General to exercise the said office subject to such instructions and directions as he, or Our Governor-General for the time being, shall from time to time receive or have received under Our Royal Sign Manual or under the hand of one of Our Principal Secretaries of State ; Governor-General to obey the Secretary of State.

And whereas certain instructions were issued under Our Royal Sign Manual to Our said Governor-General bearing date the 19th day of November, 1918 ;

And whereas by the coming into operation of the Government of India Act, 1919, it has become necessary to revoke the said Instructions and to make further and other provisions in their stead ; Revocation of earlier instructions.

Now, THEREFORE, We do by these Our Instructions under Our Royal Sign Manual hereby revoke the aforesaid Instructions and declare Our pleasure to be as follows :—

I. Our Governor-General for the time being (hereinafter called Our said Governor-General) shall with all due solemnity cause Our Warrant under Our Royal Sign Manual appointing him to be read and published in the presence of the Chief Justice for the time being or, in his absence, of the Senior Judge of one of the High Courts, established in British India, and of so many of the members of the Executive Council of Our said Governor-General as may conveniently be assembled.

He must take Oath of Allegiance.

Our said Governor-General shall take the Oath of Allegiance and the Oath for the due execution of the Office of Our Governor-General of India, and for the due and impartial administration of Justice in the forms hereto appended; which Oaths the said Chief Justice for the time being or, in his absence, the Senior Judge of one of Our said High Courts shall, and he is hereby required to, tender and administer unto him.

II. And We do authorise and require Our said Governor-General from time to time, by himself or by any other person to be authorised by him in that behalf, to administer to every person who shall be appointed by Us by Warrant under Our Royal Sign Manual to be a Governor of one of Our presidencies or provinces in India, and to every person who shall be appointed to be a Lieutenant-Governor or a Chief Commissioner, the Oaths of Allegiance and of Office in the said forms.

He shall administer Oath of Allegiance and of Office.

III. And We do authorise and require Our said Governor-General from time to time, by himself or by any other person to be authorised by him in that behalf, to administer to every person who shall be appointed by

Us by Warrant under Our Royal Sign Manual or by the Secretary of State in Council of India to be a Member of the Governor-General's Executive Council or a Member of a Governor's Executive Council, and to every person who shall be appointed to be a Member of a Lieutenant-Governor's Executive Council, and to every person whom any of Our said Governors shall appoint to be a Minister, the Oath of Allegiance and of Office in the said forms together with the Oath of Secrecy hereto appended. To be administered to all those appointed under warrant.

IV. And We do further direct that every person who under these instructions shall be required to take an Oath, may make an Affirmation in place of an Oath if he has any objection to making an Oath.

V. And We do hereby authorise and empower Our said Governor-General in Our name and on Our behalf to grant to any offender convicted in the exercise of its criminal jurisdiction by any Court of Justice within Our said territories a pardon either free or subject to such lawful conditions as to him may seem fit. Prerogative of the grant of pardon.

VI. And inasmuch as the policy of Our Parliament is set forth in the Preamble to the said Government of India Act, 1919, We do hereby require Our said Governor-General to be vigilant that this policy is constantly furthered alike by his Government and by the local Governments of all Our presidencies and provinces. Policy of Parliament to be pursued.

VII. In particular it is Our will and pleasure that the powers of superintendence, direction and control over the said local Governments vested in Our said Governor-General and in Our Governor-General in Council shall, unless grave reasons to the contrary appear, be exercised with a view to furthering the policy of the local Governments of all Our Governor's provinces, when such policy finds favour with a majority of the members of the Legislative Council of the province. Provincial responsibility to be encouraged.

VIII. Similarly, it is Our will and pleasure that Our said Governor-General shall use all endeavour consistent with the fulfilment of his responsibilities to Us and to Our Parliament for the welfare of Our Indian subjects, that the administration of the matters committed to the direct charge of Our Governor-General in Council may be conducted in harmony with the wishes of Our said subjects as expressed by their representatives in the Indian Legislature, so far as the same shall appear to him to be just and reasonable.

Wishes of the people's representatives to be respected.

IX. For above all things it is Our will and pleasure that the plans laid by Our Parliament for the progressive realisation of responsible Government in British India, as an integral part of Our empire may come to fruition, to the end that British India may attain its due place among Our Dominions. Therefore We do charge Our said Governor-General by the means aforesaid and by all other means which may to him seem fit to guide the course of Our subjects in India whose governance We have committed to his charge, so that, subject on the one hand always to the determination of Our Parliament, and, on the other hand, to the co-operation of those on whom new opportunities of service have been conferred, progress toward such realisations may ever advance to the benefit of all Our subjects in India.

Progressive realisation of responsible government to be promoted, finally reaching Dominion status.

X. And We do hereby charge Our said Governor-General to communicate these Our Instructions to the Members of his Executive Council, and to publish the same in such manner as he may think fit.

Instructions to be communicated to Councillors.

(f) *Rule for the appointment of the Governor-General followed in Colonies does not apply to India.*

In the making of the Viceregal appointment or of that of the head of a provincial administration, the people

In India the Viceroy is appointed

of India over whom they are expected to rule, unlike the rule that prevails in Colonial administrations, of the Governor never being appointed against the wishes of the people of the Colony concerned, have, no voice. India must, and as a matter of course does, accept, anybody whom the Crown should deem fit to appoint. Not so the Colonies since the lead was taken by Queensland in 1888, when that Colony refused to accept Sir Henry Blake as Governor. It was a momentous move on the part of Queensland, for it was followed by South Australia which refused to accept the Marquis of Normanby as its Governor. A question then arose of considerable constitutional intricacy, the Crown asserting that it has a constitutional right to appoint whomsoever it pleased, the Colonies insisting that they have a constitutional right to be consulted before the appointment is actually made. Consulted, at any rate in the sense, that they must be given an opportunity to express their approval or disapproval of the proposed appointment. In the constitutional struggle that ensued, the Crown came out second best, for it was conceded that notwithstanding the fact, that the Crown has a right to appoint whomsoever it pleased, it should, as a matter of political expediency and justice, inform through constitutional channels, the Colonies, of the nature of the appointment before it was formally concluded. Though the Crown did not concede the right of nomination or even of suggestion, the matter was not destined to be set at rest, for, not long after the movement initiated by South Australia and pushed forward by Victoria, of being empowered to make local appointments in the interest of the colonies, the Australian States began to gain ground until they forced the Cabinet to place the matter for consideration before the Imperial Conference in 1907. Without going into the question of the difficulties that lay in the way of the existing

without reference to local opinion; in the colonies the appointment is approved.

Colonies insist upon being consulted.

Crown had to concede.

Controversy over right to choose the Governor-General.

arrangement, such as subversion of Imperial control by the Imperial Government through its own representative, and the capability of such representative to hold the scales even in the event of a crisis, he not being a party politician, the Conference decided in favour of the existing system. The movement however, is not dead, and has a tendency to evolve into a *right* of the Colonies to choose from a panel of names placed before them by the Cabinet before each appointment is made. In furtherance of a friendly relation the rule as stated is followed now; and if the rule that applies to Colonial appointments had also been the rule governing Indian appointments, it is doubtful whether some of the recent Indian appointments would have been accepted by the Indian people at all, some because they had not, and others because they had, made themselves sufficiently obtrusive in English public life or in causes and questions bearing upon Indian social adjustments and political aspirations. Lord Chelmsford would have had small chance of coming out as Viceroy, presumed as he was to be a man without any past. Lord Hardinge would not have fared better even though, as events proved that in high and liberal statesmanship, genuine and sincere sympathy for the political aspirations of the people in his charge, unfeigned and candid appreciation of their loyalty, and judgment of their representatives, and breadth of vision, he stood unsurpassed, to be accurate, unapproached, except by Lord Ripon whom India loved, and whose memory she reveres. But an appointment of even greater moment on the political temper of the people of the country than the Colonial is that of the Irish Free State, the latest addition to the list of self-governing dominions within the British Empire. Here none but an Irishman has hitherto been appointed Governor-General, and from all appearances, it may safely be judged that none

Colonial rule applied to India may help to avoid many a trouble.

Lord Hardinge a great Viceroy.

other than an Irishman will be, or even attempted to be appointed as such.

PART III.

POWERS OF THE VICEROY.

(*a*) *His Authority.*

The powers of the Governor-General.

In theory, the Governor-General is merely the President of his Council with a casting vote in case of equality. He has however, power to overrule his Council, or a dissentient majority of it, in respect of measures whereby the safety, tranquillity or interest of the British possessions in India are, or may be, in his judgment essentially affected, any two members of the majority being entitled to insist that the circumstances be notified and that copies of dissent be forwarded to the Secretary of State. In case of emergency, the Governor-General is empowered to make ordinances which have the force of law for six months only, for the maintenance of order and good government of the country. But he is not amenable to the jurisdiction of any High Court for anything he may have done, ordered or counselled in his public capacity or in discharge of his public duty, nor is he liable to be arrested or imprisoned in any suit or proceeding in any High Court acting in the exercise of its original jurisdiction, nor is he subject to the original criminal jurisdiction of any High Court in respect of any offence which does not involve questions either of treason or

Immunity of the Governor-General.

Enjoyment of Royal prerogative.

felony. As Governor-General he enjoys the prerogative or pardon given him under his Instrument of Instructions, Clause 5 of which lays down as follows :—

> "And We do hereby authorise and empower Our said Governor-General in Our own name and on Our behalf to grant to any offender convicted in the exercise of its criminal jurisdiction by any Court of Justice within Our said territories a pardon either free or subject to such lawful conditions as to him may seem fit."

Prerogative of mercy conferred by the Instrument of Instructions.

It may be observed that the prerogative of mercy has come to be expressly conferred upon him by the Instrument of Instructions, while in the days when these instructions were based upon a different model, that is to say, before the year 1920, the prerogative impliedly attached to his office as the representative of the Sovereign, apart from the power being reserved to him under the criminal law as head of the executive. Apart from the influence which his position as head of the Government gives him, he has certain powers of control, over the legislation both of the Indian legislature, and of the local legislature, every Act of which requires to be assented to by him before it can be placed upon the Statute Book. He may also reserve an Act for the expression of the pleasure of the Crown. In order that the passions or prejudices of the Indian people may not be thoughtlessly roused, or the credit of the Government may not be unnecessarily jeopardised, no measures relating to loans or religious usages, or political or military matters may be introduced whether in the Indian legislature or in the local legislatures without his previous sanction. For a better appreciation, I propose to discuss the entire system of legislation in India in a separate lecture, and to notice

Checks upon his authority.

in its proper place the areas into which the Indian and local legislatures are forbidden to make their excursions.

(b) *Autocratic powers of the Governor-General.*

Viceroy may be an autocrat if he chooses.

It used to be said that the Czar of Russia that was and the Viceroy and Governor-General of India that is were the two highest autocrats in the civilised world. The Kaiser was not a bad third, and strangely enough, the essence of the Williamish German rule prevailed in the British Indian administration, with occasional respite no doubt, such as under Canning and Northbrook, and Ripon and Hardinge, and Minto and Irwin, but sometimes typified by the administrative principles of a Lytton or Dufferin, a Lansdowne or Curzon. And still more strangely with the advance of the War both governments have changed their character for the better. The former is completely emancipated, based as it is upon popular representation, while ours is proceeding towards it. But constituted as it is, it must be admitted, that it is not subject to any control in India, and obviously it cannot be, until India obtains Self-Government. It is however, as I have observed before, subject to the control of the British Electorate through the British Parliament. This control, I venture to submit, is more theoretical than real, inspite of the fact that the establishment of the Secretary of State is now a charge upon the British Estimates, and the records of the past ten or fifteen years afford evidence of the right of interpellation being exercised by members of Parliament frequently showing that, there is scarcely any point in England's administration of India to which attention cannot be drawn. The whole question is, how far that is effective? Personally, I regret that in 1858, a deliberate departure was made when Par-

Contrast in British Administration.

Interference of British Parliament.

British electors' hold upon the Secretary of State, and right of interpellation.

The "grand inquests" of old.

liament allowed those "grand inquests," which used to be made in the Old East India Company's days before every renewal of its charter to fall into disuetude, and I am confident, that their revival under the new constitutional arrangements every ten years would be far more useful than putting the India Office on the British Estimates. If the inquests had been followed and continued for these seventy years, and the Viceroy not made effective or potential agent of a party in England India would undoubtedly have been where Canada and Australia stand to-day, the goal of her political ambition. I should not be surprised if I were told by officials or apologists of the present form of Government in India, that the most conclusive evidence of the effectiveness of Parliamentary control of Indian administration is to be found in the number of questions, often ill-informed and sometimes preposterous, put in the House of Commons and, perhaps also in the facts that nearly half a century ago, Mr. Gladstone made the Afghan War and the Vernacular Press Act of Lord Lytton, the objects of violent denunciation in his Midlothian campaign, and that upon coming into office, he lost no time to recall the erratic and subservient Governor-General, who unreservedly placed his conscience, courage and independence at the disposal of his political chief for exploitation. Against that it may be urged that in the Midlothian campaign Indian affairs were made merely side issues. The main issue was the South African War which eventually resulted in the Majuba Hill tragedy. The unceremonious manner in which the Resolution of Mr. Herbert Paul, in favour of simultaneous civil service examination in 1892, was put aside, does not speak for the effective control of Parliament, and even in our own day, the Jallianwalla Bagh is a vivid example of the impotence of Parliament in Indian affairs. It will be remembered that this was an occasion

Usefulness of those inquests.

Questions in the Commons often ill-informed.

Gladstone and Indian misrule of Lytton.

Parliament apathetic towards Indian government or misgovernment.

when our own countryman, Lord Sinha, lost the opportunity of a life-time in the debate that took place in the House of Lords. Whoever has heard of an English election being fought on an Indian question? So-called control of the House of Commons unreal.

(c) *The Viceroy holds the balance even.*

By reason of the limited nature of the period of his stay in this country the Viceroy cannot do or undo the existing order of things by far too much. The safeguard has been provided by the political instinct of England of which India never fails to make an adequate appreciation. As a fresh man he comes to India and does not therefore stand committed to any policy or party in vogue in India. He cannot and does not, even when he can, show any undue favour to any body. He does not allow himself to be guided by any party. The constitution does not allow him to entrust everything to a Minister. This is so different from the old rule of the Hindu Rajas and Mahomedan rulers that the benefit of it is highly appreciated. He is not out of touch with the latest political and administrative developments in Europe so that, if he thinks any of them to be for the benefit of the country there is nothing to stop him from adopting or making an experiment of it. As President of his Executive Council he has power to overrule it where he finds it is going wrong or, he cannot impose his will upon it, but he cannot any longer shape and fashion the opinion of his legislature and, except in a feeble way that of the Council of State.

Viceroy is above Party politics.

Benefit of the Viceroy being an up-to-date man in European politics and administrative systems.

(d) *Division of the Viceroy's Duty.*

The personal aspects of the Viceroy's duties may be divided into two branches: the Secretariate and the

Viceroy's day with

the Secretary.

Council day.

Secretaries in attendance.

Council. In the first place he personally meets each of his Secretaries, and in the second place his Viceregal or Executive Council once a week. Each of his seven Secretaries has his own day with the Governor-General, when he lays before His Excellency, matters and problems of special importance, answers questions connected with them, and takes his orders touching any fresh materials to be included in the file of papers before circulating them.

Meetings of the Council behind closed doors.

The Viceroy also gives a day in the week to his Executive Council, consisting of the Ministers or "Members of Council," mentioned at page 94 with the Commander-in-Chief as an additional member. In this Oligarchy all matters of Imperial Policy are debated with closed doors before orders are issued, the Secretaries waiting in an ante-room, each being summoned into the Council Chamber to assist his member when the affairs belonging to his department come on for discussion. Since the members have all seen the papers and recorded their opinions beforehand, they come to the Council with their views accurately matured, and but little debate takes place beyond explanations asked for and given on minor details, as well as on the main principles in a friendly way. Viceroys such as Lord Mayo, or Lord Northbrook, or Lord Ripon, Lord Curzon, or Lord Irwin accustomed to the free flow of Parliamentary talk, would no doubt express a surprise at the rapidity with which, even on matters of the highest importance, the Council comes to its decision and at the amount of work which it gets through in a day. His personal influence here stands him in good stead. In most matters he manages to avoid the taking of votes and by little compromises wins the dissentient members, if any, to acquiescence. In great questions he invariably obtains a substantial majority, or he puts himself at the head of it. And

Discussion in Council always friendly.

The personal influence of the Viceroy is a great asset.

if he is a strong man he never allows the Council to lose sight of the fact that as Viceroy he reserves to himself the constitutional power, however seldom exercised, of deciding by his single will the action of his Government.

Part IV.

The Viceroy's Executive Council.

(a) *Mechanism of the Supreme Government.*

The mechanism.

I feel tempted to go a little more deeply into the details of how the mechanism works. The Supreme Government of India consists of what is euphemistically called a Cabinet, with the Governor-General as the absolute President, subject to the authority of the Secretary of State for India, and directly controlling the eleven Provincial Governments of Bengal, Bombay, Madras, United Provinces of Agra and Oudh, the Punjab, Behar and Orissa, Burma, the Central Provinces, Assam, the North-Western Frontier Provinces and Delhi which last, as we shall see later on, has since the removal of capital from Calcutta been formed a separate provincial enclave. Every order of the Government of India runs in the name of the President and the collective Cabinet, technically called the "Governor-General in Council." In the days of the John Company every case actually passed through the hands of each Member of Council, circulating at a snail's pace in little mahogany boxes from one Councillor's house to another. "The System," wrote Mr. John Wyllie, a former Member of Council in the January number of the Edinburgh Review in 1867,—

Delhi, a provincial enclave.

Lord Canning, the father of the Cabinet system in India.

alas, now defunct after a glorious career of over a century, "involves an amount of elaborate Minute writing which seems now hardly conceivable. Twenty years ago the Governor-General and the Council used to perform work which would now be disposed of by an Under-Secretary." In his desire as Viceroy to raise the administration to the higher standard of promptitude and efficiency which has since been attained, Lord Canning resolved to put an end to this. It was he who remodelled the Government, "into the semblance of a Cabinet, with himself as President." Each member of the Council became a Minister at the head of his own Department, responsible for its ordinary business, but bound to lay important cases before the Viceroy, whose will forms the final arbitrament in all great questions of policy in which he sees fit to exercise it. Here in 1859 was laid the foundation of what is called the portfolio system which, introduced as it was by Lord Canning, received the cordial support of the Right Hon'ble James Wilson, the first great Finance Minister India ever had. He had just then come out from the British Treasury to help the finances of India which had got into a hopeless state as a result of the Mutiny, to be placed upon a proper and sound basis. Years ago, Sir John Strachey wrote that "the ordinary current business of the Government, is divided among the members of the Council, much in the same manner in which, in England, it is divided among the Cabinet Ministers, each member having a separate Department of his own." The Governor-General himself keeps one Department specially in his own hands; it is invariably the Foreign Office, which has since the early days of the Montagu-Chelmsford Reforms been divided into two great Departments of the Foreign and the Political, each with a full secretariate of its own.

The origin of the portfolio system.

The following represents the *personnel* of the Government of India at a single view:

Departments and personnel of the Government of India.

Department.	Name of Councillor.	Secretary.
1. Foreign ...	The Viceroy ...	Sir Denys de S. Bray, K.C.I.E., C.S.I., I.C.S.
2. Political ...	Do. ...	The Hon'ble Sir Charles Watson, Kt., C.S.I., I.C.S.
3. Home ...	Sir James Crerar, K.C.S.I., K.C.I E., I.C.S.	The Hon'ble Mr. H. G. Haig, C.I.E., I.C.S.
4. Finance ...	Sir George Schuster, K.C.M.G.	The Hon'ble Mr. E. Burdon, C.S.I., I.C.S.
5. Legislative ...	Sir Brojendra Lal Mitter, Kt., Bar.-at-law.	Mr. L. Graham, C.I.E., I.C.S., M.L.A.
6. Industries & Labour	Sir Bhupendra Nath Mitra, K.C.S.I., C.B.E.	Mr. A. C. MacWatters, C.I.E., I.C S.
7. Railways and Commerce.	Sir George Rainy, K.C.I.E.	Mr. J. A. Woodhead, I.C.S.
8. Education, Health & Lands.	Sir Mian Fazli Hossain, K.C.I.E.	Mr. G. S. Bajpai, C.I.E., I.C.S.
9. Army ...	Field-Marshal Sir William Birdwood, G.C.B., Commander-in-Chief.	Mr. G. M. Young, I.C.S.

Viceroy, the President of the Council.

The Viceroy, besides his duties as President of the Council, and final source of authority in each of the nine Departments, is therefore, in his own person the Foreign and Political Minister. The Home Member as well as the Member for Railways and Commerce are Members of the Indian Civil Service along with the Secretaries and Under-Secretaries in those and *all other Departments*, even of those the Members-in-Charge whereof are either professional men or experts, as the Departments of Finance and Law. The Army Department, since the year 1905, is

Men-in-Charge of the various departments.

presided over by the Commander-in-Chief himself, the Finance, by a Financial expert of repute and distinction and the Legislative by an eminent member of the Bar. Routine and ordinary matters are disposed of by the Member of Council within whose department they fall. Papers of greater importance are sent, with the initiating Member's opinion, to the Viceroy, who either concurs in or modifies it. Where the Viceroy concurs, the case generally ends there; the Secretary then works up the Member's note into a Letter or a Resolution, to be issued as the order of the Governor-General in Council. In matters of weight however, the Viceroy, even when concurring with the initiating Member, often directs the papers to be circulated either to the whole Council, or to some of the Members whose views he may consider to be profitable on the question. In cases in which he happens to disagree with the initiating Member, the necessary papers are generally circulated to all the other Members, or they may be ordered to be brought up in Council. Urgent business is submitted to the Governor-General direct by the Secretary of the Department under which it falls; the Viceroy either initiates the order himself, or sends the case for initiation to the Member of Council in charge of the relative Department.

Mode of transaction of public business.

Cases of disagreement are brought up before the Council.

(b) *The Executive Council of the Governor-General.*

The constitution of the Executive Council.

In the work of administration, the Governor-General is aided by a Council constituted, for executive purposes, for the convenience and quick despatch of business. The several departments of State are distributed amongst himself and the various members of the Council, the Viceroy usually being in charge of the Foreign as of the Political Department. The Council, as

at present constituted, consists of six ordinary members in charge of the departments of Home, Finance, Law, Education, Health and Lands, Commerce and Railways, and Industries and Labour, and to them is added an extra-ordinary member as Army Member in the person of the Commander-in-Chief of India who, as such, enjoys a rank next after the Governor-General, and has precedence over every other member of the Council. It was in 1861, that the Secretary of State took power from Parliament to appoint the Commander-in-Chief to be a member of the Executive Council, and the practice has since been scrupulously followed till the appointment of Lord Kitchener as Commander-in-Chief in India. A fierce controversy then arose between him and an equally masterful Viceroy, Lord Curzon, over the question of whether the Commander-in-Chief should also be the Military Member of the Council, an office which was put an end to in 1905. In the duel Lord Curzon was worsted and the policy of Lord Kitchener prevailed with the authorities in England, with the result that, a perfectly anomalous position was brought about and perpetuated. It is a fixed principle of the Indian constitution that three of the six ordinary members of the Council at the time of their appointment shall have been in the service of the Crown in India. They may be selected from amongst the members of any particular service though in practice they are, and have hitherto been, recruited from among the senior members of the Indian Civil Service, and the charges hitherto held by them are those of the Home, and Industries and Labour invariably, and Finance and Education alternately. When we run our eyes through the list of Finance Ministers, these members are sometimes called Ministers, in India we discover the wonderful regularity with which they have been drawn alterna-

Commander-in-Chief ranks above other Councillors.

Curzon-Kitchener controversy.

The ordinary members.

Membership of the Executive Council and the Civil Service.

tely from the ranks of the Indian Civil Service and of experts from England. Be that as it may, it may now be safely laid down that having regard to the immense proportions, importance and complications which Indian finances have acquired and assumed, none but financial experts, except in rare instances, of undoubted merit and ability in any one member of the Indian Service, whether in England or in this country, shall ever again be appointed Finance Minister to the Government of India. The Presidency Governor, who, up till 1919 had a seat in the Viceroy's Executive Council, should it be invited to meet within his territorial jurisdiction, no longer forms part of it. It may be supposed that the least important Member is the Law Member of the Council who is without a portfolio, inasmuch as he is without a department to administer. Even Law and Justice, for which by reason of his knowledge, training and experience he must be deemed to be specially qualified, are removed from his control. Not very long ago, the Law Member was regarded as an outside Member of the Council. He was in it but not of it. He was a Member of the Council in none but its meetings, for legislative purposes only. "His duty," said Sir Barnes Peacock, "was confined entirely to the subject of Legislation; he had no power to sit and vote except at meetings for the purpose of making laws and regulations; and it was only by courtesy, and not by right that he was allowed to see the papers or correspondence, or to be made acquainted with the deliberations of the Government upon any subject not immediately connected with Legislation." Between 1859 and 1861, the Council was without a Law Member at all, and it was by the Indian Councils Act of the latter year that he,—provided he was a Barrister or a Scotch Advocate of five years' standing,

Importance of Finance Membership.

Law not an Executive charge.

Law Member—his early position.

Only permitted to see certain papers.

Council without a Law Member.

and to this category came to be added in 1919, a Vakil of any of the Indian High Courts of ten years' standing, —came to have a permanent seat in it. Eminent Law Members of early days considered the office at best to be a spectacular one. It is hardly so now; in fact, the importance the Law Member has acquired within the last twenty years in the political system of India, is enormous. The daily increasing output of legislation, the growth of the constitution and of the complexities of its working are matters with which he has to cope in a department whose influence must be felt at every step of constitutional advance and at every turn of political or legislative development. The Members are all of equal footing but take precedence according to their seniority in order of appointment. They are entitled to a salary of Rs. 80,000 a year and the Commander-in-Chief to one of Rs. 1,00,000, each being under an Oath of Secrecy which enjoins upon him not to directly or indirectly communicate or reveal to any person or persons any matter which should be brought to him as a Member of the Executive Council of the Governor-General of India, except as may be required for the due discharge of his duties as such Member, or as may be specially permitted by the Governor-General.

Importance of the Law Member.

Remuneration of Members.

Oath of Secrecy.

(c) *The Executive Council of the Governor-General and Process of Indianisation.*

The Governor-General's Council therefore is composed of seven members including the Commander-in-Chief as extraordinary Member, of whom three at present are Indian gentlemen, appointed, like the Governor-General himself by the Crown, on the advice of the Secretary of State for India, by warrant, under the Royal Sign Manual, for five years only, and bound by an Oath

Present composition of the Governor-General's Executive Council.

of Allegiance similar to that of the Viceroy in addition to the following Oath of Secrecy: "I..... do swear that I will not directly or indirectly communicate or reveal to any person or persons any matter which shall be brought under my consideration, or shall become known to me as a Member of the Executive Council of the Governor-General of India, except as may be required for the due discharge of my duties as such Member or as may be specially permitted by the Governor-General. So help me God." All credit is due to the Parliamentary Joint Select Committee over which Lord Selborne presided and of which both Mr. Montagu and Lord Sinha were among the members, who were instrumental in bringing about the generous innovation, of not less than three in place of two, recommended by the Secretary of State and the Viceroy, in the Report on Constitutional Reforms in India, which among Parliamentary papers shall always rank with the epoch-making report of Lord Durham on British North America, of the members of the Council being Indians, whose number may be safely expected to become larger with the growth of Indianisation of the services as years roll by. The arrangement no doubt, is a substantial increase of the Indian element in the Central executive, quite in keeping with the policy of the announcement, namely, "that of the increasing association of Indians in every branch of the administration," and is a great step in advance, though, it can't be said that with the exception of a few the services of the right type of men have hitherto been requisitioned, men of great power and ability, in whom the country may have confidence, as distinguished from being merely "safe men," who have been defined by a facetious friend as those morally incapable of saying *no* to an Englishman. These members, of whom three must either at the time

They are under the Oath of Secrecy.

Durham Report on Canada and Montagu Report on India on a par.

Continuing progress of Indianisation.

Government has availed of the services not of the best men.

of their appointment, or any time previous thereto have been in the service of the Crown, for at least ten years, are called "Ordinary" Members of Council. In order to enable the Governor-General to appoint the best type of Indians to be Ordinary Members of Council, he has been empowered to look for them in the wider field of business, in addition to public life, and to sanction in writing, the appointment of such a person allowing him to retain his concern or interest in the trade or business, but not to take part in its direction or management during the term of his office. The duty of the Governor-General's Council is to supervise the administration of the local Governments in all departments, and to advise them on contemplated administrative measures and reforms. The task of introducing reforms in the Government of India is also imposed on them. They form the Chief Executive authority of the Empire under ordinary circumstances. In special cases the Governor-General is empowered to overrule a decision of his Council and to elect not to be bound by it. This power has descended to him from the days of Lord Cornwallis, who, after the sad experience of Warren Hastings culminating in his continued discomfiture by Francis, Clavering and Monson in a Council of four, insisted that the smallest price the Company could pay for his services to their dominions was to authorise him to overrule the majority of his Council for adequate reasons. Cornwallis was a man of stern character and unflinching moral courage, though he lacked imagination and intellectual brilliancy, but he was armed with the power, which has since been reaffirmed into successive enactments, to overrule his Council by a short Act of 1786, before he set sail to India. It is clear therefore, that the Governor-General is the supreme authority, but in all

Ordinary members of Council.

Duty of the Governor-General's Council.

His power to overrule his Council.

Result of the insistence of Cornwallis after the experience of Warren Hastings.

Governor-General's supreme authority

not always subject to the control of the Secretary of State.

cases subject to the direction of the Secretary of State. Subject to certain rules the Secretary of State, as we have seen before, may superintend, direct and control all acts, operations and concerns which relate to the Government or the revenues of India, and all grants of salaries, gratuities and allowances and all other payments and charges, out of or on the revenues of India. This is so in both civil and military affairs. Each of the seven members of his Council has got a great Department of State in his charge for whose proper and efficient working he is responsible. Since 1905, the Commander-in-Chief himself is the Military Member of the Council, an office used to be held up till then by another military expert. The Viceroy, who looks after the foreign and political relations of the Government, is his own Foreign and Political Minister. The Members of this Council are sometimes called "Ministers" or "Members" of the Viceroy's Executive Council, each one having a statutory right to receive an honorarium which cannot be considered adequate having regard to the onerous nature of the responsibilities they are called upon to bear and a further multiplication of them by reason of the growth and development of the Indian Constitutional system.

Changes made since 1905.

Members sometimes called Ministers.

(*d*) *Viceroy—a Minister.*

Viceroy his own Foreign Minister.

The most important person in this body of Ministers is the Viceroy himself, who is his own Foreign and Political Minister. His thorough acquaintance with progressive politics in England and Europe enables him to bring a fresh mind to bear upon the administration of India, more especially because he does not stand committed to any policy or party in vogue in India. A want of knowledge on his part, of the working of the political machinery of India

is regarded as of the first consequence. He is quite free to initiate reforms and schemes he thinks fit, for, he cannot have either a predilection for, or a prejudice against the existing system of Government. An unbiassed and able participator in the Government of India, he is here, normally, for five years, a period not long enough for any body to do or undo the existing constitution by far too much, nor dislocate the Provincial Governments in any way, like many Imperial rulers in previous dynasties in our history. He keeps himself in touch with the latest political and administrative developments in Europe, and cannot be very antiquated in his methods of work. The orders of the Government of India are communicated through a Secretary in each department who is responsible for work done in it to the Member of Council in charge of the portfolio connected with that department. While upon the subject of the composition of the Government of India, notice may be taken of the fact that the Commander-in-Chief who, under Pitt's Act had an importance in the administrative system of India, next only to the Governor-General by reason of it being clearly laid down that he should have a "voice and precedence in Council" next after the Governor-General, is regarded at the present moment as no more than a Member of the Council whose "voice" cannot prevail over that of his colleagues though his political importance has been maintained unaltered for he retains his "rank and precedence in the Council" next after the Governor-General.

He has opportunities to examine the defects as well as the excellences of the system.

His familiarity with the latest administrative developments elsewhere.

Commander-in-Chief's rank has precedence, not his voice in the Council. They are all equals.

(*e*) *Cases where Divergence of Opinion exists.*

In hotly debated cases the situation is usually as follows: The Viceroy and the Members of Council in charge of the Department to which the case belongs first of all thoroughly discuss the matter and arrive at a con-

clusion. That conclusion then is laid before the Council as representing their views. These views are sent round to the other Members of Council with the case and 'noted' on by them. When the question comes up at the Council meeting no amount of talking can add any fresh knowledge to the elaborate opinions which each of the Members has recorded while the papers were in circulation. Several of these opinions are probably in favour of the policy proposed by the Member-in-Charge of the question, and supported by the Viceroy; others may be opposed to it. When the matter comes up in the meeting of the Council the Viceroy generally tries, by explanations or judicious compromises, to reduce the opposition to one or two Members and these may either yield or dissent. The despatches to the Secretary of State enunciating the policy and placing the decision of the Government of India invariably mention the names of dissentient Councillors, and if they desire it, may append in full such protests as they should deem right to record.

Differences of opinion how met.

Viceroy always the pacificator.

(*f*) *Illustrative Case.*

Divergences may take place between two sections of the Council as regards the foreign policy of the Government, or the railway system, or a great piece of legislation, or between the Departments of State. Each Member comes to the Council with his mind fully and firmly made up, quite sure that he is right, and equally certain (after reading all the arguments noted up) that those who do not agree with him are wrong. But he is also aware that the Members opposed to him come in precisely the same frame of mind. Each, therefore, while resolved to carry out his own views, knows that, in the event of a difference of opinion, he will probably

Collective opinion represents the views of the Government

have to content himself with carrying a part of them. And once the collective decision is arrived at, it is adopted as the decision of every individual Member and also as the decision of the Government. Viceroys have recorded their admiration of the vigour with which each Councillor strives for what he considers best, irrespective of the views of the Viceroy himself; and of the generous fidelity with which each carried out whatever policy may eventually be laid down by the general sense of his colleagues. It is this capacity for loyally yielding after a battle that makes the English talent for harmonious colonial rule eminently suitable, and a power whose might is invincible, and will make the Indian fit for self-rule.

(g) *Original and Appellate Functions of the Government.*

Provinces governed directly by the Supreme Government.

There are certain particular provinces or tracts which are governed directly by the Supreme Government. They are the North-Western Frontier Provinces, British Beluchistan, Coorg, Ajmere-Marwar and Delhi, which has since the removal of the Viceregal seat from Calcutta in 1912, been sliced out of the parent province of the Punjab, and formed a separate enclave under a Chief Commissioner like all the others. The Resident of Mysore and Agent to the Governor-General in Rajputana are *ex-officio* Chief Commissioners respectively of Coorg and Ajmere-Marwar, and administratively they all are under the Foreign and Political Department of the Government of India rather than under the Home to which all the other local Governments are subject and have to look for guidance. Apart from that, the Government of India has immense functions to discharge,—functions both original and appellate in their character. That is to say, it either originates,

Original functions of the Government of India; they

have appellate functions as well.

directs or initiates action in the first instance, or corrects and controls the action taken by the various local Governments, when appealed against by other local Governments, or individuals, or bodies of individuals. Even when there are no such appeals, the Supreme Government has every legal power, given it by Acts of Parliament to control and superintend the local Governments in every direction and in every sphere of its activities except in those which form the transferred subjects of administration in a province. These we shall notice in a subsequent chapter. The Government of India can call upon any single Department or even an individual officer serving in any capacity under local Governments to explain its or his conduct of affairs. There are matters, such as the Military, Postal and Railway in which the local Governments have no hand at all. These constitute the original duties of the Supreme Government, and in these the local Governments are not permitted to take any part. Such original functions are exercised in (*a*) The Army, (*b*) The Railways, (*c*) The Customs, (*d*) The Opium, (*e*) The Salt Revenue, (*f*) The Post Office, (*g*) The Telegraphs, (*h*) The Mint and Currency, (*i*) Emigration and Immigration, (*j*) Relations with foreign states whether feudatory or beyond the confines of India, (*k*) Archaeology, (*l*) Geology, and (*m*) Mining resources. The control and management of these branches of public affairs cannot be parcelled out among the various Governments, Provincial and Imperial. They are always directed by the central authority. One or other of the nine departments of the Government of India we have mentioned elsewhere discharges the original functions in respect of them in addition to the appellate functions in respect of revenue, local laws and local public works. There are other matters which may be administered by the local

All departments and officers are answerable to the Government of India.

Subjects in relation to which original functions are exercised.

Appellate functions in respect of revenue, local laws and public works.

Governments to a limited extent only, but may be fully dealt with by the Supreme Government with complete legal authority, such as the foreign relations of local tributary or feudatory States, riots and disturbances, famines and floods. In a sense, the Foreign and Political Departments are the most important of the administrative departments of the Government of India, His Excellency the Viceroy himself being in charge of them. The nature of the work transacted there is varied and difficult, so much so that, the public at large does not easily realise the onerous and trying character of the functions discharged by a Political Officer of the Political Department. "At one time," testified Lord Curzon, "he may be grinding in the foreign office, at another he may be required to stiffen the administration of a backward Native State, at a third he may be presiding over a *Jirga* of unruly tribesmen on the frontier, at a fourth he may be demarcating a boundary amid the wilds of Tibet or the sands of Seistan. There is no more varied or responsible service in the world than the Political Department of the Government of India," whose work of unusual amenability, "embraces three spheres of action so entirely different and requiring such an opposite equipment of principles and knowledge as the conduct of relations with the whole of the Native States of India, the management of the frontier provinces and handling of the frontier tribes, and the offering of advice to His Majesty's Government on practically the entire foreign policy of Asia, which mainly or wholly concerns Great Britain in its relation to India." No small testimony for any service under any Government to be proud of. It will however be remembered that being in charge of the Foreign and Political portfolio, the constitution does not permit the Viceroy to occupy a higher position or acquire greater

Limited power of local Governments to deal with foreign relations.

Varied duties of the Political Officer.

Lord *Curzon's* testimony.

No special importance attaches to the Foreign Membership,

because the Viceroy holds it.

importance than an ordinary member of Council,—of course, beyond his personal importance as Viceroy and as President of the Council. He is aided in this Department by the usual Secretariate arrangement, a Secretary for each of the two divisions, the foreign and political, with the necessary Deputy Secretaries, Under-Secretaries and Assistant Secretaries. The powers of the Governor-General in Council extend to the making of treaties and entering into arrangements with Asiatic States. He may exercise jurisdiction in a foreign territory as well as acquire and cede territory. He is moreover, not without the powers, rights and privileges ever enjoyed by the Princes of India for the logical consequence of the supercession of the English Crown over them is but that. Sir Courtney Ilbert draws our attention to a very significant example in support of the proposition just noticed. It is in respect of the powers of the Government of India over minerals. They are not those inherent in the English Crown but those attributed to the sovereign rights of an Indian Prince. The right of pardon and remission of sentences of the Governor-General has after much debate been settled by the Code of Criminal Procedure.

As Viceroy he enjoys certain powers in relation to the Princes.

Part V.

Functions of the Council.

(a) *Meetings of the Council and Procedure thereat.*

Procedure followed at meetings.

The procedure followed for the bringing of cases before meetings of the Council is one of great administrative importance. When he is in agreement with the Member-in-Charge of the Department to which a subject which should be brought before a meeting of the Council

belongs, the Governor-General is the sole determining authority as to whether and when it should be put up and also whether papers relating to it should be further circulated before action is taken upon them and, if so, whether they should be circulated to some or all of the members. This authority of the Governor-General is only limited by the rule that where it is proposed to bring forward a legislation, whether in the Legislative Assembly or in the Council of State, the papers, unless the Governor-General otherwise directs, shall be circulated to all the members and discussed in the Council, when opportunity moreover is taken to determine whether the Government should deal with the measure upon United Counsels, or should leave it an open question in which case the official members are free to vote any way they choose in the legislature. A case in which the Governor-General is not in agreement with the Member-in-Charge of the Department to which the subject belongs, has got to be referred to the Council, but whether the papers connected with it have to be circulated among the Members or be submitted to the Council when assembled is a matter which rests within the discretion of the Governor-General himself. All differences however, between the Finance Member and other Ordinary Members are usually subject matters of reference to the Council whose decision shall be final, unless overruled by the Secretary of State in Council. All decisions of the Council are taken down in the Council itself and then and there initiated by the Governor-General.

Governor-General sole determining authority in certain matters.

The discretion of the Governor-General in respect of circulation of papers unfettered.

(*b*) *Transaction of Governmental Affairs in the Council.*

The Members of the Council meet periodically as a Cabinet, ordinarily once a week,—to discuss questions

Questions that come

up before the Council.

which the Viceroy desires to be placed before them, or which a Member who has been overruled by the Viceroy, has asked to be referred to the Council. The Secretary in the Department primarily concerned with a Council case attends the Council meeting for the purpose of furnishing any information which may be required of him. If there is a difference of opinion in the Council the decision of the majority ordinarily prevails, unless the Viceroy by virtue of the authority vested in him by law overrules the majority where he considers that the matter is of such grave importance as to justify such a step; conversely, when away from his Council, the Governor-General may issue to the local Governments any order he deems necessary on his own authority and responsibility and invest it with such force as if it were an order made by the Governor-General in Council.

Governor-General may issue instructions to local Governments when away from Council.

Each departmental office is in the subordinate charge of a Secretary, whose position corresponds very much to that of a permanent Under-Secretary of State in the United Kingdom, but with these differences that the Secretary, as above stated, is present at Council meetings; that he attends on the Viceroy, usually once a week, and discusses with him all matters of importance arising in his department; that he has the right of bringing to the Viceroy's special notice any case in which he considers that the Viceroy's concurrence should be obtained in an action proposed by the departmental Member of Council; and that his tenure of office is usually limited to three years.

Secretary's duty in connection with the meetings.

The Secretary's staff.

The Secretaries have under them Deputy, Under and Assistant Secretaries, together with the ordinary clerical establishments. Taking the departments with which we are concerned, that is to say, the Home, Finance, Education, Health and Lands, Railways and

Commerce and Industries and Labour, the Secretaries, Deputy Secretaries and Under-Secretaries in all are members of the Indian Civil Service. The Assistant Secretaries, where these exist, and the subordinate staff are men permanently connected with the departments.

PART VI.

MEMBER-IN-CHARGE AND THE SECRETARY.

(*a*) *The Position of the Member of Council.*

In cases of difference of opinion between departments the Viceroy is the ultimate source of appeal and decision.

In regard to his own department each Member of Council is largely in the position of a Minister of State and has the final voice in ordinary departmental matters. Questions of special importance are usually referred to the Viceroy, as much as matters relating to local Governments in which the Member-in-Charge of the department happens to hold views different from those of the Government concerned and in which it is proposed to overrule them. It is moreover a settled principle of the Council procedure of the Government of India, that any difference of opinion between one of its departments and another in connection with a matter affecting one or the other, shall be referred to the Viceroy for final decision. Ordinarily, the Council meets as a Cabinet once a week for consideration and discussion of matters referred to it by the Viceroy, or of matters in which the Viceroy and the Member-in-Charge have differed from each other, and which the Member desires to be placed before it. If there is a difference of opinion in the Council, the decision

Difference of opinion

in Council decided by majority.

of the majority must prevail, but the Viceroy has power always to overrule wholly or in part, or modify the decision of the Council, if he should be of opinion that the measure proposed to be taken is likely to prejudicially affect the safety, tranquillity or interests of British India, or of any part thereof. Much of the preliminary spade work for decision at Executive Council meetings is done over informal dinners held by turns at the residences of the Members in which the Viceroy occasionally joins.

(*b*) *Are they Cabinet Ministers?*

Is the Government of India a Cabinet Government?

A Cabinet Minister in England is in responsible charge of a great department of State, except upon rare occasions when a person of great importance in politics and having great weight and influence upon English public opinion, has been a Cabinet Minister, though not in charge of a portfolio, or at least holding a minor one. Such a person is brought in with a view to giving strength and weight to the Cabinet itself. That because the ordinary duties of the members of the Executive Council of the Viceroy are those of administrators rather than of Counsellors, they must be regarded as Cabinet Ministers, is a theory which does not find favour with constitutional jurists. From the standpoint of a politician the Government of India may be regarded as a "Cabinet Government," but a lawyer will not regard it as such, far less a constitutional lawyer, for the expression "Cabinet Government" implies a Government by a body of people who according to constitutional principles and usages are not independent of, but responsible to the legislature. The essence of responsible Government is that mutual bond of responsibility, one for another. Government acting by party go together, frame their measures in concert, so that if one member of it falls, the

May be regarded as such politically but not constitutionally.

others, as a matter of course, fall with him. In its legal significance a Cabinet means a body of members of the Legislature who are of the same political views, and chosen from the party possessing a majority in the Lower House of Legislature, prosecuting a concerted policy, under a common responsibility, to be signified by collective resignation in the event of parliamentary censure, and acknowledging a common subordination to one Chief Minister; this is a conception upon which the jurist and the political theorist are at one, and cannot be said to fit in with the political conditions that prevail in the Government of India or the Provincial Governments having an Executive Council. The Indian Cabinet, if Cabinet it is by any stretch of imagination, is a permanent body whom no power on earth can remove from office during their statutory tenure of the same. This observation, however, does not apply to the Ministers in a local Government even though they do not constitute a "Ministry."

Test of Cabinet Government.

Government of India falls short of the test.

(c) *Position of the Secretary.*

Each department is in subordinate charge of a Secretary, whose position corresponds to that of a permanent Under-Secretary of State in the United Kingdom, but with these differences,—that the Secretary in India is present at Council (so called "Cabinet") meetings; that he attends on the Viceroy usually on a week day, an allotted day, and discusses with him all matters of importance arising in his department; that he has the power to bring to the notice of the Viceroy any matter which in his judgment the Viceroy should have an opportunity to consider before final action is decided upon by the Member-in-Charge; that his tenure of office is ordinarily limited to three years. This procedure no doubt

Position of the departmental Secretary analogous to that of the permanent Under-Secretary of State in England.

Secretary's tenure of

office usually limited to three years.

has a suspicious and ugly appearance about it, that the departmental Secretary should be permitted to go behind his departmental chief's back and discuss with the head of the Government matters which in fairness and according to strict constitutional principles and etiquette should be discussed with none other than the Member-in-Charge. The original idea behind the procedure appears to have been well-conceived and in the interest of British India, namely, to give the Viceroy opportunity to study an Indian problem in the light of two different experts unless they are in agreement with each other, and also "to make sure that important questions are not being settled in the department without reference to the Viceroy." The Secretary, moreover, is Secretary to the Government of which the Viceroy is the head; he is not Secretary to the Member-in-Charge, but having regard to the fact that during the past half a century and more, the two have worked in such cordial harmony, and also to the fact that during the last quarter of a century British India has made such rapid advance in organic developments that the practice, whatever its merits may otherwise be, cannot any longer be justified or vindicated, without doing violence to constitutional postulates or making a mockery of constitutionalism. Each Secretary has under him Deputy, Under and Assistant Secretaries, together with the ordinary clerical establishments. The Secretaries, Deputy and Under-Secretaries are members of the Civil Service except in the technical departments, such as Law or the Military. Here again the present rule is that, if the Secretary or the Deputy Secretary in the Legislative Department is a member of the Civil Service, the others need not be, so that either of them must be a Civilian. This rule however, has now been given the go by, for both are Civilians. The Government of India has a Civil Service of its own as distinct from that of the Pro-

Qualifications of the various Secretaries and Under-Secretaries.

vincial Governments, and officers serving under the Government of India are borrowed from them.

(*d*) *Position of Council Secretaries.*

Council Secretaries under the Reforms.

To these Secretaries are added the Council Secretaries, (none hitherto appointed), who may be appointed at the discretion of the Governor-General from among members of the Legislative Assembly to hold office during his pleasure only, and upon such terms and conditions as he may choose to impose upon them. During their tenure of office they are required to discharge such duties by way of assisting the members of the Executive Council as may be entrusted to them. Though no appointment of a Council Secretary has hitherto been made whether in the Government of India or in any of the Provincial Governments, where also, they may be appointed upon similar conditions and with similar limitations, it must be said that this is a move in the right direction, giving us, as it does, an opportunity to have a look into the affairs of the Government behind the scene, and affording opportunities to promising young men to learn the art of self-rule. But I must not forget to remind you that it is to the joint select committee of the two Houses of Parliament, who recommended the selection of members of the Assembly who are able to undertake duties similar to those of the Parliamentary Under-Secretaries in England, leaving it to the discretion of the Governor-General as a matter of administrative convenience to select the departments to which these officers are to be attached, that all credit must be given. The appointment of these Council Secretaries gives rise to a question of some importance which thus disqualifies an "official," to become member of either chamber of the Indian Legislature, or a "non-official" member, from

Appointments may help to gain experience in actual administration.

Council Secretaries are not "officials" within the

meaning of the Act.

retaining his seat after he has accepted office in the service of the Crown in India, on the principle of the vacation of seats obtaining in England. There you will remember it is only Ministers of the Crown, or holders of offices from or under the Crown who vacate their seats, those connected with the administration of departments of State being eligible for re-election. The Under-Secretary of State in England is not an office which is held from or under the Crown and, therefore, does not disqualify the holder of it from sitting or retaining his seat in the House of Commons. On the analogy of that principle a non-official Council Secretary cannot be said to have accepted office in the service of the Crown in India, necessary to disqualify him from membership of the Assembly, of which under the law moreover, the Council Secretary must be a member, just as the President and the Deputy President of the Assembly are regarded not to have done so. The test is whether one is an "official" or not. One who satisfies both the conditions of being a wholetime servant of the Government and also of being remunerated either by salary or fees is an "official," and as such, disqualified from taking his seat as a member. Election of both the President and his Deputy in the Assembly must be followed by the approval of the Governor-General who is empowered to appoint the President of the Council of State. The President is a person who is expected to have large experience and knowledge of Parliamentary procedure, precedents and conventions.

Under-Secretaries in England are not 'Ministers of the Crown.'

Vacation of office.

Test of an official.

President of Assembly and his Deputy approved by the Governor-General.

(e) *Officers in Control of Public Business.*

Classes of officials.

Each Department of the Government of India is conducted through the agency of three classes of officials : the Administrative Officers, the Ministerial Officers and

the Menials. Whatever be the official status of the Deputy Secretary who usually exercises the powers of the Secretary during the latter's absence from duty, and to whom is entrusted the management of the Secretariate establishment, or that of the Under-Secretary whose powers do not exceed the disposal of ordinary routine business of the department, the Secretary remains its Chief Officer, and as such is principally and directly responsible for its proper management. As an exposition of the mechanism of the administration of the State, it may not be inappropriate to describe the departments or the Secretariate as the place of business of the different Secretaries whose province it is, under the orders of the respective Members of Council-in-Charge, to take cognizance of certain branches of administration. Like the administration of the State the department is divided into branches or sections, each dealing with a group of subjects with which the department is concerned.

Secretary's responsibility for the Department and its working.

There are occasions when the Government of India differ from the Local Governments and yet, do not offer their observations in a mandatory spirit, but only in the form of suggestions, and in a spirit of advice. In such cases, it does not appear to be necessary that they should be submitted to the Viceroy for orders. The department itself would be quite competent to deal with proposals of a Local Government which cannot be given effect to except in contravention of some standing orders and accepted principles. It is not necessary merely on this account to take the Viceroy's instructions.

Departments in difference with the Provincial Governments.

The power to dispose of ordinary matters within the province of a department rests with the Member-in-Charge, or is delegated by him to the Secretary whose other duties are :—

(*a*) to place every case before the Governor-General or the Member-in-Charge of his Department, in a com-

Other duties of the Secretary.

plete form, ready for final decision, *i.e.*, accompanied by a note with his own opinion recorded thereon;

(*b*) to send the business of his Department to the Member-in-Charge, for first perusal and initiation of orders;

(*c*) to send papers of special importance at once to the Governor-General who will initiate orders or send them for initiation by the Member-in-Charge;

(*d*) to see that no papers come before the Council without having been previously seen by all the Members; and.

(*e*) to attend meetings of the Council, if necessary.

Difference of opinion and final orders.

While in matters of greater moment, the papers with the order or opinion of the Member-in-Charge are submitted for the approval of the Governor-General when only final orders may issue. But where the Governor-General does not fall in with the views of the Member-in-Charge, he may require papers to be circulated among Members of the Council and call for their opinion thereon, or direct the subject-matter to be brought up for discussion before the Council which usually meets once a week.

(*f*) *Noting up.*

Circulation of papers.

This is the paper side of the Viceroy's work. All orders are issued in his name. Every case of any real importance passes through his hands, and either bears his order or his initials under the initiating Member's note Urgent matters in all the nine Departments of the State go to him in the first instance. He has also to decide what cases had better be disposed of by the departmental Member and himself, and what ought to be circulated to the whole Council or to some of its Members. In short, he has to see, as his orders run in the name of the Governor-General in Council, that they fairly repre-

sent the collective views of his Government. The "Circulation" of the papers takes place in oblong mahogany boxes, airtight, and fitted with a uniform Chubb's lock. Each Under-Secretary, Deputy Secretary, Secretary, and Member of Council gets his allotted share of these little boxes every morning; each has his own key; and after 'noting' in the cases that come before him, sends on the box with his written opinion added to the file. As the day advances, these boxes from the various departments begin to accumulate upon the Viceroy's table, only to be disposed of by him, one by one, throughout the day. In addition to this vast diurnal tide of general work, the Viceroy has two of the heaviest Departments in his own hands, the Foreign and the Political, as Member-in-Charge.

The Cabinet box system.

Part VII.

Business of the Government of India.

(a) *The Great Departments of the Government.*

The business of the Government of India therefore, is conducted by the nine great Departments of Finance, Foreign, Political, Home, Legislative, Industries and Labour, Commerce and Railways, Army, and Education, Health and Land. To the Army is attached a sub-Department of Military Finance. Each Department has a Secretary allotted to it. Foreign hitherto had one, but with its bifurcation it is endowed with two, one on its political and the other on the foreign side, and a Member of the Supreme Council has one or more of these departments under him. Each Secretary is assisted by one or more Deputy or Assistant Secretaries. All works of a more important nature are submitted to the Governor-General-in-Council for orders. For instance, all matters dealing with public accounts including estimates, banks,

Nine great Departments of the Government of India.

alienations of revenue, public expenditure, public ways and means including loans, public funds, mints, paper currency, leave, pay, allowances, pensions, and gratuities of Public Officers, assessed taxes and opium go before the Finance Member who, in consultation and agreement with the heads of the great spending departments, arranges for the collecting departments to provide sufficient funds for meeting the needs of the year. He fixes what money the Legislature shall be asked to grant each year and submits plans for raising such money. The functions of the Finance Department have been summarised by Sir Malcolm Hailey, at one time Finance Minister, as those which involve the duty of explaining what the Government have done with the money which the Legislature has voted during the past year ; of explaining whether the anticipations of Government in respect of revenue have been fulfilled or not ; of explaining to the Legislature why and how in any particular case the Government have exceeded the grant made to them ; and of laying before the Legislature a very complete scheme of operations, not only of revenue and expenditure, but of ways and means finance for the ensuing year. There is another branch of financial activity with which the Department is concerned, namely, the framing of the Financial rules and regulations and the adjustment of financial relations with the Provincial Governments. There is yet another important branch of the Department which deals with what may be called pure finance, that is, all those questions relating to the provisions of ways and means, the adjustments of remittance transactions, the paper currency issue, the raising of loans, and the provision of everyday finance by means of Treasury Bills, advances from the Bank and the like. In short he represents what in the English Constitution is known as the " Treasury Department," in the Indian Legislature.

The work of the Finance Department.

Some details of work.

The plans of his ways and means of realising the revenue and of expenditure are submitted to the Legislature in the form of a Budget which he explains and expounds to the House by way of a statement. The Member-in-Charge of the Finance Department is sometimes a Member of the Civil Service, but very often an expert English Financier. The Foreign Department deals with and regulates the relations of the Government of India, through an envoy, with the foreign state of Nepal and other neighbouring Asiatic States and the Political Department, through Residents or Agents to the Governor-General and Political Agents, with the several Indian States and Feudatories within the limits of India. These latter officers of high dignity and onerous responsibility have been known also to supervise their administrations and regulate their relations with one another. These being the most important of all the Departments, the Viceroy himself keeps charge of them so that, constitutionally speaking, he is his own Foreign and Political Minister. To these allied Departments are entrusted the control of the administration of the Frontier Districts, and the regulation of relations with Frontier and Hill tribes, the administration of Baluchistan, the administration of Ajmere-Merwara, the duty of looking after political prisoners, the distribution of political pensions, extradition, and extra-territorial jurisdiction, the question of conferring of titles and of the various orders of the Star of India, of the Indian Empire and of the Crown of India, recognition of Consuls, arrangements for ceremonials and maintaining the standard of efficiency of the Imperial Service Troops and the Imperial Cadet Corps. The Home Department, as we have already seen, concerns itself with various branches of public business, the principal of which are the Indian Civil Service, the European Vagrancy Act

The Treasury Department of the Government of India.

Viceroy his own Foreign and Political Minister.

Subjects of administration by the Foreign and Political Department.

The Home Department.

throughout British India and Berar, internal politics including law, order and justice (except as regards petitions in Jirga cases in the North-West Frontier Province, escheated and intestate property, Jails and Penal Settlements, Police (except as regards the border military police in the North-West Frontier Province, throughout British India (except British Baluchistan and Ajmere-Merwara), the civil medical services, judicial and administrative establishments throughout British India (except the North-West Frontier Province, British Baluchistan and Ajmere-Merwara), Registration and naturalisation of aliens, the Indian Arms Act, and the nomination of members of the Indian Legislature. It is the medium of communication between the Crown and the subject. In short, its principal function is the maintenance of the King's peace, the enforcement of rules made for the internal well-being of the community and the exercise of the prerogative of mercy. It is always in charge of a member of the Indian Civil Service. It cannot very well be otherwise for, the matters dealt with in this Department are those with which none but a member of that Service is fully acquainted. The Legislative Department is in charge of a legal gentleman, a Barrister or an Advocate of a High Court of not less than ten years' standing, and has to deal with Government bills and mould rules made under the various enactments into shape. Of late, five of the Law Members have been distinguished Indians, one of whom subsequently became Parliamentary Under-Secretary of State for India, with a seat in the House of Lords, and later, the Governor of Behar and Orissa. It may be noted here that this was the first occasion in British Indian History when an Indian was taken in the British Government at home, and also when a Native of the country was raised to be the administrative head of a Province. The Land Reve-

It is the medium of communication between the Crown and the subject.

The Legislative Department.

nue, Land Surveys, Forest Arboriculture, Agricultural developments, Meteorology, Civil Veterinary administration, Agricultural statistics and famine are placed at the disposal of the Member for the Department of Education. Health and Land. Unlike Home, in the Department of Education, Health and Land, the Member-in-Charge is usually, but not invariably, a person unconnected with the Civil Service. Irrigation, roads, buildings and electricity are dealt with by the Public Works Department which forms part of the larger Department of Industries and Labour which otherwise concerns itself with Explosives, Factories, Printing, Stationery and Stamps, Mines and Mineral Resources, Geological Survey and Geological Museums and Inventions, Patents and Designs, leaving to the Department of Commerce the primary function of dealing with all business throughout British India, and in all places in the Indian States administered by the Governor-General in Council, connected with Commerce, Customs including Cotton duty, internal and foreign trade, Commercial intelligence, Weights and measures, Telegraphs and telephones, the Post Office, Emigration, Fisheries, Stores and Plants Statistics, Salt, Excise and Opium excluding the regulation of poppy cultivation and the administration of the opium department in the United Provinces, the Indian Life Assurance Companies Act, the Indian Companies Act, Steam boilers, trading by foreigners, Merchandise marks, Merchant shipping, Ports and Lighting and Coal. This department has charge also of the Railway Department, but there is an intermediate authority called the Railway Board with a Chief Commissioner at the head of it, between the superior Department of Commerce and the Railway Department proper. Both the Departments of Commerce and of Industries are of very recent creation. The one is guided by a supposed expert

Department of Education, Health and Land.

Department of Industries and Labour.

Department of Commerce and Railways.

Railway Department, a branch of the Department of Commerce.

Departments of Industries and of Commerce are of recent creation.

in Commerce, in actuality often by a Civilian, and the other practically follows the same rule. As at present constituted, three out of six members of the Governor-General's Executive Council, excluding the Commander-in-Chief are Indians, a state of affairs which ten years ago would have been regarded as inconceivable and beyond the pale of administrative politics and perhaps of human effort.

The Army Department.

The Army Department is represented by the Commander-in-Chief. The Commander-in-Chief is an "Extra-Ordinary" Member of Council. The Governors of Madras, Bombay and Bengal are no longer so, even when the Council meets within their Presidencies. The latest Department with a separate entity of its own is the Department of Education having in its charge the control of education, local self-government, sanitation, ecclesiastical affairs having recently been transferred to Commerce, though it is difficult to see what it has to do with ecclesiastical matters, unless it is an admission of the fact that the Church in India which fattens itself upon heathen money is run on commercial principles. This Department however, has been deprived of much of its usefulness, authority and power of initiation by the Government of India Act of 1919, since Education, Local Self-Government and Sanitation have all become provincial transferred subjects under the control of Ministers responsible to the Legislature. The Governor-General may call a meeting of the Council at any place in India. In practice, it meets in Delhi and at Simla.

Department of Education, Health and Land deprived of much of its powers since 1919.

(*b*) *Subjects for Central Administration.*

Subjects for Central Administration enumerated.

The subjects which have been reserved for central administration are :—

1. (*a*) Defence of India, and all matters connected

with His Majesty's Naval, Military and Air Forces in India or with His Majesty's Indian Marine Service, or with any other force raised in India other than military and armed police wholly maintained by Local Governments.

(*b*) Naval and Military Works and Cantonments.

2. External relations, including naturalization of aliens, and pilgrimages beyond India.

3. Relations with States in India.

4. Political charges.

5. Communications to the extent described under the following heads, namely :—

(*a*) Railways and extra-municipal tramways, in so far as they are not classified as provincial subjects.

(*b*) Aircraft and all matters connected therewith ; and

(*c*) Inland waterways, to an extent declared by rules made by the Governor-General in Council or by or under legislation by the Indian Legislature.

6. Shipping and navigation, including shipping and navigation in inland waterways, in so far as it is declared to be a central subject in accordance with entry 5 (*c*) mentioned above.

7. Light-houses (including their approaches), Beacons, Lightships and Buoys.

8. Ports, Quarantine and Marine hospitals.

9. Ports declared to be major ports by rules made by the Governor-General in Council or by or under legislation by the Indian Legislature.

10. Posts, telegraphs and telephones, including wireless installations,

11. Customs, Cotton Excise duties, Income-tax, Salt and other sources of all India revenues.

12. Currency and Coinage.

13. Public debt of India.

14. Savings Banks.

15. The Indian Audit Department and excluded audit departments, as defined in rules framed under section 96D (1) of the Act.

16. Civil Law, including laws regarding status, property, Civil rights and liabilities, and Civil Procedure.

17. Commerce, including banking and insurance.

18. Trading companies and other associations.

19. Control of production, supply, and distribution of any articles in respect of which control by a central authority is declared by rules made by the Governor-General in Council or by or under legislation by the Indian Legislature to be essential in the public interest.

20. Development of industries, in cases where such development by a central authority is declared by order of the Governor-General in Council, made after consultation with the Local Government or Local Governments concerned, expedient in the public interest.

21. Control of cultivation and manufacture of opium, and sale of opium for export.

22. Stores and Stationery, both imported and indigenous, required for Imperial Departments.

23. Control of petroleum and explosives.

24. Geographical survey.

25. Control of mineral development, in so far as such control is reserved to the Governor-General in Council under rules made or sanctioned by the Secretary of State, and regulation of Mines.

26. Botanical survey.

27. Inventions and Designs.

28. Copyright.

29. Emigration from, and immigration into, British India, and inter-provincial migration.

30. Criminal Law, including Criminal Procedure

31. Central police organisation.

32. Control of arms and ammunitions.

33. Central agencies and institutions for research (including observatories) and for professional or technical training or promotion of special studies.

34. Ecclesiastical administration, including European cemeteries.

35. Survey of India.

36. Archaeology.

37. Zoological survey.

38. Meteorology.

39. Census and Statistics.

40. All-India Services.

41. Legislation in regard to any provincial subject, in so far as such subject is stated to be subject to legislation by the Indian Legislature, and any powers relating to such subject reserved by legislation to the Governor-General in Council.

42. Territorial changes, other than inter-provincial and declaration of laws in connection therewith.

43. Regulation of ceremonial titles, orders, precedence and civil uniform.

44. Immovable property acquired by, and maintained at the cost of, the Governor-General in Council.

45. The Public Services Commission.

46. All matters expressly excepted from inclusion among provincial subjects.

47. All other matters not included among provincial subjects.

(c) *Functions of the Government of India.*

Functions of the Government of India.

The mechanism of the Government of India is not invariable in its structure, and the administrative policy adopted by successive Governments have at times been so divergent as to lead one to believe that a system of party Government exists in India. The policy of decentralisation recently adopted by the Government of India has tended to increase, subject to their control, the authority of the Local Governments, so that, it is necessary here to describe the functions of the Government of India to enable us to understand and appreciate the procedure followed in the disposal of administrative problems and measures by the Government of India Secretariate. I cannot do it better than in the words of the Royal Commissioners on Decentralization in India. The functions of the Government of India, " are in many respects, much wider than in the United Kingdom. The Government claims as share in the produce of the land; and save where (as in Bengal) it has commuted this into a fixed land tax, it exercises the right of periodical reassessment of the cash value of its share. In connection with its revenue assessments it has instituted a detailed cadastral survey, and a record of rights in the land. Where its assessments are made upon large landholders, it intervenes to prevent their levying excessive rents from their tenants; and in the Central Provinces it even takes an active share in the original assessment of the landlords' rents. In the Punjab and some other tracts, it has restricted the alienation of lands by agriculturists to non-agriculturists. It undertakes the management of landed estates where the proprietor is disqualified from attending to his affairs by age, sex, or infirmity or occasionally by

pecuniary embarrassments. In times of famine it undertakes relief works, and other remedial measures upon an extensive scale. It manages a vast forest property, and is a large manufacturer of salt and opium. It owns the bulk of the railways of the country and directly manages a considerable portion of them, and it has constructed and maintains most of the important irrigation works. It owns and manages the postal and telegraph systems. It has the monopoly of note issue, and it alone can set the Mints in motion. It acts for the most part as its own bankers, and it occasionally makes temporary loans to Presidency Banks (now incorporated into one Bank called the Imperial Bank of India), in times of financial stringency. With the co-operation of the Secretary of State it regulates the discharge of the balance of trade, as between India and the outside world, through the action of the India Council's drawings. It lends money to the Municipalities, rural boards and agriculturists and occasionally to the owners of historic estates. It exercises strict control over the sale of liquor and intoxicating drugs, not merely by the prevention of unlicensed sale, but by granting licenses for short periods only, and subject to special fees which are usually determined by auction. In India, moreover, the direct responsibilities of Government in respect of Police, Education, Medical and Sanitary operations, and ordinary Public Works, are of a much wider scope than in the United Kingdom. The Government has further very intimate relations with the numerous native states which collectively covers more than one-third of the whole area of India, and comprises more than one-fifth of its population."

PART VIII.

GOVERNMENT OF INDIA IN RELATION TO PROVINCIAL GOVERNMENTS.

(a) *Control of the Government of India over Provincial Governments.*

The powers of control of the Government of India over the Local and Provincial Governments are of a general character. Their legislation must on no account modify or interfere with the legislative or administrative act of the Supreme Government. Their sphere of action is necessarily limited, and their legislative activity circumscribed in proportion to the interference and activity of the Government of India. According as the Government of India pays attention to new classes of subjects for legislative purposes the local legislatures must be regarded as less competent. That control is exercised in one of three ways, the principal of which may be said to be in the direction of external concerns including foreign relations and foreign commerce. The foreign policy of India, whether political or commercial, is Imperial and can best be dealt with by the Imperial Government. It is best that it should be so, for, if the regulating of these relations were left to the Local Governments, it might give rise to a breach of harmony in the relationship of the Indian Government with the Indian Princes and India's Asiatic neighbours. Treaties and engagements, even if they relate to a particular locality or province are made by the Government of India, and not by the particular Government interested in the locality or province. Treaties so made by the Central Government are binding upon all the subordinate Governments, and it is the duty of the Government

Sphere of action of the Government of India.

Foreign policy of India is an Imperial concern.

of India to see that their terms are not ignored or nullified by the Provincial Governments any more than by the States in treaty. In respect of settlement of disputes between Indian States with conflicting interests the Government of India has a very important function to discharge. It is in a position to adjudge between them equitably and unprejudicially. As between the provinces themselves, disputes are settled and advantages and disadvantages equalised by the Government of India as the patriarchal head of a family group. One province may have the command of the sea-board, another may suffer from frequent famines, and a third may be liable to tribal attacks from the frontiers. Here the Central Government takes the advantages of one and tries to make up for the disadvantages of the other. The surplus revenues of one province may be applied to the defence of the other, for the defence of one province is likewise a defence for all the neighbouring provinces and for all India. One province helps another province which for instance, is famine-stricken, to tide over its difficulties. It is moreover, the look-out of the Government of India to introduce or have introduced in the provinces a system of working administration which should harmonise with one another. It is what is called the co-ordinating principle to facilitate the realization of which each Provincial Government should have the facts and figures before it on which experience of one another should be based. Such information and statistics are collected and published by the Central Government for the information of all. It is here that the Government of India exercises a very effective control, and more than that, for its control sometimes has a despotic tendency in that, the principles of all provincial legislation have to be submitted to the Government of India for their approval, as well as the bills drafted out,

Disputes between Indian States and Provincial Governments settled by Government of India.

Other Functions.

Check of the Government of India upon Provincial legislation.

save those relating to the transferred departments since 1920, in respect of which the powers of superintendence, direction and control over the local Government of a Governor's province vested in the Governor-General in Council under the Act. cannot be exercised for purposes other than to safeguard the administration of central subjects, and to decide questions arising between two provinces in cases where they have not succeeded in arriving at an agreement. The Devolution rules further invest the Government of India with authority 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 purpose of the appointment of the High Commissioner for India, with the pay, pensions, powers, duties and conditions of his employment, with any loan to be raised on the security of the revenues of India, and any assurances to be made therefor, or with the Civil Service of India, or with any rules made by, or with the sanction of, the Secretary of State in Council. The Government of India have got the power to alter, vary or modify them as they please. The Central Government have similar powers in questions relating to ordinary administration, and they exercise those powers though not frequently, exceptions being made in cases which we shall notice in the next chapter. They are authorised moreover, to regulate matters connected with the Government of the country or under the Government of India Act, to frame, with the approval of the Secretary of State for India, rules which have the force of law, after they have been laid before both Houses of Parliament as soon as may be after they have been made, and an opportunity has been given to the Members to move for their cancellation or recession within thirty days.

In matters relating to reserved subjects the Government of India may direct and even dictate to the provinces.

(b) *Relations between the Government of India and the Provincial Governments.*

Principles governing the relations between Simla and the Provincial Governments.

This brings us on to the general principles which govern the relations between the Government of India, and the subordinate Provincial Governments. On the subject of the Charter Act of 1833, the Court of Directors in a letter addressed to the Government of India laid down the principles which apply today just as much as they did before it was transferred to the Crown. The 39th section of the Government of India Act of 1833, called the Charter Act, lays down a very comprehensive clause that, "the superintendence, direction and control of the whole Civil and Military Government of all the said territories and revenues of India shall be vested in the said Governor-General in Council," and in explanation of it the Court of Directors in their despatch just mentioned said, that "the powers here conveyed, when the words are interpreted in all their latitude, included the whole powers of Government, and it is of infinite importance that you should well consider and understand the extent of the responsibility thus imposed upon you. The whole Civil and Military Government of India is in your hands, and for what is good or evil in the administration of it, the honour or dishonour will redound upon you." The despatch continues that with respect to the powers which the Governor-General was called upon to exercise, "It will be incumbent upon you to draw, with much discrimination and reflection, the correct line between the functions which properly belong to a local and subordinate Government and those which belong to the general Government ruling over and superintending the

whole." The object of the Act was to carry into effect that intention of the Legislature to which the Court alluded. Invested as the Governor-General was with all the powers of Government over all parts of India, and responsible for good government in them all, the Government of India are to consider to what extent, and in what particulars, the powers of Government can, or are likely to be best exercised by the local authorities, and to what extent, and in what particulars, they are likely to be best exercised when retained in their own hands with respect to that portion of the business of Government which they fully confide to the local authorities, and with which a minute interference on their part would not be beneficial. It is their duty, under such circumstances, to have always before them evidence sufficient to enable them to judge if the course of things in general is good, and to pay such vigilant attention to that evidence as will ensure their prompt interposition whenever anything occurs which demands it. A cardinal principle not to be lost sight of is that the working of a system which admits of different grades of authority depends very much on the wisdom and moderation of the supreme authority, and also of the subordinate authorities. No legislature can lay down a definite limit between a just control and a petty, vexatious, and meddling interference. Apart from the regular routine matters in which the subordinate governments have to refer to the Government of India, much reliance has to be placed on the practical good sense of the Governor-General in Council and of the local Governments, for the carrying out of the law into effect in a manner consonant with its spirit, and there is no reason to doubt the possibility of preserving to every subordinate Government its due rank and power, without subtracting from or neutralising those of the

Power of Superintendence.

Cardinal Principle of control.

Central Government. The subordinate Governments have to obey the orders and instructions of the Governor-General in Council in all cases whatever, save those I have mentioned, namely, those which relate to the transferred subjects, and in order to enable him to exercise with effect the control and superintendence devolved upon him, they have to transmit regularly to the Governor-General in Council true and exact copies of all the Orders and Acts of their respective Governments, and to give intelligence of all transactions which they may deem material to be communicated, or as the Governor-General in Council may from time to time require. Even under the reformed constitution there is no deviation from the rule stated above, except in the transferred departments of a provincial government. "It is Our will and pleasure that Our said Governor-General shall use all endeavours, consistent with the fulfilment of his responsibilities to Us and to Our Parliament for the welfare of Our Indian subjects, that the administration of the matters committed to the direct charge of Our Governor-General in Council may be conducted in harmony with the wishes of Our said subjects, as expressed by their representatives in the Indian Legislature, so far as the same shall appear to him to be just and reasonable." This is an injunction which is clear and final, and applies to the Indian Legislature in respect of all subjects of Central administration as to all matters in the control of the "reserved" side of a Provincial Government for which the Governor-General, as of old, remains responsible to Parliament. Where he will not, he will have to assign reasons for his difference, which cannot be upheld unless for the purpose of maintaining the safety and tranquillity of the Empire.

Duty of the Subordinate Government.

Principle modified by Instrument of Instructions.

(c) *Mode of exercising Authority.*

Exercise of authority.

Invested with such authority the Government of India exercises control over the Provincial Governments, (*a*) by financial rules and restrictions including those laid down by Imperial departmental codes, (*b*) by general or particular checks of a purely administrative character which may be laid down by law or rules having the force of law or have grown up in practice, (*c*) by preliminary scrutiny of proposed provincial legislation and sanction of Acts passed in the Provincial Legislatures, (*d*) by general resolution on questions of policy, issued for the guidance of the Provincial Governments, (*e*) by instructions to particular local Governments in regard to matters which may have attracted the attention of the Government of India in connection with the departmental administration reports periodically submitted to them, or the proceedings volume of a local Government, (*f*) by action taken upon matters brought to notice by Imperial Officers, and (*g*) in connection with the large right of appeal possessed by persons dissatisfied with the actions or orders of a Provincial Government.

Part IX.

Government of India and the India Office.

Secretary of State's Control over Viceroy.

Viceroy not independent of but subordinate to the

The principle that the Government of India has the right of initiation and the Council of India has the right of revision as the Secretary of State has, subject to the direction of the House of Commons, the right of veto, is

Secretary of State.

now well established. Yet in 1870, there arose a great controversy between the Duke of Argyll, the Secretary of State and the Government of India under Lord Mayo over, amongst other things, the Punjab Drainage and Canal Act, in which it was definitely laid down that the prerogative of the Secretary of State for India was not limited to a veto of measures passed in India, but extended far beyond that. The Secretary of State maintained, that the Government of India were merely executive officers of the Home Government, who held the ultimate power of requiring the Governor-General to introduce a measure and also of requiring all official Members to vote for it. The supposed powers and privileges of the Council in London have been similarly dealt with, and the Council is now regarded merely as an adjunct of the office of the Secretary of State; to furnish him with information or advice when he chooses to ask for it. Nowhere in the statutes establishing the constitution of India, is it necessary for a piece of legislation to have the sanction or assent of the Secretary of State to be operative as law, far less is such sanction or assent a condition precedent, whereas, on the other hand, without the assent of the Governor-General a law is of no effect. It is submitted therefore, that the Secretary of State reserves to himself the power of exercising his veto upon any legislation assented to by the Governor-General. In the whole course of Indian legislation, however, there is not a single measure which has been expunged from the Statute Book by reason of the disapproval or disallowance of the Secretary of State. The course that has been followed is a logical one and conducive to the maintenance of the prestige of the Government of India. To require the Governor-General or the Provincial Governor to repeal a measure not approved by the Home authorities, such

Influence of the Council of India neutralised.

Northbrook vetoed by Salisbury.

as was done by the Marquis of Salisbury, as Secretary of State for India in regard to Lord Northbrook's Tariff Act of 1875, wherein Lancashire cotton goods were placed under a ban for the benefit of Indian cotton manufacturers, is an impious policy to which the Viceroy after a long and unpleasant controversy with the Secretary of State would not submit even at the cost of his high office. Lord Northbrook declined to accept the proposition and resigned, whereupon Lord Lytton, a clever but essentially a weak party lieutenant, who was eager to accept the gift of the highest office under the Crown from Mr. Benjamin Disraeli (he was soon elevated to the Peerage as Earl of Beaconsfield), at any sacrifice and under any conditions, was sent out with a definite "mandate" to repeal the Act at the earliest possible opportunity. It would be interesting here to note what a great English historian has to say about this incident and its sequel,—the retirement of Lord Northbrook and the appointment of Lord Lytton. "The Government," we are told, "made some changes in the relations of the India Office here to the Viceroy in Calcutta, which gave much greater power into the hands of the Secretary for India. One immediate result of this was the retirement of Lord Northbrook, a prudent and able man, before the term of his administration had actually arrived. Mr. Disraeli gave the country another little surprise. He appointed Lord Lytton Viceroy of India. Lord Lytton had been previously known chiefly as the writer of charming and sensuous verse, and the author of one or two showy and feeble novels. The world was a good deal astonished at the appointment of such a man to an office which had strained the intellectual energies of men like Dalhousie and Canning and Elgin. But people were in general willing to believe that Mr. Disraeli knew Lord Lytton to be possessed of a gift of administration which

Lord Lytton not a free agent but an agent of a party.

It was a discreditable appointment.

the world outside had not any chance of discerning in him." There was no doubt something gracious and kindly of the Prime Minister thus to have recognised and exalted the son of his old friend and companion in arms. In spite of misgivings England wished well to the appointment and hoped it might prove a success. Before long England learnt and felt that the appointment was a failure, for upon coming into power Mr. Gladstone lost no time in recalling Lord Lytton to the immense relief of a disappointed, chagrined and irritated India. Lord Lytton however, found it difficult to repeal the Act, in the face of opposition from his Council, but eventually got over the difficulty by the exercise of extraordinary powers granted to him by the Indian Councils Act of 1870, of overruling his Council, when the "safety, tranquillity or the interests of British India or of any part thereof are, or may be, in the judgment of the Governor-General essentially affected." It is difficult, however, to see how the safety, tranquillity or the *interests* of British India were or could be affected by the imposition of a duty on textile fabrics imported into India. If anything, it was for the benefit of British India but you must not forget that he was sent out with a definite "mandate," and if he, the son of the Great Novelist whose political career was ennobled by his association with one of the greatest figures in Indian history, Lord Derby, who conceived and drafted the Queen's Proclamation of 1858, the most exalted and generous enunciation of the principles of Government ever made by an alien rule, for the benefit of the ruled, could not carry it out, he was not worth his salt. The "mandate theory" may therefore, be said to have been established here, though originated earlier with the Duke of Argyll, and re-affirmed under perhaps the weakest of Indian

Recall of Lord Lytton.

Lord Lytton's subserviency.

The Queen's Proclamation, the most generous enunciation of principles of government.

The mandate theory originated

with the Duke of Argyll.

Viceroys, Lord Elgin, and to this extent the rule, with respect to initiation of Legislative measures by the Governor-General as prescribed by the Statute, must be regarded to have been overridden in practice by successive Secretaries of State, beginning with the Duke of Argyll right down to Lord Peel, who gave his silent but effective assent to the dictum that India was a "subordinate branch of the English administration" enunciated by Lord Curzon in 1922, when jockeying out Mr. Montagu, to whom, and unfortunately now to his memory, India owes eternal gratitude. Be it said to the credit of the noble Marquis, that this was the very contention over which his Viceroyalty foundered, he pulling one way and the masterful Lord Kitchener the other, and the Secretary of State, Mr. St. John Brodrick, now Viscount Middleton, eventually overruling the Viceroy who devoted inexhaustible energy to the perfecting of an administrative machinery that was already outworn, whose policy and temper stimulated Indian nationalism, and prepared the land for Mr. Gandhi and Mr. Das, whose most considerable executive act (the division of Bengal Provinces) was impressively revoked by George V at Delhi, and whose administrative mechanism was swept away by the Montagu constitution of 1919. "As Foreign Secretary," estimated his countrymen, "Curzon simply did not count. He was obliterated by Lloyd George from the opening of the Peace Conference until the closing of Geneva. When Lloyd George was removed, Curzon was beaten and humiliated by Poincare. At Lausanne he was punctured by Ismet and completely worsted by Mustapha Kemal." East and West alike, the ruin of his diplomacy in spite of all the elaborate arrangements that he, as representing Great Britain in the negotiations with Ismet Pasha at Lausanne, had made through the Secret

Government of India an agent of the Home Government.

Curzon *v.* Kitchener; Curzon overpowered by Kitchener.

Curzon's ultimate discomfiture.

Service, whereby he should obtain, needless to say surreptitiously procured for him, all Ismet's telegraphic despatches to his Government at Angora as soon as or soon after they were forwarded, had to be redeemed by Mr. Ramsay MacDonald.

Agent of the party in power the Viceroy is not strictly a part of it, or even if he is, he is more fortunately situated, for it is not incumbent upon him to abide by the fortunes of the party appointing him, in the House of Commons. He is not required to, and indeed he does not, go in and out with the party to which he belongs. The earliest example of a Viceroy transferring his allegiance to his political opponents was that of Lord Canning, who, appointed by Lord Palmerston in 1856 at the head of the Liberals, elected to serve under Lord Derby on the transfer of the government to the Crown in 1858. Other cases of such transfer of fealty were those of Lord Northbrook who came out under Mr. Gladstone in 1872 and went out in 1876, two years after Mr. Disraeli came into power, of the Earl of Dufferin who began under the Earl of Kimberley, a Liberal Secretary, and served through the regime of Lord Randolph Churchill and Lord Cross, both Tory Secretaries of the most irreconcilable type, of the Marquis of Landsdowne whose tenure of office began under Viscount Cross and terminated in its natural course under Sir Henry Fowler (afterwards Lord Wolverhampton), of Lord Chelmsford and of Lord Reading, who had the privilege of serving under Mr. Lloyd George, the Liberal Prime Minister, Mr. Ramsay Macdonald, the Labour Prime Minister and Mr. Stanley Baldwin, the Conservative Prime Minister, just as much as Lord Irwin has elected to serve under Mr. Ramsay Macdonald even though he owed his appointment to his own party the Conservatives.

Examples of the Viceroy transferring allegiance.

PART X.

GENERAL.

(a) *Government of India over-officered.*

Governments in India largely "paper Governments."

But when all is said the Government of India as the Provincial Governments must be said to be over-Secretaryised and to remain open to the charge of being largely a "paper government" (as an eminent person has shrewdly observed that), it is "a pen and ink Raj, a bureaucracy which relies for information on the reports received from official subordinates, and endeavours to influence public opinion only through orders issued to its subordinates or through reasoned arguments communicated to the press." These are what are known as "Communiques," which can hardly be effective substitutes for principles won by debates in the Council Chamber, or cases placed before the country from the platform. Governments in India cannot escape the charge of fighting shy of the public; let it now however be said that it is because the forces at the disposal of those at the helm of affairs are not, as Mr. Stephen Gwynn, at one time a member of the Indian Civil Service, pertinently observes, "Strong enough to give battle in the open." This is precisely what makes the position of the Government of India untenable and irretrievably weak from which the only way out is a fearless attitude and a bold front. Our friend Mr. Gwynn discerns the weakest spot in the new constitution when he says that, the "authors of the Act saw the need for a strong Central Government. They thought of securing a strong Government by making it independent of the Assembly and subordinate to the Secretary of State.

Weakness of the Government in India—the reason why.

The result is weakness. The Government of India has no popular support behind it. It has no party in the Legislative Assembly on which it can rely. It has to sweat blood for every vote it gets. A Member of the Government rising to introduce a bill knows, that he has to persuade every non-official Member by sheer force of argument in opposition to the natural bias of the non-official mind against the official view. The physical, mental and nervous strain on the Members of the Government is immense, and they can never be sure in advance that they will be able to have their way. An organised opposition could humiliate the Government every week, and an opposition is being organised." And again, "the Government of India is conscious of its own position, and this consciousness is a fatal handicap when the need for action arises. The Government is nervous about levying fresh taxation to meet the deficit. It hesitates to deal vigorously with excesses of Communalism and with the mischief-makers who shelter themselves behind the name of X, Y, Z. Further, it is beginning to be bullied by the Provincial Governments, which can claim to have more popular support and more local knowledge. Now, the History of India shows that every stable Government in India has ultimately been ruined by the refusal of outlying provincial authorities to obey the central authority, and there is a danger that history may repeat itself if we allow the habit of challenging the central authority to become established."

Want of party Government.

Government of India sometimes bullied by Provincial Governments.

(*b*) *The Indian Legislature.*

The Indian Legislature consists of the Governor-General, the Council of State and the Legislative Assembly. The Council of State is composed of sixty members,

The Indian Legislature: bicameral.

Their composition.

of whom thirty-three are elected, and twenty seven nominated including officials, whose number may not exceed twenty, and the Legislative Assembly of one hundred and forty members, of whom one hundred are elected and forty-one nominated, of whom not more than twenty-six may be officials. Outside the officials the nominated members are those who are regarded as experts whose views and opinions the Viceroy considers are worth having. With the help of these two legislative bodies he conducts the government of the country, transacts all business and frames laws and regulations. We shall discuss the constitution and powers of the Indian Legislature later on in a separate lecture.

Original and appellate functions further considered.

As the Central authority the functions of the Government of India are both original and appellate. As original authority it can initiate all measures necessary for the whole of India as for particular local areas. As such original authority it can control the action of all local Governments. As an appellate authority it can do all that on the motion of some body or bodies. As the supreme authority it alone can deal with matters relating to the defence of India, and all matters connected with His Majesty's Naval, Military and Air Forces in India or with His Majesty's Indian Marine Service, or with any other force raised in India other than military and armed Police wholly maintained by local Governments and Naval and Military Works and Cantonments.

(c) Growth of the Central Government.

Central Government of the English is not a new institu-

The idea of a Central Government is not new to India. It is not a British introduction. The Imperial system was first brought in by the Moguls and it has remained a necessary part of the Indian Government ever

since. Under the Moguls however, the Imperial system fell into abuse in that, few among the Mogul Emperors cared for anything beyond money. So long as they had that, they cared not how their subjects in the various parts of the country were governed. The man on the Imperial '*Gadi*,' or his representative the Provincial Governor (he was called the Subadar), hardly ever mistook his charge for a sacred trust which must be carried out for the greatest good of the greatest number. They regarded their tenure of office as the opportunity of a lifetime which they never failed to utilise to the best advantage, to enrich themselves, lest it should not return again. But the British Imperial system is a great check upon all the local Governments who have got to keep the Central authorities informed of every important measure they take, and in many cases have to submit their proposals before them for sanction and approval before giving effect to them. Without a central authority to hold the balance even between the various local Governments and the innumerable Indian States there may be disputes among them. Anarchy would prevail and life would be intolerable. Where the Mogul Imperial system failed the British have succeeded. It adjusts the conflicting interests of the provinces and the States. The Central Government moreover, may concern itself with broad principles of administration while to the local are assigned the duties of working out the details of administration. The local or provincial government is no less a necessity in the British Indian administrative system than the Central Government. We cannot say that we can do with the one and without the other. Division of labour conduces to efficiency of administration. The provincial Governments are not expected to know anything about Imperial affairs. The Government of Bengal has no

tion but a continuation of the past.

Central Governmental system of the English is more orderly and better organised.

It is the link between the various provincial Governments.

knowledge of the conditions which prevail in the Presidency of Bombay or of Madras. But if one transgresses against the other the Central Government is there to correct it. The Central Government is fast moving towards bringing an uniformity in the whole system of administration in all the provinces. On major heads they agree, in some details there is still some difference, as in land tenures or police arrangements.

The object and goal of the Government of India.

The primary object of the Government of India is to look to and secure the welfare of His Majesty's Indian subjects. As evidence of this we may recall to our mind the fact that but for the English navy, the most powerful in the world, India would not be safe, and without an efficient and powerful army, Indians would not be safe from foreign aggression, and without that efficient and powerful army they would not enjoy peace at home. And they are not called upon to contribute anything towards the maintenance of that navy. In the lifetime of the present generation we have seen funds of millions of pounds being raised in England, and sent over to India, to relieve distresses caused by famines and earthquakes. England wants the children of the soil to take more interest in their own country as much as English people take in theirs. That is England's dream and there is no mistake about the fact that she will realise it in the near future. It may be said with confidence that England's readiness to grant Swaraj to India is undoubted, provided India could keep it and would maintain and safeguard it.

Realisation of England's dream.

(d) *The Machinery of the French Government in India.*

Administrative machinery

This is the machinery that works the Government of India which does not suffer in comparison with the entire administrative machinery of French India, even

though it is quite different from that of British India, as that of the French Republic differs from that of the British Isles. of French India.

The French Republic administers her colonies in a very peculiar way; she has got a centralized form of administration. The several colonial possessions of France are divided into three classes. The first class colonies have got the same laws and regulations as France, while those belonging to the second class have also got the benefit of universal suffrage. They have powers to elect their own representatives to the two Central Assemblies, *viz.*, the Senate and the Chamber of Deputies at Paris. These colonies have elected Legislative Councils with budgetary powers. They have absolute control over taxation and revenue. The difference between the first class colony and the second class colony lies in this: in the former, military training and service are compulsory for every citizen, while in the latter, military training is compulsory only for those people who declare themselves citizens of France by first agreeing to renounce their claims for being administered under the Indian laws, and then by agreeing to abide by the laws applicable to French-born citizens. These Indians are termed "renescents." The inhabitants of the third class colony have got no powers to elect their representatives to the Paris House of Parliament, even though they have got Legislative Councils, etc., for the internal management of their country.

Different classes of French colonial possessions

Representation in the Senate and the Chamber of Deputies

(*e*) *French India—a Colony.*

French India is now a second class colony while Indo-China is a third class colony. The entire area of the French establishments in India is a little less than

French India a second class colony.

100 square miles, but the population of this small area is a little less than 4 lacs. Five scattered sea-coast settlements, four of which are in the Madras Presidency, while the other is in Bengal, together with seven scattered lodges or streets situated in seven important cities in this country, make up the entire French possession in India. French India is only of the size of an ordinary and average Deputy Tehsildar's division in British India. For the management and administration of this small area, there are several establishments and organisations. There is a Legislative Council for making laws and regulations for the internal administration of this small colony. Besides this Assembly each of the five establishments comprising French India has got a local Advisory Council. Villages are grouped into several *communes* and each *commune* has got a Municipal Council. In all these three classes of Councils all the members, without exception, are elected by the people and every French Indian has got his vote.

Villages in French India grouped into communes.

(*f*) *Legislative Council of French India.*

Composition of the Legislative Council of French India.

The strength of the Legislative Council of French India is 28 (twenty-eight). As stated above, all members are elected. Ordinarily, elections take place once in three years. All these Councils have elected Presidents. Full and absolute powers are given to the Legislative Council of French India in all matters concerning revenue and taxation. The President of the Legislative Council is elected every year. The budget has to be passed by the Legislative Council.

Out of the total strength of 28 Members of the Council, 13 are elected by the voters in the first list. All Frenchmen and those Indians who register themselves

as citizens of France as mentioned, are included in the first list, while all other French Indians are included in the second list. This reservation of 13 seats to the members of the first list is, in the opinion of the people of French India, very disproportionate and unfair since the number of voters in the first list is very negligible when compared with that in the second list. Even though the area of the colony is very small, the budget revenue is a little over Rs. 28 lakhs or very nearly Rs. 28,500 per square mile, or nearly Rs. 10 per *capita*. The members of the Legislative Council of French India generally meet once every year at Pondicherry in the month of November, and the session usually lasts till Christmas.

(*g*) *Further Reforms in India foreshadowed.*

Enquiry into the Reforms by the Muddiman Committee.

Further improvements to satisfy popular demands were suggested by a Committee called the Reforms Enquiry Committee, otherwise called the Muddiman Committee, the majority of whom recommended changes of a minor, almost of a trivial character, and the minority drastic changes in the Act. A great debate ensued in the Assembly over the motion of the Home Member of the Government for adoption of the Majority Report, and acceptance of the recommendations made therein with the inevitable result of their being thrown out on the 8th of September, 1925, by a heavy majority who declared themselves in favour of an amendment which ran as follows :—

"This Assembly while confirming and reiterating the demand contained in resolution passed by it on 18th February, 1924, recommends to the Governor-General in Council that he be pleased to take immediate steps to move His Majesty's Government to make a resolution in

Parliament embodying the following fundamental changes in the present constitutional machinery and administration of India :

Amendment accepted by the Legislative Assembly on further Reforms.

(*a*) " The Revenues of India and all property vested in or arising or accruing from property or rights vested in His Majesty under the Government of India Act, 1858, or the present Act, or received by the Secretary of State in Council under any of the said acts, shall hereafter vest in the Governor-General in Council for purposes of the Government of India ;

(*b*) " The Governor-General in Council shall be responsible to the Indian Legislature and subject to such responsibility shall have power to control expenditure of the revenues of India and make such grants and appropriations of any part of those revenues or of any other property as is at present under the control or disposal of the Secretary of State for India in Council save and except the following which shall for a fixed term of years remain under the control of the Secretary of State for India, (1) expenditure on military service up to a fixed limit, (2) expenditure classed as political and foreign, (3) payment of all debts and liabilities hitherto lawfully contracted and incurred by the Secretary of State for India in Council on account of the Government of India ;

(*c*) " The Council of the Secretary of State for India shall be abolished and he be given the position and functions of the Secretary of State for self-governing dominions save as otherwise provided in clause (*b*) ;

(*d*) " The Indian Army shall be nationalised within a reasonably short and definite period of time and Indians shall be admitted for service in all arms of defence and for that purpose the Governor-General and the Commander-in-Chief shall be represented by a Minister responsible to the Assembly ;

(*e*) " Central and Provincial Legislatures shall consist entirely of members elected by constituencies formed on as wide a franchise as possible ;

(*f*) " The Principle of responsibility to Legislature shall be introduced in all branches of the administration of Central Government subject to transitional reservation and residuary powers in the Governor-General in respect of the control of Military, Foreign and Political affairs for a fixed term of years : Provided that during the said fixed term the proposal of the Governor-General in Council for appropriation of any revenue or moneys for military or other expenditure classified as " defence " shall be submitted to the vote of the Legislature but that the Governor-General shall have power notwithstanding the vote of the Assembly to appropriate up to a fixed maximum any sum he may consider necessary for such expenditure as may be considered necessary but not exceeding the maximum as fixed ;

(*g*) " The present system of dyarchy in the provinces shall be abolished and replaced by unitary and autonomous responsible Governments subject to the general control and residuary powers of the Central Government in inter-provincial and all-India matters ;

(*h*) "The Indian Legislature shall after the expiry of the fixed terms of years referred to in clauses (*b*) and (*f*) have full powers to make such amendments in the constitution of India from time to time as may appear to it necessary or desirable.

" This Assembly further recommends to the Governor-General in Council that necessary steps be taken, (*a*) to constitute in consultation with the Legislative Assembly, a Round Table Conference or other suitable agency adequately representative of all, Indian, European and Anglo-Indian, interests to frame with due regard to

interests of minorities a detailed scheme based on the above principles after making such enquiry as may be necessary in this behalf, (*b*) to place the said scheme for approval before the Legislative Assembly and submit the same to British Parliament to be embodied in a statute."

Parliamentary institutions not suited for India.

The amendment erred in vital points for it made no suggestion for the constitution of a Cabinet Government on the principle of collective responsibility, either of the Viceroy or of the provincial Governors at the head of autonomous provinces, bound together by a federal bond which seems to be the only solution of India's constitutional problem, and for which the great John Bright fought from his place in the House of Commons nearly seventy years ago. It unfortunately commits India thoughtlessly to the parliamentary system of Government prevailing in European countries with all its attendant defects, complications, iniquities, vices and miseries from which Europe herself is craving to escape. But the strongest proof of a desire for co-operation on the part of the people of the country who have known during nearly 200 years of British rule, the horrors of being regarded by the sanctioned laws of the land or their administration in the hands of the European Magistracy and Judiciary dealing criminal justice, as "uitlanders" in their own home, the horrors of illiteracy, the horrors of famine, of exploitation, of want of nourishment to withstand malaria and other pestilential diseases, and of their representatives, is to be found in their efforts to improve a system of Government said to be for the benefit of all, and the welfare of 300 millions of human beings, just as America did in 1776, or South Africa in 1909, or Ireland (the Irish Free State) in 1922, as arbiters of their own political fortunes. But no, the amendment was turned down by an overwhelming majority of the elder

Doubtful wisdom of of the amendment.

statesmen of India who compose the Council of State, guided as they were by the eldest and perhaps the oldest of them all with his political shibboleth *festina lente*, not because it was thought unsuitable to the conditions of India, or that it did not approximate the happier conditions foreshadowed by the Committee on Mysore Constitutional Reforms, over which one of the most erudite political philosophers of our day, Sir Brojendra Nath Seal presided, but because they did not think that their countrymen could be safely trusted to make less mistakes than their alien rulers did. One cannot help admiring the statesmanlike instinct and foresight of Mr. Montagu and Lord Chelmsford when they devised the institution of the Council of State in which they felt there were advantages "both direct and incidental, in setting up a separate constitutional body, in which Government will be able to command a majority," who during their tenure of existence (the first five years of the Council of State), have seldom missed an opportunity to let the Government exploit their timid and bashful patriotism and robust faith in their own wisdom.

Amendment rejected by the Council of State.

Direct advantage of having the Council of State.

(h) The Secretariate of the Government of India.

The department or Secretariate is the place of business of a Secretary whose province it is under the orders of the Member of Council called in common parlance "Hon'ble Member-in-Charge," who presides over it, to take cognisance of certain branches of the administration. Not unlike the administration of the State, the department is divided into branches or sections which deal with a certain number of the subjects with which the department is concerned. The department is conducted through the agency of three classes of officials, namely, (1) Administrative officials, (2) Ministerial

Secretariate the place of public business.

Staff of the Secretariate.

officers and (3) Menials. To the first class belong the Secretaries. These are the responsible heads of the departments, and are 'officers' *par excellence*. The officers of the second category are 'clerks' whose duty it is to see to the proper and systematic ordering of materials on which the "Secretaries" are required to work. In the third class are reckoned the servants of the Secretariate Establishment.

Grades of officers and their style.

The administrative officers are of various grades and are according to their status and the nature of their respective duties, styled (*a*) Secretary who is the chief officer of the department, and is primarily and directly responsible to the Government for its proper management, (*b*) the Deputy Secretary, practically a Vice-Secretary, who may and does exercise the powers of a Secretary during the latter's absence from duty, (*c*) the Under-Secretary who is vested with limited powers for the disposal of ordinary and less important cases, and (*d*) the Assistant Secretary who is really, as the designation implies, assistant to the Secretary, and is empowered to dispose of 'cases' of ordinary routine. The management of the Secretariate establishment is entrusted usually to the Deputy Secretary.

Official despatch.

In official phraseology, a letter addressed to His Majesty's Secretary of State for India is called a 'despatch.' It is signed by the Governor-General and the Members of his Executive Council who collectively constitute the Government of India. It differs from a letter in form and style. Those of a despatch must be more dignified, precise and conventional and greater care is taken in the selection of the language. As a rule all the papers connected with the subject-matter of reference are transmitted *in extenso* with it. The despatch however, must be self-contained and independent of the papers connected

with it. Facts and circumstances should be clearly set forth in the body of the "Despatch," together with the grounds, reasons, or arguments, on which the proposal, or recommendation, if any, is made and the language should be that generally employed to a superior authority.

Form of despatch.

(i) *The Capital of India.*

Ever since the foundation of British Rule in India, Calcutta had been the seat of the Government of India. In the year 1912 however, the King-Emperor at a historic Durbar which he held at Delhi, declared that the city of Imperial fame, the city where successive Empires had been cradled and buried, should thereafter be the Capital of India. The object of the transfer of the Capital to Delhi was that the seat of the Government should be more centrally situated and that Delhi which had been the Imperial city of the Hindus as well as of the Mahomedans before the English, was the most suitable place. It was better also for the Supreme Government to be away from local opinions and local influences, so as to enable itself without bias or prejudice, to judge and frame schemes of administrative reforms, the very soul of England's rule in India. This is in keeping with the principle of Viceregal appointment. At the time of his appointment he has not been in contact with the administrative machinery of India so that he is quite free to initiate any schemes of reform he thinks fit. Like Calcutta before 1912, Delhi cannot be said to be the permanent capital of India for the Government spends a great portion of the year during the hot months in the hill station of Simla. With the advent of the Government of India, Delhi has been separated from the Punjab and formed into a separate enclave, a new province under a Chief Commissioner.

Transfer of the seat of Government from Calcutta to Delhi.

The object is to keep away from local influence.

Having described the constitution, the functions and the mode of conduct of the Government of India, we shall now proceed to a consideration of how the Provincial Governments are constituted, managed and worked.

CHAPTER III.

PART I.

THE PROVINCIAL GOVERNMENTS.

Introductory.

Returning to England after he escaped the destroying horrors of the Black Hole,—the tragedy of which, thanks to the researches of later historians of undoubted eminence, sober judgment and impartiality, is open, inspite of the impassioned special pleading of men like Lord Curzon and the perverse verdict of European writers of Indian history of more or less consequence, to so grave a doubt—old Holwell wrote in his Tracts, "Let us boldly dare to be Subahs ourselves. We have nibbled at these provinces, for eight years, and notwithstanding an immense acquisition—an immense acquisition of territory and revenue—what benefits have resulted from our success, to the Company? Shall we then go on nibbling and nibbling at the bait, until the trap falls and crushes us?" These Tracts of Holwell, who, impartial historians without exception are agreed, was a consummate liar, even after a lapse of over a century and half are still delightful and pleasant reading, remarkable alike for their half-truths and untruths. The story made current by Anglo-Indian historians is that Sirajuddowlah got into trouble with the East India Company, by imprisoning 146 persons in the celebrated Black Hole of Calcutta. The story, if true, is undeniably a blot in our national history. Later researches however, tend to show that the accounts upon which the story of the cruel massacre is based are

The tragedy of the Black Hole.

Holwell an untruthful and unreliable man.

a myth, pure and simple. In this connection some very weighty and authoritative contributions are to be found in Bengal, Past and Present, Vols. 11 and 12, pages 75 and 136 respectively. Lord Curzon's polemics are a brilliant but unconvincing piece of special pleading, which betrays on the part of his lordship a woeful want of appreciation of evidence and lack of capability to sift it. The late Mr. J. H. Little's contributions, supported as they are by that historian of great industry, culture, erudition and originality Babu Akshayakumar Maitra, furnish practically the last word on the mythical character of the Black Hole, though it will be long before Anglo-Indian historians will have the courage to admit that they have been wrong and perverse.

Black Hole theory displaced.

But in 1765, when Clive was receiving his Diwani from the Subahdar and the Emperor, the Company still continued to nibble at the administration of the country. The collection of the revenue and the administration of justice, were at first left uncontrolled in the hands of Indian Officers. It was found that, in every respect but the promotion of their own interests, they were utterly inefficient. It would be difficult to exaggerate the demerits of such a system. Indians and Europeans alike took advantage of it. There was no responsibility, and no control. The strong preyed upon the weak,—and the weak had none to look to for protection. Mismanagement brought in its train the decline of the revenue to check which the Company hit upon the idea of appointing supervisors over Indian functionaries in the year 1769 with elaborate instructions to follow. The double government continued to work grievously, and the supervisors only made confusion worse confounded and corruption more depraved. Notwithstanding what the Governor Verelst said, that it was impossible at the time, for the Company to have taken the management of the

Acquisition of the Diwani.

Evils of the double government.

Diwani into its own hands, for that the number of Civil Servants was barely adequate to the due performance of the commercial business; they were quite ignorant of the genius of the people, and totally unfit for the work of administration. The Company's administrative agency was hopelessly vicious and corrupt.

Corrupt nature of the Company's administration.

(a) *First Arrangements under the Regulating Act.*

Things went on in this fashion with perhaps slight improvements year by year until the first constitution of the Government under the Regulating Act of 1773. By it the Government of the Presidency of Fort William in Bengal was entrusted to a Governor-General and four Councillors with power to "order, manage and govern" all the territorial acquisitions and revenues in the kingdoms of Bengal, Behar and Orissa. Council Government was introduced and the Governor-General was to respect the opinion of the majority of his Councillors and in case of an equal division amongst them by reason of "death, or removal, or by the absence of any of the members" of the Council, the Governor-General or in his absence the senior member of the Council present was to have a second or a casting vote. The Governor-General in Council was moreover authorised to have power of superintending and controlling the Government and management of the Presidencies of Madras, Bombay and Bencoolen respectively. But such powers, as were bestowed upon the Governor-General in Council under this clause, were vague and could not be definitely described. The Regulating Act further authorised His Majesty to establish by Charter or Letters Patent under the great seal of Great Britain a Supreme Court of Judicature at Fort William with a Chief Justice and three

The Regulating Act of 1773.

Governor-General in Council placed over Madras and Bombay.

Supreme Court established by the Regulating Act.

Puisne Judges being all members of the English or the Irish bar of not less than five years' standing. The jurisdiction of the Supreme Court was very full and complete. It could exercise civil, criminal, admiralty and ecclesiastical jurisdiction. It could establish rules of practice and of process. There was nothing necessary for the administration of justice which it could not do. It was a Court of Record, of Oyer and Terminer and of Gaol-delivery.

Its jurisdiction.

The misdeeds of the servants of the Company were so monstrous that Parliament did not hesitate to lay down specific provisions in the Regulating Act against acceptance by them of any present or of any donation or gratuity from the people of the country, except when the officer was a Surgeon or a Physician or a Chaplain. The earliest indication of a settled government of the English in India is to be found therefore in the Regulating Act of 1773, the principles embodied in which had been vigourously contended for by Clive. The Company now stood forth publicly as and in the character of Diwan, and the whole fiscal and judicial administration of the country passed into the hands of the English,—an event of no small moment in the history of British India.

Company as Diwan.

(*b*) *The Governor-General and Council.*

Warren Hastings the First Governor-General.

In 1772 there succeeded to the chief seat at the Presidency a man destined, in the fulness of time, to take the very highest place among Anglo-Indian Statesmen. Warren Hastings, one of the Civil Servants of the Company, was appointed President of Bengal. The double government by this time had fulfilled its mission. It had introduced an incredible amount of disorder and corruption into the State, and of poverty and wretchedness among the people. "It had embarrassed our

Disorder and Corruption

finances," wrote Sir John Kaye, "and soiled our character, and were now to be openly recognised as a failure." The Court of Directors on the other hand who seem to have been considerably in advance of their servants, wrote to Hastings in 1773, "we wish that we could refute the observation that almost every attempt made by us and our administration at your Presidency, for the reforming of abuses, has rather increased them, and added to the miseries of the country we are anxious to protect and cherish. The truth of this observation appears fully in the late appointment of supervisors and chiefs, instructed as they were to give relief to the industrious tenants, to improve and enlarge our investments, to destroy monopolies, and to retrench expenses, the end has by no means been answerable to the institution. Are not the tenants more than ever oppressed and wretched? Are our investments improved? Have not the raw silk and cocoons been raised upon us 50 per cent. in price? We can hardly say what has not been made a monopoly. And as to the expenses of your Presidency, they are at length settled to a degree we are no longer able to support." Such was the ghastly state of affairs in India at or about the time when Hastings took charge of the government aided in his Council by Richard Barwell, a member of the Indian Service, and three strangers to Indian administration from England, General Clavering, Colonel Monson, and Philip Francis. The Act of Parliament declared the new government to be inaugurated on the 1st of August, 1774, but the Councillors sent out from England did not reach Calcutta until the 19th of October next. On the 20th of October the old government was formally dissolved and the Governor-General in Council entered upon his administrative duties under the new Act, the Regulating or the Reconstruction Act. The salaries of these

under Warren Hastings.

The Court of Directors aware of the corrupt nature of their agents' administration.

Members of the First Council.

Dissolution of the old Government.

Salaries fixed under the Regulating Act.

officers were fixed at £25,000 a year for the Governor-General, and £10,000 for each member of Council—a tariff which has undergone some alteration since. It is said that Lord Clive recommended a payment of a further sum of £5,000 a year to each one of them by way of an allowance for table-money. Thus the Governor-General and Council started upon their career with a general authority vested in them "from time to time to make and issue such rules, ordinances and regulations, for the good order and civil government of the settlement of Fort William, and other Factories and places subordinate or to be subordinate thereto, as shall be deemed just and reasonable—such rules, ordinances, and regulations not being repugnant to the laws of the realm." In spite of the Act of William III it must be said that, for the first time, was the administrative character of the Company's government fixed and determined by an Act of Parliament. Up till now there had been only a general recognition of the Company's right to "have the ordering, rule and government of all their forts, factories and plantations." The system of government and the powers of the Governors, however, had been left entirely to the discretion of the Company to define and limit. When the Company became great territorial lords, and the possessors of a large territorial revenue, it became necessary for the Parliament of Great Britain to fix and regulate the administrative agencies and authorities to be established in British possessions in the East, and to exercise through the Ministers of the Crown, a direct control over the Directors of the Company themselves. On the other hand the internecine strife that went on between Hastings and his Councillors under the influence of Mr., afterwards, Sir Philip Francis, which is now a matter of history, well-nigh proved that Council government was a failure.

Determination of the administrative character of the Company.

First introduction of Ministerial control.

(c) *Acquisition of Power to overrule.*

Terms of Cornwallis' acceptance of office.

To Lord Cornwallis is due the credit of the Governor-General acquiring the power to overrule his Council. He made the grant of such a power to him by Parliament a condition of his acceptance of the office of the Governor-General and by the East India Company Act of 1786, the power in question was given him. But they had not to wait long before they acquired further powers under the Act of 1793, under which both the Governors of Madras and Bombay also acquired the authority to overrule their Councils, in addition to a recognition of their power to make laws and regulations for the territories under their rule. They were moreover, made subject to the general orders of the Governor-General. The most momentous change, however, in the constitution of the Government was made by the Charter Act of 1833, which put an end to the Company as a trading concern, and were made trustees for the Crown. Along with the Governor-General of the Presidency of Bengal being made the Governor-General of India in Council the Presidency of Fort William in Bengal was divided into the two provinces of Bengal and United Provinces, styled the Presidency of Fort William in Bengal and the Presidency of Agra. The Governor-General was to retain *ex-officio* his Governorship of the former while the province of Agra did not come to be constituted until two years later, not under a Governor-in-Council which she was to have under Section 56 of the Act of 1833, but under a Lieutenant-Governor without a Council to assist him. Until such time as we shall see later on Bengal never got a Governor-in-Council for her Executive Government, though the Act of 1833 expressly provided for such an office along with Madras, Bombay and Agra. The question of whether the subordinate

Changes made in the Charter Act of 1833.

Bengal under a Governor in the person of the Governor-General.

presidencies were to have a Council of their own was to be determined by the Court of Directors. The execution of the provisions of the Act of 1833 was suspended for a time, so far as they related to the setting up of a separate Government at Agra until such time as I have already noticed. Such was the arrangement for provincial Governments until the Company's Charter came to be renewed in 1853, when an important change in the Government was made. The provision for the appointment of a Governor for the Presidency of Bengal was reiterated, but it was to depend upon the pleasure of the Governor-General of India, and until such pleasure was acted upon, the Governor-General in Council was empowered to appoint from time to time any servant of not less than ten years in the service of the Company to the Office of Lieutenant-Governor of "such part of the territories under the Presidency of Fort William in Bengal as for the time being may not be under the Lieutenant-Governor of the North Western Provinces," otherwise called the province of Agra. It was under this Act, the Charter Act of 1853, that Bengal came to have a Lieutenant-Governor, an arrangement which continued right up to 1912, when by a proclamation of His Majesty the King Emperor at the Imperial Durbar at Delhi, Bengal was raised to the status of a Presidency Government with a Governor-in-Council on the lines of Madras and Bombay.

Changes made in the Charter Act of 1853.

Bengal placed under a Lieutenant-Governor.

(d) Provincial System based neither upon Federal nor upon Unitary Method.

The development of the provincial Governmental system which I have traced above from almost its inception is not based upon what may be called the unitary method. It is not based upon the federal method either,

Neither Federal nor Unitary method of the

as in the United States of America where, because of the historical association or tradition, they have desired 'Union' without desiring 'Unity,' nor in the German Empire that was, where the same political or historical associations prevailed. The idea which lies at the bottom of federalism is that each of the separate States should have approximately equal political rights and should thereby be able to maintain the "limited independence" (if the term may be used) meant to be secured by the terms of federal union, for a necessary condition of the formation of a federal State is that the people of the proposed state should wish to form for many purposes a single nation, yet should not wish to surrender the separate existence of each individual State. A federal Government would be inconceivable except where a large portion of the inhabitants of the several constituent States feel a stronger allegiance to their individual State, than the state they have constituted for the purpose of representation as a common government. It is not so in India, and the Imperial Indian system may perhaps be called the "Unitary constitution," a fact which accounts for the strength of the Government of India as an administrative system. Its powers are not divided between itself and the provincial governments and administrations. Certain powers are only delegated to them, there being a general power of Control and Superintendence remaining all the time in the Government of India itself. Provincial Governments are merely the agents of the Government of India and are in no sense a limb either of 'Federalism' or of 'Unitarianism.'

governing principle.

What they are and how they are defined.

Power of Control and Superintendence.

(e) *Administrative Divisions of India.*

For administrative purposes the whole of British India is divided into provinces of greater or smaller

Political Divisions of India.

dimensions and of greater or smaller political importance The nine major provinces are those of Bengal, Bombay, Madras, the United Provinces of Agra and Oudh, Behar and Orissa, Punjab, Burma, the Central Provinces, and Assam, the first three being regarded as of superior political importance, the nature of which may be considered later as we proceed. Each of these is administered by its local Government or Administration under the control of the Government of India. The five minor provinces are those of the North-West Frontier Province, Ajmere, Coorg, the Andamans, British Baluchistan, and Delhi, all governed by officers called Chief Commissioners, under the control of the Foreign Department of the Government of India. All these political divisions lead into one another in regular chain, the village into the taluka and subdivision, the taluka or the subdivision into the district, the district into the division, the division into the province and the province into the country.

(f) *Regulation and Non-Regulation Areas.*

Regulation and Non-Regulation Provinces.

A distinction though not of very great importance ought to be noted here, namely, the difference between Regulation and Non-Regulation provinces into which British India is divided. Those I have last mentioned are classed as non-regulation provinces, and in order to explain to you what the difference between the two is, I shall have to take you back to the period antecedent to 1834, when a *quasi* Legislative Council was formed. Previous to the formation of the council, under the constitution then prevailing of the Governments, each Presidency was empowered to enact regulations, and territories added to a Presidency came under the existing Regulations, and the course of their official appointments was governed by an Act of Parliament.

In the case of provinces which were not and could not be annexed to any Presidency, their official staff was to be provided by the Governor-General unrestricted by any statute. Of greater moment is the fact that the existing Regulations did not apply to them. There were parts of the older Presidencies which, by reason of their backward state of civilization or literacy or other causes, were exempt from the ordinary law. We have therefore, Provinces belonging to the latter category, come to be styled Non-Regulation, in contradistinction to those of the former class styled the Regulation Provinces. You will notice therefore, that the two features which serve to distinguish the Non-Regulation from the Regulation Provinces have reference to the difference in the laws in force and to official appointments. Non-Regulation provinces as such, except in respect of a few really backward and exceptional tracts of country requiring a simple form of government, have almost disappeared. The Regulation, however, survive in the titles and salaries of certain offices, some of which are by law reserved for the members of the Indian Civil Service.

Circumstances which made a province or a part of it Regulation or Non-Regulation.

Difference in Laws.

The tracts in which the difference in laws still obtains and which may, in a perfectly valid and current sense, be said to be extra-regulation, are now spoken of as the *Scheduled Districts*, so called because they are not noted in the Schedules of Act XIV of 1874, which was passed to place them on an intelligible basis as regards the laws in force in them. It must, however, be observed that, owing to altered circumstances, the terms, *Regulation* and *Non-Regulation* have lost their force and are becoming obsolete.

The Scheduled Districts.

(g) *Re-arrangement of Administrative Areas.*

The recent constitutional developments have served to re-arrange the administrative and political fabric of

Revision of administrative arrangements.

India on a basis for which the great John Bright fought from his place in the House of Commons, more than half a century ago,—in 1858, when the Government of India Act which transferred the Government of the country from the Company to the Crown, was on the parliamentary anvil. Under the Government of India Act, 1919, otherwise known as the Reform Act, which is founded upon certain proposals recommended jointly by the Secretary of State for India and the Viceroy in 1918, in pursuance of the announcement of the 20th of August, 1917, in which the policy of His Majesty's Government, with which the Government of India were in complete accord, was promulgated to be the increasing association of Indians in every branch of the administration and the gradual development of self-governing institutions with a view to the progressive realisation of responsible government in India as an integral part of the British Empire, the Government proposes to give effect to their decision that progress in this policy must be achieved by successive stages, the time and measure of which, or of each successive advance will be judged by Parliament as the final source of authority and decision.

Indianisation of services and gradual realisation of responsible Government the guiding principles.

The Reform Bill, as enacted puts the matter upon this high footing, for it places all responsibility for the progress and realisation of policy upon Parliament, and not upon the whim of any individual Statesman or caprice of a political pharisee.

Subjects for provincial administration.

A province, though subject to the general control of the Governor-General in Council, has a separate government of its own, having under its charge or supervision the various branches of administration, such as, (1) Land Revenue, (2) Assessed taxes, (3) Customs, (4) Education, (5) Ecclesiastical, (6) Excise, (7) Finance, (8) Forest, (9) Income tax, (10) Jails, (11) Judicial, (12) Marine, (13) Medical, (14) Mint, (15) Municipalities, (16) Can-

tonments, (17) Opium, (18) Paper Currency, (19) Police, (20) Postal, (21) Political, (22) Public Works, (23) Registration, (24) Salt, (25) Survey, (26) Stamps, (27) Stationery, (28) Telegraph and (29) General Administration, the number of branches varying according to the size of the province, the state of its advancement in civilization, its locality or situation and other causes, and each branch of the administration being administered by a specially organised establishment. To further facilitate and simplify administration, each province, as we shall see later on, is divided into districts, which, except in Madras, are grouped into larger areas called divisions. The district in its turn is subdivided into smaller tracts known as sub-divisions in Bengal, *Talukas* in Madras and Bombay, and *Tahsils* in Northern India, they generally remaining the unit of general administration. Of fiscal administration the sub-divisions are the primary units.

For efficient administration a province is divided and subdivided.

(*h*) *Local Governments are either Presidencies or Provinces.*

The existing provinces of India may be classed as Presidencies and Provinces. Of the former there are three in British India, that of Fort William in Bengal, otherwise called the Presidency of Bengal, of Fort St. George or the Presidency of Madras and of the Presidency of Bombay, and of the provinces so called there are the United Provinces of Agrâ and Oudh, the Punjab, Behar and Orissa, Burma, the Central Provinces and Assam, each governed by a Governor, aided in respect of certain items of administration by an Executive Council, and in respect of others by a Ministry,—it is a combination of Ministers, rather than a Ministry,—the several

Presidencies and Provinces.

Combination of

Ministers—not a Ministry.

members of which are individually appointed and held responsible for his own conduct and administration. These need not necessarily be Indians, though hitherto as a matter of fact they have been, but they must all be members elected to the provincial legislatures. It is a dual form of Government popularly known as Dyarchy, which has been made to prevail in the provinces with a view to introduce responsibility in the executive, in conformity with the definite injunction laid down in both the announcement of the 20th of August, 1917, and the preamble of the Government of India Act of 1919. The preamble runs as follows :—

The preamble of the Government of India Act.

> " Whereas it is the declared policy of Parliament to provide for the increasing association of Indians in every branch of Indian administration, and for the gradual development of self-governing institutions, with a view to the progressive realisation of responsible government in British India as an integral part of the Empire :
>
> " And whereas progress in giving effect to this policy can only be achieved by successive stages, and it is expedient that substantial steps in this direction should now be taken :
>
> " And whereas the time and manner of each advance can be determined only by Parliament, upon whom responsibility lies for the welfare and advancement of the Indian Peoples :
>
> " And whereas the action of the Parliament in such matters must be guided by the co-operation received from those on whom new opportunities of service will be conferred,

and by the extent to which it is found that confidence can be reposed in their sense of responsibility :

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

That is how the preamble to the Government of India Act runs.

PART II.

THE HEAD OF THE ADMINISTRATION.

(a) *The Government of India Act of 1919.*

Preamble embraces all parts of the announcement.

The preamble it will be seen includes all parts of the announcement of the 20th of August, 1917. It has been so framed with a purpose and a forethought. That purpose being as the Joint Parliamentary Committee argues, to meet the " attempt which has been made to distinguish between the parts of the announcement and to attach a different value to each part, according to opinion." And the Joint Committee was right, for it had been said in some quarters that while the first part of the announcement was a binding pledge, the latter part was a mere expression of opinion of no importance whatsoever. To guard against that the Committee thought that it was of the utmost importance, from the very inauguration of

The responsibility for the various stages of constitutional development rests with Parliament.

these constitutional changes, " that Parliament should make it quite plain that the responsibility for the successive stages of the development of self-government in India rests on itself and itself alone, and that it cannot share this responsibility with, much less delegate it to, the newly elected legislatures of India." Moreover, in desiring to " emphasize the wisdom and justice of an increasing association of Indians with every branch of the administration," they wished " to make it perfectly clear that His Majesty's Government must remain free to appoint Europeans to those posts for which they are specially required and qualified." Nevertheless, in unmistakable terms the Act indicates the principles on which devolution of powers, duties and responsibilities from the Central to the Provincial Government is to take place. It leaves the extent and conditions of the devolution to be settled by statutory rules. Distinction has been clearly made between the subjects which are controlled by the Central government and, those which are controlled by the Provincial governments, and again as to the latter, between those called the " reserved subjects," which are dealt with by the Governor-in-Council, and those called the " transferred subjects," which are administered by the Governor with the advice of his Ministers. In this connection I would like to read to you Section 45-A of the Act from which it will appear that within its four corners powers may be acquired, if the demand for them is sufficiently insistent, which will help anybody to make a substantial beginning in the art of Responsible Government in India.

Subjects of administration divided between "reserved" and "transferred."

Section 45 A of the Government of India Act, 1919.

"45-A. (1) Provision may be made by rules under this Act—

" (*a*) for the classification of subjects, in relation to the functions of Government, as central

and provincial subjects, for the purpose of distinguishing the functions of local governments and local legislatures from the functions of the Governor-General in Council and the Indian legislature;

"(*b*) for the devolution of authority in respect of provincial subjects to local governments, and for the allocation of revenues or other moneys to those governments;

"(*c*) for the use under the authority of the Governor-General in Council of the agency of local Governments in relation to Central subjects, in so far as such agency may be found convenient, and for determining the financial conditions of such agency; and

" (*d*) for the transfer from among the provincial subjects of subjects (in this Act referred to as ' transferred subjects ') to the administration of the Governor acting with Ministers appointed under this Act, and for the allocation of revenues or moneys for the purpose of such administration."

"(2) Without prejudice to the generality of the foregoing powers, rules made for the abovementioned purposes may—

"(*i*) regulate the extent and conditions of such devolution, allocation and transfer;

"(*ii*) provide for fixing the contributions payable by local governments to the Governor-General in Council, and making such contributions a first charge on allocated revenues or moneys;

"(*iii*) provide for constituting a finance department in any province, and regulating the functions of that department;

"(*iv*) provide for regulating the exercise of the authority vested in the local government of a province over members of the public services therein;

"(*v*) provide for the settlement of doubts arising as to whether any matter does or does not relate to a provincial subject or a transferred subject, and for the treatment of matters which affect both a transferred subject and a subject which is not transferred; and

"(*vi*) make such consequential and supplemental provisions as appear necessary or expedient:

" Provided that without prejudice to any general power of revoking or altering rules under this Act, the rules shall not authorise the revocation or suspension of the transfer of *any* subject except with the sanction of the Secretary of State in Council.

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

" (4) The expressions ' central subjects ' and ' provincial subjects ' as used in this Act mean subjects so classified under the rules. Provincial subjects other than transferred subjects, are in this Act referred to as ' reserved subjects.' "

(b) *Appointments of Heads of Governments.*

Appointment of Governors.

Since the basis of the present constitution of the Provincial Governments, in which are included the Presidency Governments to which are left certain vestiges of privileges, is a Governor-in-Council, we will turn our attention to the Governor himself, who, in Bengal, Bombay and Madras is appointed ordinarily from among prominent men in English public life and of administrative experience, by warrant, under the Royal Sign Manual. In making this observation, I do not for a moment suggest that the Governors of the other provinces, namely, of the Punjab, of Behar and Orissa, of the United Provinces, of Burma, of the Central Provinces or of Assam, stand upon a different footing. They are similarly appointed, but upon the nomination of the Governor-General, for, he has a statutory right to be consulted with respect to every such gubernatorial appointment, outside what may still be called the Presidencies. Lord Sinha's appointment to the Government of Behar and Orissa was the only exception hitherto made to the rule of these being nominated from the ranks of the Indian Civil Service. The mode of these appointments whether of the provincial Governors, or of the Governor-General, is unlike that followed in the Colonies or Dominions as they are now called, where a constitutional doctrine has been established, as a result of the refusal of Queensland in 1888, to accept Sir Henry Blake, as Governor, and of South Australia, to accept the Marquis of Normandy, which requires the Imperial Government in effect to tell the Dominion concerned, the nature of the appointment proposed to be made, before it is formally approved and made. Having gained so far, the Dominions have moved to take a long step forward, namely, to establish

Some from the governing class in England, others from the Indian Civil Service, Lord Sinha being an exception.

The colonies claim a voice in these appointments.

that these appointments should be locally made, and how the self-governing Dominions are trying to become more and more self-contained can be seen from the latest demand made by Australia. Internal sovereignty the Dominions have all along enjoyed, and they are now more insistent than ever in their demand for a voice in Britain's foreign policy as well. The Premiers of Queensland, South Australia, Tasmania and West Australia, not long ago, decided to approach the Imperial Government with a request that future Governors shall be Australians. It was estimated that there would be a saving of £100,000 if this change were to take place. But this request was made not with a view towards economy only, but also on account of the fact that, the introduction of such a reform would mean that the highest offices in the state should be thrown open to Australian citizens. As it is, the Dominions have considerable scope to influence such appointments, as they are consulted by the Imperial Government, and if the present demand is pressed with sufficient insistence, Australia would soon have Australians as Governors just as Ireland has had from the very start of her career as a Free State, Irishmen as her Governors. To return to our topic. For a considerable period, the position of the Presidency of Bengal was anomalous for, when it was found that the old arrangement under which the Governor-General of India was also the Governor of Bengal, and as such, was invested with the power of control and supervision over the other administrations, was impeding the course of efficient administration, it was decided to relieve Bengal by the creation of a fourth Presidency—to be accurate, a Sub-Presidency—by cutting up the old Presidency of Bengal, which in itself was a charge of immense size and magnitude, into two, the Upper Provinces of the

The object is to throw open highest offices to Australian Citizens.

Irishmen as Governors of Ireland.

Anomaly of the position of the Governor of Bengal.

Presidency of Bengal, now comprised in the United Provinces of Agra and Oudh, and the Lower Provinces of the Presidency of Bengal which until 1912, comprised the Provinces of Bengal proper and Behar and Orissa. When the sub-division of the Presidency of Bengal came to be effected, under section 2 of the Government of India Act of 1835, into two provinces (confirming a previous Act—Act 38 of 1833), of the Upper and Lower provinces of Bengal, which were to be named the Presidency of Fort William in Bengal and Presidency of Agra, and the executive Government of each of the several Presidencies of Fort William in Bengal, Fort St. George in Madras, Bombay and Agra was to be administered by a Governor and three Councillors, to be styled "the Governor in Council of the said Presidencies of Fort William in Bengal, Fort St. George, Bombay and Agra respectively," both of them were very badly treated in that, upon each a Lieutenant Governor appointed from the ranks of the Indian Civil Service was foisted even though the former, then called the North Western Provinces were taken as a slice out of the old Presidency of Bengal which in itself, was still more shabbily treated when we think of section 16 of the Act of 1853, which provides for the appointment of a separate Governor for the Presidency of Fort William in Bengal and his successors from time to time, in manner provided by the Government of India Act of 1833, in the event of vacancies happening in the offices of the Governors of the Presidencies of Fort St. George and Bombay. Bengal thus lost its traditional ascendancy, and Madras and Bombay acquired a position of relative superiority in dignity, if not in either actual independence or importance. Of the importance of Bengal as a charge, an Anglo-Indian writer, pertinently observes, that "the first point which arrests attention in considering this arrangement is the

Presidency of Bengal, upper and lower divisions.

Lieutenant Governor of the lower division of Bengal.

Loss of Bengal's ascendancy.

anomaly that the province which is, beyond all comparison, the richest, the wealthiest, and most advanced, should be on a lower footing in the scale of administration, than other and less influential divisions of the Empire. The enormous area of Bengal, 200,000 square miles, its huge population of 60 millions, the wide varieties of race, religion and society, which are comprised in a jurisdiction extending from Behar to Orissa, the important Commercial interests involved, the large European community, the numerous and complex questions to which so vast an administration cannot fail to give rise,—would seem to suggest that its ruler should, after the Viceroy, be unquestionably the highest official in the Empire, that he should enjoy the most plenary authority, and should receive, in his administrative business, all the assistance that direct communication with the Secretary of State and the co-operation of an Executive Council can give. If the *quasi*-independence of a Governorship and Council is anywhere desirable, surely it must be here; on the other hand, if the absence of those privileges does not operate injuriously in Bengal, we may conclude they are unnecessary in smaller and less important provinces." And if the new Presidency of Agra and the subsequently acquired provinces of the Punjab lack the wealth and influence of Bengal they have an importance all their own, in being the home of the warlike and martial races of India, from which the successive rulers of India have systematically drafted their military contingents. Equally important a charge has been that of Burma, acquired in 1886, by reason of its magnitude and the enormous growth of its trade. They all had a Lieutenant Governor each, leaving the less advanced administrations of the Central Provinces and Assam in charge of Chief Commissioners. All that invidious distinction between province and province has

Important interests in Bengal.

United Provinces and the Punjab are also important charges; also Burma.

now been swept away; each of them has a Governor to itself, aided in the discharge of the duties of a part of his administration by an Executive Council of not more than four, and of the other part by Ministers whose number may vary according as the Ministerial charges are heavy or light. Governors hold office for a term of five years only, those of Bengal, Bombay and Madras being still left in the enjoyment of the privilege of a direct correspondence with the Secretary of State.

Tenure of office of Governors.

(c) *Instructions to the Governor.*

THE INSTRUCTIONS WHICH THE GOVERNORS ARE REQUIRED TO FOLLOW MAY BE GIVEN IN THE WORDS OF THE DOCUMENT ITSELF. THEY ARE AS FOLLOWS.

Instructions to the Governor of the Presidency of Bengal.

Whereas by the Government of India Act provision has been made for the gradual development of self-governing institutions in British India with a view to the progressive realisation of responsible government in that country as an integral part of our Empire, and whereas it is Our will and pleasure that in the execution of the office of Governor in and over the Presidency of Bengal you shall further the purposes of the said Act to the end that the institutions and methods of Government therein provided shall be laid upon the best and surest foundations, that the people of the said Presidency shall acquire such habits of political action and respect, such conventions as will best and soonest fit them for self-government, and that our authority and the authority of our Governor-General in Council shall be duly maintained,

Now, therefore, We do hereby direct and enjoin you and declare Our will and pleasure to be as follows :—

Maintenance of high standard of administration.

1. You shall do all that lies in your power to maintain standards of good administration, to encourage religious toleration, co-operation, and good-will among all classes and creeds, to ensure the probity of public finance and the solvency of the Presidency and to promote all measures making for the moral, social and industrial welfare of the people and tending to fit all classes of the population without distinction to take their due share in the public life and government of the country.

Sense of responsibility.

2. You shall bear in mind that it is necessary and expedient that those now and hereafter to be enfranchised shall appreciate the duties, responsibilities and advantages which spring from the privilege of enfranchisement, that is to say, that those who exercise the power henceforward entrusted to them of returning representatives to the Legislative Council being enabled to perceive the effects of their choice of a representative and that those who are returned to the Council being enabled to perceive the effects of their votes given therein shall come to look for the redress of their grievances and the improvement of their condition to the working of representative institutions.

Reserved and Transferred matters.

3. Inasmuch as certain matters have been reserved for the administration according to law of the Governor in Council in respect of which the authority of Our Governor-General in Council shall remain unimpaired while certain other matters have been transferred to the administration of the Governor acting with a Minister, it will be for you so to regulate the business of the Government of the Presidency, that so far as may be possible, the responsibility for each of these respective classes of matters may be kept clear and distinct.

Purpose of joint deliberation.

4. Nevertheless you shall encourage the habit of joint deliberation between yourself, your Councillors and your Ministers in order that the experience of your official advisers may be at the disposal of your Ministers and that the knowledge of your Ministers as to the wishes of the people may be at the disposal of your Councillors.

Ministers to be assisted.

5. You shall assist Ministers by all the means in your power in the administration of the transferred subjects and advise them in regard to their relations with the Legislative Council.

Regard for the position of the Ministers.

6. In considering a Minister's advice and deciding whether or not there is sufficient cause in any case to dissent from his opinion you shall have due regard to his relations with the Legislative Council and to the wishes of the people of the Presidency as expressed by their representatives therein.

Special instructions.

7. But in addition to the general responsibilities with which you are, whether by statute or under this instrument, charged, We do further hereby specially require and charge you—

(1) to see that whatsoever measures are in your opinion necessary for maintaining safety and tranquillity in all parts of your Presidency, and for preventing occasions of religious or racial conflict are duly taken and that all orders issued by Our Secretary of State, or by Our Governor-General in Council on Our behalf, to whatever matters relating, are duly complied with;

(2) to take care that due provision shall be made for the advancement and social welfare of those classes amongst the people committed to your charge who, whether on account of the small-

ness of their number, or their lack of educational or material advantages, or from any other cause, specially rely upon Our protection and cannot as yet fully rely for their welfare upon joint political action, and that such classes shall not suffer or have cause to fear neglect or oppression;

(3) to see that no order of your Government and no act of your Legislative Council shall be so framed that any of the diverse interests of, or arising from, race, religion, education, social condition, wealth or any other circumstance may receive unfair, advantage or may unfairly be deprived of privileges or advantages which they have heretofore enjoyed, or be excluded from the enjoyment of benefits which may hereafter be conferred on the people at large;

(4) to safeguard all members of Our services employed in the said Presidency in the legitimate exercise of their functions, and in the enjoyment of all recognised rights and privileges, and to see that your Government order all things justly and reasonably in their regard, and that due obedience is paid to all just and reasonable orders and diligence shown in their execution;

(5) to take care that while the people inhabiting the said Presidency shall enjoy all facilities for the development of commercial and industrial undertakings no monopoly or special privilege, which is against the common interest, shall be established and no unfair discrimination shall be made in matters affecting commercial or industrial interests.

8. And We do hereby charge you to communicate these Our Instructions to the members of your Executive Council and your Ministers and to publish the same in your Presidency in such manner as you may think fit.

Councillors and Ministers to follow the same instructions.

(d) The Position of the Administrative Heads.

These governors, as we have seen before, are recruited either from the ranks of distinguished public men or servants of the Crown in other parts of the Empire in respect of some of the provinces, namely, Bengal, Bombay and Madras and, in respect of others from the ranks of the Indian Civil Service who have been employed in multifarious administrative activities from their youth up and may be regarded to have rendered eminent public services to the country itself. Once appointed they are independent of the Viceroy in that their appointments, like those of their colleagues in the Executive Council, are what are called "Crown appointments," while the office of the Chief Commissioner, though recognised by the Statute, is entirely in the gift of the Viceroy, by reason of the fact that he is no other than merely a delegate of the head of the Government of India. He is under the direct control of the Governor-General in Council and appointed with reference only to the Act of Parliament, and may be recalled or transferred to other activities. The Chief Commissioners are all officers of the Political Department acting directly under the orders of the Viceroy who is his own Foreign Minister, controlling the Political Department. Theoretically speaking, those portions of India which are not under a Governor in Council are under the immediate authority and management of the Governor-General in Council, so that, it is within his competence to order and

Field of recruitment of Governors—Presidency and Provincial.

Chief Commissionership not a Statutory appointments.

Chief Commissioner agent of the Governor-General.

direct all details of administration respecting them. A Chief Commissioner therefore, would be regarded as "administering his province on behalf of the Governor-General in Council who may resume or modify the powers that he has himself conferred," and it will be of interest to know that the earliest official approval of the title of Chief Commissioner was when John Lawrence (afterwards Lord Lawrence, Viceroy and Governor-General of India), was called in to replace the Board of Administration under a President in the Punjab in 1853. Three years later, on its annexation, Oudh passed into the hands of a Chief Commissioner followed soon after the Mutiny by the Central Provinces in 1861, Burma in 1862, and Assam in 1874, all since passing into the hands of a Governor in Council. A little more history attaches to the province of Assam, as to how the Chief Commissionership arose there. Power had been taken under successive Acts of Parliament beginning with that of 1854, whereby the Governor-General of India, first with the approval of the Court of Directors, and then with that of the Secretary of State, has taken parts of British India under his own immediate authority and management, and provided for its administration. It is in exercise of such power that Assam came to be separated from Bengal in 1874, and placed under a Chief Commissioner, and the North West Frontier Province from the Punjab by Lord Curzon in 1901. Round this Parliamentary recognition, however, has grown up a constitutional understanding whereby the Chief Commissioner, whatever the political or administrative value of his position may be, is regarded as a local government as much as the charge of a Governor in Council, without ousting the authority and jurisdiction, inherent and statutory, of the Governor-General. The powers exercised by the Chief Commissioners are almost as wide as those of any other local

Constitution of the province of Assam.

government. What little difference there is, lies in the fact that the structure and arrangement of a Chief Commissioner's administration does not admit of a legislature, which is a *sine qua non* in other provincial administrations. It is expected however, that the more advanced of them may soon have their own Legislative Councils and be in line with the sister provinces.

Arrangement of the Chief Commissioner's administration.

Part III.

The Executive Arrangement.

(a) *The Executive Council of the Governor.*

One has not to stretch his imagination too far to discover the liberality of the spirit in which the new constitution of India as a first step towards responsible government was conceived. For India it means more. India which has been ruled by an autocracy, whether Hindu or non-descript, Mogul or British, for centuries,—over twenty centuries,—India which has ever, except in the later years of British rule, groaned under the octopus of foreign aggression or arbitrary domination, had to be inured into a system of Government foreign to her soil, alien to her mental outlook and strange to her habits and association. But the longest rope that could be given under these circumstances to the people of the country has been given in the statutory provision which allows all the members of the Governor's Executive Council, except one, to be Indians and non-officials, the exception being in favour of one who shall have, at the time of his appointment as such Councillor, been in the service of the Crown in India for a period of not less than twelve years. The old order that the Commander-in-Chief

Liberal character of the Reforms.

Constitution of the Executive Council in India.

shall be an *ex-officio* member of the Governor's Executive Council, should he happen to be in the province at the time of the meeting of the Council, has been deleted and an unwritten law inscribed upon the constitution that not less than one half of the Executive Council the size of which is limited to four, shall be Indian. Breaches of this unwritten rule have however, been made, notably in Bombay, Behar and Orissa, and Assam, and I have it upon the best authority that they will be remedied when the Council comes to be reconstituted upon the expiry of the term of office of the present incumbents.

Executive Councillors are appointed by the Crown.

As in the case of members of the Supreme Council, they are appointed by the Crown on the advice of the Secretary of State by warrant, under the Royal Sign Manual. There is a conventional rule that they are there for five years only. The ordinary business of the Government in what are called "Reserved Departments," is distributed among the members of the Executive Council.

They have charge of the "Reserved" subjects.

The Governor is not empowered to overrule his Council except under circumstances when the safety, tranquillity, or interests of his charge or any part thereof is, or are likely to be, essentially affected, and when he entertains the opinion that the measure proposed ought to be adopted or carried into execution, or that it ought to be suspended or rejected, or the majority present at the meeting of the Council dissent from the opinion, the Governor may, on his own authority and responsibility, by order in writing, adopt, suspend or reject the measure in whole or in part, but in every such case the Governor and members of the Council present at the meeting, may mutually exchange written communications, which are recorded in their secret proceedings, stating the grounds of their respective opinions. Upon that the order of the Governor is made and signed by himself and the members whether agreeing or dissenting.

Governor's power to overrule his Council.

(b) *The "Reserved" and the "Transferred" Parts of the Government.*

The Governmental affairs of the province are divided into two distinct and well-defined parts,—the "Reserved part" under what I have observed as the Governor's Executive Council, the members of which as you have seen are appointed by the Crown, on the advice of the Secretary of State, and the "Transferred part" under persons known as the "Ministers" appointed by the Governor, from amongst the elected members of the provincial Legislative Council. It is here where the Government of India has no longer any constitutional right of interference, and a complete devolution of authority has been conceded both by them and the British Parliament. And here we arrive at the maximum of autonomy hitherto granted, but we will not forget that it is subject to the re-transfer of "Transferred Subjects," under certain conditions which we shall examine later on. Since the object of the British Government in India is the progressive realisation of responsible government which implies two conditions, first, that the members of the Executive Government should be responsible to their constituents, and second, that the constituents should exercise their power through the agency of their representatives in the Assembly, the principle of transferring certain functions of government, the credit for success or blame for failure of administration of which shall belong to the popular Ministers, while reserving control over others, at the same time establishing substantial provincial autonomy, has been adopted. Here I must not fail to notice that the authority acquired by the local governments under the new constitution in respect of subjects, which are classified as provincial, and

The "Reserved part" and the "Transferred part."

Meaning of responsible Government.

the allocation to them of specific sources of revenue, considerably emancipate them from the leading strings of the Central Government, aptly described by Ilbert as the "parental tutelage under which they had lived." They make it possible for the local governments to raise money on the security of revenues allocated to them under the Act and make proper assurances for that purpose, and the conditions under which the power to borrow is or may be exercised are provided in certain rules to which we shall refer later on. No option, however, is left to provincial governments when they administer a subject, merely as agents of the Central Government, but to act in accordance with the authority delegated to them or to carry out their mandate and directions given from time to time. The Presidency or Provincial Governor as the case may be, is supposed to be acting with the Ministers in the transferred departments, and on their advice, except when he has good and sufficient reason for rejecting it, and even when he feels called upon to dissent from the opinion of his Ministers, he is enjoined by the instrument of instructions given him by His Majesty upon his appointment, to have due regard to their relations with the legislative councils, and to the wishes of the people of the province as expressed by their representatives therein. Needless to remind you, that our Ministers hold office during pleasure of the Governor. In theory, each one of them is responsible to the Council and retains office, only so long, as he enjoys their confidence, but the members of the Executive Council in charge of the reserved subjects are placed in a more fortunate position. They are independent of the Council, though the tendency in the Council has systematically been to bring them under control and the searchlight of criticism, quite as much as the Ministers themselves, and thus influence them to shape their ad-

Power of the Government of India to dictate their opinion.

Tenure of office of Ministers.

ministrative policy, otherwise sacrosanct, according to the will of the people.

(c) *Governor-in-Council deals with the "Reserved" Part.*

Governor-in-Council and the "Reserved subjects."

The Governor-in-Council deals with what are called the "Reserved subjects." They form part of the provincial subjects which are : (1) Local self-govtrnment, that is to say, matters relating to the constitution and powers of municipal corporations, improvement trusts, district boards, mining boards of health, and other local authorities established in a province for purposes of local self-government, exclusive of matters arising under the Cantonments Act, 1910, subject to legislation by the Indian Legislature, as regards the powers of such authorities to borrow otherwise than from a provincial government, and the levying by such authorities of taxation not included in the list detailed below (T). (2) Medical administration, including hospitals, dispensaries and asylums and provisions for medical education (T). (3) Public health and sanitation and vital statistics, subject to legislation by the Indian Legislature in respect of infectious and contagious diseases to such extent as may be declared by any Act of the Indian Legislature (T). (4) Pilgrimages within British India (T). (5) One of the most important subjects which has been provincialised and moreover comes under the transferred category is Education, including the Calcutta University, the Benares Hindu University, the Aligarh Moslem University, the control and organization of secondary education in the Presidency of Bengal which for a time had been kept outside the sphere of either the legislative or administrative activity of the provincial governments concerned, and such other Universities constituted after the commencement of the Act, and the rules made thereunder,

Transferred and Reserved Subjects.

to the exclusion of the Chiefs' Colleges, and any institution maintained by the Governor-General in Council for the benefit of members of His Majesty's Forces or, of other public servants or, of the children of such members or servants; the Government of India has reserved to itself the power to legislate for the establishment, the regulation of the constitutions and functions of Universities constituted after the commencement of the rules under the Act. (6) Public Works included under the following heads, namely, (*a*) construction and maintenance of provincial buildings used or intended for any purpose in connection with the administration of the province and care of historical monuments, with the exception of ancient monuments as defined in section 2 (1) of the Ancient Monuments Preservation Act, 1904, which are for the time being declared to be protected monuments under section 3 (1) of that Act; provided that the Governor-General in Council may, by notification in the Gazette of India, remove any such monument from the operation of this exception; (*b*) roads, bridges, tunnels, ferries, ropeways and causeways and other means of communication, subject to such conditions as regards control over construction and maintenance of means of communication declared by the Governor-General in Council to be of military importance, and as regards incidence of special expenditure connected therewith as the Governor-General in Council may prescribe; (*c*) tramways within municipal areas; light and feeder railways and extra-municipal tramways, in so far as provision for their construction and management is made by provincial legislation; subject to legislation by the Indian Legislature in case of any such railway or tramway which is in physical connection with a main line or is built on the same gauge as an adjacent main

line (T). (7) Water supplies, irrigation and canals, drainage and embankments, water-storage and water power; subject to legislation by the Indian Legislature with regard to matters of inter-provincial concern or affecting the relations of a province with any other territory (R). (8) Land revenue administration, described under the following heads, namely, (*a*) assessment and collection of land revenue, (*b*) maintenance of land records and survey for revenue purposes, records of rights, (*c*) laws regarding land tenures, relation of landlords and tenants, collection of rents, (*d*) Courts of Wards, encumbered and attached estates, (*e*) land improvements and agricultural loans, (*f*) Colonisation and disposal of Crown lands and alienation of land revenue, and (*g*) management of Government estates (R). (9) Famine Relief (R). (10) Agriculture, including research institutes, experimental and demonstration farms, introduction of improved methods, provision for agricultural education, protection against destructive insects and pests, and prevention of plant diseases, subject to legislation by the Indian Legislature in respect of destructive insects and pests, and plant diseases to such extent as may be declared by any Act of that Legislature (T). (11) Civil Veterinary Department, including provision for veterinary training, improvement of stock, and prevention of animal diseases to such extent as may be declared by any Act of the Indian Legislature (T). (12) Fisheries (T). (13) Co-operative Societies (T). (14) Forests, including preservation of game therein, subject to legislation by the Indian Legislature as regards deforestation of reserved forests (T) in Bombay only. (15) Land acquisition, subject to legislation by the Indian Legislature (R). (16) Excise, that is to say, the control of production, manufacture, possession, transport, purchase and sale of alcoholic liquor and intoxicating drugs, and the levying of excise duties and

license fees on, or in relation to, such articles, but excluding, in the case of opium, control of its cultivation, manufacture and sale for export (T). (17) Administration of justice, including constitution, power, maintenance and organisation of Courts of Civil and Criminal jurisdiction within the province, subject to legislation by the Indian Legislature as regards High Courts, Chief Courts, and Courts of Judicial Commissioners and any Courts of Criminal jurisdiction (R). (18) Provincial Law Reports (R). (19) Administrator-General and Official Trustees, subject to legislation by the Indian Legislature (R). (20) Non-judicial stamps, subject to legislation by the Indian Legislature as regards amount of Court-fees levied in relation to suits and proceedings in the High Courts under their Original Jurisdiction (R). (21) Registration of deeds and documents subject to legislation by the Indian Legislature (T). (22) Registration of births, deaths and marriages, subject to legislation by the Indian Legislature for such classes as the Indian Legislature may determine (T). (23) Religious and Charitable endowments (T). (24) Development of mineral resources in areas which are Government property, subject to rules made or sanctioned by the Secretary of State, but not including the regulation of mines (R). (25) Development of industries, including industrial research and technical education (T). (26) Industrial matters included under the heads of, (*a*) factories, (*b*) settlement of labour disputes, (*c*) electricity, (*d*) boilers, (*e*) gas, (*f*) smoke nuisances and (*g*) welfare of labour, including provident funds, industrial insurance (general, health and accident), and housing, subject as to heads (*a*), (*b*), (*c*), (*d*) and (*g*) to legislation by the Indian Legislature (R). (27) Stores and Stationery, subject in the case of imported stores and stationery, to such rules as may be prescribed by the Secretary of State in Council (T, in respect of stores and stationery required

for transferred departments only), the rest (R). (28) Adulteration of food-stuffs and other articles, subject to legislation by the Indian Legislature as regards import and export trade (T). (29) Weights and measures, subject to legislation by the Indian Legislature as regards standards (T). (30) Ports, except such ports as may be declared by rules made by the Governor-General in Council or by or under Indian legislation to be major ports (R). (31) Inland waterways, including shipping and navigation therein, so far as not declared by the Governor-General in Council to be Central subjects; but subject as regards inland steam vessels to legislation by the Indian Legislature (R). (32) Police, including Railway Police, subject in the case of railway police, to such conditions as regards limits of jurisdiction and railway contributions to cost of maintenance as the Governor-General in Council may determine (R). (33) Miscellaneous matters such as, (*a*) regulation of betting and gambling; (*b*) prevention of cruelty to animals; (*c*) protection of wild birds and animals; (*d*) control of poisons, subject to legislation by the Indian Legislature; (*e*) control of motor vehicles, subject to legislation by the Indian Legislature as regards licenses, valid throughout British India; and (*f*) control of dramatic performances and cinematographs, subject to legislation by the Indian Legislature in regard to sanction of films for exhibition (R). (34) Control of newspapers, books and printing presses, subject to legislation by the Indian Legislature (R). (35) Coroners (R). (36) Excluded areas (R). (37) Criminal tribes, subject to legislation by the Indian Legislature (R). (38) European vagrancy, subject to legislation by the Indian Legislature (R). (39) Prisoners (except State prisoners), and reformatories, subject to legislation by the Indian Legislature (R). (40) Pounds and preservation of cattle trespass (R). (41) Treasure Trove

(R). (42) Libraries, Museums and Zoological gardens (T), but the Imperial Library, the Indian Museum, the Victoria Memorial in Calcutta and the Imperial War Museum at Delhi, are kept reserved. (43) Provincial Government Presses (R). (44) Elections for Indian and Provincial legislatures, subject to rules framed under sections 64 (1) and 72A (4), of the Government of India Act, (R). Let us for one moment see what they are, and I cannot do better than place the clear provisions of the section before you :—

64. (1) Subject to the provisions of this Act, provision may be made by rules under this Act as to—

Subjects in respect of which Rules may be made under the Act.

(*a*) the term of office of nominated members of the Council of State and the Legislative Assembly and manner of filling casual vacancies occurring by reason of absence of members from India, inability to attend to duty, death, acceptance of office, or resignation duly accepted, or otherwise; and

(*b*) the conditions under which and the manner in which persons may be nominated as members of the Council of State or the Legislative Assembly; and

(*c*) the qualifications of electors, the constitution of constituencies and the method of election for the Council of State and Legislative Assembly (including the number of members to be elected by communal and other electorates) and matters incidental or ancillary thereto; and

(*d*) the qualifications for being or for being nominated or elected as members of the Council of State or the Legislative Assembly; and

(*e*) the final decision of doubts or disputes as to the validity of an election; and

(*f*) the manner in which the rules are to be carried into effect.

And again under Section 72 A (4), you have similar provisions made for the Governor's legislative councils. They are on all fours with those provided for the Council of State and the Legislative Assembly. (45) Regulation of medical and other professional qualifications and standards subject to legislation by the Indian Legislature (R). (46) Local Fund Audit by which is meant the audit by Government Agency of income and expenditure controlled by local bodies (R). (47) Control, as defined by rule 10, of members of all-India and provincial services serving within the province, and control, subject to legislation by the Indian Legislature of public services within the province other than all-India services (R). (48) Sources of provincial revenue, not included under previous heads, whether (*a*) taxes included in the schedules to the Scheduled Taxes Rules; or (*b*), taxes not included in those schedules which are imposed by or under provincial legislation which have received the previous sanction of the Governor-General (R). (49) Borrowing of money on the sole credit of the province, subject to provisions of the local Government (Borrowing Rules) (R). (50) Imposition by legislation of punishments by fine, penalty or imprisonment for enforcing any law of the province relating to any provincial subject, subject to legislation by the Indian Legislature in the case of any subject in respect of which such a limitation is imposed under these rules (R). (51) Any matter which though falling within a central subject, is declared by the Governor-General in Council to be of a merely local or private nature within the province such

as Provincial Gazetteers, Provincial Statistics and Provincial Statistical Memoirs and Preservation and Translation of Ancient Manuscripts (R).

(*d*) *Division of Subjects : Transferred Subjects.*

Net result of the division of subjects

Even at the risk of repetition and diffuseness I would invite your attention to the net result. It is that the transferred subjects, in which the powers of the provincial legislatures are virtually those of a sovereign parliament, tempered by an authority vested in the Governor to intervene, where he honestly feels that the Ministers or the Council have a tendency to go wrong, are (1) Local Self-Government, by which we must understand the matters relating to the constitution and powers of municipal corporations, improvement trusts, district boards, mining boards of health and other local authorities established in the province for purposes of local self-government, exclusive of matters arising under the Cantonments Act, 1910, subject to legislation by Indian Legislature as regards, (*a*) the powers of such authorities to borrow otherwise than from a provincial Government, (*b*) the control of rents, and (*c*) the levying by such authorities of taxation not included in toll, tax on land or land values, tax on buildings, tax on vehicles or boats, tax on animals, tax on menials or domestic servants, octroi, terminal tax on goods imported into a local area in which an octroi used to be levied, tax on trades, professions, and callings, tax on private markets, tax imposed in return for services rendered, such as water rate, lighting rate, scavenging, sanitary or sewage rate, drainage tax and fees for the use of markets, and other public conveniences; (2) Medical administration, including hospitals, dispensaries and asylums, and pro-

vision for medical education; (3) Public health, and sanitation, and vital statistics subject to legislation by the Indian Legislature, in respect of infectious and contagious diseases to such extent as may be declared by any Act of Indian Legislature; (4) Pilgrimages within British India; (5) Education other than European and Anglo-Indian, the Hindu University of Benares and the Moslem University of Aligarh, the Chiefs' colleges and institutions maintained for the benefit of members of His Majesty's forces or of other public servants or of the children of such members or servants. In order that the several new Universities in India may not bring into play an unhealthy spirit of rivalry with their elder sisters, the control of the establishment and the regulation of their constitutions and functions and their jurisdiction, are vested in the Indian Legislature until such time as the Government of India may decide. The very important department (6) of Agriculture including research institutes, experimental and demonstration farms, introduction of improved methods, provision for agricultural education, protection against destructive insects and pests and prevention of plant diseases, with certain reservations; (7) Co-operative societies; (8) Civil Veterinary department which included veterinary training, improvement of stock, and prevention of animal diseases; (9) Registration of deeds and documents; (10) Registration of births, deaths and marriages; (11) Religious and charitable endowments; (12) Development of industries, industrial research and technical education; (13) Stores and stationery required for transferred departments except those imported which are subject to rules prescribed by the Secretary of State in Council; (14) Adulteration of food-stuffs and other articles subject to legislation by the Indian Legislature as regards import and export trade; (15) Weights and measures subject to

standard prescribed by the Indian Legislature; (16) Libraries other than the Imperial Library in Calcutta, Museums, except the Indian Museum and the Victoria Memorial in Calcutta, and Zoological Gardens with very minor reservations, are all transferred subjects in charge of Ministers in all Governors' Provinces, appointed by the Governor from among elected members of the Council. A distinction, however, is made in case of Assam, probably because of its backwardness. There the departments of (17) Public Works including the construction and maintenance of provincial buildings, other than residence of the Governor of the province, used or intended for any purpose in connection with the administration of the province on behalf of the departments of Government concerned, save in so far as the Governor may assign such work to the departments using or requiring such buildings, the care of historical monuments except those taken care of by the Ancient Monuments Act, 1904, roads, bridges, ferries, tunnels, ropeways and causeways, tramways within municipal areas, light and feeder railways and extra-municipal tramways, or (18) the Department of fisheries, or that of (19) the Excise with control of production, manufacture, possession, transport, purchase and sale of alcoholic liquor and intoxicating drugs, excluding the control of cultivation, manufacture and sale for export of opium are, unlike in all other provinces, kept back from the control of Ministers. Bombay is the only Province the Ministers of which have the privilege of controlling their own Forests including preservation of game therein, but the deforestation of reserved forests is placed in charge of the Central Government. The reason why the subjects which for administrative purposes are provincial, but subject to legislation by the Indian Legislature, are so arranged, is manifest to

you. It is for the purpose of securing uniformity of legislation throughout India so far as they are concerned.

(e) The Governor acting with his Ministers.

Transferred part of the government under Ministers.

To return to our topic: the second part of the Government, therefore, is under the control of a Ministry consisting of one or more Ministers chosen by the Governor from the elected members of the Legislative Council and are appointed for the lifetime of the Council, and if re-elected, may be eligible for re-appointment. Undoubtedly a generous proposition, if only the right type of men are appointed, and will be regarded as such, even by the most fastidious critic of Indian administration among our own people as a preparatory step. Theoretically therefore, it is a liberal and highly politic arrangement. But since in these lectures we are concerned also with the practical aspect of Indian administration, I shall not fail to remind you that the tendency of the Government has hitherto been to appoint to these offices of members of the Executive Council and Ministers, with rare exceptions, when men of undoubted ability, position and weight in the country have been selected, men "of varying degrees of public inutility," as an eminent Indian publicist, himself at one time a Minister of considerable courage, independence and capability, puts it. Latter-day administrators in India display a wonderful acumen for unearthing men whose best qualification is that they have no past, intellectual, academic or in the public life of the country. It is they, who, ungrudgingly have submitted to the Rules of Executive Business, even though they were made without consulting or reference to them. True the power of making rules, for the disposal of Executive Business is vested, under the Government of India Act, in the Governor alone. "The rule which sanctions the present practice, might as well have

Some Members and Ministers have been men of outstanding ability.

been made so as to make the Governor share this responsibility with all the other Members of his Government, so that the rules may carry with them the concurrence of all of them or, at any rate, of a majority of them.'' This is the suggestion of an eminent public man. In theory, the Ministers hold office at the will of their constituents though, in practice, they do so at the will of the Legislature in the full constitutional sense of the term, for no self-respecting Minister, as in the English Constitution, will continue to be in office a day after a vote of censure or of want of confidence has been passed on him in Council.

In theory ministerial office is based on popular will.

(f) *Ministers may set a Bad Example.*

Vote of no confidence in the Ministers.

A bad and dishonourable example, however, has been set in spite of the clear injunction of the Joint Committee to the effect that, no gentleman would care to adhere to his office a day after a vote of want of confidence in him was passed by the Council. And want of confidence may be expressed in various ways, the most common being the carriage of a direct resolution of want of confidence or by the reduction of a portion, however small, of salary on a demand to that effect, or by a wholesale refusal to pay the same. The last, though unusual, is yet the most effective expression of want of confidence and, in thus giving expression to their decision, the Councils would be strictly within their legitimate and constitutional rights. In one Indian Province the Ministers promptly laid down their office upon a substantial reduction of their salary grant, in the other, however, they declined to do so, even upon a total rejection, and thus created an unwholesome precedent and an unpalatable and disastrous situation for themselves. Reduction or rejection of salary is, in law, tantamount to want of confidence in a Minister, which is the only

Various ways of expressing it.

method of removing him under constitutional procedure and constitutional arrangement. And this proposition has been fully endorsed by the Joint Committee, who lay it down in unmistakable language that, by "refusing them supplies or by means of *votes of censure*, the carrying of which may in accordance with established constitutional practice, involve their quitting office," the legislature takes recourse to the most effective method of removing a Minister it does not want. This is a clear and authoritative injunction, the simple meaning and spirit of which was not appreciated by the appointed Presidents of the Legislative Councils, with the honourable exception of that of the Central Provinces Council, nor acted upon by the elected, certainly not by the President of the Bombay Council, who in disallowing a motion of censure on the Excise Minister, for having supported the Governor's veto of a private bill on Local Option, was held to have betrayed public interests, and helped to reveal the hollowness and futility of the power of control which the non-official members of the legislatures are supposed to have over the Ministers. And the ground on which the motion was disallowed was ludicrous to say the least of it. It was because, as the President thought, the removal of a Minister rests under section 52 (1) of the Government of India Act, absolutely in the discretion of the Governor, that a motion for censure which is tantamount to a recommendation for his removal, cannot lie. True, the appointing authority in every administrative system is also the dismissing authority, and if the Bombay President is held to have taken the correct view of law and procedure, the injunction of the Joint Committee cited above, no less than the 2nd and 5th Clauses in His Majesty's Instrument of Instructions to the Governor, namely, that "those who are returned to the Council being enabled to perceive the

(1) Direct vote of no confidence.
(2) Reduction of salary.
(3) Disallowance of salary.
(4) Refusal of supplies.
(5) Vote of censure.

President's want of appreciation of the spirit of the principle.

Instructions given to the Governor.

effects of their votes given therein shall come to look for the redress of their grievances and the improvement of their condition to the working of representative institutions,'' and again that, '' you shall assist Ministers by all the means in your power in the administration of the transferred subjects and advise them *in regard to their relations in the Legislative Council,*'' must be regarded to be a specimen of mental reservation to which no responsible Minister of the Crown, without stultifying himself, may commit His Majesty, whose severest displeasure moreover, in such an event, he is bound to incur. The Bombay President out-herods the majority of the Muddiman Committee who recommend the placing of all decisions by Presidents of legislatures beyond the control of the High Courts, with the sole object of investing them with arbitrary power of disallowing unsavoury and inconvenient motions. The fall of a Ministry as a whole is unknown in the Indian Constitution for, collective responsibility of Ministers is not recognised by it, though attempts are being made to introduce that healthy political principle. In relation to his Ministers, it is not contemplated that the Governor should be entirely bound by their opinion and decision, though their advice has its due weight upon him in his choice, of course to be adopted, except where he should be of opinion, that the adoption of the course suggested by them, would be detrimental to the best interests of the people or endanger the position of the government. In such a case he is at liberty to call for action to be taken otherwise than in accordance with the advice offered by his Ministers. In practice, however, they are found ready to avail themselves of the trained advice of the Governor, much as he is found to meet them whenever possible, especially in cases where he realises that they have the support of public opinion behind them.

Recommendation of the Muddiman Committee.

Governor need not follow the advice of his Ministers.

(g) *The Dyarchy.*

Scheme of Dyarchy is a novel project

This is what we have known as dyarchy, a scheme which evoked apprehensions, not unnatural, in view of its novelty. But we all know the anxious and close consideration which the Committee devoted to it, and to various other alternative suggestions, that were made from different quarters before arriving at the conclusion that this was the best way of giving effect to the spirit of the policy announced on the 20th August, 1917, by His Majesty's Government. The theory and principle of the scheme of dyarchy was summed up by the Joint Committee in these words : " Ministers who enjoy the confidence of a majority in their legislative council will be given the fullest opportunity of managing that field of government which is entrusted to their care. In their work they will be assisted and guided by the Governor, who will accept their advice and promote their policy whenever possible. If he finds himself compelled to act against their advice, it will only be in circumstances roughly analogous to those in which he has to override his Executive Council,—circumstances which will be indicated in the Instrument of Instructions furnished to him on his appointment by His Majesty. On the other hand, in and for that field of government in which Parliament continues to hold him responsible, the provincial Governor in council will remain equipped with the sure and certain power of fulfilling that responsibility. The committee will indicate in the course of this Report how they visualise the relations between the two parts of the provincial government, but they wish to place in the forefront of the Report their opinion that they see no reason why the relations should not be harmonious and mutually advantageous. They regard it as of the highest importance that the Governor should foster the habit of free

Joint Committee's summing up of the scheme.

Committee recommend joint conference and action.

consultation between both halves of his government, and indeed that he should insist upon it in all important matters of common interest. We will thus ensure that ministers will contribute their knowledge of the people's wishes and susceptibilities, and the members of his Executive Council their administrative experience, to the joint wisdom of the government. But while the Committee anticipate much advantage from amicable and, as far as possible, spontaneous association for purpose of deliberation, they would not allow it to confuse the duties or obscure the separate responsibility which will rest in the two parts of the administration. Each side of the government will advise and assist the other; neither will control nor impede the other. The responsibility for administrative and legislative action in their own field will be fixed beyond possibility of doubt on Ministers and on the majorities of the provincial legislatures which support them; and they will be given adequate power to fulfill their charge. Similarly within that field for which he remains accountable to Parliament, the responsibility for action must be fixed on the Governor in Council, and he must possess unfailing means for the discharge of his duties." Pious desires these are, and nobody could wish for nobler sentiments for the better government of the country than those to which I have drawn your attention, but whether they have been carried out in practice has to be ascertained by reference to the evidence, particularly of those whose familiarity with and experience of the four years' working of the scheme is undoubted and unimpeachable, recorded before the Muddiman Committee. That evidence is considered and deliberate, not irresponsible. But let us come back to our portrait at the point where we left it and try with the assistance of the Joint Committee to visualise the scheme and, as far as possible, in their own words.

Yet each side independent of the other.

Adverse opinion of its efficacy expressed before the Muddiman Committee.

"There will be many matters of administrative business," observes the Joint Committee later on, "as in all countries, which can be disposed of departmentally; but there will remain a large category of business, of the character which would naturally be the subject of Cabinet consultation. In regard to this category the Committee conceive that the habit should be carefully fostered of joint deliberation between the members of the Executive Council and the Ministers, sitting under the Chairmanship of the Governor. There cannot be too much mutual advice and consultation on such subjects; but the Committee attach the highest importance to the principle that, when once opinions have been freely exchanged and the last word has been said, there ought then to be no doubt whatever as to where the responsibility for the decision lies. Therefore, in the opinion of the Committee, after such consultation, and when it is clear that the decision lies within the jurisdiction of one or other half of the government, that decision, in respect of a reserved subject should be recorded separately by the Executive Council, and in respect of a transferred subject by the Ministers and all Acts and proceedings of the government should state in definite terms on whom the responsibility for the decision rests. It will not always, however, be clear, otherwise than in a purely departmental and technical fashion, with whom the jurisdiction lies in the case of questions of common interest. In such cases it will be inevitable for the Governor to occupy the position of informal arbitrator between the two parts of his administration; and it will equally be his duty to see that a decision arrived at on one side of his government is followed by such consequential action on the other side as may be necessary to make the policy effective and homogeneous." And yet more direct is His Majesty's instruction to the Governor. "You shall encourage the

Cabinet consultation.

The fixing of responsibility.

Task of the Governor delicate but potential.

habit of joint deliberation between yourself, your Councillors, and your Ministers, in order that the experience of your official advisers may be at the disposal of your Ministers, and that the knowledge of your Ministers as to the wishes of the people may be at the disposal of your Councillors.'' We have it however, on the authority of those, who, one after another, were responsible for nine long years for the working of the new constitution and had inside information of how it was respected in the several provinces of India, including Bombay, Bengal, Punjab and U. P., that its spirit was honoured more in its breach than in its observance, with a determination on the part of those who proclaim their regard for the sanctity of the constitution to be greater than that of those to whom it is given, and who are said not to be able to appreciate it because they are not used to the best things of the world. That is hardly convincing, though I think, we must agree with Sir Courtenay Ilbert when he says '' that there is no constitution, however carefully and ingeniously framed, which cannot be made unworkable by an impracticable and sufficiently obstinate minority,''—he might have added unpractical and perverse,—and that '' there is hardly any which cannot be made to work with a sufficient amount of goodwill.'' It is doubtful whether there is any real goodwill in a five per cent. of the educated Indian population and in more than 10 per cent. of the entire Indian population though, it is easy to assert that in the remaining 90 per cent. there is a positive, deep-rooted distrust of England, her professions and above all her intentions, even though, when it is explained to them that the constitution under which they live is a flexible and not a rigid one,—flexible in the sense that much of its gradual or immediate expansion may be effected without an Act of Parliament and

Spirit of the Reforms disregarded.

They can be made to work all the same.

Indian constitution more flexible than rigid.

under the rule-making powers of the government. To that extent it must be regarded to be superior to the colonial constitutions and, even to that of the United States of America, or other prominent constitutions which have been given or made, and not grown. The elasticity of the Indian constitution therefore lies, as Sir Courtenay Ilbert puts it, in the " extensive use of what has sometimes been called delegated legislation, legislation not directly by Parliament, but by rules and orders made under an authority given by Parliament." And nowhere has the policy of giving and using delegated power been carried farther than in the Government of India Act of 1919. The reasons for such extension of powers to the Government of India are obvious. Parliament is as hopelessly pre-occupied with the affairs at home or with foreign affairs that, it is not possible to persuade her to afford the time necessary for the consideration of the details of Indian Constitution or Administration. But whatever the reasons may be, the power is there, and the Indian people would be well-advised to fully realise that situation and, exploit it as best and as fast as they can, even though, the Reserved side of the executive government is armed with the power of obtaining such monies, and securing the passage of such laws, as are necessary for the proper administration of the province by the well-known process of certification. Not so the Transferred side, for the principle of certification does not apply to it, beyond what is absolutely necessary for the safety and tranquillity of the province or, for the purpose of carrying on the administration of any (transferred) department. It is also by taking advantage of the certificate procedure that the Governor can place against what he thinks an obdurate, obstructive and hostile legislature, any bill upon the statute book necessary for the discharge of his responsibility to Parliament. Thus it will be seen that,

Indian constitution superior to Colonial or American constitution in one aspect.

Certificate procedure does not apply to the Transferred side.

devices in the constitution are made for meeting any emergency foreseen or unforeseen, and for preventing a transferred department from being closed down by reason of supplies having been refused. But a bill to which certificate has been applied is forthwith submitted to the Governor-General who reserves it for the signification of the pleasure of His Majesty. Should His Majesty in Council signify his assent, it becomes law and shall have the same force and effect as an Act passed by the local legislature and duly assented to. Provision also has been made to cases of extreme emergency where loss of time involved in the procedure referred to may cause trouble, in that the Governor-General in such a case may signify his assent to the Bill, entitling it to have the force and effect of law. This, however, is tentative and temporary, for the signification of the assent of the Governor-General does not do away with the necessity of submission to His Majesty for allowance or disallowance. An Act so made, must be laid before each House of Parliament without undue delay, and no Act is presented to His Majesty for his assent, without copies thereof being laid before each House of Parliament for not less than eight days during its session prior to such presentation, to enable the House to avail of an opportunity to express its opinion upon the matter. A notable instance is the Ordinance Bill in Bengal, which was thrown out in the Council by a decided majority, but later certified by His Excellency the Governor at the instance of the Agents in India of His Majesty's Government, who, I am afraid, have thereby helped England to lay herself open to a charge of leading a double life,—taking up the pose of a peaceful nation and the attitude of a peace-maker before the League of Nations while ruling India by threat, coercion and force.

Governor's certificate is not final.

Signification of Governor-General's assent in emergent cases is tentative and temporary.

England in a difficult position.

PART IV

PROCEDURE OF BUSINESS.

(a) *Rules of Business in the Ministry or Executive Council.*

Power of the Governor.

The Rules known as the "*Rules of Business*" are framed and promulgated by the Governor under the authority of the statute. These are the rules which make for the more convenient transaction of business in his Executive Council or with his Ministers. The rules have got the status of and are treated as orders or acts of the Governor-in-Council. Under the rules themselves the Governor has got unrestricted power to allot the business of the various departments, such as the first perusal of papers and the initiation of orders thereon, in such manner as he chooses. It is under these rules that cases have to be ordinarily submitted by the Secretary in the department to which the subject belongs to the Member-in-charge, for such purposes as we have noticed, and for such orders as may be deemed fit. The authority to dispose of, or cause to be disposed of cases of minor importance belongs solely to the Member-in-charge. In cases however, of special urgency the Secretary of the department concerned would be justified in asking the Member-in-charge for his sanction to a proposed order based on an anticipatory approval of the Governor to whom a case in certain circumstances may be submitted direct for orders. The authority of the Member or Minister-in-charge is limited by the rule which requires the submission to His Excellency of all proposed Resolutions on Administration Reports, proposed circulars embodying important principles

Urgent cases and the power of the Secretary.

The authority of the Member or Minister.

or changes, all correspondence with the Secretary of State (in respect of Provinces or Presidencies authorised to carry on such correspondence), Government of India, the High Courts or any public Association recognised by Government, except correspondence on routine matters, all orders conveying censure or praise to gazetted officers, orders dismissing officers in receipt of a pay in excess of Rs. 100 a month, all proposals for the disposal of provincial balances, answers to questions asked in the Legislative Council, petitions connected with sentences of death passed in criminal cases and all cases which in the opinion of the Member or Minister-in-charge are of sufficient importance. Should there be an occasion for the Secretary to submit a case for reasons stated to the Governor direct, the rules make it incumbent upon him to apprise the Member or Minister-in-charge of the fact.

A further examination of these rules of business discloses the fact that there are certain appointments which are listed as Class I and II respectively, nomination to which is made either by the Governor direct, or by him on the recommendation of the Member or Minister-in-charge according as the appointment belongs to the reserved or the transferred category. The concurrence of the majority of the Council and—or the Ministry deliberating as a Cabinet—is a *sine qua non* for some of these appointments, and the rules governing the procedure of nomination and appointment are so well hedged in, that concurrence cannot be withheld merely on the ground that some other person is deemed to be better fitted for the particular office, but only, if there are specific objections on public grounds such as unfitness for the office in question. The nett result of such a rule is manifest. On the other hand, the Governor stands supreme and unfettered by his Council

Opinion of the majority in respect of the appointments.

Governor's position supreme.

when it is proposed in any department to negative the recommendation, or to overrule the decision of the Board of Revenue, of the Commissioner of a division or of the Head of a Department, in any matter of major importance connected with the Reserved side of the Government. The provincial rule with regard to the submission of cases by departmental Secretary to the Governor direct, and without the intervention of the Member or the Minister-in-charge, is identical with what prevails in the Government of India (*ante* p. 133) and as there, the provincial Secretary has got to bring the fact of his having done so to the knowledge of his chief. And this power in the Secretary is easily explained. He is Secretary to the Government of which the Governor is the head, not Secretary to the Member or Minister whose function is to advise and suggest, but not act independently of the Governor, such as that which prevails under a government responsible to the will of the people. However important a case may be, one Member of Council to whose department it legitimately belongs, may not refer it to another Member or Minister personally for opinion, without the previous consent of the Governor, though any Member or Minister may call for any papers in any department of the Secretariate other than his own ; but the papers requisitioned may not be forwarded to him without the consent of the Member or the Minister-in-charge of the department to which they belong. The circulation however, of these papers among Members or Ministers, or the bringing in of them before a meeting of the Council, are matters in which the Members or Ministers can only make their formal request to the Governor who may or may not comply with it. No order of the Governor-in-Council shall be deemed to be valid, unless it appears over the signature of a Secretary, or Deputy Secretary, or an

Central and provincial rule *re* submissions of cases to head of administration alike.

Papers before the Member or Minister.

Validity of orders.

Under-Secretary or an Assistant Secretary, except where a particular enactment specially authorises another officer to sign such documents.

(*b*) *Favoured Position of Certain Departments.*

The Financial department of a provincial government is legitimately placed in a position of advantage, for, certain matters are privileged from being brought forward for the consideration of the Governor-in-Council, or Governor in the Ministry, without a previous reference to it, such as a proposal involving (*a*) an abandonment of revenue for which credit has been taken in the Budget, or (*b*) expenditure which has not been provided for in the Budget, or (*c*) expenditure which has not been specifically sanctioned, although provided for in the Budget. In the same way the Legislative Department is in a favoured position for, whenever it is proposed in an Executive department (*a*) to issue any statutory rule, notification or order or (*b*) to sanction under a statutory power, the issue of any rule, bye-law, notification or order by a subordinate authority or (*c*) to submit to the Secretary of State or the Government of India any statutory rule, notification or order, for issue by him or them, a draft of the same must be submitted to the Legislative department for opinion, as to whether it is strictly within the power conferred by the Legislature, and is in proper form as regards wording and arrangement, and if necessary, for revision. But the constitution places the Governor in a position of authority to direct from time to time the modification of such rule, though as a matter of fact he seldom does it.

Matters of revenue.

Function of the Legislative Department.

(c) *Business Procedure in the Council or Ministry.*

The Governor-in-Council or in Ministry.

It rests with the head of the administration to determine what cases are of great importance, in order that they may be submitted before the Council or Ministry for discussion after circulation of papers connected with them, and before the issue of orders thereon. When however, the Governor should be in agreement with the Member or Minister-in-charge, the case need not be brought before a meeting of the Council or Ministry at all, unless the Governor otherwise directs, no option or discretion being left to him in this respect in connection with a case on the papers of which the Government proposes to found a legislation in the local Council. Such a matter would stand on a different footing if the Governor does not concur with a Member or Minister-in-charge. He will then record a note to the effect, and the papers of the case shall either (*a*) be circulated to all the members, and then be brought before a meeting of the Council, or the Ministry as the case may be; or (*b*) if the Governor so directs, be at once brought before such a meeting. In the matter of circulation of papers to Members the order that is followed is, that the papers are first sent to the Members or Ministers,—other than the differing Member or Minister,—in order of juniority, then to the Member or Minister-in-charge, and finally to the Governor himself. But despatches addressed by a local government to the Secretary of State, privileged to do so, are circulated with their connected papers in a reverse order, namely, first to the Governor and then to the Member or Minister, in order of seniority, and finally to the Member or Minister-in-charge. In some cases the most convenient order with regard to their places of residence is followed, but the order of signature is invariably in the order of seniority.

Order in which papers are circulated.

Procedure of discussion of cases.

The procedure that is followed for the discussion of cases in the Council is one that calls for notice. When a case is brought before a meeting of the Council, the Secretary in the department to which the subject belongs is empowered to attend such meeting and to briefly state the point or points on which a decision is required, or to give a complete history of the case, recapitulating, in order, the substance of the opinion, if any, given thereon by each member who has examined it. If the case concerns any other department, the Secretary in that department also may be required to attend and follow the Secretary who has put it up. The Member or the Minister-in-charge then makes his observations followed by his colleagues in order of their seniority. When a decision is arrived at, the Secretary in the department to which the subject belongs takes down in writing and reads out the order proposed to be passed. Its approval is signified by an initial of the Governor. Mere orders and notes do not form part of the Proceedings of the Government, unless they have been converted into minutes for the recording of which definite rules are laid down. These rules to be of any effect must receive the approval of the Government of India. There is a strict injunction that the rules regulating the conduct of business in the Council or Ministry must be rigorously adhered to and the Secretary in each department whose affair is up for consideration is held responsible for the careful observance thereof.

Proceedings of the Council.

Minutes recorded by the Secretary himself.

(d) Most Important Subjects of Finance and Law and Order are reserved.

We have enumerated before what are transferred subjects. The rest are all " Reserved subjects " and we have taken care to indicate both in the general list by the letters R and T according as they are " Reserved " or

"Transferred." It will be seen that the two important subjects of Finance, and Law and Order are kept back from the popular control. Much depends upon the amount of control the representatives of the people are permitted, within the four corners of the Act to exercise over Finance. He who pays the piper has a right to call the tune. If the self-governing constitutions are strong and successful, it is because under them the representatives of the people have got the purse-strings in their hands. They make and unmake a Government. Want of such control tends to make a Government however liberal it may otherwise be, a sham, a defect from which the Government of India unfortunately undoubtedly suffers. But looking through the report of the Joint-Committee it strikes me that their clear intention was effectually to make over the control over finance to the Legislature, with only a reserve power in the hands of the Executive under exceptional circumstances, a power, which in the hands of one with full constitutional consciousness and integrity, should and would not be dealt with as lightly as it has hitherto been, and is being, dealt with by the various Provincial Governments, as by the Central Government itself,—in culpable disregard of public opinion. Herein lies the plague spot of the constitution under which we live. The other is what we know as the control over the department of Law and Order, which cannot have failed to acquire a bad odour about it, by reason of its achievements of which no civilised government can be proud. This is not the place where I propose to discuss the merits of those achievements, though in the interest of constitutional theory and principle, I should be leaving my subject incomplete, if I did not observe that, the blunders that are habitually made by this department are due solely to the fact that it is kept as a reserve department, and a subject for Central

The most important subjects of Finance, Law and Order not made over to popular control.

Intention of the Joint-Committee with regard to Finance.

Blunders made by the department of Law

and Order in India.

Administration, a position which can be easily remedied under the rule-making powers of the Government of India, if there is a genuinely sincere desire to bring about a happier state of affairs in the Government of the country, in supersession of the stubborn determination of the bureaucracy not to part with powers which give them their importance, and their prestige. India lacks mutual trust. Trust by the rulers in the ruled; trust by the ruled in the rulers. What is wanted is trust with which Lord Hardinge was inspired when he allowed India to be cleared of the entire British Military estab lishment but a negligibly infinitesimal part of it, for the War front. "It is a fact that," proudly declared His Lordship in the House of Lords in July 1917, "for the space of some weeks before the arrival of the Territorials, the British Garrison in India was reduced to about 15,000 men. The safety of India was thus imperilled in the interest of the Empire as a whole. In such a case I was naturally prepared to take risks, and I took them confidently, because I trusted the people of India, and I am proud to say they fully justified my confidence in them." That is the trust that is wanted, and the student of constitutional politics will be disinclined to give any quarters to the official assertion that the subject of Law and Order entails such onerous responsibilities on those who are charged with administering it, that it is unsafe to transfer it to the hands of popular leaders. There can be no greater misapprehension and the whole history of democratic government proves that the preservation of internal order is best done not by autocrats but by those who can speak in the name of, and act, on behalf of the people. The reason is not far to seek. If there is one subject more than another in which the willing consent and co-operation of the people ought to be secured it is the task of keeping law and order. There should be no room for

Lord Hardinge trusted the people of the country.

Willing support of the people necessary for main-

popular sympathy with those who break the very foundations of progress and good government. And those who sit aloof,—far from the madding crowd,—they are terribly handicapped, however noble their motives, however excellent their deeds, in their attempt to preserve internal peace. And yet the fact remains that, that is the primary duty of a citizen, and from a moral as from a national point of view, one who does not realise the importance of this supreme duty, is as unworthy a son of his country as the person who actually makes a breach of that peace. And before the duty could be effectively cast upon the citizen, the government must be able to show that it possesses clean hands; that it has power behind it to suppress a breach; that individual liberty is assured; that general welfare is the first look-out of the government and that education is being vigorously pushed forward solely for the purpose of making men good and worthy citizens. These in short, exhaust the ends of the State, comprising as they do, what American political philosophers call the "primary, the secondary and the ultimate purpose of the State," which are said to be the bases of the political organisation of a portion of mankind, then the establishment of a national State, and finally the perfecting of its nationality or, as Burgess puts it, "the development of the peculiar principle of its nationality." You will not wonder therefore, that the maintenance of law and order is the primary object of the State, and it is upon that principle that the Government in India takes its stand, rejecting every canon of popular control whether over finance, or over legislation, and every appeal to address itself to the establishment of a system of individual liberty. For, individual liberty after all, is a creation of the State, not a natural right. The idea which was at the root of the revolution of the eighteenth century is that,

tenance of Law and Order.

Conditions of undertaking the task.

Maintenance of Law and Order primary object of the State.

" man is born free.' Mankind nowhere has begun with liberty, but it has acquired it everywhere, through civilisation the excellence of which is proportionate to the refinement of the Government upon which it is founded. In fact the *quantum* of liberty enjoyed by the people, is an index to the excellence the government of the country has attained. It must be maintained however, that liberty must be reconciled with law and both preserved and sustained in proper poise by guarantees which are real, and immunities which are genuine.

Liberty index to the efficiency of the Government.

Part V

Legislation by the Executive.

(a) *Legislation on the Governor's Responsibility.*

Power of the Governor " real."

The makers of the Constitution do not make a secret of what their real object is, namely to make the power left in the hands of the Governor, *real*. They " think it much better," observe the Committee, " that there should be no attempt to conceal the fact that the responsibility is with the Governor in Council, and they recommend a process by which the Governor should be empowered to pass an Act in respect of any reserved subject, if he considers that the Act is necessary for the proper fulfilment of his responsibility to Parliament. He should not do so until he has given every opportunity for the matter to be thoroughly discussed in the legislative council, and as a sensible member should, of course, endeavour to carry the legislative council with him in the matter by the strength of his case. But, if he finds that cannot be so, then he should have the power to proceed on

his own responsibility." Acts therefore passed on the sole responsibility of the Governor are reserved by the Governor-General for the pleasure of His Majesty and are laid before Parliament. It follows that, according to the constitutional procedure, His Majesty will be necessarily advised by the Secretary of State for India, and the responsibility for the advice given to His Majesty can only rest with the Secretary of State. In the event of grave emergency, all delays attendant upon the regular course of legislation may be avoided by the Governor-General exercising the power bestowed upon him, to assent to the necessary Act without reserving it for the pleasure of His Majesty. This of course, does not prevent subsequent disallowance by His Majesty in Council.

Governor acting on his own responsibility.

There is yet another contingency of the highest consequences to the constitution of India. It is the deadlock which has been created in Bengal and the Central Provinces. It was not anticipated, but framers of a Constitution like other human beings cannot be expected to be omniscient. They have their limitations, but luckily the rule-making power was reserved in the Government. With its help they have devised to get over the difficulty, and I will tell you how.

Deadlock in Bengal unforeseen.

(*b*) *Repressive Legislation.*

Take the Bengal Ordinance relating to the anarchist movements in that unfortunate Presidency which has received unanimous condemnation at the hands of all sections of the Indian public. No student of constitutional politics would be found able to support the authorities, first because, the normal procedure of consulting representative public opinion through the reformed Councils has not been adopted, and secondly, and even more because the actions of the bureaucracy in the past have not inspired the people with the confidence in

The Bengal Ordinance.

the necessity and wisdom of their acts which they must have, ere they give or may be expected to give their support to such extreme steps. If only the subject were transferred, if the subject of Law and Order were in the hands of a Minister, and if he had after examining the entire political situation, and giving his best consideration to the reports of his confidential agents and advisers, above all, after the personal investigation which he, as a popular leader, can make by his close intimacy with responsible leaders of public opinion, if, after all this he, a Minister, had taken the same step, how much surer would the Government have been of public support, how much more certain would the Minister have been to get at least one section of the public, and that the larger section, namely, the members of his own party, to support him in the drastic steps that he may have to take to suppress crime and to put down anarchy The constitutional history of progressive countries, especially of England with which all of you are familiar, is replete with instances such as I have described. Read the history of the Sein Fein, the Coercion Acts passed by Parliament, the measures which Earl Balfour (then Mr. Arthur James Balfour), as Chief Secretary for Ireland forged through the House of Commons, and you will find that, it was the solid support of his party which sustained him in a task which cannot but have been highly distasteful and irksome to a man so brilliant, so highly cultured and so finely attuned to all the best traditions of an English gentleman. The reason is obvious. These extraordinary steps, the Draconian powers, can be justified not so much by reason and logic, nor by proof, for, that is not forthcoming, unless the administration is in the hands of an elected member of the people. It is indeed a matter of surprise why this simple psychological fact is neither realised nor appreciated. Criticism must

Popular support through Ministers.

Comparison with the Irish Coercion Acts.

therefore, be vigorously advanced till Law and Order are made safe in the hands of the chosen of the people.

(c) *The Executive has more Arbitrary Powers than it can manage.*

Rights of the people last concern of the Governments in India.

The wonder of it is that the executive government in India is not yet satisfied with all the arbitrary powers it possesses, but invests itself with more without caring for the rights of citizens, the two latest examples being the Bengal Ordinance Act and the Burma Expulsion Act. It is one of the fundamental axioms of Jurisprudence that, it is the function of law to punish, and not to prevent the commission of crime; but the executive government in India does not at all scruple to convert a preventive into a punitive action. Emphasis therefore, is laid on the necessity of a Declaration of Rights for India on the model of that of the present-day Germany,—an idea which was presented by the Right Hon'ble Mr. Srinivasa Sastri to the country some years ago, and which has since been reiterated from every responsible quarter. I am afraid however, that under a three-fourths autocratic and one-fourth constitutional government as at present exists in India, a Declaration of Rights is an impossibility and an anomaly. Such a Declaration comes only with full responsible government as in Germany after the downfall of Kaiserdom. When bureaucracy ends and full self-government starts in this country, then alone will the criminal laws be brought into line with those of the civilised countries of the West. A Declaration of Rights and a semi-autocratic government go ill together.

Declaration of Rights would be an anomaly in the present state of Indian political development.

(d) *Negative Power in the Hands of the Governor.*

Positive and Negative.

What has been described above is however, a positive power in the hands of the Governor. He is, moreover,

power in the hands of the Governor.

armed with power of a negative character under the Rules. He may in various ways prevent the introduction of a bill or the moving of an amendment to one introduced by the simple procedure of issuing a certificate that the Bill or the amendment as the case may be, affects the safety or tranquillity of a province, or any part thereof. The rule also empowers him to direct that no proceedings or no further proceedings should be taken on it. Automatically all notices of motions, in connection with the subject-matter of the certificate ballotted or listed, lapse.

Effect of the exercise of such power.

Furthermore, he may exercise his power of veto on an Act of his legislature, by simply withholding his assent thereto, or he may remonstrate with the Council, by recommending its reconsideration by the Council, or may even reserve a Bill for the consideration of the Governor-General. Let us only note here that, these matters are regulated by rules almost similar to those which regulate the admission or rejection of motions and resolutions which, when disallowed, are usually on the ground of detriment to public interest. These are extensive powers, and in the hands of an inexperienced, weak and ill-advised Governor, are liable to be made an abuse of, as has sometimes been done during the chequered career of the reformed constitution. They are all emergency powers, the exercise of which can be justified only when made with great caution and circumspection, and with due regard to the tone and temper of both the Council and the country, or else he (the Governor) brings himself into direct conflict, irreconcilable conflict with the people and their representatives, and creates for himself an *impasse* from which His Majesty's Instrument of Instructions commands him to keep at an arm's length, except under circumstances of the safety of the realm or the essential well-being of the people being in jeopardy.

Admission or rejection of motions in the Council.

(e) Alteration of Rule 6 of Devolution Rules arbitrary.

Alteration of Devolution Rule 6.

Rule 6 of the Devolution Rules says that "the Governor-General in Council, may, by notification in the Gazette of India, with the previous sanction of the Secretary of State in Council, revoke or suspend for such period as he may consider necessary the transfer of *any* provincial subject in any province, and upon such revocation or during such suspension the subject shall not be transferred subject." The word 'any' which we have italicised has a world of significance. It shows that *all* the Transferred subjects could not be revoked or suspended, for 'any' does not include 'all.' But the Government is too astute for all of them. It has, by a notification published in the Gazette of India on the 18th May, 1925, altered the Rule with the previous sanction of the Secretary of State by substitution for the word 'any' the words 'all or any,' so that the difficulty, according to Government has been got over. Thus not only any one Transferred subject, but *all* the subjects may be revoked.

Dyarchy may be given the go-by.

Politicians in India however, pointed out another difficulty. The Rules can of course be altered by the Government of India with the previous sanction of the Secretary of State, but the Act cannot be so altered. Now in Section 45-A of the Government of India Act, which mentions certain purposes for which provision may be made by Rules, occurs the following :—

> "Provided that, without prejudice to any general power of revoking or altering rules under this Act, the rules shall not authorise

> the revocation or suspension of the transfer of any subject, except with the sanction of the Secretary of State in Council."

Abuse of power.

The Act controls the Rules and not the Rules the Act. The Government has cured the defect in the Rule by altering it, but it cannot alter the Act which contemplates, under certain contingencies, the revocation of *any* Transferred subject but not *all*.

Indian publicists therefore, contended that the Government was abusing its Rule-making power for taking back the Reforms. The Act, they said, did not give the power of revoking *all* Transferred subjects, and thereby in effect, of abolishing Dyarchy, to any authority other than Parliament.

Report of the Muddiman Committee does not favour the idea of amending the rules so as to convert Reserved into Transferred subjects.

They could have cited the opinion of the Muddiman Committee in support of their contention. The suggestion was made before the Committee that by simply amending the Rules all the Reserved subjects could be made Transferred, thereby establishing what is loosely described as Provincial autonomy. But the Committee, after careful examination of the law, arrived at the conclusion that no such wholesale transfer was possible without amending the Act itself. At least one subject had to be kept Reserved. "It seems to us," say the Minority in their Report (and the Majority do not differ from them on this point), "that the immediate purpose of the Act of 1919 was to establish what is now generally known as the system of Dyarchy in the provinces, and no responsibility in the Central Government. So long as this Act continues to be on the Statute Book, it is impossible to dispense altogether with the classification of subjects into Reserved and Transferred."

The last sentence is particularly important. If *all* Reserved subjects cannot be made Transferred, neither can *all* Transferred subjects be made Reserved. This division into Reserved and Transferred subjects in the provinces is a vitally important part of the scheme of the Reform Act. It is common sense that this scheme or any part of it can be abrogated only by Parliament which passed the Act. It cannot certainly be done by any other authority by the simple device of altering the Rules.

So far as the interpretation of the law is concerned, one would be inclined to join issue with Mr. Iyengar, a Madras gentleman of considerable reputation as a student of the Indian Constitution. We are agreed that the constitution has been abrogated in violation of the law. But what is the remedy? I leave it to the Statesman and the practical politician, the level-headed man to answer the question "What is the remedy?"

PART VI

FRICTION AND REMEDY.

(*a*) *Friction between the two Halves of the Government*; *Hypothetical Cases.*

Differences between the two halves of the government.

In this dyarchical form of Government, however, there may arise between the two halves of it, difficulties to which Lord Meston who was thick in the reforms controversy, both in India and in England, draws pointed attention. Fortunately, no such difficulty has hitherto arisen in the actual working of the new consti-

tution, but it is improbable, having regard to the temper of the Indian people on the one hand, and the unbending and inexorable obduracy of the European services on the other, that they shall before long arise, placing the Governor in the unenviable position of the arbitrator, doing the thankless task of deciding between the two contending parties. I will give you what Lord Meston calls a conundrum in his own words. "Let us suppose," says his Lordship, "that the Minister in charge of Education has set his heart on a policy of compulsory primary schooling of all children up to a certain age. He will naturally talk it over with his permanent officials and they will put the district inspectors to work on framing a scheme. The number of children affected, the number and locality of new schools required, the arrangements for training the necessary teachers, the curricula and finally the probable cost, will all be worked out in detail, and summarised for the Minister. His next step will be to persuade the other Minister or Ministers to stand with him, so that they may present a united front in the legislature when the time comes. This arranged, the Governor will next be approached, though it may be presumed that, in a matter of this magnitude he has been cognisant of the proposal from an early stage, and has assented at least to preliminary inquiries. Meanwhile the idea has got noised abroad, or perhaps the Minister has been engaged in propaganda in support of it. And mutterings have started. The peasantry are beginning to take alarm, lest their children be forced to school at an age when they are actively employed on the family holding by the humbler cultivators. The Mahomedans happen to be in a suspicious mood, and are starting an agitation for exemption unless religious teaching is provided, or unless schools are closed on

A conundrum suggested by Lord Meston: one side of a hypothetical case.

Friday as their day of prayer. An outcry is rising against any compulsion in the case of girls. The district magistrates, to whose ears these murmurs do not fail to come, have been warning the executive councillor who looks after law and order that trouble may eventuate; and the Governor has thus been separately approached from this side. At last a point comes at which he considers it advisable to bring his whole government together for a discussion of policy. They meet under his presidency, for consideration, not for decision, as there can be no decision for which the two halves of the government are jointly responsible. The Minister for Education propounds his scheme and argues its advantages to the national progress. His colleagues support him. The member of the Executive Council who holds the portfolio of Law and Order sets out the dangers, the hardship to the poorer cultivators, the racial susceptibilities involved and the impropriety of using the police as attendance officers. Then the member in charge of Finance challenges the estimate of costs, urges the necessity for fees and asks where the rest of the funds are to come from. Amendments of the scheme are volunteered to meet the objections and an education rate is sketched out. You can imagine a prolonged and heated debate, or possibly a series of debates. In the end the Governor has to decide whether the issue is primarily one of educational policy or one of public tranquillity; and according to his decision the further development of the proposals remains in the hands of the Ministers or of the Executive Council as the case may be. Supposing that he is satisfied that the administrative and financial difficulties can be sufficiently met and that he therefore places the policy with his Ministers, it will then be for him to thrash out with them the character of the legislation required to

initiate the policy. He will no doubt advise them to modify the proposals for cases of special hardship, to compromise with the Mahomedan leaders, and in other respects to make the scheme as little burdensome as possible, compatible with its main purpose of educating a future electorate. When he approves of the Bill which they finally determine to promote, his Executive Council will give it all reasonable support in the legislature. They will assist in rebutting unfair attacks upon it, and the Finance Member will defend the provision of the necessary funds and commit himself to budgetting for them. But the Ministers will be responsible for carrying the legislature with them, and for getting the Bill passed. The policy will be theirs; by its wisdom and by the method in which they administer the new law, they will be judged when they come to render an account of their stewardship to the next Parliamentary commission. There remains of course, the possibility that Ministers may not be able to get their policy accepted by the legislature or to obtain their consent to the proposals for financing it. In that event, it will be for the Governor to decide whether he should dismiss the Ministers, or the Minister for Education, as having lost the confidence of the Council. By such action, however, the position of the Executive Council would not be affected."

(b) *Another Hypothetical Case.*

The other side of the case.

That is one side of a hypothetical case that might crop up in the dual system of government in the provinces. And Lord Meston is not unmindful of the other. "Let us now examine," His Lordship continues, "a converse and equally hypothetical case, in which the initiative is

taken by the other half of the government. Impressed by the growth of agrarian unrest, the Governor in his executive Council, after all the necessary inquiries, proposes a new system of tenant's occupancy right against the landlord, with compensation for ejectment, and so on. By a slight straining of his commission, the Minister who has agriculture in his portfolio might argue that his department is concerned and demand a conference of the full government to discuss the scheme. This, however, would hardly be necessary; for, in all matters of such moment the Governor would naturally wish to have Ministers with him, and would not stand on the strict letter of the constitutional form. There would in practice be many discussions between the two halves of the government, both on the policy itself and on its major details. In the event of the Governor deciding to go on with it the whole responsibility for arguing it in the legislature would rest on the Executive Council. If Ministers were converted to the policy, their support and influence in the council would be of great value; if they were not converted there would presumably be a convention by which they would at least abstain from speaking or voting against the scheme. At this point, however, the procedure in our two hypothetical cases diverges. Should the legislature reject the tenant right scheme, the Ministers have no responsibility. If they had supported it and failed, the Governor does not regard them as having forfeited the confidence of the council, and no question arises of replacing them. But what the Governor has to decide is, whether he will persevere with his land policy in the teeth of his legislature. Provided, he is satisfied that the law is essential to the discharge of his responsibilities for the well-being of the peasantry, he will make the Act under his special statutory powers, and submit it through

the regular channels for His Majesty's approval. As every Act made in this way must be laid before both Houses of Parliament, any member who considers that the Governor has improperly exercised his special powers has an opportunity of drawing attention to the case by the ordinary procedure of moving an address to His Majesty for the disallowance of the measure." These are two extreme cases, and my justification in placing this lengthy excerpt before you from one, who has had an unparalleled experience of the working of the Indian administration, and a most perfect knowledge of every nook and corner of the new Indian constitution is, to enable you to realise the difficulties with which we might be faced, and that, nobody could describe these imaginary impediments or possible sources of conflict,—for imaginary or possible they must be voted until their actual happening,—better and more lucidly than Lord Meston, who took a leading hand along with our own countryman Lord Sinha, in piloting the Bill for the better Government of India through the House of Lords in 1919.

Lord Meston's part in the Reforms Act.

(c) *The Demand for Responsible Government.*

Dyarchy makes room for responsible government in the near future.

But after all has been said and done, it is difficult to conceal the fact that the feeling, among Indians of all classes that dyarchy should, with the least possible delay, be replaced by full responsible government in the provinces is, a strong one. It is not the fulfilment of the desire expressed by Sir Thomas Munro, to endeavour to raise the character of the people, "and to render them worthy of filling higher situation in the management of their country, and of devising plans for its improvement," nor consummation of the scheme of government

authoritatively laid down by Lord Hardinge to whom no less than to Mr. Montagu, or the Cabinet of which he was a member in 1917, credit shall be given by the future historian, for having, in a sense, forced it upon the English government that their ultimate goal should be "gradually to give the Provinces a larger measure of self-government, until at last India would consist of a number of administrations, autonomous in all provincial affairs, with the Government of India above them all, and possessing power to interfere in cases of mis-government, but ordinarily restricting their functions to matters of Imperial concern," a system which has been introduced into Malta in 1921. By provincial autonomy, however, Lord Hardinge did not mean exactly what John Bright meant in his scheme of federal governments in India, those of the major provinces being made directly responsible to Parliament and free from any control by the Central Government of India, elaborated in his famous speech in the House of Commons on the Government of India Bill of 1858. The people of India cannot and do not appreciate dyarchy, which is neither a benevolent despotism, nor responsible government as obtains in the Dominions. An esteemed friend, the Hon'ble Mr. Sachchidananda Sinha puts me in mind of a remarkable story which is an apposite illustration of the Indian mind in relation to the present form of government. After Akbar had formally founded and declared himself the high-priest of his new religion, "Din Elahi," he asked his new relation Raja Man Singh to join the new church. Man Singh said, "If your Majesty had asked me to become a Mussalman, I might have understood it, for I understand Hinduism and I understand Islam, but I confess I do not understand this hybrid creed which your Majesty has established." Nothing can be more

Due share of credit belongs to Lord Hardinge.

Bright conceived a higher ideal of provincial autonomy than Hardinge.

Dyarchy a hybrid constitutional device.

suggestive than the story of Akbar whose highest ambition in life was to create and leave a united, nationalised India.

(d) *The Two Halves acting in Concert.*

Governor as the arbitrator : in one sense a beneficial system.

Thus composed, the Government, as far as possible, act together, though decisions on reserved or transferred questions will be those of the portion of the Government having jurisdiction. In cases where both parts of the Government are concerned, it is the Governor himself who decides between two conflicting opinions, if there should be any. Such a procedure, no doubt, involves a weakening of the unity of the executive, but as a matter of actual experience we find, that the unifying force is the Governor himself, strong or tolerable according as he keeps an open or unbiassed mind, and desires to rule for the benefit of the people of the country, and not to dictate which by reason of his position must be attributed to weakness alone. The most important subjects which have lent themselves to classification as transferred subjects are, taxation for provincial purposes, local self-government, education, public works, agriculture, excise and local industries. It is easily seen how important is the business which the Ministers are called upon to manage. It is what may justly be called the *Nation building business*. Dyarchy no doubt is a novel constitutional experiment except for one parallel in history. Would it be believed that, that parallel exists in the history of India itself, during the brief period when the *Dewani* existed side by side with the *Nizami*. It was the shrewd political instinct of the Englishman that would not allow it to acquire any constitutional importance before it was abolished, because of its incon-

Ministers in charge of nation-building business.

The earliest experiment of dyarchy

venience and unworkability. There is no reason therefore to think that the same wisdom will not return when the co-operative part of human nature, particularly that of the ruler and the ruled, of which dyarchy affords a high test, has been reasonably established.

in India is the *Dewani* and the *Nizami*.

Part VII

The People and the Government.

(*a*) *Indian Politics ridden by Lawyers.*

Repression or coercion never brings peace. It always excites friction and makes new enemies. Under coercion, the Councils will tend to become more and more organs of criticism and of agitation, and in exactly similar proportion be disinclined to accept any responsibility for the administration of the transferred subjects. Encouragement will be given to a demoralising tendency on the part of the people of the country, led as they are by lawyer politicians all over the Empire, to blame any one rather than themselves for everything that goes wrong. Government by lawyers, as much as opposition led by lawyers, have their weak points and their dangers, in so far as they are much too prone, unless they are also students of history and of political and constitutional developments in other countries, to separate law from history and jurisprudence, and jurisprudence from ethics, leading to an inevitable and speedy loss of that spiritual influence over the consciousness of the people which after all is, and if it is not, ought to be the sole basis of the power of every government and of every political leader whether in or out of the government. Law is regarded

Lawyers in politics.

Lack of spirituality in Indian politics.

Is Law an industry?

by the great mass of the Indian people as an *industry*, and as such it is divested of that spiritual power over the consciousness of the people and of the State. All the time therefore, there will be flowing a steady stream of propaganda calculated to soil England's reputation. The attitude of distrust of all things English is something of a pose with the generation that is passing away. It will become a creed with the rising generation, for that generation is being taught to accept without question readings of history which its fathers regarded as interesting paradoxes.

(b) *Danger of proceeding on European Models.*

If things go on as they are, and by the time action is taken upon the recommendations of the Grand Inquisition, they may have gone too far to leave any hope of an advantageous and honourable settlement. That would be a disaster for England as well as for India for, honestly one cannot believe that India is yet able to stand alone, but by saying in 1926 what he insisted upon in 1916, the theory of "not yet," Lord Sinha, who was of course, never a public man, nor a political thinker of any consequence, who had never thought out a problem except in terms of the thoughts of others, nor had ever been known to have kept himself abreast either of political movements or of the growth of political consciousness of the people, showed a lamentable ignorance of history and a lack of the sense of the perspective. Having regard of course, to the situation that has been created in the various provinces of India and the determination to stand by it shown during the past few years, the theory will be pondered over by men of all parties, castes and creeds.

Lord Sinha and his theory of "not yet."

But the view that, the time has not yet come for framing a constitution for Indian Home Rule may be seriously questioned. For a constitution to be worth anything must embody the stable and living elements in the political consciousness of a people. Such elements are discerned by some to have come into being, and would furnish materials for a constitution which would conduce to the commonweal of India. They have existed, damaged at times, by indiscreet and impolitic movements, such as the Non-co-operation or the Khilafat movement, and far more than either, by the feverish and nervous activity, of a few enthusiasts whose political shibboleths, sober and rational India deplores more than appreciates. Both Lord Sinha and the politicians against whom he set his face fell into the woeful error of conceiving, that India must proceed to reach the goal of the English governmental system, and nothing more or less than it, without stopping to enquire, from the trend of events, how fast the British system itself is making its way to the melting pot. Cannot India evolve a constitution, democratic let it be, of her own? Why cannot the Government in India, I do not mean the services, which may mean a bureaucracy, Indian in place of the European, but grafted on the same system, be Indianised instead of India being asked to suffer her Government to be Englishised? "Nations by themselves are made," and India will obtain no greater opportunity to make herself! India needs England's help and now more than ever. She is still willing to accept it provided she can get it on terms which are regarded as honourable and consistent with her self-respect and aptitude for political advancement and degree of cultural fitness. But if England does not make it possible for India to take her help without loss of self-respect, then she (England) must expect to see her

Adoption of the English Governmental System the ambition of political enthusiasts.

Evolution of a constitution for India.

(India's) civilised, tolerant, and rational but ever-sensitive people cutting their own throats in the endeavour to cut hers.

(c) *Dyarchy as was anticipated is discredited.*

Dyarchy is ill-suited to India.

Dyarchy, however, seems to have broken down in India. And the reason is not far to seek. If what the Joint Committee in their pious desire laid down as a principle to be followed in the working of dyarchy, that gradual but certain development of responsible self-government shall be realised, I have no doubt in my own mind that much of the friction between the rulers and the ruled would have been avoided. What is more, the new constitution instead of breaking down, and government admittedly in some provinces is being carried on only with the help of arbitrary powers which found their place in the Act and do find their place in all constitutions, only as reserves in the hands of the authorities and not for normal exercise, it would have been given a fair trial. The Committee conceived that the habit of holding joint deliberation between the Members of the Executive Council and the Ministers, sitting under the Chairmanship of the Governor, should be carefully fostered. One does not find any difficulty in agreeing with them that there cannot be too much mutual advice and consultation on every subject of importance, whether in the transferred or the reserved side, though the highest importance should always be attached to the principle that, when once opinions have been freely exchanged and the last word has been said, there ought then to be no doubt whatever as to where the responsibility for the decision lies. The Committee decided that after such consultation, and when it is clear that the decision lies

The recommendation of the Joint Committee.

within the jurisdiction of one or other half of the Government, that decision in respect of a reserved subject should be recorded separately by the Executive Council, and in respect of a transferred subject by the Ministers, and all acts and proceedings of the Government should state in definite terms on whom the responsibility for the decision rests. Where common interests are affected it is for the Governor to occupy the position of informal arbitrator between the two parts of the administration, and it is his duty to see that a decision arrived at on one side of his Government is followed by such consequential action on the other as may be necessary to make the policy effective and homogeneous.

The seat of responsibility.

(d) Ministers Responsible for Failure.

What follows however, is of supreme importance to the student of the Constitution as to the practical politician, and to the regret of the people at large, it must be admitted that, neither have the Ministers hitherto insisted upon the clear injunction of the Joint Committee being respected and carried out, nor have the men in power ever cared to play more than trifles with them. With the best of motives the Committee advised the Governor, "to help with sympathy and courage the popular side of his government in their new responsibilities. He should never hesitate to point out to Ministers what he thinks is the right course or to warn them if he thinks they are taking the wrong course. But if, after hearing all the arguments, Ministers should decide not to adopt his advice, then, in the opinion of the Committee, the Governor should ordinarily allow Ministers to have their way, fixing the responsibility upon them, even if it may subsequently be necessary for him to veto any particular piece of legislation." They

Recommendation of the Joint Committee disregarded.

Ministers may have a free hand.

Ministers and Members of Executive Council in relation to each other.

give the Members of the Executive Council and the Ministers still larger latitude when they say that "in the debates of the Legislative Council Members of the Executive Council should act together and Ministers should act together," but that, though they should not be permitted to oppose each other by speech or vote, they should not be required to support each other by speech or vote in respect of proposals of which there has not been mutual exchange of approval. All other Official Members of the Legislative Council have been left free to speak and vote as they choose. These injunctions may not have been sedulously set at naught but there is no evidence that they have been honoured and adhered to uniformly by every Governor or Councillor. It can only be hoped that, things will improve with the coming in of an improved batch of Ministers and Councillors, with a higher and better sense of public duty. It is disappointing however, that the Joint Committee never suggested any form of ministerial responsibility, the sheet anchor of parliamentary government. By that is not meant the personal responsibility of Ministers or, of Members of the Executive, but the political responsibility of them all, as well as the responsibility of each one to the other of his colleagues, without which it is difficult to raise either the electorate or the legislature to that pitch of intellectual and moral excellence from where they should be incapable of forming an erroneous opinion, or of doing an unjust thing. The ministerial responsibility which finds favour with constitutional theorists, is that which prevails in England, not the one under which France is perennially groaning. Collective or concentrated responsibility of Ministers is what we should look to, not their divided or individual responsibility.

Ministerial responsibility not contemplated.

Collective responsibility must be the goal.

Things are otherwise in the arrangement of the

administration with which we are concerned. If the design of the ministerial arrangement is to make for responsible government, it need hardly be pointed out, that the constitution is as far from it as it had ever been. Here we may observe that the term "responsible government" is a comparatively new one in English history or English Colonial history. It is not of English political terminology,—certainly not accepted in England as applicable to colonial governments,—until Great Britain in the period between 1837 and 1850, at last began to learn the lessons of the American Revolution, and to concede large powers of self-government to the British North American provinces; next to Australia, New Zealand and Cape Colony; in 1893 to Natal and finally to Federated South Africa. The term "Responsible Government," as now used in English Political Science, means that in each dominion there is a parliament or legislature and an executive, called the Ministry, which, like the Ministry in Downing Street for the last two centuries, is dependent for its tenure on the continuous support of a majority in the legislature. In the overseas dominions, as in the United Kingdom the executive is often described as the Cabinet. The correct term however, is the Ministry; for, it frequently happens, especially at Westminster, that there are men in the Ministry who are not of the inner committee of the Privy Council which is termed the Cabinet. In this view of the case there is a total lack of representative character in the legislative councils in India where Ministers appointed, are made to depend upon a majority not of the representatives of the people, but of the members of the legislature, composed of the Governor's block, namely the *ex-officio* members who are already members of his government, and those nominated and appointed by him, and the members upon whom the

What is "Responsible Government" according to English Political Science.

In the overseas Dominions.

Indian Legislative Councils lack representative character.

Governor forms the Ministry and helps the Ministers to shuffle a possible majority.

Ministers appointed may count for support. In other words, the Governor, in order to form a Ministry, need only look for the leader of the group which, coupled with the block he is always prepared to place at the disposal of his selection which otherwise may be, as indeed it has invariably been, very indifferent, may form a working majority in the House. The result is that men of outstanding ability, courage and resourcefulness, commanding influence in the country and respect of the House have often been left out to make room for mediocre men who can successfully intrigue for a clique or brotherhood glorified by the designation of a 'group' or a 'party.' These gentlemen, all the time, feeling secure upon the Governor's block placed at their disposal have to cultivate every form of artifice and finesse to keep together the clique whose existence, encouraged and impelled the Governor to send for and appoint them as Ministers under the dyarchical form of government prevailing under the constitution of 1919. It will be seen how the whole object of the constitution, designed to make for responsible government, is defeated by putting the Governor in a position to help the Ministers of his own selection, not to form a majority among representatives, but to put together a majority of votes in the legislature of which they are members but whose respect some of them have seldom commanded. There has necessarily been a disinclination on the part of a goodly number among self-respecting men in the legislature, innocent of anything unbecoming, to serve as Ministers, without forming part of the ministry, under such circumstances. If the secret history of ministry-making, and breaking, ever comes to be told it might disclose astounding and inconceivable facts as to their origin, formation, maintenance and disappearance.

Thereby object of the constitution defeated.

Device of Ministry making and breaking.

The real situation.

In Bengal a deadlock was created and the operations of the Council were suspended. It is clear that there are real grievances, that the country is almost inconceivably poor, that its economic development is neglected, that enormous sums are spent on the army which, it is alleged, is maintained less for India's defence than to keep India in subjection; that millions are being spent on new Government buildings in Delhi, while education, hospitals, technical instruction and railways are starved, and the latter badly administered. In Dutch and French possessions attention is paid first to economic development: in India concentration has been made on constitutional changes, while the country was getting poorer and poorer.

Inefficient advice of members of the Civil Service.

It is charged against the Indian Civil Service that, while it is honest and hard-working, the majority have little or no economic knowledge, and they are therefore, unfitted to be efficient advisers with regard to industrial or agricultural developments, particularly in a country where economic activities are more urgently needed than anything else to relieve the grinding poverty. It is also charged against them that, their manners irritate even the best educated Indians by conveying subtly to the Indian the suggestion of racial inferiority, and this suggestion almost more than any thing else arouses the bitterest hatred. Administrative changes can be made, economic policies put into motion but what genius, what statesman can find a remedy for incompatibility of temperament? Whatever the aspects or the faults of dyarchy may be, the things that count in Indian administration now, are the Assembly and the Councils. They are representative, they are permanent. They have the practical work to do and they have some power, above all they have the platform. Their members may be self-seeking, and perhaps a good many of them are, but they

Superior advantages of representatives of the people.

are India—an epitome of the people. India made them whatever they are and elected them. The electorate are to be educated up to a sense of responsibility, not fear or hatred, which will do more to set back constitutional advancement than the massacre of Jallianwala Bagh or of Kohat or any disillusionment about British labour doing the miracle for us in an age which is essentially rationalistic.

Dyarchy is a cumbrous system.

Dyarchy undoubtedly is a cumbrous, complex and confused system, having hardly any historical analogy and no logical basis, rooted in compromise and, as the *London Times* observed, "defensible only as a transitional experiment." It gives rise to solid objection and can never be smoothly worked without the co-operation and good will of those concerned in the working of it. But it may be asked, is this not true of every constitution in the world? Is the position of the Minister in India so very much more unfortunate than that of the late Government (I mean the Labour Ministry), under the English constitution, in office but not in power? We must expect to have to put up with some inconveniences in the delicate process of transforming the foreign bureaucracy into a national Government for, in the working of any constitutional scheme in the world, the spirit of those who operate it is, in effect, more important than the actual provisions of the scheme itself.

Council Secretaries.

To relieve their pressure of work both the members of the Executive Council and the Ministry may, with the permission of the Governor-General, have the assistance of Council Secretaries for the purpose of assisting their chiefs in their departmental duties, and of representing them in the Council. To the non-official members of the Council the choice of these secretaries must be limited. As a matter of fact however, the provision of the appoint-

ment of Council Secretaries, as they are called, occupying a position analogous to that of Parliamentary Under-Secretaries in Great Britain, has in no province been taken advantage of, any more than in the Central government.

(e) *Anomaly of Business Procedure in India.*

The heads of Governments, whether a Governor, or a Lieutenant-Governor, or a Chief Commissioner, are usually assisted by five Secretaries, of whom three are Civil Secretaries, and two Public Works Secretaries. The Civil Secretaries are the Chief Secretary, the Judicial Secretary and the Financial and Municipal Secretary. One of the Public Works Secretaries is in charge of Roads and Buildings, and the other in charge of Irrigation and Railways. Except in the Public Works the Secretaries are drawn from the Civil Service. These Secretaries, it must be noted, occupy an anomalous position. They are Secretaries to the departments under the Minister, or under the Member of the Executive Council as the case may be, not Secretaries to the Member or the Minister. In brief, they are Secretaries to the Government of which the Governor is the head, and the Members and Ministers are the advisers with executive control. That is a clear principle, but by virtue of a queer and unconstitutional tradition they have direct access to the Governor and, if occasion arises by reason of difference of opinion between them and the Ministers or Members, they may and do act similarly over the shoulders of their chiefs. There is nothing in the constitution of India to entitle them to such access, or to offer advice apart from and independent of their chiefs, but it is an *usage*, long established. With a strong Member or a strong Minister, the matter is bound to come to a head some

The departments of a provincial government.

Secretaries are Secretaries to Government —not to the Minister or Member.

day, and it will then be interesting to watch if the unconstitutional practice is retained or abandoned. The question doubtless will arise on the Ministerial side, but it is needless to speculate now upon the problem.

PART VIII.

REVENUE ADMINISTRATION AND SUBORDINATE ORGANISATION.

(a) *District Organisation in India.*

The District Organisation.

We shall try to have an idea of the District Organisation, before we go into the functions of each limb of it. The Collector, the Magistrate, the Judge, the Executive Engineer, the Civil Surgeon, the Police Superintendent or Inspector, and the Inspector of Schools are each responsible for the proper administration of the several departments in his charge. The Collector collects the Government revenue, and looks after the collection of other assessed taxes, as the Magistrate looks after the due administration of criminal justice, and the Judge after that of civil justice and of criminal appeals against magisterial decisions. Public Works are proposed and carried out by the Executive Engineer and the public health, sanitation and vaccination are taken care of by the Civil Surgeon and the other medical men under him. The peace and protection of the district are committed to the charge of the Police Superintendent and education to that of the Inspector of Schools. They exercise considerable power over matters connected with their respective charges in the district subject always to appeal to

Duties of Officers.

the controlling authorities in the provincial organisation. The Collector's action may be questioned first before the Commissioner, and finally, before the Board of Revenue or the Financial Commissioner, as the Judge's Order may be referred to the High Court. Orders of Officers subordinate to either the Collector, or the Judge, lie in appeal before them respectively. The powers of executive officials are well defined, and thanks to the current of political life with which every district is permeated, they are required to be honest, able and energetic, and they all are, more or less. If they are unsympathetic it is perhaps because the multifarious nature of their responsibilities makes them so. The entire machinery of the government hinges on them with the result that their shoulders are stiffened by the heavy burdens imposed on them. If they are capable of running a district administration smoothly, it must be concluded that they are efficient, and if tyrannical, they are inefficient, to which, to the discredit of British rule in India, it must be admitted, the police administration in the country, lends itself.

Powers of Executive Officers.

(b) *District Officer in Charge of Executive Administration.*

The unit of executive administration in India is the District Officer,—called Magistrate and Collector or the Deputy Commissioner according as it is a Regulation or a Non-Regulation District. As the executive chief and administrator of the tract of the country committed to his charge and care, he is the head of every branch of the administrative organisation except the Judiciary, Civil and Criminal. Theoretically, the other heads of departments in a district are independent of him, while in practice, and by force of circumstances, he is the one

The District Officer called District Magistrate and Collector or Deputy Commissioner.

individual who has the control over all. The administrative organism, save the judiciary whose vocation is absolute, and cannot, and must not, to ensure absolute justice being meted out, not between man and man, where to be fair is no credit, but between the people and the government, be mixed up with the executive duties of the government, is merged in the political unity. The history of ancient India tells its own tale. There the tax-gatherers mixed up those two functions. In mediaeval India the Kazis and Kotwals degenerated into the police and Judge rolled up in one. The Fouzdar was likewise the Military Commander and Magistrate combined. They discredited themselves as tyrants, oppressors and exactors, as their contemporaries all over the world were. The Collector however, in India, is now primarily a Revenue Collector, and more for the sake of unity of orderly administration than for economy, is also the Chief Magistrate for the whole district. He goes on tour over his charge for at least four months in the year, and besides superintending the realization of the land revenue, the duties of administering the excise and other special taxes, as well as of supervising the stamp revenue, devolve upon him as executive head of the district. He is also the District Registrar, and Visitor of the district jail, and has important duties to perform in connection with local funds and municipalities, with the Land Acquisition Act, and the forests, and his opinion is required on all questions of executive administration. True, he is not above the law of the land, but he has power to suspend the law under circumstances such as, during a riot or a peace-breaking commotion in the district, in religious disputes or during famines and floods. As the officer in charge of law and order of the district, he controls the police. He has authority to send out military forces to

Collector of Revenue.

quell disturbances or, if otherwise necessary, to declare martial law over his whole charge or, in any particular area within it. He has to devise plans for combating epidemics, floods and riots when they disturb the peace and order of the district. Without his sanction no roads or buildings may be constructed in the district by the Public Works Department, any more than any measures can be undertaken by the local bodies, rural or urban. The requirements of the landlords and tenants with regard to irrigation, forests and other matters have got to be satisfied by him. The recommendations of the Chaplain in the Ecclesiastical department, or of the Inspector of Schools for the Education department have got to be approved by him before they can be taken up or carried out. He is the meteorological reporter of the district, factory inspector, protector of emigrants, registrar of deeds and assurances and also the sanitary adviser. In the absence of the Chaplain he marries and buries people of Christian denomination, and as eyes and ears of the Government, he has to report to it whatever he comes across in the district. There are more than 250 districts in British India, the average area of each being about 4,500 square miles and population about 950,000. They vary greatly in size and population. The largest are in Madras and Burma and the smallest in the United Provinces. Every province is divided into (1) Regulation Districts to which the general Regulations and Acts apply; and (2) Non-Regulation Districts to which the Regulations and Acts do not apply of their own force, but to which they may be extended at the discretion of the Government, and to all of which, except in the Frontier Provinces, they have as a matter of fact been applied. The District Magistrate or the Deputy Commissioner, is the most important official of the government for he is

His powers and authority.

His functions.

Regulation and Non-Regulation Districts.

the connecting link between the executive power and authority and the people.

(c) *Administrative Machinery of a Subdivision.*

Subdivisional administration—identical with District administration on a lower scale.

The entire District Administrative machinery is duplicated in what is known as Subdivisions in some provinces, (Bengal, Behar and Orissa, United Provinces and Assam), or Taluqas in others (Madras and Bombay), under an Indian Revenue officer, called Deputy Magistrate and Deputy Collector in the former, and Taluqdar, or Tehsildar, or Mamlatdar in the latter. There are three or four or more of these subdivisions or Taluqas into which for administrative purposes a district is divided. In subdivisions of exceptional importance, whether by reason of their affluent trade or the existence of an European Settlement, a Member of the Indian Civil Service, and in nine cases out of ten an European member thereof, is deputed to hold charge under the designation of Joint Magistrate or Deputy Magistrate and Deputy Collector. By these subdivisional officers the chain of political authority is extended into the remote villages and hamlets through village officers, whose number in all India is considerably over a million. On a smaller scale all the District administrative departments are represented here; the Revenue administration by the Deputy Collector himself, who has to satisfy himself by direct personal inspection that the revenue work is being properly done, that the revenue of each village is brought to account, that proper village officers are nominated, that the legitimate wants of the people in his charge in respect of local roads, wells, tree plantations and the like, are met, the Magistracy by the Magistrate, the

Work of the Subdivisional Officer, called the Deputy Collector.

Executive Engineer by the Public Works overseer, the Superintendent of Police by the Inspector, the Inspector of Schools by the Assistant Inspector, the Civil Surgeon by the Assistant Surgeon, and sometimes by the Sub-Assistant Surgeon, and lastly, the Judge by the Munsiff. The Officers enumerated here are supreme in their subdivisions as the District officers in their larger area, subject of course to the control of the latter, as they are to that of the divisional or Central provincial authorities. There is no question about the efficiency with which these Indian Officials manage their respective charges; in fact opportunities have sometimes been taken to raise the abler and senior of them to district appointments in which not one hitherto has proved a failure. They are an honest, efficient, willing, faithful, and loyal body of public servants who have done credit to themselves and their education, and to the Government which is daily growing more and more conscious of the desirability of utilising local talents upon political and economical grounds. England, not the bureaucracy, appreciates the need of local talent and influence for purposes of successful administration. Other Officers.

(*d*) *The Indian Civil Service.*

We have so often talked of the Indian Civil Service that it is deemed proper to give an account of who they are, and of what qualifications. They are men who have passed a competitive examination held every year in London and India called the Indian Civil Service examination. The object of this examination is to select the best available men in the Empire to serve in India. As their powers of administration are considerable, pick- The Indian Civil Service.

ed men have to be chosen with the necessary character, ability, breeding and knowledge, and this is best done by a competitive test. The same papers or papers of equal standard of knowledge are to be answered by all, and the answer-papers do not bear the names of the candidates, but only their numbers, so that the examiners cannot, by any chance, even unconsciously, be partial towards any candidate in whose success they may be interested. The selected candidates then appear before a Medical Board who pronounce judgment on their physical fitness to serve in the tropics. Two years are thereafter spent on probation in one of the Universities to make them learn the principles of the constitution of England, Indian laws and languages. They also imbibe, if they have not done so, the public spirit of England with her freedom of speech and action. These examinations are open to all subjects of the empire without distinction of race, colour or creed. There are nearly 1,300 civilians in all India, of whom about 200 are Indians, excluding those appointed to hold posts usually held by civilians, by reason of their meritorious service in subordinate offices. They are, after their years of probation and final examination are over, sent out to various provinces according to the rank they manage to occupy, as a combined result of their open competitive and final examinations, as Assistant Magistrates. While serving in junior capacities they are required to satisfy further tests in the local language of the province, as well as, in criminal and revenue laws. Undoubtedly, the finest and the ablest body of administrators in the world, their emoluments and pensions are on an imperial scale, perhaps more than well-deserved. But India owes a deep debt of gratitude to many of them who have been benefactors of the country inasmuchas in the early history

Method of selection.

Their rank and position in the Services.

of British rule in India they took up the cause of the poor and dumb agricultural millions when nobody cared for or thought of them. There was no public opinion to guide them when their sense of duty to man and the State impelled them to do what will for all times stand out as the monument of England's work in India. While India does not grudge the Civilian the meed of praise due to him, the worst, the severest condemnation of him comes from a redoubtable Civilian himself. Sir Bamfylde Fuller, whose creed, unsympathetic and iron rule some years back threw the whole of Eastern Bengal and Assam into a state of convulsion, delivers himself thus :—

Sir Bamfylde Fuller on the European bureaucracy.

"Young British Officials go out to India most imperfectly equipped for their responsibilities. They learn no law worth the name, a little Indian history, no political economy, and gain a smattering of one Indian vernacular. In regard to other branches of the service matters are still more unsatisfactory. Young men who are to be police officers are sent out with no training whatever, though for the proper discharge of their duties an intimate acquaintance with Indian life and ideas is essential. They land in India in absolute ignorance of the language. So also with forest officers, medical officers, engineers and (still more surprising) educational officers. Nowhere is this state of affairs more objectionable in our body politic than in the judicial department, where, all on a sudden, a member of the Indian Civil Service finds himself translated • from the Joint Magistracy (purely executive service) to a District Judgeship, and placed over the heads of Indian Judges, whose high sense of justice and consummate knowledge of law, have often been the subjects of the highest compliment from the highest Court of appellate jurisdiction, as against

whom the knowledge of law of his judicial superior, the Civilian District Judge is not "worth the name." He however, is allowed to manage with the help of the Bench clerk,—the Peshkar, to whom such a Sahib is a God-send, because the Peshkar becomes the power behind the bench. This judicial officer is also expected to hear certain appeals from the courts of Sub-Judges, —trained lawyers who have great judicial experience. Similarly a Finance Member recruited from the Service proves a veritable blessing because he has not to undergo a course of training in political economy. What is the use of the member of the Indian Education Service, learning the vernaculars of the province to which he has been drafted? To the Services, ignorance is indeed a bliss, and source of praise and promotion."

(e) *The Revenue Authorities.*

Commissioner of Division is the revenue authority over the District Collector.

Excepting in Madras where the head of the District is directly subordinate to the Government, in all other provinces a Commissioner of a Division is the intermediate authority between the Collector and the Government, or the Board of Revenue. A Division is a group of several Districts, usually from four to six, of which the Commissioner has the general superintendence, and in which, he also acts as the Court of Appeal in revenue cases. The Commissioner is always a senior officer of the Indian Civil Service.

First appearance of Commissioners in history.

It was in the year 1829, that the Commissioner first appeared in the administrative history of India, in the old Bengal Presidency which later on, came to be divided into Bengal and the North Western Provinces. The former was re-divided in 1912, into what are now the

Presidency of Bengal, the province of Behar and Orissa, and the latter re-christened in 1902, as the United Provinces of Agra and Oudh. Following in the wake of Bengal, in 1830, the Revenue Commissioner came into being in the Presidency of Bombay, followed in due course for each of the subsequently acquired Provinces of the Punjab, Burma and the Central Provinces by an officer of the same denomination.

He is a man of large experience.

A senior member of the Indian Civil Service and a picked man with long experience of district administration, the Commissioner is expected to, and does, maintain closer personal relations with the officials subordinate to him on the one hand, and the leaders of thought and opinion amongst the people of his division on the other, than is possible for any headquarters authority. His greater experience and more distant range of vision enables him, to assist the Government with more natural and comprehensive view than can be formed by a Collector.

Commissioner is the Court of Appeal in Revenue matters.

As an immediate authority his work is primarily concerned with land revenue administration and connected questions but it is as a Court of Revenue Appeal that he discharges his most important duties. In some provinces, this officer has the power to suspend the collection of, and in others to remit land revenue, and in regard to revenue settlements his functions are mainly of an advisory nature. Subject to certain rules and restrictions, he had the power to sanction grant of loans to landholders and cultivators which, if found to be irrecoverable for no fault of the grantees, may also be remitted by him. In the management of private estates by the Court of Wards, the Commissioner plays a very important part.

Next higher authority in Revenue matters is the Board of Revenue or the Financial Commissioner.

In all the major provinces of India, Bombay being the only exception, provincial fiscal affairs are controlled either by a Board of Revenue or a Financial Commissioner, none but a Civilian being entitled to be a member of the former, or holder of the latter office. The Board in Bengal, United Provinces, Madras, and Behar and Orissa, or the Financial Commissioner in the Punjab and the Central Provinces, is the highest authority in all matters relating to revenue administration. Ever since the establishment of the Board of Revenue in Madras and Bengal towards the end of the 18th century, the Madras Board which consists of two members, have exercised powers in regard to land revenue and revenue settlements and excise, one of them dealing with matters appertaining exclusively to land revenue, agriculture and land records, and the other with salt, excise, customs, income-tax and stamps. But perhaps, that is because revenue affairs in Madras are managed without the intervention of territorial or Divisional Commissioners, while in the United Provinces, Bengal, and Behar and Orissa a Revenue Board, of two in United Provinces, one dealing with land and the other with miscellaneous revenue, of one in Bengal since 1912, and of one in Behar, deals with all fiscal matters of the respective provinces. Here the excise revenue and all questions of settlement are dealt with by the Divisional Commissioners, functions performed by Financial Commissioners in each of the provinces of the Punjab, Burma and the Central Provinces. In revenue matters the territorial Commissioner is subordinate to the Board where there is one, or to the Financial Commissioner where there is none. The ultimate revenue authority in the minor administrations of Baluchistan and the North West Frontier Provinces is designated the Revenue Commissioner.

Madras has no Divisional Commissioner.

Distribution of work.

(f) Board of Revenue and the Financial Commissioner.

Functions of the Board of Revenue or the Financial Commissioner.

We shall now proceed to consider the functions entrusted to the Board of Revenue or the Financial Commissioner as the case may be. In Madras, apart from the subjects enumerated above, the Board acts as a collective body in all matters, (1) of personal conduct affecting officers of the Indian Civil Service, (2) of importance affecting estates under its management as Court of Wards, (3) involving important questions of principle, or regarding which the opinion of the full Board is expressly called for by the Government, and (4) matters referred to the full Board by any member. In the other provinces, the Board with more than one member, hardly ever sit as a collective body though, in the United Provinces, a revenue decree of a lower Court can be amended, varied or reversed only by the Joint Board, and not by the members acting singly. The details of their general functions may differ in different provinces, but "the principal duties of Boards of Revenue and Financial Commissioners are in connection with such questions of land revenue administration as by law, rule, or practice have to be referred to them by subordinate authorities, *e.g.*, settlement, the collection of revenue and local rates, suspensions and remissions, the maintenance of land-records, the partition of permanently settled estates, the acquisition of land for public purposes, the grant of loans to landlords, and agriculturists, and to co-operative Credit Societies, and the work of the agricultural and Veterinary departments," also, the sources of miscellaneous revenue, such as excise, salt, stamps, income tax, and customs fall within their charge. The first department in Madras is controlled by the Board of Revenue, whereas,

opium is entrusted to the Bengal Board, working in subordination to the Government of Bengal, and ultimately to the Government of India, for opium is a Central Revenue. The Board of Revenue, and in the term I have included the Financial Commissioners throughout, is responsible for the unity, co-ordination, and efficiency of the administration of revenue, and they would initiate, or be consulted on, any new departure, in revenue policy or method. Equally important is their function connected with the appellate Jurisdiction, they have in all revenue matters over all revenue Courts whether of the Collector or of the Divisional Commissioner, who makes all his reports to the Board through whom he receives instructions. The separate functions of the Board and the Commissioners are so well defined that they scarcely overstep their respective provinces. Apart from cases of importance and intricacy, the Commissioners have a liberty of action, in respect of every one of which the Board maintains a general controlling superintendence, having it in their power to deal with them as they please. The fundamental principle moving the entire machinery of administration, is the division of labour connected with the working of its branches among various grades and classes of officers, according to the nature of their charges, under the supervision of the provincial head, and subject to the general control of the supreme authority, the Governor-General in Council.

(*g*) *Different Grades of Local Administrations.*

The popular notion that a Presidency Governor's administration is more independent of or less interfered with by the Government of India than that of a provincial Governor, or that the position and administration of

Difference in the dignity of the Governors *inter se*.

the latter is more autonomous than that of a Chief Commissioner is not erroneous. It is only natural, or else why should there be this marked difference in their emoluments and dignity. From the point of view of the standard of salary there is a difference as from that of dignity of the Governors *inter se*. The Governors of Bengal, Madras, Bombay and the United Provinces alone are entitled to the highest emoluments, of Rupees one hundred and twenty-eight thousand each annually, while those of the Punjab, and Behar and Orissa, are qualified for Rupees one hundred thousand only as against the annual seventy-two thousand Rupees of the Governor of the Central Provinces, and Rupees sixty-two thousand only of the Governor of Assam. The Chief Commissioner's salaries of Rupees five thousand five hundred for the North West Frontier Province, Rupees four thousand for Ajmere, of Rupees four thousand for Coorg, of Rupees three thousand for Port Blair and the Andamans, of Rupees four thousand for British Baluchistan and of Rupees four thousand for Delhi are said to be fixed on a scale suited to the relative importance of the respective charges. The salaries of the Chief Commissioners have no statutory sanction behind them and may be enlarged or modified according as it may appear fit to the Viceroy and Governor-General whose agents they are. There is however, hardly any difference in their powers of Civil administration, whether of the Presidency Governors as compared to those of the Provincial Governors, or of the Provincial Governors *inter se*, or of the Governors against the powers of the Chief Commissioners,—even though the former always have enjoyed and still do enjoy the privilege of communicating with the Home Government, that is to say, the India Office, direct in the event of diff-

erence of opinion with the Government of India. This is a privilege which is not shared by the Governors of Provinces and still less by the Chief Commissioners, of whom the Chief Commissioner of Coorg, from the constitutional point of view ranks as the foremost for, it is to him that the provisions of section 77 (2) has been extended, a privilege and constitutional importance hitherto denied to heads of administrations of his rank. The Governor-General has the power under section 77 (1) to constitute with His Majesty's sanction previously signified by the Secretary of State in Council, a Lieutenant-Governorship in Legislative Council of a province from a specified date and to define the limits of the province for which the Lieutenant-Governor in Legislative Council is to exercise legislative powers. Subsection (2) of the same section authorises the Governor-General to extend the provisions of (1) to Chief Commissioner when and whenever constituted. Advantage therefore of the statutory power has been taken in the case of Coorg which started upon a career of constitutional government from the 28th of January, 1924. But to return to our topic. The real difference that did exist at one time lay in the fact that the head of the Government in Madras and Bombay was charged in addition to his Civil administrative responsibilities, with the administration and control of the army that was or might be located there. This special privilege has long since ceased to exist as we shall see later on, but it is no overstatement of a fact to say, that one after another the Governors have all been invested with all the authority in Civil business which at one time was retained by the Supreme Government, so that, there is now no difference in the administrative authority and financial independence of one Governor-in-Council from the other.

(*h*) *General Principles governing the Relation of the two Governments—Supreme and Local.*

Relation prescribed by official despatch.

The general principles governing the relation of the Government of India with the subordinate Provincial Governments are to be found in a despatch addressed by the Court of Directors to the Government of India immediately after the passing of the Charter Act of 1833. The despatch to which I allude was dated the 10th of December 1834. We are verging on to the close of a century after that, and the principles which were laid down then when the Government in India was emerging from a chaotic state and was taking shape are, in their essentials, valid and apply with equal force in our own day such as has been pointed to you in section (*b*) Part VIII, of Chapter II, pp. 153 *et seq*. There have, no doubt, been slight variations. They are negligible in their import and signification.

AGENTS OF THE GOVERNMENT.

CHAPTER IV.

Administration of Justice.

Part I.

(*a*) *The Civil Justice.*

We shall now turn to how, where and by whom justice is administered in India, and examine the development of the judicial system that obtains there. It is a most necessary thing for a people to have a methodical and well-arranged system for the administration of justice. What are all the laws in the world worth, if they are not respected and obeyed? What is administration worth, if it does not provide for means by which laws may be enforced or disobedience checked?

Bulwark of British rule is the administration of justice.

The improvement that has taken place in the administration of Civil Justice is a remarkable feature of British rule in India, and may well bear comparison with the system and efficiency that exist anywhere in the world. Laws have been simplified and codified and it is a settled rule, never departed from, except in rare instances in very backward provinces, to appoint to judicial offices persons of high education and mental culture and of unblemished character. A Judicial officer in India moreover is well versed in Law, and has before his appointment received a legal training which enables him to discharge his judicial duties satisfactorily. Indian Judges and Magistrates are in a large majority, so much so that, in nearly 90 per cent. of the causes before the

Qualifications and training of members of the Judiciary

Courts, our own men are our judges. This is a feature of British rule which has been greatly appreciated, for who can appreciate her laws, her customs, her habits and her defects better than her own people? Some of the best men of the country have been attracted to the judicial services who, in later life, have risen to eminence in Indian public or social life

(*b*) *Early Judicial Authority.*

Grant of certain judicial authorities to the Company by the English Crown.

In the earliest Charters granted by the Crown, power was given to the Company in a general and indefinite way to administer justice to those who should live under them. Certain territorial acquisitions had in the meantime been made by the Company. Though only in the position of tenants of the Moghul Government and owing allegiance to them, they were allowed to be tried by themselves in accordance with their own laws. Consequently, it became necessary that the British Crown should grant them certain legislative and judicial authorities to be exercised over their English servants, and such Indian settlers as came under their protection. From time to time, they were authorised to make, ordain, and constitute such laws, constitutions, orders, etc., as would seem necessary and convenient for the good government of the Company, notably in 1601 by the Charter of Elizabeth, in 1609 by that of James I, in 1661 by one from Charles II, in 1698 by the Charter of William III, vesting the Company with the government of all their forts, factories and plantations, the sovereign power residing in the Crown being left undisturbed. Another very important Charter was that of George I, of 1726, which established the Mayor's Courts and invested the Governors and Councillors of the three Presidencies

Legislative authority also.

of Fort William, Fort St. George and Bombay with powers to make, constitute and ordain bye-laws, rules, etc., for good government, and to impose reasonable pains and penalties upon all persons offending against the same or any of them, and finally the Charter of 1753. Thus was Charles II's Charter of 1661, followed soon after in 1683, by a second Charter in which the King authorised the establishment of a Court of Judicature at such places as the Company might appoint, to consist of one person learned in the Civil laws and two merchants, all to be appointed by the Company. In 1726 the existing Courts, whatever they might have been, were superseded and the Crown by Letters Patent established Mayor's Courts at Madras, Bombay, and Fort William (Calcutta), each consisting of a Mayor and nine Aldermen, seven of whom with the Mayor were required to be natural-born British subjects. They were declared to be Courts of Record and were empowered to try, hear and determine all Civil suits, actions and pleas between party and party. The same Letters Patent constituted each Local Government consisting of a Governor in Council, into a Government Court of Record to which appeals from the decisions of the Mayor's Court might be made. The Government Court was further constituted a Court of *Oyer* and *Terminer*, and was authorised and required to hold quarter Sessions for the trial of all offences except treason. The Mayor's Courts were empowered to grant probates of wills and letters of administration to the estate and effects of intestates.

Court of Judicature established.

Mayor's Courts established in the three Presidency towns by Letters Patent.

Government Court a Court of *Oyer* and *Terminer*.

(c) *Courts of Requests.*

A Charter granted in 1753 made some amendments of the Mayor's Courts and established Courts of Re-

quests at Madras, Bombay and Calcutta for the determination of suits where the debt or matter in dispute should not exceed five pagodas. The chief alteration was that, suits between one Indian and another were directed not to be entertained by the Mayor's Courts unless by consent of the parties.

Courts of Requests in the Presidency towns.

(d) *The Grant of the Diwani.*

After the Battle of Plassey in 1757, the English became the virtual sovereign of Bengal though the Emperor of Delhi still continued to be the nominal sovereign. When Clive was sent out to India in 1765 to organise the affairs of the Company in Bengal, he decided to avail himself of the outstanding sovereignty of the Moghul Emperor, and succeeded in obtaining from him the grant of the Diwani of Bengal, Behar and Orissa on the 12th of August of the same year. The Diwani involved the collection of revenues and the administration of Civil Justice both of which are generally regarded as symbolical of the acquisition of sovereignty by the English. It vested in the Company's Government the semblance of legitimate authority over the people of the country and, together with the actual military power of the English, it was deemed sufficient for the actual government of the three presidencies. The Nizamut or administration of Criminal Justice was left with the Nawab of Murshidabad with respect to the European servants of the Company whom it was Clive's object firmly to restrain. In this task he had to surmount great difficulties. The Charter of 1753 empowered the Mayor's Court at Calcutta to try all Civil suits between Europeans, and it constituted the President and Council a Court of Record to hear appeals from Mayors, and made them Justices of the

Grant of the Diwani of Bengal, Behar and Orissa by the Moghul Emperor.

Criminal justice in the Nawab Nazim.

Peace to hold quarter Sessions, and Commissioners of *Oyer* and *Terminer*, and general gaol delivery for the trying and punishing of all offences, high treason excepted, committed within the limits of Calcutta and its dependent factories. The Company were thus deprived of all powers of judicial coercion with regard to Europeans over the wide extent of territory of which they now acted as the sovereign. They possessed indeed the power of suing, or prosecuting in the Courts of Westminster; but under the necessity of having to bring evidence from India. This was a privilege more nominal than real and was hardly ever taken advantage of. And in the event of a Governor or Judge exceeding the scanty and inadequate power which he possessed, he was made liable in an action in the same Courts.

Company put on terms.

(e) *Reforms of Lord Clive and Warren Hastings.*

Clive's initiative.

During the twenty months that Clive ruled Bengal he effected considerable reforms. He prohibited private trade by the servants of the Company. By obtaining the grant of the Diwani also Clive placed the Government of Bengal on a new footing which helped to establish its relations with the people of the country on a basis of Civil responsibility.

Warren Hastings put vigour into judicial administration.

With the transfer of Warren Hastings from Madras to Bengal in 1772, Civil Justice assumed a new aspect in that, without any loss of time he infused life into its administration in Bengal by establishing a Sudder Diwani Adalut or Chief Civil Court, exercising appellate civil jurisdiction over the Mofussil Courts in cases where the amount in dispute exceeded Rs. 500, Diwani Adaluts in the Mofussil and a Committee of Circuit, consisting of the Governor and four Members of the Council, while

taking simultaneous steps to bring about the abolition of the office of Naib Diwan. In the meantime the excesses of the Company's servants had reached the ears of the most prominent and powerful men in England. Vast riches acquired by them, aroused in the minds of the most scrupulous and conscientious among them strong suspicions about their honesty. Burke was determined to bring the authority of Parliament into action, to restrain the excesses of his countrymen abroad, and to secure, at any rate, some measure of protection and good government to the territories which they had acquired. Chiefly as a result of the labours of Burke, Fox and Sheridan, the House of Commons appointed a Committee of Secrecy to enquire and report on the proceedings of the Company in India. And it was a damaging report which passed scathing criticism on the rule of the Company as a most defective administration which must immediately be remedied. Even the misdeeds of the great Lord Clive were not given the shelter for which he and his friends had been zealously working for months. As a result of the report a parliamentary inquiry was held into his conduct. He was charged with having practised deceit on Omichand in 1757. He admitted but defended the charge and endeavoured to justify acceptance of enormous sums as bribe from Mir Jafar. They were as nothing compared to what he might have had; "Mr. Chairman," he declared brazen-facedly, "at this moment I stand astonished at my own moderation." In condemnation of his conduct Burgoyne moved resolution after resolution which a great English historian appreciates "he defended with force and dignity." Eventually the House voted that he had through the power entrusted to him possessed himself of £234,000, but refused to vote that he had in any way abused his power, and instead voted that "he did at the same time render great and merito-

Dishonesty of Company's servants.

Report of the Secret Committee upon their conduct.

Clive's deceit on Omichand.

Clive admits having taken large bribes

His conduct condoned.

rious services to this country." The King fully acknowledged Clive's services, but thought him guilty of "rapine" and disapproved of his virtual acquittal.

The Reconstruction Act brought in the Governor-General with four Councillors.

In 1773 therefore, the celebrated Regulating Act was passed, which committed the Government of Bengal to the Governor-General, with four councillors designated the Governor-General in Council, and placed them at the head of the two Presidency Governments of Madras and Bombay. The Act moreover, gave the country a Supreme Court for judicial administration, directly under the Crown of England, and empowered the Governor-General in Council, otherwise called the Supreme Council, to issue with the approval of the Supreme Court, rules, regulations and ordinances. What the Regulating Act proposed to do, the Royal Charter of 1774, accomplished and prescribed the Court to be presided over by a Chief Justice and three Judges from among barristers of not less than five years' standing, appointed by the Crown. It was constituted a Court of Equity, a Court of *Oyer* and *Terminer* and Jail Delivery, an Ecclesiastical and an Admiralty Court necessarily having jurisdiction over all civil, criminal, admiralty and ecclesiastical matters.

Conflict between the Executive and the Judiciary.

Thus you will find that two independent and rival powers came to be established in India, one by the side of the other. The Company desired the establishment of a judicial organisation which, from the highest to the lowest, should be under their own control while on the other hand, the dominant party in England was determined to separate entirely the judicial from the executive branch of the administration, and to reserve the former exclusively to the Crown. Thus was the Supreme Court from the beginning antagonistic to the Supreme Council, the court drawing its authority directly from the Crown and the Council from the Company. The Regulating

Act was passed with the best of intentions and motives. Nevertheless its actual achievement fell short of its purpose for reasons which we need not consider here beyond that, there was great confusion in the Supreme Council, the majority of whom were hostile to the Governor-General, against whom Maharaja Nun Coomer laid certain definite allegations of having taken heavy bribes to dismiss Mahomed Reza Khan from the Diwanship of Murshidabad, and of having sold certain public offices. The charges were read openly in the Council Chamber, at a meeting, in the presence of Hastings, followed by a communication from the Maharaja requesting to be heard in support of the allegations and offering to be examined. The Council desired to hear him, but the Governor-General refused to be confronted with his accuser, and abruptly dissolved the meeting, whereupon, the majority of them decided to go on with the proceedings of the Council, and hear the Maharaja. With internal dissensions and internecine warfare of this character all government was practically at an end, and public affairs were at a deadlock.

The Council and the Governor-General.

Part II.

Further Development.

(a) *The Supreme Court.*

About this time, the many avocations of the Governor-General and Council compelled them to discontinue the practice of sitting in the Sudder Diwan's Adalut to decide cases and appeals, and a Judge unconnected with the Council or the Executive was accordingly on the 18th of October, 1780, appointed to preside over that Court.

Establishment of the Supreme Court.

The person selected by Warren Hastings for this high office was no other than his old friend Sir Elijah Impey, the Chief Justice of the Supreme Court, and his acceptance of it was one of the charges from which that much favoured but too dishonourable a judge triumphantly emerged. Macaulay speaking of Hastings' appointment of Impey to the Sudder Diwani Adalut, as an expedient to avoid further quarrel with the Supreme Court says that, it was "neither more nor less than a bribe," and concludes *that, "the bargain was struck; Bengal was saved; an* appeal to force was averted; and the Chief Justice was rich, quiet and infamous." Rich, because the office carried with it a salary of Rs. 5,000 a month, (I am taking from Impey's letter to Lord Thurlow in April, 1781,) in addition to his remuneration as Chief Justice of the Supreme Court. Impey's biographer however, (his own son) is of opinion that, he "declined appropriating to himself any part of the salary annexed to the office of Judge of the Sudder Diwani Adalut until the pleasure of the Lord Chancellor should be known." This can be easily controverted, for the fact is, that Impey regularly drew the salary for two years as Judge of the Sudder Diwani Adalut. Whether he refunded the aggregate amount on his appointment not being approved by the authorities at home is a matter of doubt, and from his entire silence on the point, one would be disposed to answer the question in the negative. Would Impey, whose subsequent conduct as a Judge belies the theory of his having ever had a sense of honour or scrupulous instinct have acted without any salary at all?

Elijah Impey suborned.

His son's special pleading untrustworthy.

But apart from the question whether Impey was justified in accepting an office to which a salary was attached, there can be no doubt that he did full justice to it. In the course of the eight months between the end

of October, 1780, and July, 1781, he prepared a set of judicial regulations, which formed a new code of procedure. It was founded on the earlier regulations and included many new ones which he proposed for adoption. It was a consolidation of regulations which did Sir Elijah Impey great credit. He was thus the first Codifier in India,—a fact which should testify much to his honour. Impey's Code is Regulation VI of 1781. It consists of ninety-five sections, which fill thirty-eight folio pages, and repeals all other regulations then in force relating to Civil Procedure. It is not a work of genius like "Macaulay's Code," but it is none the less a creditable performance, written in vigorous, manly English, and is well arranged. It gives the effect of some regulations which were passed in 1780 and the early part of 1781, by which eighteen courts were established, in fourteen of which was the Judge independent of the revenue authorities. In four the Collector was to be the judge but in distinct capacities, and, as Civil Judge, he was wholly independent of the Board of Revenue, and subject only to the authority of the Governor-General in Council and of the Judge of the Sadar Diwani Adalut. The Regulation defined the local jurisdiction of the courts and their jurisdiction over causes. It provided for the limitation of suits, giving in most cases a term of twelve years. It laid down a system of procedure which contained a greatly simplified version of the old English special pleading. It provided for the mode of trial, and contained regulations as to arbitrations and appeals, besides many other matters. An appeal was allowed from the Provincial Diwani Adalut, in cases where the amount in dispute exceeded Rs. 1,000 to the Sadar Diwani Adalut. The Regulation remained in force for six years, when it was repealed, but re-enacted, with amendments and additions, by Regulation VIII of 1787.

Impey, the first Codifier.

His Regulations.

(b) *Fouzdari Courts abolished.*

Fouzdari Courts done away with.

Under orders of the 6th of April, 1781, the Fouzdars instituted in 1775 were abolished, and the Police jurisdiction was transferred to the Judges of the Civil Courts, or, in some cases, to the Zemindars, by a special permission of the Governor-General in Council. The Judges, however, were not empowered to punish, but merely to apprehend offenders, whom they were at once to forward to the Darogah of the nearest Fouzdari Adalut, and the Zemindars were to exercise a concurrent jurisdiction for the apprehension of robbers and disturbers of the public peace. As Magistrates, they were also empowered to hear and determine complaints for petty offences, such as the case of abusive language, or calumny, commission of inconsiderable assault, or affrays, and to punish the same, when proved, by corporal punishment, not exceeding fifteen *rattans*, or imprisonment not exceeding fifteen days. This was the first direct exercise of criminal authority and jurisdiction by European functionaries in the Moffusil. A separate department was established at the Presidency, under the immediate control of the Governor-General, to receive reports and returns of the proceedings of the Fouzdari Courts, and lists of prisoners apprehended and convicted by the authorities in the provinces. To arrange these records and to maintain a check on all persons entrusted with the administration of criminal justice, an officer was appointed on a salary of 1,000 *sicca* rupees a month, to act under the direction of the Governor-General, with the title of Remembrancer of Criminal Courts. The ultimate decision still rested with the Naib Nazim at Murshidabad. In the same year the Provincial Councils were dissolved, and a Committee of Revenue established, who were entrusted with the charge and administration of all revenue matters,

Courts presided over by Europeans.

Commencement of the Revenue Committee.

and were vested with the powers of the Provincial Councils They were placed under the control of the Governor-General and Council.

Judge of the Sadar Diwani Adalut.

The arrangement made for the appointment of a separate Judge to the Sadar Diwani Adalut not having found favour with the Home authorities, and in compliance with the orders sent out by the Court of Directors, the Governor-General and Council resumed charge of the Court on the 15th of November, 1782. In the meantime the Regulating Act, which had given rise to such terrible dissensions between the two supreme powers in the land, had been amended and explained by the Statute 21 Geo. III, c. 70. By section 21 of the Amending Act, the Sadar Diwani Adalut had been constituted a Court of Record, and had thus become in reality a King's Court, although it was generally looked upon as the principal court of the Honourable East India Company. The Statute declared the judgments of the Governor-General and Council in appeal from the Provincial Courts in civil cases to be final, except in civil suits, where the amount in dispute was £5,000 and upwards, when an appeal lay to the King in Council. Under the authority given to His Majesty in Council by 3 and 4 Wm. IV, c. 41, s. 24, an order was made on the 10th of April, fixing Rs. 10,000 as the lowest sum for which an appeal might be preferred to the Privy Council from any Court in India as a matter of right. The limit still remains at this amount. There is, however, no right of appeal in criminal cases. By the 23rd section of the same Statute, the Governor-General and Council were empowered to frame regulations for the Provincial Courts, —an enactment which, as observed by Sir James Stephen, was the legal foundation of the body of regulations of which the Permanent Settlement forms the most important and conspicuous limb.

(c) *Dissatisfaction in England.*

Feeling in England *re* Company's administration.

The judicial system, as it stood towards the close of 1781, was allowed to remain intact for the next four years. At any rate no material alteration seems to have taken place in it. But a change was wrought in the region of politics and a great change it certainly was. A terrible hue and cry having been raised in England against the East India Company on account of grievous oppressions of the people of India, the Home Government could no longer abstain from interfering in their affairs. Fox was then the dominating personality in the Coalition Ministry, if not actually at the head of it, and the nation with one voice called on him to legislate for India. In response to the national call, that famous statesman, actuated as he was by the purest and most benevolent of motives, brought forward his celebrated India Bill in November, 1783. With all its merits, it was of a drastic nature, pure and simple: it aimed at the very existence of the Company. The King naturally took alarm, apprehending that it would take the diadem from his head and place it on the brows of Fox; and, therefore, although the Bill passed the Lower House by a triumphant majority, it was thrown out in the House of Lords, said to be at the behest of the King himself. It was largely prepared by Burke, one part affecting the constitution of the Company, the other its administration in India. The first vested the management of the territories, revenue, and commerce of the Company in seven commissioners, named in the bill, for four years, with power to remove all officers of the Company. Thereafter the power of nomination, appointment and dismissal of all, including the commissioners, was to be transferred to and vest in the Crown. Pitt and

Fox's India Bill.

Grenville made much political capital of it. Pitt characterised the political effect of the bill as " a new and enormous influence " the object of which was to vest " all the patronage of the East " in the nominees of his opponent. He found an echo in Grenville who exclaimed that " the treasures of India like a flood would sweep away our liberties." Fox was accused of having laid the foundation of making himself the " King of Bengal," and a caricature represented him as Carlo Khan entering Leadenhall Street on an elephant with a face resembling that of North and led by Burke. All this, of course, was party exaggeration, but it will be seen that the political opponents of Fox and Burke, who were actuated by the noblest motive, put no limit upon misrepresentation or exaggeration and that, the friends and flunkies of the Company were prepared to go to any length. The King had already been waiting for an opportunity to get rid of the coalition ministry of North and Fox. Seizing hold of the opportunitty, Lord Chancellor Thurlow (who is known in English history as a ' brute ' and whom Sir William Jones called a "beast"), whose tenure of office ended with the downfall of the Shelburn ministry in April, only to recommence under Pitt eight months later in December, 1783, and Temple succeeded in arousing the King's suspicion that he was going to be deprived of his powers. This led the King to authorise them to make it known that " whoever voted for the Bill would be regarded by him as an enemy." The unconstitutional move on the part of the King was successful and the Lords rejected the Bill.

Fox's Bill thrown out.

King supports the Company.

Thus was the Bill which was a genuine attempt to benefit the people of India was thwarted by the unconstitutional interference of the King, at once the creature and patron of the Company, but Fox was determined to vindicate the authority of the House where he had a

substantial majority which did not, for obvious reasons daunt Pitt when he brought in his Bill on the 14th of January, 1784. The Bill proposed to place the political concerns of the Company under a board of control in England, to be appointed by the Crown, and to leave to the Company its commerce and patronage. Fox was unsparing in his attack on the Bill and he had it thrown out by the House. A fierce struggle then ensued, a struggle which has been immortalised by Samuel Johnson as one "between George the Third's sceptre and Mr. Fox's tongue." Fox left no means unexplored to force the ministers to resign. "He put forth," records an estimable historian, "all his wonderful powers of debate and attacked Pitt with great bitterness; resolutions addressed to the Crown and hostile to the ministers were adopted." He carried the war further when he got the House to postpone supplies, and even the Mutiny Act, the last weapon according to Prof. Dicey, to paralyse the government. Through it all, Pitt emerged with perfect self-control and considerable fortitude, mainly because he knew and he felt that he had all the influence and encouragement from royal quarters at his back. Dr. Hunt records further, that "a body of independent members proposed a compromise, and the King reluctantly assented. Fox declared himself willing to work with Pitt, but, determined to assert the authority of the House, insisted that ministers should resign before arrangements could be discussed. To this Pitt haughtily refused to assent. George upheld him; during the late administration he would not create any peers; on Pitt's recommendation he created four, and almost daily sent his young minister encouraging little notes. The Lords were on his side; they condemned as unconstitutional a resolution of the Commons suspending certain statutory powers of the treasury, which was adopted in

Provisions of Pitt's Bill.

Rebellious attitude of Fox.

Lords in support of the King's iniquity.

order to embarrass the ministry, and sent an address to the King assuring him of their support in the just exercise of the prerogative." This gives us an adequate idea of how every influence and every vote, from the King downwards had been bargained for by a powerful corporation, the wealthiest in English history.

Pitt's Bill.

In the following year (1784), William Pitt, "the boy Minister," as he was called in view of his tender age, who had been placed at the head of the new Ministry, brought forward a Bill on the same subject. The two bills, of Fox and of Pitt, were practically identical in their outlook; at any rate there was no essential difference between the two so as to justify the marked difference in their reception. Pitt's bill passed through both Houses, in the upper without opposition. The Bill however, laid the axe at the root of the power of the Company by substituting the control of a Minister of the Crown, assisted by a Board, termed the Board of Control. While, therefore, the Company continued to exercise a nominal executive power, every act was to become known to, and be regulated by, the new Board. The authority of the Court of Proprietors was confined within narrow bounds; and three only out of the twenty-four members who composed the Court of Directors, were admitted to the privilege of association with the Board in political affairs.

Board over the Company's executive.

Hastings makes room for Cornwallis.

Warren Hastings was at the head of the Company's affairs till 1785. He was succeeded by the Marquis of Cornwallis who, in the following year proceeded to India as Governor-General, carrying with him detailed instructions from the Court of Directors, which were dictated by a wise and considerate spirit, stating "that they had been actuated by the necessity of accommodating their views and interests to the subsisting manners and usages of the people, rather than by any abstract theories

drawn from other countries, or applicable to a different state of things.''

(*d*) *Constitution of the Courts—Civil and Criminal.*

Constitution of the Courts.

The following is the constitution of the Courts for the administration of Civil and Criminal Justice, as remodelled by the Bengal Code of Regulations: (*i*) The Sadar Diwani Adalut and the Sadar Nizamut Adalut, which may be regarded as a single court having a civil and a criminal side. The Judges of this Court were the Governor-General and the Members of Council, with the addition, on the criminal side, of the Head Kazi of Bengal, Behar and Orissa, and two Muftis. (*ii*) Four Provincial Courts of Appeal and Circuit, one for each of the Divisions of Calcutta, Dacca, Murshidabad and Patna. Each of these Courts was presided over by three Judges. (*iii*) Twenty-three Zillah and three City Courts, each presided over by a single Judge, who also held the office of Magistrate for the Zillah or city under his jurisdiction, in which latter capacity he was further vested with the superintendance and control of the police. These three classes of Courts were European Courts, that is to say, they were presided over by European Officers. The fourth and last class of Courts were the only Indian Courts, whose Commissioners, as the officers holding such Courts were called, were chosen from amongst the principal proprietors of land, farmers, tehsildars, under-farmers, merchants, traders, shopkeepers, altamghadars, jagirdars and kazis. Thus the remark made by some impartial European writers,—that the Company's services were closed by Lord Cornwallis to all children of the

The three classes of European Courts.

soil, except in the most inferior positions,—is quite true and correct.

(e) *Assertion of Authority by the Supreme Court.*

Supreme Court gets opportunity to assert its authority.

With the Executive Council thus hopelessly divided, the Supreme Court first asserted its own authority, newly acquired. To the astonishment of the people an Executive Government armed with despotic power was baffled, and eventually vanquished by a Court of Justice. Nun Coomar was supported by the entire force of the executive and doubtless, fancied himself secure. But he was suddenly arrested and committed to the common jail on a charge of forgery. The stoutest protestations of the Council was of no avail against the verdict of jury of the Supreme Court to convict Nun Coomar who was sentenced to be hanged by Sir Elijah Impey, the first Chief Justice and a friend of Warren Hastings. The story of this judicial murder is well known, and has been sought to be defended or justified by no less a person than Sir James Fitzjames Stephen, sometime Law Member of the Government of India and later, a judge of the English High Court, the hollowness of whose special pleading in its turn, has been mercilessly exposed by Mr. Henry Beveridge, at one time a Judge of the High Court of Calcutta, in his "Trial of Nunda Coomer," leaving the whole subject to be reviewed with remarkable legal acumen and historical precision in his introduction to a reprint of the report of the infamous trial by an advocate of the High Court of great ability and learning, the late Mr. P. Mitter. To those of you who are historically disposed, I would commend these works for a better appreciation of the appalling condition into which the government of the country under the Company, and the Supreme

Impey prostituted his powers as the perpetrator of a judicial murder.

Balance of Political power re-adjusted.

Court under an able but dishonest chief had degenerated. Nun Coomar's execution however, made it clear to his countrymen that possession of political power, and the support of the executive were no longer to be deemed protection against this new and powerful tribunal. In fact, in no country were two powers ever placed side by side, so utterly divergent, irreconcilable and independent of each other.

(*f*) *The High-handedness of the Court.*

Arbitrariness of the Supreme Court and the conflict between the Judges and the Governor-General.

The high-handedness of the Court was unspeakable and its proceedings were arbitrary to a degree,—enough to defy all dignity of decency. Its mad career however, was not to continue long, for seeing the unseemly dissensions that had arisen between the Judges and the Governor-General and his Council and, having regard to the disquietude in the minds of the inhabitants, who were subject to the Company's Government, brought on by fears and apprehensions, of what incalculable mischief might possibly ensue from the misunderstandings and discontents, if a seasonable and suitable remedy were not provided, it was thought prudent to pass the Settlement Act. It was simply an amended form of the Regulating Act of 1773. This Act, the Settlement Act of 1781, limited the jurisdiction of the Supreme Court so that, it should have no jurisdiction over revenue affairs nor over the regulations of the Governor-General. The other limitations imposed upon the jurisdiction of the Supreme Court were that, mere possession of any interest in, or authority over lands or rents in Bengal, Behar and Orissa would not make the possessor subject to its jurisdiction, that except in actions for wrongs or trespasses,

or by express agreement of the parties, it should exercise no jurisdiction over employees of the Company, or of the Governor-General, or of any British-born subject, nor over a person holding judicial office, or any person acting under some judicial order, nor over the Governor-General and Members of his Council. But the more wholesome provisions were those, whereby the Judges were enjoined thenceforward to decide causes conformably to Hindu or Mahomedan law, according as the parties were subject to; recognition moreover, was extended to the Provincial Courts and the Indian Legislature. The effect was direct and immediate, for the Supreme Court was thereby deprived of its power to veto Acts and Regulations passed by the Supreme Council, whose proceedings could no longer be considered by any light other than whether they are within or without constitutional limitations.

Recognition of Hindu and Mahomedan law by the Supreme Court.

Sixty-five years ago, there were two superior courts sitting in each Presidency town of Calcutta, Madras and Bombay. They were the Supreme Court finally established in Calcutta in 1781, in Madras in 1801, and in Bombay in 1823, all having similar powers and subject to similar restrictions, and the Sadar Diyani Adault to function as the Court of Appeal from the Mofussil Adaluts, to superintend their conduct, to revise their proceedings, to remedy their defects and to frame such new regulations and checks as were found necessary. The Supreme Court which as we have seen owed its origin to the Regulating Act of 1773, though finally settled and established in 1781, by the Settlement Act, and which maintained its vitality for full eighty years, till the advent of the High Courts under the Indian High Courts Act of 1861, had no appellate powers, but exercised original jurisdiction over residents in the Presi-

Supreme Court for the Presidency towns and Sadar Diwani Adalut to hear appeals from Mofussil Courts.

Inauguration of the High Courts in 1861.

dency towns, and in certain cases, over European British subjects outside those limits. It had full power and authority to exercise and perform all Civil, Criminal, Admiralty, and Ecclesiastical jurisdiction; and to frame and establish such rules of practice, and of process of the Court, and to do such other things as should be found necessary for the proper administration of justice and the due execution of all or any of the powers granted by the Charter establishing the Court. It was a Court of Record, of *Oyer* and *Terminer*, and Gaol Delivery, in and for the town of Calcutta and Factory of Fort William in Bengal, and the limits thereof, and the factories subordinate thereto. The Supreme Court was constituted a Court of Equity, like the Court of Chancery in England, and was empowered to exercise testamentary and intestate and ecclesiastical jurisdiction as well. Soon after the establishment of the Supreme Court there arose those unfortunate contentions which I have already noticed between the Governor-General in Council and the Judges of the Supreme Court at Calcutta, which, whoever might have been in the wrong, were discreditable to both parties. The unanimity, which existed however, between the two sets of disputants in every measure throughout these unhappy disagreements, proves that the difference arose, not from personal feelings or from any desire of undue extension of their several powers, but from a defect in the law, arising from the obscurity in the statute, with reference to which the Judges of the Supreme Court at Calcutta in their letter to the Government dated the 16th of October, 1830, observed "that the Legislature had passed the Act of the 13th Geo. III, c. 63, without fully investigating what it was that they were legislating about; and that if the Act did not do any more than was meant, it seemed at least to have said

High Court inherits the power, authority and jurisdiction of the late Courts.

Struggle between the Supreme Court and the Governor-General in Council.

more than was well-understood." Accordingly the Legislature at once intervened and by an Act of 21st Geo. III, explained the anomaly and declared among other things, that the Supreme Court had no jurisdiction over the Governor-General in Council for any act or order made or done by them in their public capacity and that, the plea of the order of the Governor-General in Council in writing, to meet a charge of misfeasance or malfeasance, was a complete defence. The Supreme Courts, as has been pointed out, were invested with five distinct jurisdictions—Civil, Criminal, Equity, Ecclesiastical, and Admiralty—and their local jurisdiction extended over the entire presidency town, as for instance, in the case of Calcutta over the whole town, which for this purpose was bounded on the west by the river Hughli, and on the other side by what is called the Mahratta Ditch. This jurisdiction is what is familiarly known as the ordinary original jurisdiction, which however, with the growth of the city has since been extended. Within these limits the Court exercised all its jurisdictions, Civil and Criminal, over all persons residing within them, save and except its ecclesiastical jurisdiction, which was not meant to apply either to Hindus or to Mahomedans beyond the grant of probates of their Wills or Letters of Administration to their estates. We shall examine the criminal jurisdiction of the Supreme Court in another part of this chapter.

Supreme Court deprived of its jurisdiction over Governor-General in Council in matters done in public capacity.

The system of the administration of justice introduced by the East India Company, and which continues to exist in India is based upon the Regulations passed by the respective Governments of the Presidencies of Bengal, Madras, and Bombay in the years 1739, 1802, and 1827, the plan introduced into Bengal being the foundation of the organisations in the sister Presidencies,

Regulations of 1739, 1802, and 1827.

with but very slight modifications according to local needs.

Revenue authority separated from Judicial authority.

The Regulations of 1780 completed the separation of Revenue from Judicial authority, and while enacting the establishment of District Courts of Diwani Adaluts, within the jurisdiction of the six Provincial Councils they left their jurisdiction over Revenue matters undisturbed. This arrangement however, was the precursor of a fierce struggle between the Civil and Revenue Courts whose rival claims to exercise jurisdiction were destined to a prolonged antagonism, attended from time to time with varying degree of success for one or the other, so that, within a few months of the separation of their functions, the Governor-General was compelled to observe in a minute that, "the institution of the new Courts of Diwani Adalut has already given occasion to very troublesome and alarming competition between them and the Provincial Councils."

Part III.

The System Matured.

(a) *Improved Justice follows the Diwani.*

Diwani and Fouzdari Adaluts introduced

The earliest step towards any improvement in the administration of justice in India was taken by the government of the East India Company, seven years after the acquisition of the Diwani, when a Diwani or Civil Court and a Fouzdari or Criminal Court were established, one for each provincial division or collectorship

as it was then constituted, with the Collector or *Diwan* as the president of the Diwani Adalut (Court), and the *Kazi* or *Mufti* assisted by two Moulvis presided over the Fouzdari or the Criminal Court, over which the Collector had his power of supervision. From these, appeals lay to the Sadar Diwani Adalut or the Chief Civil Court, and to the Nizamut Adalut or the Chief Criminal Court respectively, both established in the Presidency towns. The leading feature therefore, of Warren Hastings' scheme of 1772, was the union of fiscal and judicial authority in the same person. The Regulating Act brought in its train numerous alterations, chief among them were the vesting of the superintendence of the collection of revenue in the six Provincial Councils, appointed for the respective divisions of Calcutta, Burdwan, Dacca, Murshidabad, Dinajpur and Patna, an arrangement with which the later Act of 1780, did not interfere, and the transfer of the administration of Civil Justice from the European Collectors to Indian Amils, from whom in every case, an appeal was permitted to lie to the new Provincial Councils, and thence, under certain restrictions, to the Governor and Council as the Sadar Adalut. The effect of these alterations, was to revive to some extent government through Indian officials for the purpose of effecting a considerable separation between that department and the business of revenue collection and management, and for the still more important work of administering Civil and Criminal Justice through such agency with a view to elude the interference of the Supreme Court. In the process of development, several changes in their constitution took place until in 1780 District Civil Courts, independent of the Provincial Councils came to be established at the headquarters of the several provincial divisions. In the case of Bengal, they were Calcutta, Burdwan, Dacca, Murshidabad,

seven years after the acquisition of the Diwani.

Effect of the Regulating Act.

District Civil Courts instituted.

Dinajpur and Patna, each of which was presided over by a Company's Civil Servant, styled Superintendent of Diwani Adalut, who was to have jurisdiction in all causes of a Civil nature, the provincial Council reserving jurisdiction over all causes having an immediate relation to the public revenue. Appeals likewise, lay to the Sadar Diwani Adalut, which by now had come to include the Chief Justice of the Supreme Court, in place of the Governor-General and Council, as one of its judges, but upon the humiliating condition of retaining the office at their pleasure. Then came the Regulation of Lord Cornwallis of 1793, under which the Courts for the administration of Civil and Criminal justice were remodelled on the basis of the Sadar Diwani Adalut for all the Provinces of Bengal, Madras, Bombay and North West Provinces now the United Provinces of Agra and Oudh, and of the Sadar Nizamat Adalut for Bengal and the North West Provinces. It was ruled that the Sadar Fouzdari Adalut for Bombay and Madras should be regarded as one Court with two sides, the Civil side and the Criminal side. The establishment of provincial courts of appeal and circuit, each presided over by three Judges, and the constitution of a judgeship in every district, in whom was combined the office of Magistrate for the *Zillah* or City under his jurisdiction, followed in due course. In this latter capacity he was further charged with the duty of superintendence and control of the Police, and invested with the power to appoint Indian Commissioners for the trial of Civil suits. This arrangement must have been the result of the six years' experience Lord Cornwallis gained of the union of Civil Justice with the collection of the Revenue, in the person of the Collector, to whom all Revenue cases were transferred, and from whom an appeal lay to the Governro-General in Council, before he finally decided to return

Remodelling of the Courts by Cornwallis in 1793.

Constitution of District Judgeship.

Revenue cases vested in the Collector.

to the system of fiscal separated from judicial functions, which he found in existence on his arrival. You will notice that the principal feature of the Cornwallis system was the abolition of the Revenue Courts, and the transference of all causes from the Revenue Officers to the Civil Courts, thus entirely separating the collection of revenue from the Administration of Justice. Yet these were not considered as final stages in the development of Civil Judiciary in India, for, it had to undergo various vicissitudes, until by Act VIII of 1869, the question of separation and union was finally set at rest when a return to the system introduced by Cornwallis was again made. These were the predecessors of the subordinate judiciary of our day.

Cornwallis completes the separation of Revenue from Civil Judiciary.

Such in brief is the constitution and jurisdiction of the Courts of Civil Justice as organised up to 1793. It is said, that the system then established exists more or less altered at the present day; but the constitutional lawyer would be inclined to agree with Mr. Justice Field that " it might convey a more accurate impression to say that so many alterations and improvements have been made, that the architects of 1793, if now alive, would, with difficulty, recognise the original structure in the enlarged and improved modern edifice," though to a student of history and of constitutional principles, it would mean nothing more than a gradual development of a judicial system the culmination of which is what prevails to-day, namely the establishment since 1861, under Charter from the Crown of High Courts with an original jurisdiction, in which is merged the Supreme Court, and an appellate jurisdiction comprising in it the powers and functions of the Sadar Diwani Adalut, the Court of the District Judge and that of the Subordinate Judge, both with original as well as appellate jurisdiction, and the Court of the Munsiff and of Small Causes

The East India Company's system continues but altered at so many points as not to be recognised even as a shadow of the original.

having original jurisdiction only. The powers of these Courts are well-defined and their respective jurisdiction is based upon a graduated scale. Appeals lie before the High Court from tribunals all over the country. In the Presidency towns the Civil Courts are the High Courts and the Small Cause Courts. Madras only has a City Civil Court whose jurisdiction in causes of lesser degree and importance is formed of a slice taken out of that of the High Court, solely for the benefit of the litigants,—to keep down heavy costs entailed in a High Court litigation.

The City Civil Court in Madras.

(*b*) *Establishment of the High Courts.*

Beginning of the High Courts.

By the Government of India Act, which was passed on the 6th of August, 1861, Her Majesty the Queen was empowered to establish, by Letters Patent, High Courts of Judicature in the several Presidencies of India. These Charters for the several Presidencies are identical, and what is true of Calcutta is true also of Bombay and Madras, and now also of Allahabad, Lahore, Rangoon and Patna. Section 2 of the Act provided for the constitution of such Courts. It enacted among other things that the High Court of Judicature at Fort William in Bengal should consist of a Chief Justice and as many puisne Judges, not exceeding fifteen, as Her Majesty might, from time to time, deem proper to appoint, and that these Judges should be selected, first, from barristers of not less than five years' standing; or, secondly, from members of the Covenanted Civil Service of not less than ten years' standing, and who should have served as Zillah Judges, or should have exercised the like powers as those of a Zillah Judge for at least three years of that period; or, thirdly, from persons who had held Judicial office not inferior to that of Principal Sadar

Composition of the High Courts.

1. Barristers.
2. Civilians.

Amin now termed Subordinate Judge or Judge of a Small Cause Court for a period of not less than five years; or, fourthly, from persons who had been pleaders of a Sadar Court or High Court for a period of not less than ten years, if such pleaders of a Sadar Court should have been admitted as pleaders of the High Court. Thus, the High Court Judgeship was thrown open to the children of the soil. This was quite in consonance with the letter and spirit of the Royal Proclamation of the first of November, 1858, which, among other things, declared that, "so far as may be, our subjects of whatever race or creed, be freely and impartially admitted to offices in our service, the duties of which they may be qualified, by their education, ability and integrity, duly to discharge." Accordingly, Babu Ramaprasad Ray, a luminary of the Indian side of the bar, was nominated to a seat on the bench of the newly established Court, but a fatal illness prevented him from occupying it even for a single day and giving a glorious account of himself. It was provided that not less than one-third of the Judges of such High Courts, including the Chief Justice, should be barristers, and not less than one-third should be members of the Covenanted Civil Service. Section 3 contained the other proviso which was to the effect that persons, who, at the time of the establishment of such High Courts, were Judges of the Supreme Courts of Judicature and permanent Judges of the Courts of Sadar Diwani Adalut of the Presidency, should be and become Judges of such High Courts without further appointment for that purpose; and the Chief Justice of the Supreme Court should become the Chief Justice of the respective High Court. All the Judges of the High Courts, established under the Act at Fort William in Bengal, in Bombay and in Madras, are appointed to hold their offices during Her Majesty's pleasure, but this would not

3. Subordinate Judges.

4. Vakils.

Rama Prasad Ray, the first Indian Judge appointed.

Judges hold office during pleasure of the Crown.

prevent any Judge of the Court so established from resigning such office of Judge, to the Governor-General in Council. As questions of precedence amongst Judges were likely to arise, provision was made which declared that the Chief Justice of such High Court should have rank and precedence over the other Judges of the said Court, and that such of the other Judges of such Court as on its establishment should have been transferred thereto from the Supreme Court, and that, except as stated above, all the Judges of the High Courts should have rank and precedence according to the seniority of their appointment, unless otherwise provided in their patents. The Act further provided for the salaries and pensions of the Judges of the High Courts, but nothing was said in particular about the salary of the Judges transferred from the Sadar Court, or of those who were newly appointed. It appears however, that there was no difference in the salary of the puisne Judges; it was Rs. 50,000 a year all round, or, to be more accurate Rs. 4,166 a month. The Chief Justice or the Judge transferred to any High Court from the Supreme Court, received the like salary, and was entitled to the like retiring pension and advantages as he would have been entitled to for and in respect of service in the Supreme Court, as if such Court had been continued. His service in the High Court was to be reckoned as service in the Supreme Court, and that, except as we have noticed, it should be lawful for the Secretary of State in Council to fix the salaries, allowances, furloughs, retiring pensions, and where necessary, expenses for equipment and voyage of the Chief Justice and Judges of the High Courts coming out from England, upon their first appointment under the said Act, and from time to time to alter the same: provided always, that such alteration should not affect the salary of any Judge appointed prior to the date thereof.

Rank and precedence of the Judges

Their emoluments.

Alterations made from time to time in their emoluments.

The last time that any alteration was made in the salary of the judges was on the 25th April, 1899. It may be observed that the salary of the Chief Justice or Acting Chief Justice has always remained constant, *viz.*, Rs. 72,000 per annum for the Chief Justice of Calcutta and Rs. 60,000 a year for his brother Chief Justices elsewhere. The salary of a puisne Judge was first reduced to Rs. 45,000 a year. On the 25th of April, 1899, however, it was raised to Rs. 48,000 per annum, though Judges appointed before the 18th day of January, 1881, continued to get Rs. 50,000 per annum. It is provided, that the Chief Justice of the Bengal High Court after an active service of eleven and half years as Judge of the High Court, of which period at least five years and nine months shall have been as Chief Justice, shall receive a pension not exceeding £1,800 per annum. It is further provided that a puisne Judge, after an active service of the same period as aforesaid as Judge, shall receive a pension not exceeding £1,200 per annum.

Provision for their pension.

Equipment allowance.

For the purpose of defraying the expenses of equipment and voyage from Europe on first appointment, an allowance, as provided by Rules, is made to a Chief Justice or Judge of any High Court of £300. But no such allowance is made to any person who being in India, is appointed to the office of Chief Justice or Judge, or who, having been in India, is in Europe at the time of his appointment with the intention of returning to India.

Provision has been made for filling a vacancy in the office of Chief Justice or other Judge. If there is any vacancy, either permanent or temporary, in the office of Chief Justice, the Governor-General in Council has power to appoint one of the Judges of the same High Court to perform the duties of the Chief Justice until some person is appointed by His Majesty to the

Acting appointments.

office, and he has entered on the duties of such office. And in the case of a like vacancy in the office of a puisne Judge, the Governor-General in Council is empowered to appoint a person, with such qualifications as are required in persons to be appointed to the High Court, to act as a Judge of the said High Court, and the person so appointed has authority to sit and perform the duties of a Judge of the said Court until some person has been appointed by His Majesty to the office of Judge of the same Court, and he has entered upon the duties of such office, or until the Governor-General in Council should, in the case of an acting appointment, see cause to cancel the appointment of such acting Judge. It should be observed that, although a vacancy in the office of the Chief Justice cannot be permanently filled by any person other than a barrister, there is nothing to prevent an ordinary puisne Judge from holding the office before a permanent man is appointed to it. Accordingly, during the absence on leave of Chief Justice Garth Mr. (afterwards Sir) Romesh Chandra Mitter, as the senior Judge actually serving in the country, was appointed by Lord Ripon to officiate as Chief Justice. This preferment of which there was no precedent, was disapproved of in some quarters, and even resented in others, though, there was a small university of catholic-minded Englishmen who considered that the Governor-General's action was justified, although the appointment had no parallel in the annals of British rule in India or elsewhere.

Sir Romesh Mitter, the first Indian Chief Justice.

Anglo-Indian revolt against the appointment.

The Act made a very important change in that it abolished the Supreme and Sadar Courts in the different Presidencies upon the establishment of the High Court in each of them. As a necessary consequence, the records

and documents of the Courts so abolished, became the records and documents of the High Courts established in their stead. The High Court was to have and to exercise all such civil, criminal, admiralty, vice-admiralty, testamentary, intestate and matrimonial jurisdiction, both original and appellate, and all such powers and authority for, and in relation to, the administration of justice in the Presidency, for which it was established, as His Majesty might, by Letters Patent as aforesaid, grant and direct, subject, however, to such directions and limitations as to the exercise of civil, and criminal jurisdiction beyond the limits of the Presidency towns as might be prescribed thereby, and save as by such Letters Patent might be otherwise directed, and subject and without prejudice to the legislative powers in relation to the matters aforesaid of the Governor-General in Council, the High Court established in the Presidency should have and exercise all jurisdiction and every power and authority whatsoever, in any manner vested in any of the Courts in the same Presidency now abolished, at the time of the abolition of the Courts. The High Courts further were given the power to provide for the exercise, by one or more Judges, or by a Division Court constituted by two or more Judges of the said Court, of the original and appellate jurisdiction vested in such Court, in such manner as might appear to such Court to be convenient for the due administration of justice, the Chief justice being authorised to determine what Judges should sit alone or in Division Courts. The High Court was further empowered and authorised to have superintendence over all Courts which might be subject to its appellate jurisdiction, and to have power to call for returns and to direct the transfer of any suit or appeal from any such Court to any other Court of equal or

Administrative affairs of the High Court.

superior jurisdiction and generally to frame rules of practice for the guidance of such Courts.

The above are substantially the provisions of the Government of India Act, and in pursuance of this Act Letters Patent were issued by Her Majesty under the seal of the United Kingdom on the 14th of May, 1862, constituting the High Court of Judicature for the Bengal Division of the Presidency of Fort William, for Bombay and for Madras. The Bengal Court so constituted, consisted of a Chief Justice and thirteen Judges. The first Chief Justice, who was the last Chief Justice of the Supreme Court, was Sir Barnes Peacock, *Knight*, and of the thirteen puisne Judges seven were transferred from the Courts abolished, and six were new appointments. Of the seven Judges so transferred, two, Sir Charles Robert Mitchell Jackson, *Knight*, and Sir Mordant Lawson Wells, *Knight*, were from the late Supreme Court, and the remaining five, Henry Thomas Raikes, Charles Binny Trevor, George Loch, Henry Vincent Bayley, and Charles Steer, were from the late Sadar Court. The five new appointments were John Paxton Norman, Walter Morgan, Francis Baring Kemp, Walter Scott Seton-Kerr, and Louis Stuart Jackson. The Chief Justice, as also every puisne Judge, previously to entering upon the duties of his office, was required to take an oath in the prescribed form, thereby solemnly declaring that he would faithfully perform the duties of his office to the best of his ability, knowledge and judgment. This oath was required to be made before such authority or person as the Governor-General in Council might commission to receive it. To give solemnity to the proceedings of the High Court it was provided that a seal bearing the inscription, "The Seal of the High Court at Fort William in Bengal" should be used by

The first Chief Justice and Judges of the Calcutta High Court.

Chief Justice, the Sealer of the Court.

the Court. This Seal should be in the custody of the Chief Justice, and as such he is the Sealer of the Court.

(c) *The Judicature of to-day.*

Present Courts in India.

The present system which gives us the High Courts in the three Presidencies of Bengal, Bombay and Madras and the four major provinces of Behar and Orissa, United Provinces of Agra and Oudh, the Punjab and Burma are all therefore established under Royal Charters, and based upon a Parliamentary Statute. They are established in Calcutta, Bombay, Madras, Patna, Allahabad, Lahore and Rangoon respectively. The Chief Courts of which we have two in India, one in Nagpur for the Central Provinces, and the other in Lucknow for the sub-province of Oudh as well as the Judicial Commissioner's Courts, one for the North-West Frontier Province, another for Sindh a sub-province of Bombay and the third for lower Burma (in Mandalay) a sub-province of Burma, owe their existence to and derive their authority from different statutes of the Government of India. They however exercise practically all the powers and jurisdiction vested in the High Courts. The arrangement under notice may be said to be the culmination of a system which has been in the making for over a century. The highest tribunals in India are the High Courts of Judicature the composition of which as we have seen before, is divided between barristers including the Chief Justice, members of the judicial branch of the Indian Civil Service and Indian lawyers in the proportion of 2 : 2 : 1. They owe their constitution and jurisdiction to Acts of Parliament, and directly to Letters

Composition of the High Courts.

Patent commonly known as Charters, granted by the Crown in pursuance of authority given by the Statute. The further powers that they enjoy are in virtue either of Parliamentary Statutes or Acts of the Indian or Provincial Legislatures. These Charters are all of an identical nature and are based upon the Act which authorises the appointment of not less than one-third of the judges to be barristers of five years' standing, and not less than another third from among members of the Judicial branch of the Civil Service of ten years' standing who have served as District Judges, the remainder being made available to members of the Subordinate Judicial Service but not below the rank of Sub-Judge or Small Cause Court Judge, and Indian lawyers not inferior to *Vakils of High Courts*. In all matters the High Court in its appellate side is the final Court of appeal in India, even from the superior Courts in the Districts. It is only the High Courts of Calcutta, Madras, Bombay and Rangoon which are endowed with an ordinary original Civil and Criminal Jurisdiction, and these along with the rest namely those of Patna, Allahabad and Lahore have an extra-ordinary Original Jurisdiction over any suit, being or falling within the Jurisdiction of any Court subject to its superintendence, when it shall think proper to exercise the same, either on the agreement of the parties to that effect, or for purposes of justice. In matters in which a further appeal is permissible it lies to His Majesty in Council. These are heard by the Judicial Committee of the Privy Council in England, whose powers are well defined, practically following in the wake of the Royal Charter of 1726, under which for the first time appeals from India were granted. The grant has since been renewed from time to time by the Charter of 1781, by the Charter of 1838, and finally by the Act

Charters of different High Courts identical.

Original Civil and Criminal jurisdiction granted to Calcutta, Bombay, Madras and Rangoon.

Appeal to the Judicial Committee of the Privy Council.

of 1863, but every time bringing down the appealable issue, from the original of Rs. 50,000 to what it is now, namely, either a stake of Rs. 10,000 or if, for a smaller sum, the High Court should have declared it fit to be laid before His Majesty in Council, before whom, none but the final judgment, order or decree may be placed for decision, leaving Criminal judgments to take care of themselves, unless they involve an intricate point of law over which the minds of the Judges in this country have been exercised. The jurisdiction of the High Courts may shortly be described to extend to cases of all descriptions, and in all matters civil and criminal throughout India, in which British subjects are interested, to the Indian subjects or servants of the Crown, or to any European British or colonial subject, or to any other European or American (U. S. A.) subject, for acts committed as such, with limitations in certain criminal matters, to all persons whatsoever for maritime crimes, and, in respect of High Courts having ordinary original jurisdiction, namely of Calcutta, Madras, Bombay and Rangoon to inhabitants of those towns respectively, whether Indians or others, in all matters, civil and criminal.

The powers and functions of the High Courts.

The High Courts exercise supervision and powers of superintendence, revision and transfer over all the Subordinate Courts within their respective territorial jurisdiction, and are empowered to call for returns at regular intervals, as also, for their records and proceedings to make themselves acquainted with the manner in which the Courts generally are discharging their duties. Its full control over all courts civil and criminal in the province, is an improvement which has gradually developed and has asserted itself until, as now, we recognise every authority exercised or exercisable by the High Court to be a matter of inherent jurisdiction. The

Power to issue writs of (a) *Procedendo*, (b) *Mandamus*, (c) *Prohibition*, (d) *Quo warranto*, (e) *Habeas Corpus*, (f) *Certiorari* and (g) *Error*.

prerogative writs of *Procedendo*, by which inferior Courts could be compelled to proceed to give judgment, of *Mandamus*, the object of which was the enforcement of public duties, of *Prohibition*, the object of which was to compel inferior Courts to stay proceedings in matters over which they had no jurisdiction, of *Quo Warranto*, which dealt with usurpation of office, franchise or liberty, of *Habeas Corpus*, which dealt with the improper detention in custody by the authorities of subjects of the Crown, of *Certiorari*, the object of which was to transfer to its own file cases on the file of inferior courts, and of *Error* which the Supreme Court had liberty to issue have, in other forms, been allowed to continue to be issued by its descendant the High Court of our day. Let us now see for a moment how the extensive powers, when properly exercised, of superintendence, revision and transfer are, as we are told by Sir John Trevelyan, at one time a Judge of the High Court of Calcutta, and supported by a long series of judicial decisions, covered by the writs of *Procedendo* and *Certiorari*. The power to entertain appeals and revisions undoubtedly affords a remedy for the *Writ of Prohibition*, and section 45 of the Specific Relief Act, 1877, the words of which are, "Any of the High Courts of Judicature at Fort William, Madras, Bombay and Rangoon may make an order requiring any specific act to be done or foreborne, within the local limits of its ordinary original civil jurisdiction, by any person holding a public office, whether of a permanent or temporary nature, or by any Corporation or inferior Court of Judicature." substitutes the valuable remedy afforded by the writ of *Mandamus* as section 491 of the Criminal Procedure Code is put in place of the writ of *Habeas Corpus*, the most celebrated prerogative writ in English law, which serves as a remedy for

a person deprived of his liberty and is addressed to him who detains him in custody, and commands him to produce his body, with the day and cause of his caption and detention, and to do, submit to, and receive whatever the Judge or Court shall consider in that behalf. The Section runs as follows :—

Any High Court may, whenever it thinks fit, direct :—

When *Habeas Corpus* to issue.

(*a*) that a person within the limits of its appellate Jurisdiction be brought up before it to be dealt with according to law ;

(*b*) that a person illegally or improperly detained in public or private custody within such limits be set at liberty ;

(*c*) that a prisoner detained in any jail situate within such limits be brought before the Court to be there examined as or witness in any matter pending or to be inquired into in such Court ;

(*d*) that a prisoner detained as aforesaid be brought before a Court-Martial or any Commissioners acting under the authority of any commission from the Governor-General in Council for trial or to be examined touching any matter pending before such Court-Martial or Commissioners, respectively ;

(*e*) that a prisoner within such limits be removed from one custody to another for the purpose of trial ; and

(*f*) that the body of a defendant within such limits be brought in on the Sheriff's return on *Cepi Corpus* to a writ of attachment.

The layman requires a little explanation of the last clause. *Cepi Corpus et poratum habeo* as the legal phraseology goes means " I have taken the body and have it ready." It is a writ made by the Sheriff upon the attachment *Capias*, etc., when he has the person, against whom, the process was issued, in custody. Section 491 however, does not apply to persons detained under certain enactments in India, such as the Bengal State Prisoners Regulation of 1818, Madras Regulation II of 1819, the Bombay Regulation XXV of 1827, the State Prisoners Act, 1850 and the State Prisoners Act, 1858. And because the legislature has provided for speedier processes of obtaining relief against usurpation of office, franchise or liberty, *Quo Warranto*, which is an obsolete writ even in England, has seldom been sought to be taken advantage of in India. Similarly, the writ of *Error*, has never been applied by our Courts by reason of the existence of more effective means at our disposal of correcting errors committed by subordinate Courts. But the High Court has no original jurisdiction " in matters concerning the revenue, or concerning any act ordered or done in the collection thereof according to the usage and practice of the country or the law for the time being in force."

Habeas Corpus and the Sheriff.

The authority vested in the High Court of superintendence over all Courts subject to its appellate jurisdiction, empowers it to call for their returns, to direct the transfer of any suit or appeal from any such Court to any other Court of equal or superior jurisdiction, to make and issue, subject to the approval of the Governor-General in Council in the case of the Calcutta High Court, and of the Local Government in the case of others, general rules and prescribe forms for regulating the practice and procedure of such Courts, to lay down forms, subject

High Court's power of superintendence.

to similar approval, in which books, entries and accounts are to be kept by the officers of any such Courts, and to settle the table of fees chargeable by the Sheriff, attorneys, clerks and officers of the Courts.

(*d*) *Appointment of Judges of the High Courts.*

Appointment of Judges of High Courts, their tenure of office.

The Judges of the High Courts are appointed by the King and hold office during his pleasure,—their number may not exceed twenty, and they may be removed by him alone, so that, no Government in India can touch them. The idea is, that they should be quite independent of the Government to avoid or ward off a state of confusion in the administration of Justice, especially in claims against the Government itself. It may safely be said that the judges whether of the High Courts, or of the inferior Courts, are perhaps, with a few exceptions as independent as may be desired. It should be remembered that Government dare not attempt to direct or influence a Court of law. For, if it, or any officer on its behalf makes an attempt to do so, the matter could at once be brought to the notice of the High Court, the Judges of which are not responsible to the Government of India to take such action thereon as they may deem proper in the interest of unsullied administration of justice. In the old days, no Judge or Kazi would have the courage to give a decree against a high official or against the Government. Even at the present day, in some of the Indian States of Rajputana or Central India, no judge would care to be a party to the passing of a decree against the State he serves, without imperilling his position. If he did so, it might cost him his office. If he is an extremely lucky man that pain might be spared him, but the decree would not be attended to or carried out. The strongest bul-

The independence of the Judges.

wark of British Rule in India is the impartial administration of justice in the hands of strong and fair-minded judges. It should know no distinction between man and man, though unfortunate instances to the contrary, have recently had the effect of lowering the prestige of the British Indian Empire in the eyes of its Indian subjects. These were the occasions when Lord Reading might have proved, that he it was, who, administered Justice in the seat occupied by Lord Chief Justices. whose memory is a part of the proud inheritance not of professional lawyers but of Great Britain herself, and as such he would insist not to let British justice under any circumstances fall from her high estate.

Occasional lapses.

(e) *The Work of the High Courts.*

The High Court is a composite body, having two branches, which are respectively termed the Original Side and the Appellate Side. Roughly speaking, the Original Side represents the late Supreme Court, and the Appellate Side the late Sadar Court. Thus, though the Sadar and Supreme Courts have become things of the past, still their memory is well preserved by the High Court which has taken their place. The procedure and practice followed in the two sides of the High Court differ from each other. In the Original side the English law and the practice of the Courts in England predominate, whereas in the Appellate side, the Acts and Regutions of the Governor-General in Council and the laws and usages of the country, where they are applicable, are the guiding authorities. This being the case, it is only just and proper that in the Original side only Barrister Judges who have had legal training in the Inns of Court in England should preside. In the Appellate side no

Law practised.

such distinction is made, and Judges, whether chosen from among barristers or recruited from the Covenanted or Uncovenanted Civil Service, or from the Indian side of the bar, are privileged to sit in it. The Rules and Orders governing the High Court in its Original side being different from those having force and effect on the Appellate side, it is only fair and reasonable that they should be dealt with separately.

The general rule governing both sides of the Court, is that all powers and functions which are vested in it by the Letters Patent constituting the Court, and which are not otherwise expressly provided for by the rules of the Court, may be exercised by a single Judge, or by a Division Bench, consisting of two or more Judges. This being so, it necessarily follows that a Court for the exercise of the ordinary original jurisdiction of the Court may be held before one Judge, or before two or more Judges, and one or more of such Courts may sit at the same time. In case of doubt or difficulty a Judge sitting alone may refer any matter for the decision of two or three Judges. If in a Court of original jurisdiction held before two Judges there should be a difference of opinion, the Chief Justice, or in his absence the senior Judge present, would have a double or casting vote. Appeals from the decision of one Judge in the exercise of Ordinary Original Civil jurisdiction are heard and determined by at least two other Judges, and in case the two Judges who exercise the appellate jurisdiction differ in opinion, they may direct that the case shall be reheard before a Division Court consisting of themselves and some other Judge or Judges, and if no such order is made, the decision of the senior Judge shall prevail and be affirmed. In order to avoid complicated process, the Appellate Bench is, as a rule, formed of three Judges. Appeals both from decrees and

Division of the Court: (*a*) Appellate and (*b*) Original.

orders shall be presented within a time limit prescribed for each class of order.

Original Criminal Jurisdiction.

A Court for the exercise of the Ordinary Original Criminal Jurisdiction of the High Court may be held before one Judge, and one or more Courts may sit at the same time, in each of which there is a Judge presiding. A Division Court for the hearing of criminal appeals may consist of two or more Judges. Appeals on the Criminal side of the appellate bench of the Court, which are in the first instance heard before one Judge, may, if he thinks fit, be referred to such Division Court. All proceedings in civil cases which shall be brought before the Court, except proceedings in its Admiralty, and Matrimonial jurisdiction, and in its Original, Testamentary and Intestate jurisdiction, are regulated by the Code of Civil Procedure, and by such other Acts and by such rules and orders of the High Court as should be in force for the time being, or have regulated the procedure of the Court at the time of the publication of the Letters Patent, except in so far as the same are at variance with the provisions of the Letters Patent.

(*f*) *Civil Justice removed from Executive Control.*

Civil Justice separated from executive and police administration in most provinces.

According as the province has advanced in education, civil justice is separated from executive or police administration, so that, there is no direct concern between the two, except in some parts of Burma, where certain executive functionaries, such as Commissioners, Deputy Commissioners and Assistant Commissioners, exercise civil judicial authority, and in the Sonthal Perganas in the province of Behar and Orissa, in respect of which the Commissioner of the Bhagalpur Division is still the final Court of Civil appeals in preference to the High Court. In the extremely backward tracts of the country

such as Ajmere and Merwar the arrangement is slightly different in that, here the highest Court of Appeal is that of the Chief Commissioner, who, with the previous sanction of the Governor-General in Council, appoints an additional Commissioner to relieve him of much of his judicial duties, original and appellate, and of his own motion, appoints additional District Judges, and Subordinate Judges, to exercise jurisdiction over suits of the value of Rupees ten thousand, if, of the first class, and of Rupees five hundred, if, of the second class, and Munsiffs, whose jurisdiction may not extend to suits of a higher value than Rupees one hundred.

The arrangement differs in backward provinces.

Extension of foreign and home trade under British rule is a patent fact. Simplification of laws and of legal procedure has enlarged the legal profession so considerably that any further addition is regarded as undesirable, even though it has produced some most estimable men in the country. In cases where the debtor is an ignorant man or a poor tiller of the soil, the laws framed by the legislature are jealous to protect him, against the oppression of the landlord or the extortion of the moneylender. Of late years, special laws have been passed with a view to protect the agricultural classes. In some of the provinces private transfer of agricultural lands in favour of creditors has been made more difficult. In all of them execution of decrees on the land is discouraged and special laws are in existence for the relief of encumbered estates.

Simplification of law and procedure under British Rule.

Now, let us see what has been the practical effect of British legal methods as applied to India. Their first object was to simplify and cheapen justice in India, and bring it more within the reach of the rich and poor alike. And in order to attain this end, all the old complicated distinctions which existed under Mahomedan rule, had either to be done away with, or completely over-

Benefits derived from the introduction of the British System.

hauled, or improved, so as to fit in with modern ideas and theories of justice.

Justice, as we have said, was brought within the reach of the poorest. Very long ago, civil actions about small sums of money were so expensive that poor people chose to suffer injustice rather than go to law. Courts have been provided all over the country within easy reach where Civil Justice can be had at as little cost of time and money as possible.

Civil actions, where small sums not exceeding Rs. 1,000 are at stake, come before the Munsiff in the first instance. One who is dissatisfied with his decision, may take it in appeal before the District Judge from whom there is an appeal before two Judges of the High Court, or, of the Chief Court, as the case may be. But if the action involves a larger sum of money, he may begin with the Sub-judge or the District Judge, both of whom are authorised to try all original suits for the time being, cognizable by Civil Courts, and then to the High Court, and finally to the Privy Council. The matter is only then finally settled, and at an end. Thus it will be seen that, in order to guard against possible errors of judgement, all civil cases may be tried no less than three times over. It is however a moot question whether all these facilities have not had the effect of encouraging litigiousness and thereby making the initial cheapness lead to greater loss in the long run.

The subordinate judiciary: their jurisdiction

Besides the Courts of the Munsiffs, the Subordinate Judges and the District Judges, there are the Courts of Small Causes in the Moffussil, with power to try all suits of the nature tried by the Presidency Small Causes Courts, namely, suits on monies lent and advanced, and on goods sold and delivered, the value of which does not exceed the sum of Rs. 500 (Rs. 2,000 in the Presidency Small Causes Court). There are moreover, the Joint, Additional

and Assistant Judges, who, as their designation signifies, are there to assist and relieve the District Judges. They may try suits of any value, and are empowered to hear appeals from the Subordinate Judges up to a value of Rs. 5,000 but no more. There are Courts in certain special and exceptional tracts of the country, such as the Chittagong Hill tracts, the hill tracts of Assam, in the Darjeeling district, British Baluchistan, parts of Burma and the North-West Frontier Province of which anything like an adequate description would fill pages and take us outside our present scope. Nevertheless a brief reference to the Civil Courts that exist in Oudh, and in Sindh may be useful to the student. From the fact that the administration of Oudh forms part of the Government of the United Provinces, it should not be concluded that the High Court of Allahabad controls the judiciary in the province of Oudh where the highest Court is the Chief Court which has a full complement of the subordinate judiciary, *viz.*, District Judge, Subordinate Judge and Munsiff under it, each with powers, more or less on a par with those described above. No more is the judiciary in the province of Sindh subject to the control of the High Court of Bombay even though it forms part of the executive administration of Bombay. It is the Judicial Commissioner who is the High Court of Sindh.

vary in different localities.

(*g*) *Appeals to the Privy Council.*

With regard to appeals to the Privy Council, it is provided by the statute that such an appeal may be made, in any matter not being of criminal jurisdiction, from any *final* judgement, decree, or order made in the exercise of original jurisdiction by a majority of the full complement of Judges of the said High Court, or of any

Limit of pecuniary value of Privy Council appeal.

Division Court, from which an appeal shall not lie to the said Court, under the provisions contained in the 15th clause of the Charter. This is the general rule as to such appeals. On the question of pecuniary limit it is provided that in each of the cases we have noticed, the sum or matter in issue must be of the amount or value of not less than Rs. 10,000, or that such final judgement, decree, or order, so intended to be appealed against, must involve directly or indirectly, some claim, demand, or question referring to or respecting property amounting to or of the value of not less than Rs. 10,000. But by the true construction of the law as laid down in Section 109 of the Civil Procedure Code, namely, " Subject to such rules as may, from time to time, be made by His Majesty in Council regarding appeals from the Courts of British India, and to the provisions hereinafter contained," an appeal shall lie to His Majesty in Council :—

When appeals lie to the King in Council.

(*a*) from any decree or final order passed on appeal by a High Court or by any other court of final appellate jurisdiction ;

(*b*) from any decree or final order passed by a High Court in the exercise of original civil jurisdiction ; and

(*c*) from any decree or order, when the case, as hereinafter provided, is certified to be a fit one for appeal to His Majesty in Council.

There are two conditions of appeal, that the amount or value both of the subject-matter of the first court, and also of the matter in dispute on appeal must be Rs. 10,000 or upwards. The case must comply with both conditions. An appeal also lies from any other final judgement, decree or order made either on appeal or otherwise as aforesaid, when the High Court has declared that the case is a fit one for appeal to the Privy Council,

subject always to such rules and orders as are now in force, or may from time to time be made, respecting appeals to the Sovereign in Council, from the High Courts; except in so far as the existing rules and orders, respectively, are by the Charter varied, and subject also to such further rules and orders as may be hereafter made in that behalf by the Sovereign with the advice of the Privy Council. Where the amount or value of the property in dispute is that sum or more, the case is clear enough; and the same thing will happen when the decision appealed against involves, directly or indirectly, some claim, demand or question referring to or respecting property worth such sum. So it has been held, that leave to appeal to the Privy Council, will in some cases be allowed respecting property, which, on the whole, is above the pecuniary limit stated, notwithstanding that the portion of the property which is the subject of appeal is below that limit. The Court may take into consideration, in allowing or rejecting a petition of appeal to the Privy Council, the fact that the property has increased in value since the commencement of the suit. And even where the value is less than Rs. 10,000, an appeal may still lie to the Privy Council, if from the peculiar difficulty of the case, from a legal point of view, or from its great importance, the High Court should certify that it is a fit case for appeal to the Privy Council. Orders contemplated by the section are orders made in regular course as distinguished from subsidiary orders or the like. An order of a Division Bench, rejecting an application for a review of judgement passed on appeal, is not an order made on appeal from which an appeal lies to the Privy Council. But an appeal does lie to the Privy Council from the order of the High Court in execution proceedings when the amount involved is above the appealable value. Even interlocutory judgements

Other important grounds of appeal.

Appeals in execution cases.

may form subjects of appeal to the Privy Council. This provision is expressly made in the Charter. It enacts that it shall be lawful for the High Court, at its discretion, on the motion, or if the High Court be not sitting, then for any Judge of the Court, upon the petition, of any party who considers himself aggrieved by any preliminary or interlocutory judgement, decree, order, or sentence of the High Court in any such proceeding as aforesaid, not being of criminal jurisdiction, to grant permission to such party to appeal against the same to the Privy Council, subject to the same rules, regulations, and limitations as are in this Charter expressed, respecting appeals from final judgements, decrees, orders and sentences. As regards appeals in criminal cases, it is provided that from any judgement, order, or sentence of the said High Court, made in the exercise of its original criminal jurisdiction, or in any criminal case where any point or points of law has or have been reserved for the opinion of the Court, in manner hereinbefore provided by any Court which has exercised original jurisdiction, it shall be lawful for the person aggrieved by such judgement, order, or sentence to appeal to the Sovereign in Council, provided the said High Court shall declare that the case is a fit one for such appeal, and under such conditions as the said High Court may establish or require, subject always to such rules and orders as may hereafter be made in that behalf by the Sovereign with the advice of his or her Council.

Appeals under the Rules.

Clause 42 provides for the transmission of copies of evidence and other evidence to the Privy Council. It also provides that the High Court shall, in all cases of appeal to the Privy Council, conform to and execute, or cause to be executed, such judgements and orders as the Privy Council shall think fit to make in the premises, in such manner as any original judgement, decree, or decre-

tal order or other order or rule of the said High Court should or might have been executed. Where a decree is simply affirmed by the Privy Council, it is the decree of the Appellate Court which is to be executed. When a decision of the Judicial Committee has been reported to the Sovereign and has been sanctioned, it becomes the decree or order of the final Court of Appeal, and it is the duty of every subordinate tribunal, to which the decree or order is addressed, to carry it into execution. Decree of the Privy Council: its effects.

Clause 43 requires the High Court to comply with requisitions from Government for records, returns and statements.

By Clause 44 legislative powers of the Governor-General in Council are preserved to them in their full integrity. In exercise of such powers the Governor-General in Council is competent to make new laws and regulations, or to amend and alter existing ones.

PART IV.

ADMINISTRATION OF CRIMINAL JUSTICE.

(a) *Introductory.*

In the civilised countries of Europe, Criminal justice is just as pure and above reproach as Civil justice. In India, if the civil judiciary has reached a high order of efficiency and purity, that is as much due to the system as to the men who work it. On the other hand, in the case of criminal justice, notwithstanding the fact, that as honourable men its administrators leave nothing to be desired, they have not the detachment of mind and purity Purity of the Judiciary in India.

Criminal Justice in India leaves much to be desired.

of motive which alone can give the same satisfactory results. The administrators of criminal justice are also executive officers of the government, and the rule hitherto had been, for a considerable period, that their promotion in office depended upon the number of convictions they could display to their credit, on the principle of "no conviction no promotion," a principle enunciated by no less a person than a famous Lieutenant-Governor of Bengal, Sir Charles Elliott. It is therefore, clearly the system that is at fault, not the men than whom a body of better qualified public servants can hardly be found anywhere in the world.

(b) *Criminal Justice under the Moghuls.*

Criminal justice under the Moghuls.

We will now therefore, turn to the system of Criminal Justice. The Moghul arrangement was that all capital cases should come before the *Nawab Nazim* himself at headquarters, and other cases of an important nature go before *Naib Nazim*. *Fouzdars* and *Kotwals* had jurisdiction over offences of a minor degree. In the Mofussil, the Zamindars exercised unlimited criminal jurisdiction. They were required to report decisions of capital cases only to the Nawab. In all others there was no check or control over them.

The Kazi's Court.

The *Kazi's* courts of old are not a thing of which any nation could feel proud. But the *Kazi* was a Civil Judge also, having jurisdiction over questions of inheritance and succession. The justice which the *Kazis* distributed under the Mahomedan Government was according to an elaborate system of Moslem law which empowered criminals to be dealt with by a number of officials, one independent of the other, such as the *Daroga-al-alica* or the officer who was the Deputy of the *Nazim*

Law administered by the Kazi.

in the Criminal Court, the *Fouzdar* or the Police Officer and Judge of all petty crimes, and the *Kotwal* or peace officer of the night, subordinate to the *Fouzdar* and the *Kazi* with whom sat the *Muftis* whose business it was to expound the law for his acceptance. In considering the development of the Civil judiciary, we have seen how shortly after the grant of the *Diwani* the *Fouzdari Adalut* or Criminal Court came to be placed on a footing of its own, with the *Kazi* as the presiding judge, supported by *Muftis* and *Moulvis* to determine upon a proper presentation of the Mahomedan law, how far accused persons were guilty of its violation with a power of superintendence over the regularity of its proceedings and the fairness of its trials, vested in the Collector. An appeal lay from the *Kazi's* Court to the *Nizamat Adalut* or the Chief Criminal Court. The administration of criminal justice in India remained in a hopeless state until the arrival of Lord Cornwallis with a definite mandate from the authorities at home, to introduce among others reforms into this important branch of administration upon which much of the future stability of British rule, which was then taking root and gradually expanding, in India, was to depend. Up to 1790, the Company's Magistrate had no more power than to arrest criminals only to make them over to the *Nawab Nazim* and his officers, a procedure which was found to be highly unsatisfactory in that, "from the inefficiency of the authority of the English Magistrates over the Zamindars and other land-holders, the course of criminal justice throughout the country remained in a very weak state," while "many of the lowest and most indigent classes of people were frequently liable to remain for a long period in confinement, where the length of their sufferings, from the delay in their trial, very often more than equalled their demerits." With a view

Fouzdar, Kotwal and Kazi.

Fouzdari Adalut gains in importance after the grant of the *Diwani*.

Criminal justice improved.

Power of the Company's servants to arrest but not to punish.

Law's delays—a curse in the criminal judicial system.

therefore, to ensure a prompt and impartial administration of the criminal law, and that all ranks of people might enjoy security of person and property, the Governor-General in Council resolved to resume the superintendence of the criminal justice throughout the province. The *Nizamat Adalut* which thenceforth (1790), was to consist of the Governor-General and members of his Council, assisted by the *Kazi* and two *Muftis* with power to exercise all the jurisdiction lately vested in the *Naib Nazim*, but not to interfere with the law hitherto in force, was removed from Murshidabad to Calcutta.

(c) *Development of the Criminal Judiciary.*

In order fully to be able to realise the development of the Criminal judiciary as we have it, it is important to know in some detail what its position was at the time when the government of the country was gradually but imperceptibly passing into the hands of her alien traders. Early in 1772, the two important criminal courts that administered criminal justice in or for the provinces, outside the Presidency towns, were the *Sadar Nizamat Adalut* taking cognisance of criminal matters coming from the provinces and the *Fouzdari Adalut*. Eighteen years later, in 1790, they came to be supplemented by the courts of circuit and in 1832, by the courts of the Panchayat and in 1871, by the Sessions Judges. To Warren Hastings the earliest scheme for the administration of criminal as of civil justice in Bengal is attributable and the principle upon which he modelled his scheme, was the retention of *Mahomedan law*, the *Mahomedan law* officers and the Mahomedan Courts of criminal justice. Almost simultaneously a scheme of Police administration was prepared and carried into execution which was entirely remodelled in 1793.

The Sadar Nizamut Adalut and Fouzdari Adalut were the two criminal courts.

Governor-General became the head of the Sadar Nizamut Adalut.

The *Sadar Nizamut Adalut* found its earliest habitation at Murshidabad. It was later on transferred to Calcutta with the Governor-General at its head who, by reason of the multifarious nature of his duties and the heavy load of administrative business at a time when the Company's government itself was evolving and taking shape, could not, without doing injustice to himself and to his charge, continue any longer to be at the head of it. He had therefore, to be relieved to make room for Mahomed Reza Khan, who was entrusted with the superintendence of Penal Justice and Criminal Courts throughout the country, as well as the responsibilities involved in the removal of the Adalut back to Murshidabad in 1775. During the fifteen years, which elapsed before the Court was again restored to Calcutta, the course of the administration of Criminal Justice was through Mahomedan tribunals with Mahomedan officers who administered their own criminal law. All this was changed, and in the remodelling that took place in the year 1793, the Governor-General and Council came, from the *Sadar Nizamat Adalut* from where they were removed in 1801, to make room for a more orderly state of things,—a Chief Judge and Puisne Judges.

(*d*) *Birth of the Sessions Courts*

Courts of circuit the bases of Courts of Sessions.

The Courts of Circuit which, as we have seen, were established in 1790, from the basis of our present-day Courts of Sessions. Next in rank to the Nizamat Adalut and composed of the same judges as the Provincial courts, their duties including gaol delivery, were performed by all save the first or the Chief Judge, whose administrative duties kept him at the headquarters station. These courts had a fairly long life and were not abolished till about 1829, when they were made to give

place to the Courts of Commissioners of Revenue and Circuit and were invested with the powers of the Courts of Circuit and of the Board of Revenue.

The original District and Sessions judges were not known to law.

The reference that is made in the Criminal Procedure Code of 1861, is only a reference to the powers of the Sessions Judges who, in Bengal and the United Provinces, derived their powers from the old Courts of Circuit. In the meantime the practice of appointing different persons, to hold respectively, the offices of Judges of the Courts of Circuit and of District and Sessions Judges, had grown up but without any authority in law. The practice continued till after the repeal in 1868, of the Regulation of 1831, and of Act VII of 1835, to which probably the practice owed its existence. The only law under which a Sessions Judge could thereafter be appointed was the Regulation of 1823, which authorised an occasional transference of a Judge to criminal work. These were the circumstances under which the Bengal Sessions Courts Act came to be passed by the local Legislative Council.

(e) *Struggle of the Zamindars.*

The responsibility of Zamindars for maintenance of law and order.

A long-standing grievance was that of the Zamindars, that they were held responsible for public safety and the maintenance of public roads. It was obligatory upon them to keep the peace and in the event of any robbery and dacoity, to produce both the robber and the dacoit and the property robbed or plundered. As a result of the resumption of the *Chakran* lands which had taken place ere this and to put a premium upon collusion, which was constantly proved or suspected between the perpetrators of offences and the officers who were maintained by the holders of land, the Zamindars were de-

prived of their Fouzdari jurisdiction in 1772, preliminary to Warren Hastings taking his epoch-making step of dividing Bengal for purposes of Police administration into 14 districts or distinct charges. Under the new scheme *Thanadars* were appointed with an assurance, in the discharge of their duties, of assistance from the landholders. It was also under this project that *Chakran* lands were again applied to their original design and *Fouzdars* appointed to apprehend all offenders. The system however, was foredoomed to failure, and lasted but for a short time. Soon after the Fouzdars and subordinate *Thanadars* were abolished, and Judges of the Civil Courts were invested with the power, as Magistrates, of apprehending and bringing to trial offenders in their districts, the power to punish them still remaining with the Nawab's Courts. And it was now that with a view to give the Government some control over the penal jurisdiction of the country, that a new office under the immediate superintendence of the Governor-General was established in Calcutta, called the office of the Remembrancer of Criminal Courts, the predecessor in office of the Remembrancer of Legal Affairs, where reports of proceedings, lists of commitments and convictions were transmitted every month

Trials held by Company's Courts and punishments inflicted by Nawab's Courts.

(f) *Courts remodelled.*

In 1793 the courts of Criminal justice were remodelled, and since then they have kept pace with the improvements made in the Civil judiciary. After various changes, the more important of them, as I have noticed, being the replacing of the Governor-General in Council by three Judges in the *Nizamut Adalut* in 1801, the vesting of larger powers extending to the infliction of imprisonment for a term of one year in the Magistrates

Criminal judiciary took shape in 1793.

in 1807, the authorising of District Magistrates to punish British subjects resident in the provinces for assaults and trespass against Natives of India, though their convictions were made removable by *Certiorari* to the King's Courts in 1813 (Charter Act, 53, Geo. III, c. 155), the making of crimes against the State triable by ordinary tribunals in 1841, the appointment of uncovenanted Deputy Magistrates capable of being employed as Judicial officers with limited powers in cases referred to them by the Magistrate in 1843, and the vesting of power to try cases, without previous reference to the Magistrate, in the Deputy and Assistant Magistrates, the system of criminal justice in India has been brought up to its present level and standard, the union of the offices of Collector and Magistrate having in the meantime, been effected in 1831. This is a system which it is rightly contended, obtains nowhere in the civilised world. The system of the union of the judicial with executive functions, for the Collector is an executive functionary, as the Magistrate being the head of the Police is both the prosecutor and the judge combined, lends itself, as it has always done, to gross abuse of power and miscarriage of justice. When to this fault of the system is superadded the racial prejudice inherent in the higher officials, particularly in the rank of the European services in India, the result is at times barbaric indeed. As an instance I might draw your attention to the case known as the Higginbotham bookstall clerk's case that happened recently in the Presidency of Madras, at Tanjore, when a European Magistrate upon a complaint lodged by an Indian gentleman, in charge of a Railway bookstall, for being pulled by the ear and kicked by one alleged to be a European decided,—be it said to the credit of the accused that he admitted the charge,—that " the hitting with the booted leg " for

Collector and Magistrate combined in one person.

the purpose of making the man stand and do his duty in a proper way, "was not harmful or dishonourable" to the man hit any more than the "touching of the ear" for the same purpose is. On appeal a learned European Judge of the Madras High Court confirmed the judgement of the lower Court *even though* his Lordship *admitted* that the proceedings in the *lower court* were irregular and improper. But then, said this learned judge, the incident happened ten months ago, and was in itself of a trivial character. It would be interesting to know what his Lordship's decision would have been in a similar case with only the position of the parties reversed. All this from a person who by character and education is placed far above the common run of Britishers in India who sit as jury in point of culture which begets a sense of justice and fairness in its possessors. Moreover, it is the provincial High Courts to which the people ultimately look for protection against race arrogance, if they are denied proper redress in the lower courts. It has also been authoritatively laid down again and again, that the duty of the courts is not only to administer justice, but to do it in such a manner as to convince the people that justice has been done. But what do we find in the Book-stall Clerk's case? He was kicked and pulled by the ear by an Anglo-Indian without just provocation. The accused was acquitted by the lower court. On appeal the judgement of the lower court was confirmed. Is it any wonder that a most competent, sympathetic and fair-minded of Englishmen, also a member of the Indian Civil Service, Sir Henry Cotton, should have written in his famous book "New India" that, he could not "omit one feature of race prejudice which is rapidly developing into a source of embarrassment to the administration. Assaults on natives by Europeans have

A typical instance of a gross case.

High Court the palladium of Justice.

Failure of Justice in the hands of European Magistracy and Jury.

always been of frequent occurrence, and it occasionally happens that they are attended with serious and sometimes fatal consequences. The trial of these cases, in which Englishmen are tried by English juries too often results in a failure of justice, not falling short of judicial scandal." The whole trouble nevertheless arises, as I have observed elsewhere, from a false sense of superiority which the European harbours in his own heart, resulting in an arrogance and superciliousness in the one and racial hatred in the other, which, as Sir Valentine Chirol puts it, " has often had its origin in the rancour created by personal insults to which the natives of oriental countries even of good positions have occasionally been subjected by white men who fancied themselves, but were not their betters." And if this is true of some judicial officers of the highest courts in the land, doubts will naturally be expressed for the wisdom of the decision of the Government in extending the powers of the High Courts, to punish contempts of subordinate Courts, or to invest the Judicial Commissioners' Courts, not possessing the status of High Courts, with the power of trying contempt cases and further to invest them all with the power to inflict punishment of six months' rigorous imprisonment.

Sir Charles Napier an honest and a far-seeing Englishman.

The ideal of the stay-at-home Britisher, no doubt, is justice, pure and stern, which recognises neither position, nor caste, nor creed, nor colour. Sir Charles Napier was a distinguished soldier in the service of the East India Company whose contribution towards the building up of the empire was neither mean nor inconsiderable. On his statue in St. Paul's Cathedral are inscribed the words : " A prescient General, a beneficent Governor, a just man." His words about India were emphatic : " The final results of our Indian conquests no one can predict, but if we take the people by the

hand we may count on ruling India for ages. Justice—rigid justice, even severe justice will work miracles. India is safe if so ruled; but such deeds are done as make one wonder that we hold it a year." In practice, expediency occupies a larger place in the ethical code of the persons in authority in the Government than justice; and truth is thoughtlessly cast in the cold shade to make room sometimes for prestige, and at others for diplomacy. It is greatly to be regretted that the Government in India do not realise what incalculable harm is wrought by such things not only to the victims but also to those in power whose character it deteriorates.

A short-sighted policy.

Part V.

The Criminal Judiciary.

(a) *Criminal Jurisdiction of the High Courts.*

The High Courts Act provides that the High Court shall be a Court of Appeal from the Criminal Courts of the Presidency or Province as the case may be, and from all other Courts subject to its superintendence, and shall exercise appellate jurisdiction in such cases as are subject to appeal to it by virtue of any law now in force. It further provides that the High Court shall also be a Court of Reference or Revision from the Criminal Courts subordinate to its appellate jurisdiction, and has power to hear and determine all such cases as may be referred to it by the Sessions Judges or by any other officers authorised to refer cases to the High Court, and to revise all such cases tried by any officer or Court possessing Criminal jurisdiction, as are now subject to reference to, or revision by, the High Court. As the law stood under

High Court's power of superintendence, etc., in criminal matters.

the Charter of 1862, the High Court, as a Cuort of Revision, had no jurisdiction on its appellate side over Criminal Courts dealing with offences committed by European British subjects, still the present High Courts in the Presidency towns uniting in themselves the functions both of the Nizamut Adalut and the late Supreme Court are justly given the power to deal with such offences in their revisional jurisdiction. The power of superintendence over the subordinate Court vested in the High Court includes the power and auhority to direct the transfer of any criminal case or appeal from any Court to any other Court of equal or superior jurisdiction, and also to direct the preliminary investigation or trial of any criminal case by any officer or Court otherwise competent to investigate or try it, though, such case belongs in ordinary course to the jurisdiction of some other officer or Court. The Act, however, does not say whether the High Court can transfer a case or appeal pending in any Court subordinate to it to its own file; but it seems clear that since it possesses the power to transfer generally, it may as well transfer to its own file as to the file of any subordinate Court, as it has often done. It could not transfer to a Court of inferior jurisdiction from a Court of superior jurisdiction, for, that would be giving jurisdiction to a Court in a matter which in law it does not possess, and thereby assuming to itself functions of the legislature which the High Court does not really possess.

High Court inherits the revisional jurisdiction of the Supreme Court.

Power to transfer cases from one file to another.

As regards the criminal law which should be administered by the High Courts, the Act provides that all persons brought up for trial before the High Court, either in the exercise of its original jurisdiction, or in the exercise of its jurisdiction as a Court of Appeal, Reference, or Revision, charged with any offence for which provision is made in the "Indian Penal Code," or by any Act

nal law that is administered.

amending or excluding the same, which may have been passed prior to the publication of the Letters Patent, shall be liable to punishment under the Code or Acts, and not otherwise.

As it may be necessary under peculiar circumstances to change the venue of the High Court, and to hold its sittings in places other than its ordinary place of sitting, the Act provides that the Governor-General in Council may, on the ground of convenience, authorise and empower the Judges of the Court to exercise their powers as such Judges in any place within the jurisdiction of any Court subject to the superintendence of the said High Court other than the usual place of sitting of the said High Court, or at several such places by way of circuit, and the proceeding in cases before the said High Court at such place or places will be regulated by any law relating thereto which has been, or may be, made by competent legislative authority in India.

Circuit Courts may be established.

(*b*) *Present Constitution of Criminal Courts.*

To return to our subject, the Criminal Courts as at present constituted in their order, are the High Court with original and appellate jurisdiction, the Court of Sessions in the District with original and appellate jurisdiction, the Magistrate of the District with original and appellate jurisdiction, the Magistrate usually called the Deputy Magistrate (covenanted Assistant Magistrate in important sub-divisions), in the subdivision of a District with original jurisdiction only, Magistrate of the first class with original jurisdiction only, Magistrate of the second class with original jurisdiction only, and Magistrate of the third class also having original jurisdiction only. These are all constituted under the provisions of

Original and appellate criminal jurisdiction of the High Courts.

the Criminal Procedure Code applicable to the Presidency towns where magisterial power is vested in a special class of Magistrates called the Presidency Magistrates, who are Judicial officers only, without any executive or police functions, and the provinces alike divided into Districts or Sessions divisions, each having a Sessions Judge who combines in himself the functions also of the District Judge on the civil side.

The High Court's criminal jurisdiction, is as we have seen, in respect of all persons within and without the limits of its territorial jurisdiction, and not within the limits of the criminal jurisdiction of any other court, and over whom the Supreme Court formerly had jurisdiction. It also has extra-ordinary criminal jurisdiction. over all persons who reside in places within the jurisdiction of any court, formerly subject to the Sadar Nizamut Adalut, upon any charge preferred by the Advocate-General or by any Magistrate, or other officer especially empowered by the Government on their behalf. It is also constituted a Court of Appeal from the criminal courts and all other courts subject to its superintendence in addition to being a Court of Reference and Revision from the Criminal Courts subject to its Appellate Jurisdiction.

Extra-ordinary criminal jurisdiction of the High Courts.

(c) *Criminal Courts in Presidency Towns.*

For purposes of the administration of criminal justice the Local Government appoints in each Presidency town a number of persons to exercise the functions of Magistrates. These are called Presidency Magistrates, one of whom is usually appointed as their chief under the designation of the Chief Presidency Magistrate who is assisted in the discharge of his magisterial duties by a number of Magistrates called stipendiary Presidency

Presidency Magistrates.

Magistrates and Honorary Presidency Magistrates, all appointed by the local government who has the power to order the latter to sit singly or form benches of two, for the trial of cases according as they are able and experienced, upon which also depends the class of power with which they are invested. But it is the chief who has the control and distribution of the benches, the constitution of benches, and the time when and the place at which they shall sit, the mode of settling differences of opinion in a bench and the general control over them all, in his hands. In fact it is the Chief Presidency Magistrate who, for such purposes as are described here is the local government, in that he is authorised to exercise these powers which belong to the local government.

Coroner's Court—its functions.

An unique feature of administration of criminal justice in the Presidency towns is the Court of the Coroner whose duty it is to inquire into the cause of death whenever any person dies of accident, homicide, suicide, in prison, or suddenly by means unknown. On receiving notice of such death the Coroner summons a Jury, views and examines the body, summons witnesses and finally draws up the inquisition according to the finding of the Jury or the opinion of the majority of them.

(d) *Moffussil Criminal Courts—the Origin of the District Magistrates.*

District Magistrates and Deputy Commissioners: Magistrates in the Regulation and Commissioners

There are as many District Magistrates in India as there are Districts. In non-Regulation provinces they are called Deputy Commissioners. As chief executive authorities in a British district they are all Magistrates of the first class, the local government having the power to appoint others as Magistrates of the first, second or third class, to assist them and relieve them of their magisterial functions, just as they have the power to appoint from time to time honorary magistrates to form benches

in non-Regulation.

with such powers conferred upon them as they may be found qualified for. Subject to the orders of the local government these are all directly under the control of the District Magistrate or the Deputy Commissioner according as his official designation may be. It is the District Magistrate who frames rules, subject as above, to the control of the local government, for the guidance of the benches, the classes of cases to be tried by them, the times and places of their sitting, their constitution and the mode of settling differences of opinion among them.

District Magistrate first appeared in 1793

The earliest origin of the District Magistrate is to be found in sections 2 and 3 of Regulations IX of 1793 re-enacted in Regulation XVI of 1795 whereby Civil Judges were constituted magistrates of the Districts under their respective jurisdictions, with a provision that their local jurisdiction, as magistrates, should be the same as that of the Civil Court. It was however, " found expedient to appoint a district officer to execute the duty of Magistrate " and consequently by section 2 of Regulation XVI of 1810, the government was empowered to make such district appointment, and to direct whether the judge of the Civil Court should or should not exercise a concurrent authority as joint-magistrate : and by section 6 of the same Regulation, it was enacted that the officers so appointed should be guided by the regulations in force for the discharge of the duties of the magistrate's office. Previous to the execution of the functions thereof he has to take and subscribe to an oath, namely, " I, A. B. appointed Magistrate of the District do solemnly swear, that I will, to the best of my ability, preserve the peace of the District over which my authority extends; that I will act with impartiality and integrity, and will not exact, or receive, nor knowingly allow any other person

Oath taken by Magistrates.

to exact, or receive, directly or indirectly, any fee, reward, or emolument whatsoever, in the execution of, or on account of, any matter relating to the duties of my office, excepting such as the orders of the Governor-General in Council do or may expressly authorise; and that I will perform the duties of my office, according to the best of my knowledge, abilities, and judgement, conformably to the Acts that have been, or may be, passed by the Governor-General in Council or the local Government. So help me God."

(*e*) *Powers of Magistrates.*

The value of a magistrate's service is more dependant on the skill and judgement with which he directs and controls the acts of all subordinate officers, than upon the work he can himself perform. The time of any officer exercising criminal jurisdiction is not employed in details, which are well performed by ministerial officers. The judicial powers of the Magistrates are defined under different clauses of the various enactments of both the Indian and the local legislatures, but the general rule never departed from is, that if he considers the sentence, which under the law he is competent to pass, insufficient for the offence, he commits the accused to the session, and when he is in doubt as to the law to be applied to it, he applies to the law officer of the District or to the Legal Remembrancer for assistance and guidance. Magistrates however, in India, have occasionally mistaken their power to include the power of interference with judicial proceeding before Magistrates subordinate to them. The earliest case on record of this description was when the District and Sessions Judge of an important District in Bengal made a grievance of it to a strong and stalwart

Ministerial officers and details of magisterial duties.

Interference with the discretion of the subordinate magistracy.

Chief Justice who was a Judge and nothing else, Sir Comer Petheram, and observed that criminal judicial proceedings with regard to Section 110 namely,

Section 110 of the Criminal Procedure Code.

"Whenever a Presidency Magistrate, District Magistrate, Sub-divisional Magistrate or a Magistrate of the 1st class specially empowered in this behalf by the Local Government receives information that any person within the local limits of his jurisdiction :—

(*a*) is by habit a robber, house-breaker, thief or forger; or

(*b*) is by habit a receiver of stolen property knowing the same to have been stolen; or

(*c*) habitually protects or harbours thieves or aids in the concealment or disposal of stolen property; or

(*d*) habitually commits or attempts to commit, or *abets* the commission of the offence of kidnapping, abduction, extortion or cheating or mischief, or any offence punishable under Chap. XII of the Indian Penal Code or under Sections 489 A, 489 B, 489 C, or Section 489 D of that Code; or

(*e*) habitually commits, or attempts to commit, or abets the commission of offences involving a breach of the peace; or

(*f*) is as desperate and dangerous as to render his being at large without security hazardous to the community.

such Magistrate may, in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour for such period, not exceeding three years, as the Magistrate thinks fit to fix," gave rise to a moral canker for, the trying Magistrates were often

instructed by the District Magistrate to bind down all persons charged under the Section by the Police of which, be it remembered, he, the District Magistrate, is the *de facto* head. There was fought a great duel between Sir Comer Petheram, Chief Justice of Bengal, and Sir Charles Elliott, Lieutenant-Governor of the Province, over the question of interference by the District Magistrate with the judicial proceedings before subordinate magistrates. The matter was referred to the Secretary of State and Sir Charles went home on six months' leave to fight out the case which he had made his own as the head of and representing the executive in Bengal. Lord Cross disposed of the matter in a fashion which was neither a triumph nor a loss for either of the mighty combatants, though the balance of the former may be said to have been in favour of the Lieutenant-Governor. This was in the mid-nineties of the last century. Section 110 of the Criminal Procedure Code has sometimes been employed by Magistrates and the Police against those who have incurred their displeasure or are not in their good books.

Indiscreet exercise of the power.

Secretary of State untrue to his profession and training.

The latest case of this description comes from Allahabad where the Judges of the High Court in a case before them in their high sense of duty observed: "The object of Section 110, Criminal Procedure Code, is to offer protection to the members of the public and is not intended to be an engine of oppression. The Courts below have got, in all cases coming up under Sections 108, 109 or 110 of the Criminal Procedure Code, to pay strict regard to the question whether the evidence adduced is legal evidence in the case on the question of repute. Nothing is more easy than to put forward a general charge against a certain person that he is a burglar and a thief. The said statement has got to be tested in the light of tangible facts and particulars, if

Education imparted by the High Courts.

there are any such facts to support the story. If there are no such facts, the evidence loses its value." In this case, the accused was prosecuted on the allegation that he was a habitual burglar and thief and that his character was so desperate and dangerous that it was a menace to the community at large to allow him to remain without being bound over. The first class Magistrate ordered the accused to execute a personal bond of Rs. 200 with two sureties each for the like sum to be of good behaviour for a term of three years. The accused was unable to furnish the securities required. The matter therefore, was placed before the Sessions Judge of the District who acquitted the accused. The Government impelled by the executive appealed to the High Court for a revision of his judgement. In course of their judgement their lordships observed : " The judgement of the trial court was an excellent model of what a judgement should not be. It was summary, sketchy, and most unconvincing. Without caring to weigh the value of the evidence and without trying to consider whether the evidence produced before him was legal evidence of repute or otherwise, the Magistrate had pronounced judgement in this case." Their Lordships agreed with the view of the Sessions Judge that it was not proved that the accused was a habitual burglar and thief and dismissed the Government application for revision.

Magistrate's power to call out troops.

Magistrates have it in their power to require the services of detachment of troops, for the maintenance of the peace in their respective districts and in the event of any breach of peace being apprehended from public offenders. And when they do require the services of the troops they are to state in writing, as fully and precisely as is practicable the nature of the service, required to be performed to the officer commanding the corps or company, from

which the detachment is to be furnished, leaving it to the Commanding Officer, on consideration of the circumstances stated, to judge of the strength of the force which should be employed in the execution of the duty in question.

Procedure followed in calling out detachments.

The power thus vested in the Magistrate, being founded upon the nature and exigency of the case, which may frequently require promptitude and decision, will seldom admit of a reference to Government; it is then the duty of the Commanding Officers immediately to furnish the necessary aid, whenever applications are regularly and publicly made to them by the Magistrate for troops for the maintenance of the peace, or for the support of the general police of the country. By these means the responsibility of calling in the aid of the military is made to rest with the Magistrates, the allotment of the force depending upon the officers commanding who are not, however, on occasions of this nature, to exercise any discretion in granting or withholding the required aid. But as it is, at the same time, essential to restrict the employment of military force to cases of absolute necessity, the Magistrates are enjoined to confine their requisitions to cases of that description only, and to report to Government, whenever they may apply for military aid, at the same time furnishing the Government with the necessary information respecting the circumstances upon which the application is grounded. The report of which copies are sent to the Superintendent of Police and the Sessions Judge must be full and distinct. The Courts of Sessions Judges in India who are not authorised to issue instructions of a general nature for the conduct of the Magistrate, that power being expressly reserved to the High Court, or to take cognisance of any matter not coming before them either

Restricted employment of military force.

High Court only can issue general instructions to Magistrates.

the Magistrate, may be said to co-relate with the English Assize Courts, and are competent to take cognisance of every offence, and to inflict any punishment short of capital punishment which requires confirmation by the highest tribunal of criminal appeal in the province. Identical powers are conferred upon both the Additional and Joint Sessions Judges, the Assistant Sessions Judges having power only to pass any sentence short of death or transportation or imprisonment for a term exceeding seven years. Similarly, Magistrates whether Presidency or District Magistrate, who are all vested with first class powers, or Magistrates exercising first class powers, have no authority to try cases punishable with imprisonment for a term exceeding two years, or with a fine exceeding one thousand Rupees, while Magistrates who are invested with second class powers may not inflict a punishment of imprisonment for a term exceeding six months or fine exceeding two hundred Rupees. It is only petty cases punishable with imprisonment for a term of one month or a fine of Rupees fifty which are triable by Magistrates enjoying third class powers. The law empowers only Magistrates of first class to inflict the punishment of whipping, in cases where such punishment may be thought to act as a deterrent to others and to inquire into the offence with which an European British subject may be charged, or try him for an offence involving a larger punishment than a fine of Rupees fifty.

Confirmation of high punishments by the High Court.

Powers of magistrates.

(f) *Privilege of the European Accused—the Ilbert Bill.*

While on this subject we may as well consider the position which Europeans, whether British subjects or not and Americans—occupied in the eye of the criminal law of on appeal from a magisterial order, or commitment by

Position of advantage occupied by Europeans

the country and its administration. Previous to 1882, no Indian Judge or Magistrate could try a European or American offender nor could enquire into offences committed by him. Early in the year 1882, Mr. Whitley Stokes, Legal Member of the Government of Lord Ripon issued a circular to the local governments proposing to do away with the distinction in power Judges and Magistrates of different physical complexion enjoyed over European and American offenders and for the favour of their opinion. It was a distinction which the liberal-minded Viceroy held was incompatible with the principles and professions of a civilised government, and one which could not bear the test of the moral support of any but the most bigoted, dishonest and detested of political heretics, and that not a day should be lost to blot it out of the statute book. With this object in view the Viceroy resolved to amend the provision in the Code of Criminal Procedure for the trial of European and American accused in India, and instructed his new legal member Mr. (afterwards Sir) Courtenay Ilbert, to take up the question set in motion by his predecessor in office, Mr. Stokes, in right earnest, and bring forward an amending bill to rectify the anomaly, and make amends for the insult to the entire population of the Indian Empire. Immediately previous to this Lord Ripon had given cause for umbrage to the people of his own community in India, official and non-official, by appointing Mr. (afterwards Sir) Romesh Chandra Mitter as acting Chief Justice of the High Court of Calcutta, during the absence on leave of Sir Richard Garth, whose fury at the decision of the Governor-General got the better of his mind as a Judge and impelled him to threaten to have his leave cancelled rather than suffer to see his seat on the bench occupied by one who was not of the white race, and was

and Americans.

Lord Ripon's scheme of doing away with the invidious distinction.

Sir Richard Garth stultifying himself as Chief Justice.

The Ilbert Bill in its ill-fated course.

a 'mere' Indian even though, he was the seniormost among the judges, and by common consent the ablest of them all. The European section of the Calcutta bar felt mortified at the appointment and took it as an affront with the result that they were only too glad of an opportunity to do the government of Lord Ripon which was popular with the Indian section of the community, and was pro-Indian, in the sense that it meant well by India, as far as it could be, an injury if it could. The idea of an opposition to the amending bill which had received the sanction of Whitehall, and from where not so much as a hint of any misgiving was communicated to the Viceroy, was hatched and communication was entered into with the 'Englishman' newspaper, the most uncompromising of anti-Indian papers in those days and ever since, (the 'Statesman' which still continued to be friendly towards Indians, having been under the angelic influence of Robert Knight the "Bayard of Journalism" in India and in receipt for its very subsistence of substantial financial help from a wealthy Indian gentleman,) and circulars in the shape of letters were sent to the Planters and settlers up-country suggesting their opposition to the Bill. Then with dramatic suddenness the storm of opposition to the Bill now come to be known as the "Ilbert Bill" for Ilbert had the piloting of it through the Council though he was in no sense the originator of it, burst. Within a week of the introduction of the Bill in the Council on the 2nd of February, 1883, the Anglo-Indian press became utterly hysterical and a European Defence Association was formed and started, which became the official organisation of the movement. Volunteers were openly incited to resign in a mass and opinions were sounded in the regimental canteens as to what measure of support it

Irate Anglo-Indian Journal.

Sedition provoked by the European Association.

would receive as against the constitutional authorities in the event of a 'white mutiny.' In other words attempts were made to seduce them away and subvert their loyalty. The Viceroy's *levees* were boycotted by the non-official European community, and he was openly insulted in the streets of Calcutta by the planters specially brought down for the purpose from the Mofussil. At a meeting of the Europeans held in the Town Hall of Calcutta, speeches were made of an intemperance beyond all limits of decency, and the first place in the discharge of volley of abuse and billingsgate was claimed here by a leading European member of the Calcutta bar and in the putting forward of sophistry, platitude and foul rodomontode in the Council, by another European member of the bar otherwise one of the ablest that ever came out to India. But after all what was the bone of contention? The object of the Bill was to empower the higher Indian Magistrates and Sessions Judges to try European offenders as the European Magistrates and Judges had hitherto done to the exclusion of their Indian compeers. They urged that as they were admitted to the Covenanted Civil Service and deemed qualified to discharge the highest judicial functions, they were also entitled to the jurisdiction which they claimed. The Europeans on the other hand protested against the proposed increase of Indian authority and refused, as "constituting" a superior class, to submit to be tried by "natives" their presumed inferiors. The fact that the local governments opposed the measure so strengthened the hands of the opposition that they with the knowledge and connivance of the Bengal Government, under Sir Rivers Thompson, contemplated chartering a steamer and keeping her ready at the Prinsep Ghat to carry the Viceroy straight to England by way of the Cape as soon as they could carry him bodily

European example of violence in speech.

The object of the Bill.

A projected 'White' Mutiny.

into it by overpowering the sentries of the Government House. After months of fierce discussion a compromise was effected by which the jurisdiction in question was given to the Indian Magistracy and Judiciary subject to special guarantees of their competence namely, their being appointed by the Government Justices of the Peace. The Bill thus amended was passed in 1884, but the compromise ever remained a dead letter for, no Indian however high his position as a Magistrate or Judge, was appointed a Justice of the Peace while every European Judge or Magistrate, and even a Jew and an Armenian, and even an Eurasian, however raw and inexperienced in judicial work he might have been had invariably been appointed a Justice of the Peace.

Amended bill remained a dead letter.

(g) *Further Compromise.*

The concession made helped to scandalise criminal justice in India.

This brings us to a point at which we find that European and American offenders in India occupied a position of privilege, for the compromise also included a condition that in every case triable by a Court of Sessions the majority of the Jury must be of the European stock, a state of affairs which has helped more to scandalise criminal justice in India, specially between Europeans and Indians, and consequently British rule, which ought to stand upon the rocky foundation of justice than anything else in the whole history of the British in India. For a whole generation of forty years that was the prevailing rule until the high sense of justice of the last Viceroy, who administered justice in the seat occupied by Lord Chief Justices whose memory is a part of the proud inheritance not of professional lawyers but of Great Britain herself, prompted him to do what is necessary to erase from the statute book all odious distinctions between Europeans and Indians, in view of

Lord Reading's half-hearted endeavours.

which a committee was appointed to suggest means of doing so, without unnecessarily irritating the feeling of pride or prejudice of either community. The whole object has been to realise and give effect to the spirit of the reforms which admittedly must be worked to success by the co-operation of the European and Indian communities alike. After considerable deliberation the committee recommended the abolition of the distinction that has hitherto existed and the substitution in its place of a freedom of choice to the Indian offender, to claim to be tried by a majority of his fellow countrymen as jurors, just as the European British subject only is entitled to claim the privilege of being tried by a majority of jurors who are his countrymen or of his stock. The privilege of trial by a jury, the majority of whom are their countrymen, is limited now to Indian British subjects and European British subjects if they so desire, not to Europeans and Americans generally, who may advance such claim at the trial with the chance of it being satisfied if practicable or available, not otherwise. This is a rule which applies to assessor districts also. What makes for the levelling up of the Indian Magistracy and Judiciary is the fact moreover of the statutory principle which declares that in virtue of their respective offices, the Governor-General, Governors, Lieutenant-Governors and Chief Commissioners, the ordinary members of the Council of the Governor-General, and the Judges of the High Courts are Justices of the Peace within and for the whole of British India. Sessions Judges and District Magistrates are Justices of the Peace within and for the whole of the territories administered by the local Government under which they are serving, and the Presidency Magistrates are Justices of the Peace within the towns of which they are respectively Magistrates. And

Odious distinctions done away with and Indians and Europeans placed on a par.

Justices of the Peace.

when offenders of the two communities are jointly charged, each may demand a separate trial, in conformity to the rules to which I have drawn your attention. Since India came to be under the direct rule of the Crown the number of Criminal Courts has largely increased, in most of which the presiding Magistrate is no other than an Indian himself. The Penal Code has simplified the law of Crimes as the Criminal Procedure Code has put the method of enquiry and prosecution on a footing, as nearing perfection as any Code, but what deserves full appreciation is that one has not now to travel far to seek and get relief from wrong done to him. The higher Courts are there to keep the lower Courts in check. An important factor in the improvement of both Civil and Criminal Courts is the advance of general education in the country and an altogether higher moral tone prevailing among the people themselves. It has given rise everywhere to a better, more cultured and more honest class of men called advocates or pleaders, by virtue of whose character and innate sense of justice and fairplay Criminal Courts in India are not a little influenced. The more serious Crimes or Criminal offences are tried by what are called Courts of Sessions. Before 1861, Criminal justice rested solely with the Judge in some districts and the Judge with the jury or assessors in the more advanced districts. It is no small privilege to be able to get the benefit of the famous 39th clause of the Magna Charta which lays down that no freeman shall be taken, imprisoned, dispossessed, outlawed, banished, or in any way destroyed, nor will they be proceeded against or prosecuted except by the lawful judgement of his peers or the law of the land, without so much as even a struggle when we are reminded of the fact that it was not vouchsafed to the English people themselves until after considerable

Merits of the Penal Code and the Criminal Procedure Code.

Advocates and Pleaders as a rule are an honest class.

Benefits of the Magna Charta acquired without bloodshed.

bloodshed. By it the right to be pronounced guilty or declared innocent by the verdict of our fellow citizens is secured. The jury are judges of facts and the judge is the judge of law. The duty of the assessors is to help the judge to arrive at a correct conclusion having regard to the facts of the case before them. A similar duty is imposed upon the jurors whose finding of facts is binding upon the judge who may or may not accept the verdict of the assessors. In the older and more advanced provinces the jury is freely used, such as Bengal which is an entirely jury province now. Burma is the only country where the administration of Civil Justice is not altogether dissociated from the executive, police, and revenue work. Minor criminal cases are tried in all provinces by officers who exercise executive and revenue powers.

The Judge is the judge of law and the Jury are judges of facts.

(g) *Inconsistent Practice.*

Everywhere the District Magistrate has the police, revenue and executive work in his charge. He has moreover executive control of all subordinate magistrates within his jurisdiction. This is a system which has often been found fault with though it is admitted that it has its advantages too. "In England a large majority of offenders are, as here, tried and sentenced by the Magistrates." There however, the cases so tried are comparatively of a trivial and unimportant nature. In India the powers of the Magistrates are much greater; their sentences extend to imprisonment for two years and their jurisdiction embraces offences which, both for frequency and importance, are by far the weightiest subjects of the criminal administration of the country. The evil which this system produces is twofold: it affects the fair distribution of justice and it impairs at the same time, the efficiency of the police. The union of Magistrate with

Union of the executive and the judiciary.

The union of Magistrate and

Collector is inconsistent with civilised administration.

Collector has been stigmatised as incompatible, but the junction of thief-catcher with Judge is surely more anomalous in theory, and still more mischievous in practice. So long as it lasts, the public confidence in Indian criminal tribunals must always be liable to injury, and the authority of justice itself must often be abused and misapplied. For this evil which arises from a constant and unavoidable bias against all supposed offenders, the power of appeal is not a sufficient remedy—the danger to justice, under such circumstances, exists not in a few cases, nor in any proportion of cases, but in every case. In all, the Magistrate is Constable, Prosecutor and Judge. If an appeal is necessary to secure justice in any case, it must be so in all: and if,—as will follow,—all sentences by a Magistrate should properly be revised by another authority, it would manifestly be for the public benefit that the appellate tribunal should decide all cases in the first instance. It is well known on the other hand that the judicial labours of a Magistrate occupy nearly all his time, that which is devoted to matters strictly executive being only the short space daily employed in hearing *thana* reports. But the effectual management of even a small police force, and the duties of a Public Prosecutor, ought to occupy the whole of one man's time and the management of the police of a large district must necessarily be inefficient which, from pressure of other duties, is slurred over in two hasty hours of each day. An indispensable preliminary to the improvement of our system as laid down by the considered judgement of the country and of impartial Europeans is, that the duties of preventing crime and of apprehending and prosecuting offenders should, without delay, be separated from the judicial function. That was the considered opinion,—more a condemnation than an

The Magistrate as the policeman, prosecutor and judge.

Separation urged.

opinion,—of Sir Frederick Halliday, sometime Lieutenant-Governor of Bengal and member of the council of the Secretary of State as member of the committee appointed in 1838 to prepare a scheme for the more efficient organisation of the Police. Matters have not improved since and the principle of division of labour in spite of all its general, special and peculiar advantages remains to this day unredeemed and the thief-catcher flourishes as ever as prosecutor, also as judge.

Separation overdue.

But when the system comes to be improved upon the basis of the English system there is no doubt due regard will be paid to the economic difficulty there is in adopting it. The English is the most perfect system to be found anywhere in the world. There the stipendiary magistrates are a body apart from the executive staff.

The administration of Criminal justice has deterred violent crimes in India, no less than minor crimes. Its healthy influence upon the latter is most marked. Religious or caste disputes are not of frequent occurrence in our day. Minor officials are purer than they ever were and commercial dealings are carried on with a nobler sense of honour.

CHAPTER V.

Maintenance of Peace and Order.

Part I.

(*a*) *The Police*

There is, in every country and in every town, a body of men whose duty it is to help in the preservation of law and order, and to arrest criminals. It is the *Police*. Originally the Zemindars were responsible for the public peace and the public safety in this country. There was a clause in the engagement of these landholders and farmers of land by which they were bound to keep the peace; and in the event of any robbery being committed on their respective estates or farms, to produce both the robbers and the property plundered. But with the decline of the Moghul power the system of police fell into great disorder, and the petty chiefs and Zemindars, no longer dreading punishment from above, used their adherents to ravage and plunder the lands of their neighbours. This evil example was followed by the village headman and the village police. Most of the latter became thieves themselves, and many of the former harboured criminals and connived at crime for a share of the booty.

(*b*) *The Ancient Police System*

The early police system of India.

The ancient police system of India consisted of a headman and under him watchmen in every village who

formed the backbone of the police machinery. They do so even now to a large measure. The functions of the headman were more of the nature of those of a Magistrate, under whom the watchmen worked, with duties to keep watch at night, and find out all arrivals in, and departures from, the area entrusted to each one of them. He had to observe all strangers and report suspicious persons to the headman or *patail* as he was called. He was expected to know the character and whereabouts of every man in the village. In case of a theft in the village it was his business to detect the thief. Theft or robbery set the watchman on his enquiry, and it was not uncommon for him to track a thief, by his footsteps. If he traced him to another village to the satisfaction of the headman his responsibility ceased, the watchman of the latter taking up the enquiry. The ultimate watchman was made answerable for the stolen property, and if he failed to make good the property or the value thereof, the villagers themselves were called upon to compensate. " The exaction of the indemnity," wrote Mountstuart Elphinstone, " is evidently unjust, since the village might neither be able to prevent the theft, nor to make up the loss, and it was only in particular cases that it was insisted on to its full extent; but some fine was generally levied, and neglect or connivance was punished by transferring the *inam* of the *patail* or watchman to his nearest relation, by fine, by imprisonment in irons, or by severe corporal punishment. This responsibility was necessary, as besides the usual temptation to neglect, the watchman is often himself a thief, and the *patail* disposed to harbour thieves, with a view to share their profits " (East India Judicial Selections, Vol. VI, p. 176). The ancient system of police answered every useful purpose. Their office was hereditary and, war or calamity, they would

The responsibility of the watchman in the early system.

Responsibility how enforced.

never give it up. They were paid by the produce of an *inam* (free grant) land, by a small tax on each house in the village. The watchman therefore, was the executive police of the country and servant of the whole community.

(c) *The Moghul System of Police Administration.*

Perpetuation of the system under the Moghuls.

The Moghuls perpetuated the system but appointed at the head of a group of villages, a supervising officer, usually a revenue officer who had certain Magisterial functions put to his care. We have it on the authority of Abul Fazl, Minister of the Emperor Akbar, that, "the Kotwals of cities, kasbahs, towns and villages, in conjunction with the Royal clerks, shall prepare a register of the houses and buildings of the same, which register shall include a particular description of the inhabitants of each habitation. One house shall become security for another; so that, they shall all be reciprocally pledged and answerable each for the other. They shall be divided into districts, each having a chief or prefect, to whose superintendence the district shall be subject. Secret intelligencers and spies shall be appointed to each district, who shall keep a journal of local occurrences, arrivals and departures, happening either by day or by night. When any theft, fire or other misfortune may happen, the neighbours shall render immediate assistance; especially the prefect and public informers, who, failing to attend on such occasions, unless unavoidably prevented, shall be held responsible for the omission. No person shall be permitted to travel beyond, or to arrive within, the limits of the district, without the knowledge of the prefect, the neighbours or public informers. Those who cannot provide security shall reside in a separate place of abode, to be allotted to them by the prefect of the district and the public informers."

Police methods of the Moghuls.

A certain number of persons in each district, shall be appointed to patrol by night the several streets and the environs of the several cities, towns, villages, etc., taking care that no strangers infest them, and especially exerting themselves to discover, pursue, and apprehend robbers, thieves, cut-purses, etc. If any articles be stolen or plundered, the police must restore the articles, produce the criminal, or failing to do so, become responsible for the equivalent. Under them the system of spies known to us as detectives who made a speciality of bringing criminals to justice, and were not merely reporting agents, was also developed and with the decline of their power the police system became hopeless. Petty chiefs and Zemindars did what they liked to realise their dues, and looted and plundered all over the villages and the province to enrich themselves. The greater ones of them harboured criminals and connived at crime for a share of the booty. The watchman was no longer responsible for stolen goods or for their value. Old village responsibility had no longer any binding force. But the anarchy which reigned during the decline of the Moghul Empire seems to have destroyed any system of police which ever existed. As collusion was constantly proved or suspected between the perpetrators of offences and the officers who were maintained by the holders of land, the "chakran" land was resumed and the Zemindars were relieved of their police duties. In 1772, the "Fouzdary" jurisdiction of the Zemindars was transferred to the "Adaluts."

The Moghul detective system.

Decline of the police system under the Moghuls.

(d) *Reforms introduced by the English.*

This was the order of things when the British came and they at once set themselves to work. The remedies

adopted by them were not alike in different provinces, but the village system which was retained was made the basis upon which the general lines of reform, particularly in the direction of the improvement of the machinery for supervision, were founded. In 1774, Warren Hastings divided Bengal for purposes of police administration into 14 districts. *Fouzdars* were appointed for the protection of the inhabitants, and we have it in the Proceedings of the Governor-General in Council, dated the 19th of April, 1774, that, for the detection and apprehension of public robbers within their respective districts, and for the transmission of continuous intelligence of all matters relating to the peace of the Presidency, the Zemindars, farmers and other officers of the collection were enjoined to afford them all possible assistance in the discharge of their duty; and to obey such orders as they might have occasion to issue for that purpose; that the jurisdiction of each *Fouzdar* was ascertained by proper limits; that he was made responsible for the due maintenance of the peace within that space, and that an office was established under the control and authority of the President for receiving and registering all reports from the *Fouzdars* and issuing orders to them. "Thanadars" were appointed over them and landholders were enjoined to assist; "chakran" lands were again applied to their original design, and *Fouzdars* were appointed to apprehend all offenders against the public peace. This system proved a failure, and lasted a few years. In 1781, the *Fouzdars* and their subordinate "Thanadars" were abolished, and the Judges of the civil courts were invested with the power of apprehending and bringing to trial offenders in their districts. Their duty was to forward them to the *Darogah* of the nearest criminal court, the power of punishment still

Division of Bengal by Warren Hastings for purposes of police administration.

Failure of the Thanadar system.

residing in the Nawab's courts. Subsequently, the Civil Judges were vested with authority to hear and decide complaints of slight offences. "But the numerous robberies, murders and other enormities, which continued to be daily committed throughout the country, evinced that the administration of criminal justice was in a very defective state." The British Government whether of yesterday or of to-day, is nothing if not commercial in spirit, and does not know anything if it does not know how and when to turn the screw of taxation on. It was now their chance to make for an enhanced revenue which they thought could easily be effected, if the landlords who had certain police service entrusted to them, and for which, in the early days they were held responsible were called upon to commute it for an annual payment as an adjunct to the land revenue. Serious charges were brought against them, and to relieve themselves of the ignominy of having grossly abused the authority entrusted to them, or of having harboured thieves and dacoits for self-aggrandisement, they were in their turn too glad to have an opportunity to purchase their honour and reputation, both of which had been in jeopardy. As in the case of the Amirs of Sind, or in that of the Nawab of Oudh, a British officer was told off to bolster up a case against them, so in the case of these Zemindars, a charge was openly made against them, the gravamen of which was that, "they extorted and amassed wealth, which was dissipated in a jealous rivalry of magnificent pageantry, that the weapons which were intended for the enemies only of the State were turned against the State itself, and against each other, and were used for plans of personal aggrandisement, mutual revenge or public plunder. It was sometimes with difficulty that the regular or standing army of the State could restrain the insolence, or subdue the insubordination, of these intes-

The English took the opportunity to enhance the revenue.

Case bolstered up against the Zemindars.

Landlords held the combined offices of (1) Fouzdar, (2) Kotwal, (3) Daroga and (4) Barkandaz.

tine rebels and robbers." Be that as it may, the landlords who up till 1751 held the combined offices of *Fouzdar* and *Kotwal*, and later still, up till 1793, had to make room for the Magistrates of the districts, who were allowed a certain number of *darogahs* under them, and a complement of peons and *barkandazes*, all on a fixed remuneration and subject to his orders. Here rests the earliest connection of this officer with the police. In 1793 the whole criminal and police administration of the country was remodelled. The authority of the Nawab Nazim was abolished, and the Governor-General and Council formed the Sadar Nizamut Adalut, having general control over the criminal courts.

Landholders replaced by Superintendents of Police.

With regard to the administration of police, it was, in 1793, placed under the exclusive charge of officers appointed to the superintendence of it on the part of Government. The landholders and farmers of land, who were bound to keep up establishments of "Thanadars" and police officers for the preservation of the peace, were required to discharge them, and were prohibited from entertaining such establishments in future. They were relieved of responsibilities for robberies committed on their estates.

(*e*) *Magistrates and the Police.*

Police jurisdiction under Magistrate.

The Magistrates divided their Zillas into police jurisdictions, each of which was guarded by a *Darogah* with an establishment of officers. The police officers were directed to apprehend and send to the Magistrates all persons charged with crimes and misdemeanours, and vagrants. Various rules were, from time to time, enacted respecting the duties of the *Darogahs* and other subordinate officers of police, and, in 1817, they were all reduced into one regulation (Regulation XX of 1817).

For upwards of half a century, the Magistrate had been charged with the oversight of the police of his district; and as with the increase of business, Magistrates became judicial officers, with extended powers, they were little able to give the police the attention necessary to maintain its efficiency. " Complaints of their inefficiency and corruption became universal." "The police," said Sir Bartle Frere in introducing the Bill which later became Act V of 1861, " was everywhere oppressive and corrupt, undisciplined and ill-supervised."

Laxity of Magistrates.

The Regulation of the Governor-General in Council (Lord Cornwallis), which was passed on the 7th of December, 1792, for the establishment of an efficient police throughout the country is summarised by a very high authority as follows :—" The police of the country was removed from the control of the Zemindars and placed under officers of Government, and Zemindars were required to discharge their police and prohibited from entertaining police establishments in future. Landholders and farmers of land were not in future to be considered responsible for robberies unless complicity could be proved against them. The Zilla Judges, who in 1774 took ever the Fouzdar's duties and held magisterial powers, were required to divide their zillas into police jurisdictions, each jurisdiction to be of the area of about 400 square miles and the guarding of this area was committed to a *Darogah* with an establishment of police officers to be paid by Government. The *Darogahs* were required to give security in the sum of Rs. 1,000. The Magistrates at Dacca, Murshidabad and Patna were directed to divide their cities and their environments into wards, each ward to be guarded by a *Darogah* and the *Darogahs* to be under the immediate authority of a *Kotwal*. The *Kotwal* had to give security of Rs. 5,000. The *Darogahs* and *Kotwals* could not be removed without

Mr. Gourlay's summary.

the sanction of Government. The numbers of the police force and their stations were left to the discretion of the Magistrate. But in the cities, the *Jamadar* with half the establishment patrolled for the first half of the night, and the *Darogah* with the other half of the establishment patrolled from midnight till dawn. The instructions in the Regulation are that the patrols are to move about with as little noise as possible, that thieves and other disorderly persons may not be apprised of their approach. The patrol of the several wards and such part of the stationary watchmen as the *Kotwal* shall appoint are to be furnished with *Singharus* or horns, which they are to sound when they meet with robbers and other persons guilty of a breach of the peace and when they have occasion to give the alarm to each other or to the inhabitants of the ward that may operate for the apprehension of the offenders. The *Kotwal* is to be careful that the stationary watchmen, and the *Darogahs* and their officers perform the efficient duties prescribed in this clause regularly and properly and to report to the Magistrate every instance in which they may be guilty of negligence or misconduct in the discharge of them.

"The *mohalladars* were held responsible for any offenders or strangers within their *mohalla* and had to report daily the arrival and departure of travellers, and all private watchmen were required to assist the police and were declared subject to the orders of the *Kotwal* and *Darogah*. The duty of the *Kotwal* and of the *Darogah* was to apprehend all criminals or persons guilty of a breach of the peace and all vagrants. People arrested by the patrol in the night were brought to the *Kotwali* at sunrise and the *Kotwal* brought all persons before the Magistrate by 11 o'clock. The *Kotwals* and *Darogahs* were given powers of releasing persons apprehended for petty offences of a bailable nature; but a report

of all such releases had to be made to the Magistrate. The duty of the *Kotwals* and *Darogahs* of wards was restricted to apprehension and production before the Magistrate. They were not to make any enquiry into the truth of the charges preferred to them without special instruction from the Magistrates. They had no powers of fining or of passing sentence. The *Kotwals* had also to make inquests in cases of murder or unnatural death and local enquiries on information received of a robbery or other violent crime. They could also take voluntary confessions of persons apprehended.

"By a general rule extended to the whole of the provinces all 'pykes, chowkeydars, panshauns, dusauds, nigaleans, harees and other descriptions of village watchmen' were declared subject to the orders of the *Darogah* who kept a register of their names and upon the death or removal of any one of them, the landholders or others to whom the filling up of the vacancies belonged, sent the name of the persons whom they appointed to be *Darogah* of the jurisdiction, that they might be registered by him.

"The pykes, panshauns and other village watchmen were to apprehend and send to the *Darogah* any persons who might be taken in the act of committing murder, robbery, house-breaking or theft, or against whom a hue and cry had been raised. It was their special duty also to convey to the *Darogah* of the jurisdiction immediate intelligence of any robbers who might have concealed themselves in their respective villages or the country adjacent, and also of any vagrants or other persons who might be lurking about the country, without any ostensible means of subsistence or who could not give a satisfactory account of themselves. Pykes, panshauns or other village watchmen who did not act in conformity to the section, were to be dismissed from their station

by the landholders or other persons by whom they might be employed upon the requisition of the Magistrate, and further punished as the law might direct, should it be proved that they had assisted in harbouring or concealing any of the abovementioned descriptions of offenders or suspicious persons, or connived in any respect at their malpractices. The *darogahs* of the mofussil police jurisdiction had under their immediate authority—

1. The Watchmen.
2. The writer.
3. One or more *Jamadars*.
4. An establishment of *Burkandazes* or matchlockmen, varying from 10 to 20, 30 or 40 according to the circumstances of the jurisdiction.

"The general duty of the police *Darogah* and of the officer appointed to act under him was (1) to maintain the peace; (2) to prevent, as far as possible, the commission of all criminal offences; (3) to discover and apprehend the offenders: (4) to execute processes and obey orders transmitted by the Magistrate; and (5) to perform such other services as are prescribed by the Regulations. Any person having a charge to prefer against another for a crime was at liberty to prefer it in writing to the police *Darogah*. If the complaint was a petty one, it had to be written on a stamped paper bearing a duty of eight annas per roll. The object was to check litigation. The *darogah*, if the offence complained of was a serious one, took the statement of any credible person acquainted with the case on oath or on solemn affirmation and himself issued a warrant for the arrest of the offender, and when apprehended, the offender was to be sent in safe custody within 24 hours to the Magistrate. If the complaint made was for a bailable offence, the *darogah* was

to issue such summons specifying the offence charged and requiring the accused to attend before the Magistrate on a specified date, either with or without bail; in cases where the charge did not involve a breach of the peace, the *darogah* was empowered to transmit the complaint to the Magistrate for his orders.

" When the *darogah* apprehended an offender, he examined him without oath, and in the event of the prisoner making a free and voluntary confession, he has to question fully, on the whole of the circumstances of the case, the person concerned in the commission of the crime and the persons in the possession of the stolen property. The *Darogah* was warned against using any compulsion against either the party or the witnesses and against persuading or threatening or promising pardon to induce a confession. The police officers were also required to make it an invariable rule whenever information was received by them of a robbery or other violent crime within their respective jurisdiction to repair in person to the spot or to send a fit person from among the officers under them to ascertain the facts and circumstances of the case. This enquiry was to be made and committed in writing on the spot and attested by three or more credible persons and forwarded to the Magistrate. Excepting cases in which the Zilla officers were specially authorised to make enquiries, they were prohibited from enquiring into the truth of any complaint preferred to them. They were likewise prohibited from passing sentences or imposing a fine or inflicting any punishment. The police officers were likewise forbidden to discharge persons accused after they have apprehended them, except in case where they were authorised to do so by Regulations.

"The police *darogahs* were authorised to apprehend without a written charge and without a writ persons

found in the act of committing a breach of the peace or against whom a general hue and cry shall have been raised and also notorious robbers and dacoits as well as vagrants or suspected persons without ostensible means of subsistence. Police *Darogahs* were likewise directed to despatch immediate information concerning crimes and criminals to all neighbouring *darogahs* as well as to Magistrates of adjoining Zillas. *Darogahs* of police were entitled to receive from Government a reward of ten rupees for every dacoit who may be apprehended by them, to be paid on the conviction of the offender, and they were entitled to a commission of ten per cent. on the value of stolen property recovered, provided the thieves be apprehended and convicted.

"The Regulation of 1793 also provided for the registration of certain descriptions of boats usually employed by dacoits who infested the rivers in the lower part of Bengal. The Police were authorised to give assistance to travellers passing through their respective jurisdictions under certain restrictions. The *Darogahs* also submitted a monthly report of all that happened within the jurisdiction of the *thana*."

This extract which is taken from a valuable paper styled " Contribution towards a history of the Police Organisation in Bengal " by Mr. W. R. Gourlay, sometime a Member of the Indian Civil Service, represents Lord Cornwallis' scheme of police organisation. This however, was not to survive long for we find Lord Moira (Marquis of Hastings) after the lapse of about a quarter of a century instituting a thorough enquiry into the efficiency of the *thanadari* system introduced by Lord Cornwallis, only to arrive at the conclusion that the system had not worked well, and that a return should be made to certain principles that were old while engrafting others which were new. In this view he passed the

Lord Hastings enquires into the *thanadari* system.

Regulation XX of 1817 whereby all the rules which had from time to time been enacted respecting the duties of *darogahs* and other Indian police officers were systematically and logically arranged. One momentous change was made in that the appointment of all police officers was vested in the Magistrate of the district, a system which prevailed, in spite of all the reproach and condemnation it had incurred from the Court of Directors on the one hand and the people of the country on the other, up till the Police Act of 1860.

(f) Reforms found inefficient and inadequate.

Lord Wellesley's enquiry into the causes of failure of the police to preserve peace.

The reforms whatever they were, did not produce the desired result, for the "people did not sleep in tranquillity;" dacoits there were as before, and the country was overrun by robbers as before, as the villages and countrysides were infested with thieves as before. These were the circumstances which impelled Lord Wellesley in 1801, to resolve to institute immediate inquiries into the causes of the failure of the police to preserve peace and order in Bengal. Five years later a similar committee appointed by Lord William Bentinck, was seen labouring in Madras to devise means of improvement of the police service, and immediately after the passing of the Charter Act of 1813, the Court of Directors, insisted upon very effective reforms being introduced whereby, internal peace could be secured to the people of the country. The result was the passing of the Madras Regulation XI of 1816, the object of which was to establish a general police system throughout the presidency. Of this system Sir Thomas Munro said, "we have now in most places reverted to the old police of the country, executed by village watchmen, mostly hereditary, under the direction of the heads of the villages, tahsildars of districts and the Collector and

General police system introduced in Madras in 1816.

Magistrate of the province. The establishment of the tahsildars are employed without distinction either in police or revenue duties, as the occasion requires." A few years later in 1827, Regulation XII was passed in Bombay establishing a system of police "founded chiefly on the ancient usages of the country," and in all material particulars, identical with the scheme adopted in Madras. In Bengal however, considerable difficulty was experienced. By reason of the permanent settlement prevailing there, the subordinate revenue establishment was not available and, consequently the abolition of the *darogah* with his retainers could not be thought of without detriment to what little efficiency there was, though his executive powers had been considerably curtailed by the removal of all petty, as well as, bailable offences from his cognizance. He was hereafter to carry out behests. Various enquiries thereafter were made in 1829, 1832, 1843 and 1849, into the working of the police in India, followed by the appointment of a Commission in 1860, with instructions to go into the whole question of "police administration in British India and to submit proposals for increasing the efficiency and reducing the excessive expenditure." Their report was followed by a Bill being brought into the Legislative Council which subsequently became Act V of 1861.

In Bombay in 1827.

The several enquiries of 1829, 1832, 1843,1849 and 1860.

The object of Act V of 1861 was "to reorganize the police, and to make it a more efficient instrument for the prevention and detection of crime." So the entire police establishment under a Local Government was enrolled as one police force. The superintendence of the police throughout a general police-district was vested in and was exercised by the Local Government to which such district is subordinate. The administration of the police throughout a general police-district vested in an officer to be styled the Inspector-General of Police and his subor-

Object of Act V of 1861 and police reorganisation.

dinate officers; and throughout the local jurisdiction of the Magistrate of a district, it is vested in a District Superintendent and his subordinates, subject to the general control and direction of the Magistrate.

The duty of the police officers is promptly to obey and execute all orders and warrants lawfully issued to him by any competent authority, to collect and communicate intelligence affecting the public peace; to prevent the commission of offences and public nuisances, to detect and bring offenders to justice, and to apprehend all persons whom he is legally authorised to apprehend, and for whose apprehension sufficient ground exists.

Reform and re-organisation of the police have been going on ever since. Of these, the 1843 enquiry, which followed the annexation of Sind, and carried on by Sir Charles Napier, is of great importance for, it was here that a regular police force, semi-military in character, on the model of the Irish Constabulary, as opposed to a purely civil force, was organised. What was started as a special organization for the newly-acquired province of Sind, soon became the basis of the general police organisation in the Presidency of Bombay, where the condition of the police had remained in an unsatisfactory state, and which Governor Sir George Clerk had attributed to inefficiency in superintendence and want of proper supervision. He appreciated the merits of the Sind system and was quick to see that that provided a remedy for a long-standing defect. Promptly did Sir George Clerk remodel the Bombay system, and appoint at the head of every district police organization, a Superintendent in full control, but generally subordinate to the Magistrate in matters relating to executive administration. In turn the subdivision or *tahsil* was placed under an Indian police officer, holding to the subdivisional officer or *mamlatdar*

Enquiry made by Sir Charles Napier.

Superintendent of Police appointed and placed under the

control of the Magistrate.

or *tahsildar*, the same relations as those between the Superintendent and the Magistrate, the supreme control over the police being transferred from the court of *Fouzdari Adalut* to the Government in the Judicial department. It was not till 1855 that the administration of the police was transferred to a Commissioner of Police, the predecessor of the Inspector General of Police of our day.

(*g*) *Reforms introduced in Madras*

The Torture Commission in Madras.

Madras followed suit as a result of the disclosures made in the Torture Commission (1855), a witness before which stated that, " the police was a terror to well-disposed and peaceable people, none whatever to thieves and rogues; and that if it was abolished *in toto*, the saving of expense to Government would be great and property would be not a whit less secured than it then was." Another witness deposed that " the police establishment had become the bane and pest of society, the terror of the community, and the origin of half the misery and discontent that existed among the subjects of the Government." To bring about a happier state of things Lord Harris, at the instance of Mr. J. D. Mayne, the famous author of " Hindu Law and Usage," then Advocate General of Madras, resolved to adopt the system without the Magistrate in executive control of the police. This however, did not appeal to his successor Sir Charles Trevelyan who, in the meantime, before the necessary enactment was passed, had become the Governor. He decided that the Superintendent should be placed under the orders of the District Magistrate as in Bombay, a provision which was incorporated in the Bill finally passed as Act XXIV of 1859. Upon the recommendations of this Commission were founded, the various provincial Police Acts which notwithstanding the

Mayne's suggestion and Sir Charles Trevelyan's rejection thereof.

Police Commission of 1902-03, over which the late Sir Andrew Fraser, sometime Lieutenant Governor of Bengal presided, and in whom the masterful mind of Lord Curzon discerned a pliable instrument who could and would anticipate his wishes, form the cornerstone of the police organisation in India. This was a commission the hidden purpose of which was to enhance the pay and prospects of the European members of the Police and, as far as possible, to close the ranks of the Imperial Police Service to the children of the soil, however well qualified, well connected and well educated they may be, and to perpetuate a distinction between the European and Indian members of a service in which both are called upon to display equal amount of zeal, courage and honesty and, above all, to discharge their duties at equally considerable personal risk. In all essential features the constitution of the Police force was left undisturbed.

The Police Commission of Lord Curzon—1902-03.

Superiority of European personnel maintained though the quality and quantity of their duty remain identical with those of Indians.

(h) Village Agency a part of the Police System.

With regard to the working of the police system notice should be taken of the village agency, the foundation of the entire Police edifice. The ancient system of village police, regulated formerly by Regulation IV of 1818, and Regulation XII of 1827, and subsequently by other provincial Acts, remains unaffected by the Criminal Procedure Code, except where the Code contains a specific provision to the contrary. Under the local law, the *police-patail* has to do much more than merely inform the District police and he has himself to investigate in the matter of a crime, and obtain all procurable evidence and if any unnatural or sudden death occurs, or any corpse be found, the *police-patail* forthwith assembles an inquest, and investigates with the *Panch* into the causes of

Inquest by the *police-patail.*

death and all the circumstances of the case, and makes written report of the same. If from the inquest it appears that the death was unlawfully caused, he gives immediate notice to the police-station, and, if the state of the corpse permits, he forwards it at once to the Civil Surgeon or other appointed medical officer. The *police-patail* can make arrests, and can take evidence on solemn affirmation, and can hold searches also. It is the village headman in Madras, in his capacity as village magistrate who carries on the duties of the police officer, aided by *taliars* or village watchmen who are his principal informers, rather than the beat constables, while in Bombay they have a *police-patail* for each village with a number of watchmen subordinate to him, and directly under his control. These appointments have for centuries been more or less hereditary and are remunerated by rent-free lands and, sometimes by cash, and in some parts of the Deccan by both in the case of efficient and suitable men. If the wholesome custom and tradition that prevailed in Sind, of Zemindars and landowners assisting the police, have entirely disappeared, the administration of unsympathetic European officers is responsible for it, for, in their false notion of prestige and idea of superiority of race, colour and creed they never cared to make any effort to maintain and foster these relations, though attempts are now being made to rehabilitate them and enlist them as co-adjutors in the work of the maintenance of peace and order, and in the work of carrying on the ordinary duties of the police. In the United Provinces the system does not vary very much, except that the *Chaukidars* whose duties there, as elsewhere, are watch and ward, reporting to the police and exercising limited powers of arrest, are considered to be a more useful body of men than their brother officers in the sister provinces.

Police-patail at the head of *taliars* or village watchmen.

Chaukidar's duty is watch and ward.

(i) *The Bengal System*

The most important system however, is that which prevails in Bengal. It is based primarily upon Act VI of 1870, which "was framed in a spirit of trust in the village community, and it was hoped that, when the control of the village police was placed in the hands of villagers themselves, a sense of self-respect would induce them to co-operate honestly and cordially in the detection of crime, and that a sense of justice would induce them to see that the village watchman was regularly paid." The Act effected some improvements in the working of the police, but it left much yet to be remedied, so that, as a result of a very thorough enquiry that was made into the problem, Act I of 1892, sponsored by Sir Henry Cotton, was passed, which introduced a wholesale modification of the principles underlying the Act of 1870. It took away the control of the village police from the hands of the villagers themselves. The attitude of the Government was quite clear, for they held, that the inhabitants of a village have no claim to a municipal administration in any respect, still less have they any claim to control the police. "For the discharge of such duties," said the official spokesman, "the highest possible qualifications must be secured, and where the low calibre of the men who constitute a village *punchayat* is considered; the advantage appears to be wholly on the side of a police administration by the Central Government." The main principles therefore, adopted by the Act, are that the *Chaukidari* system was to be retained, that the *Chaukidars* who are mostly local men with local knowledge of men and things might be nominated by the *panchayats*, but the determination of their number and remuneration, and their appointment, must rest with the District

Village police placed in the hands of villagers

Control of the villagers removed by Act of 1870.

Chaukidari system not interfered with.

authority, namely the Magistrate. The salary of the *Chaukidar* is paid by the Government from out of a fund made up of the *Chaukidari* tax, levied on the villagers themselves, and any punishment for neglect of duty to be meted out to him, was to be so done by the Government and not by the *panchayat* on whose part, anything by way of interference beyond reporting failure in the performance of duty on the part of a *chaukidar*, should not be tolerated. The innovation had its desired effect, namely, it brought the village police into closer touch with the regular police of the province. It has since been supplemented by the *daffadar* system, a *daffadar* being placed at the head of 10 or 20 *Chaukidars*, functioning as merely the supervisor of their work but not to interfere with it in any way, except in cases of gross dereliction of duty. It is a system of low-paid regular constabulary, more than of village police, with which it harmonises in nothing but the residence of the Chaukidar in the village where he is a watchman, more or less subject to the influence of village opinion. If the main object of the village police system is to secure the co-operation of the people, the system introduced in 1892, must be said to have failed of its purpose. It alienated the sympathies of the village people to whom the *chaukidar* gradually became an eyesore so that, the Commission of 1902, in condemning it observed that, " if the present system is to be maintained they would like to see the *panchayat* or its members employed in some measure at least as they desire to see headmen employed in other parts of India." Since then definite and successful steps have been taken to improve the situation by replacing a supplementary body of low-paid stipendiaries or subordinate police by the village agency itself, the village being assumed to be the unit of administration, the excellence of which is in proportion to the active and

Introduction of the *Daffadar* system.

Chaukidari system and the Police Commission of 1902.

New responsibilities imposed

intelligent interest the village communities take in their own affairs. The village community is represented by its headman on whom lies a responsibility to co-operate with the police who must find the weight of his position and influence of considerable assistance in the discharge of their work. This principle is said to be the basis of the provisions of section 45 of the Criminal Procedure Code, which make it incumbent upon the headman to communicate forthwith to the Magistracy or the police any information concerning certain offences and offenders. It is in that view that the position and influence of the village headman in Bengal has been considerably strengthened and recently democratised by the Village Self-Government Act of 1921, which I shall notice elsewhere. In principle therefore, both the village headman and the village police officer, though the latter is a servant of the village and subordinate to the former, are coadjutors of, rather than subordinates to, the regular police.

under the Village Self-Government Act.

Village headman and village police officer.

Though yet capable of improvement the police system has largely helped us to secure the safety of our lives and property. The Criminal Procedure Code of India carefully defines the powers of the several grades of police officers. It limits the number of cases in which the police of their own motion may arrest. It restricts the time for which they may detain suspected persons without bringing them before a magistrate. The law prescribes the formation of the police force and subjects them to proper order and control. As early as the year 1860 a Commission was appointed by the Government of India to enquire into the organisation and administration of the police force in the territories where the Company's rule had recently to make room for the rule of the Crown direct. The Commission made certain recommendations, chief of which was the establishment of a well organised constabulary controlled and supervised by European officers.

Powers of the several grades of officers.

Police Commission of 1860.

The Commission did not recommend the extinction of the old village police, nor would they interfere with their existing footing which however, they desired to be brought into direct relationship with the constabulary to be formed. For all police purposes of protection, prevention and detection it was proposed that the civil constabulary should be under the executive government and that, it should be linked to the village police, so as to make the latter an useful supplement to the former. The principal glory of the Commission was the recommendation for the abolition of the separate detective body and of the body known as " spies " and " informers," who under the present system, are a curse and an abomination to the country and for a complete divorce of executive police from judicial functions. These recommendations formed the basis of an Act passed in 1861, which, with amendments made from time to time to suit local and provincial conditions, still regulates the Indian Police Force. The Police Force of the Presidency towns of Calcutta, Madras and Bombay, and of the city of Rangoon, are regulated by Acts of their own Legislatures which required them to carry on operations which were supposed to militate against the method of work and organisation of the general Provincial police; the tendency was towards the separation of the special forces employed in these cities from the Provincial police, and the result was absence of co-operation on the part of both. It was deemed to be prejudicial to the suppression of crime and therefore, to the best interests of society. With a view to remedy these defects, and more particularly to devise means to fight the unrest, symptoms of which were discernible in the nation, and which culminated in the Bengal anarchism of 1908, Lord Curzon appointed a Commission in 1902, with instructions to enquire into the working of the Indian Police, and suggest means

' Spies ' and ' informers ' as a rule are unscrupulous.

Presidency towns Police.

Curzon had an ulterior

whereby harmony could be established and uniformity in the method of work and operation throughout India, could be introduced.

motive in appointing the Police Commission of 1902.

PART II.

THE MODERN POLICE.

(a) *Recommendations of the Police Commission of 1902.*

The recommendations of this Commission which were acted upon by the Government of India, in consultation with the Local Governments, are the basis of the Police organisation of India of the present day. Its administration, ever since the days of Lord Mayo who provincialised the police service by his scheme of financial devolution in 1870, has always been in the hands of Provincial Governments, though a moiety of the cost of up-keep of the town police was for many years afterwards met from municipal funds. On the basis of the recommendations of the Police Commission of 1902, the District-Police establishment in every province was largely reinforced and the whole of it now forms a single force. The reinforcement has continued with such unabated vigour that, a force which cost Bengal 35 lacs (approximately 35 lacs for the 26 districts of Bengal and 23 lacs for the 20 districts of Behar and Orissa) in 1902, cost her 200 lacs in 1922. Constables are enrolled for service in particular districts, but the supervising officers are liable to transfer as a normal condition of their service and promotion. In every province they are all under the control of an officer designated the "Inspector

Provincialisation of of the Police is a direct result of Lord Mayo's financial devolution of 1870.

The Inspector-General of

Police: his duties and responsibilities.

General of Police," who is ordinarily a member of the Indian Civil Service, unless there is one in the provincial force itself who, by reason of outstanding ability and remarkable administrative capacity, is considered by the Local Government fit to be promoted to that office. The exercise of the full powers of a Magistrate to which he is entitled within his own jurisdiction is in the absence of the Magistrate, limited to the preservation of peace, the prevention or detection of crime and the apprehension or detection of offenders, and with regard to his own staff below the rank of Superintendents and Assistant Superintendents he exercises full powers of an administrative head including dismissal, removal, reduction, black mark, withholding of promotion or periodical increment, removal from any office of distinction or special emolument, forfeiture of privilege leave, censure or reprimand, confinement to quarters for a period not exceeding 15 days, punishment, drill and extra guard or other duty. Inspectors, Sub-Inspectors and Head Constables however, are exempt from some of these punishments. Not unusually is he assisted by one or more Deputy Inspectors General to whom, is given the charge of a specified area of Police administration, an incubus and a sinecure, which can be easily done away with, having regard to the fact that District Magistrates and Deputy Commissioners have now been relieved of much of their work in respect of Registration, District Boards and Municipalities. They are now enabled to have sufficient time at their disposal to exercise better and closer supervision than they at present do over the Police administration, in their respective districts and, having regard to the fact, that under the new dispensation of the Montagu Reforms, and the cruel recommendations of the Lee Commission, their pay and remuneration have nearly been doubled, it is

His powers over his staff.

Deputy Inspectors General are superfluous appointments

only reasonable that they should be held responsible for what is wrong in the police. They should be made to supervise the police work of the district in place of the Deputy Inspectors General, rather than take out shooting parties under the pretence of tours of inspection, entertain friends and be entertained by them, and make themselves popular in clubs and mixed societies. Be that as it may, the Deputy Inspector General has certain duties allotted to him which are of a two-fold character, namely, the suppression of crime and the maintenance of discipline,—one of the principal reasons why the early administrators in India endorsed the project of the separation of the Police from the Judicial Department was that, for detection and prevention of crime it should not be made to depend on the instrumentality and initiation of the Magistracy.

Two-fold character of Deputy Inspector General's duties.

(b) Recommendations of the Commission carried out.

The recommendations of the Commission regarding recruitment and training, so far as they concern the Local Government, have been carried out. Sub-Inspectors are now recruited direct, a small proportion being promoted from the rank of Head Constables. Similarly, the considerable rank of Sub-Inspectors is a large recruiting ground for Inspectors, a small portion of whom is recruited direct. It will be noticed that a provincial police service was reorganised under the recommendations of the Fraser or the Curzon Commission, which in Bengal consists of 23 appointments of Deputy Superintendents, divided into four grades. Provision has also been made for the training of all police officers at the several provincial police colleges. There are special classes for the Assistant Superintendents of the Imperial service and all new recruits pass through one or other of the colleges under the direction of a specially selected Superintendent.

Conditions of recruitment and training.

There have been established schools for constables also in every province, while the organisation of a Criminal Investigation Department under an officer of the rank of Deputy Inspector General of Police with a Personal Assistant of the rank of District Superintendent is a notable feature of the recommendations of the Commission of 1902. The Provincial River Police has been reorganised though much yet remains to be done before the force may be said to be an efficient body.

Personal Assistant to the Deputy Inspector General.

(c) *Invidious Distinction among Police Officers.*

"The Deputy Inspector General of Police," said Lt.-Col. Bruce, sometime Inspector General of Police in India, who reorganised the police force on the lines of the recommendations of the Police Commission of 1860, "is the schoolmaster of the District Superintendents, to instruct, advise and guide them. He takes care that every district in the division works with the other and not independently. He is kept perfectly informed of the state of crime in each district. He is, in the opinion of the Lieutenant Governor, the backbone of the system. His position enables him particularly to study professional crime, tracing it from one district to another, and all this he does without in the least distressing his District Superintendent." The district-police is under the control of a Superintendent of Police, an Imperial officer, assisted in the discharge of his duties by Assistant or Deputy Superintendent of Police as the case may be, though it is difficult to see why they should not, and do not, form one cadre of officers who are to assist in the district administration under the designation either of Assistant Superintendents or Deputy Superintendents of Police, unless it be for the fact, that it would be

Superintendent of Police in the district and the Deputy and Assistant Superintendent of Police.

sacrilegious to the rigour of the Imperial policy and principle if the two races, the European and the Indian were not kept apart, even in services where both are equally called upon to discharge their duties sometimes at considerable risk and danger to their lives. The division is invidious and is not justifiable upon any ground, particularly when the class of people from which Deputy Superintendents are drafted, is quite as well educated, intelligent, honest and characterful as the one from which Superintendents and Assistant Superintendents, of whom not many years ago the late Mr. Romesh Chunder Dutt, a most distinguished member of the Indian Civil Service, said that, not one of the thirty candidates, all Englishmen, within his knowledge, got more than a "zero" in their English papers in the Indian Police Service Examination in England, are drawn. It is really the Superintendent of Police who has onerous duties to discharge, the most important of them being the personal investigation or supervision of investigation of all serious cases in which Europeans are accused, and all serious cases in which racial feelings have been or are likely to be aroused, of all affrays between British soldiers and villagers, and of all cases in which there is reason to suspect that a villager has met with death at the hands of a British soldier. In this task however, he may be superseded by the District Magistrate if he chooses to conduct the investigation himself or depute an European Civil officer for the purpose. The Superintendent of Police has also to report misconduct of officers under him, to inquire into the accuracy or inaccuracy of reports of occurrences in the newspapers, to attend to excise offences, to inspect the premises of all arms and ammunition dealers, to attend to bad livelihood, police investigation and C.I.D. cases and to maintain a gazetteer of crimes. His powers are wide and varied, under the statutes but

Invidious distinction introduced and maintained.

English police officers insufficiently educated and uncultured as a rule.

Duties of the Superintendent.

those under the departmental rules are the more important, namely, to transfer his subordinate officers, to grant them leave of absence, to punish delinquency on their part, to take finger prints of convicted persons, to issue circular or general orders dealing with questions of law and procedure, and to alter disposition of force. And the part of his duties which is sacred and in which he can perpetrate the worst mischief, as a great many of them have been discovered to do, is the rule which makes it incumbent on him to submit to the District authorities, confidential reports on the work of his subordinates, including Assistant and Deputy Superintendents of Police, and on the character, conduct and political opinions of respectable and notable citizens. The Deputy Superintendents who are all Indians, and form the cadre of the Provincial Police Service, are the creation of the Police Commission of 1902, though the recruitment of the European element, mainly in England, is as old as the Viceroyalty of Lord Lansdowne.

Cadre of the Provincial police service.

(*d*) *Police Areas in a District.*

As the district is parcelled out for police purposes into various areas, these officers have under them Inspectors, Sub-Inspectors, Head or Chief Constables to be in charge of each such area according as it is large or small, important or minor. Such subordinate officer is primarily responsible for the working of the police within his charge, and is assisted by a body of constables. It is his duty to enquire personally into cases of serious crime, and he may be described, as he has been in Parliamentary papers, as the pivot of the entire police system, two of the more important limbs of which are the Armed and the Military Police, which are called out to

Inspector and Sub-Inspector.

meet cases of emergency. Of them a few words seem to be necessary in order to give you an idea of what their functions and duties are. The Armed Police, commonly known as the *Head Quarters Force*, consists of *fixed reserves* at head-quarters and at selected subdivisions, guards including temporary armed guards and escorts, all in charge of an European armed Inspector, who in matters relating to drill, discipline and training of the force, is assisted by an armed Sergeant. The primary function of the Armed Police is, to keep itself always in readiness at headquarters or subdivisions, to deal with local disturbances whenever there is any. And the Military Police who are enlisted under Act V of 1861, and Act V of 1892 are, for administrative purposes placed under the Deputy Inspector General of the Range and the Inspector General of the Province. Unlike the Civil police force they are not under the District Magistrate in any sense, nor do they discharge any civil duties, but are concerned only with restoring and preserving order in the event of any internal disturbance. But when called out to disperse an unlawful assembly they are under the direction, not the control, of the Magistrate or Civil officer, if any, in the same way as the ordinary police—that because they are not "Military," in the sense of sections 129 and 130 of the Code of Criminal Procedure. And the formalities observed in calling the Military Police out, are different from those obtaining in the case of the Civil Police in that, the services of the former are requisitioned by the Magistrate by means of an application to the Inspector General through the Commissioner of the Division, except in extreme cases when such application may be made to the Inspector General direct who, after a reference to the Government may or may not comply with the requisition. Under Section 128 of the Criminal Procedure

Armed Police is not Military Police.

Formalities of calling out the Armed and the Military Police.

Code however, the District Magistrate may, in cases of emergency, call out the Military Police.

(e) *Railway, River and Military Police.*

Railway, River and Military Police.

Without going into any details of the Railway, River and Military Police establishments which are all constituted with slight variations according to circumstances upon the model of the Civil Police we may notice the existence of the Central department of Criminal Intelligence as a part of the Government of India. In the early days of British rule in India the Government found it necessary to maintain a department of *Thugi* and *Dacoity*, designed to suppress crime generally in the country, but particularly in the Indian States. As with the advance of British Rule, law and order became firmly established, the department as a separate entity was deemed to be no longer necessary, but the question arose, as to what should be done with the head of the department who included in his functions certain duties of supreme importance to the state, and for the continuance of which arrangements should have to be made. The collection and distribution of secret and political intelligence, enquiries into note-forging, counterfeit coining, illicit traffic in arms, inter-provincial smuggling, and the operations and activities in provinces distant from their homes, of gang robbers and criminal tribes,—all of which had been much facilitated by the extension of railways. These called for a central agency of information and record, coupled with a detective establishment. It was therefore, deemed important, in 1904, to create a Central Criminal Intelligence Department, under a Director whose business it was made to see that the work of investigation of the departments established in

Abolition of the Thugi and Dacoity department.

The Central Criminal Intelligence Department.

the different provinces, specially to deal with the matters relating to crime and political intelligence as a consequence of the deliberation of the Commission, was carried on in co-operation with each other. The present police system was begun in 1861, with a chief officer at the head of the district police who is separate from the judicial staff but is subject to the control of the chief executive officer of the district. The Magistrate directs and manages the police and their work all over the district. Since 1861, great improvements have been made in the status, the pay, the education and behaviour of the force, nor has the position of the native village watchman been lost sight of. His duties are now clearly defined and regular payment of his monthly wages is secured to him. Recent laws have made the village police-man a member and servant of the village community so that, he is always under the legitimate control of the village elders. The urban watchmen have been, under British rule, united into a body of town police with duties confined to their respective towns. In time of trouble and pressure well-to-do and respectable townsmen and villagers are expected to work as constables, and they have cheerfully accepted such position and faithfully discharged their duties without pay or reward, except where executive vagary is discerned. It is the duty of the police to see that municipal and sanitary rules are observed by the people and that excise, forest, and criminal laws are not broken.

Existing system began in 1861.

Town police and Special Constables.

(*f*) *Function of the Police.*

The principal function of the police in India as in all other countries is the prevention of crime; not so much the detection of crime to which credit is too often

The efficient police.

given. He, who, by his vigilant watch and responsive, yet vigorous but not unsympathetic, administration keeps his charge free from crime, ought to be regarded as the more successful police officer than he who detects the crime however cleverly it may be. Murder is an offence which is not easily prevented and the police have little power to prevent it, especially in rural areas. The great mass of crime however, in this as in many other countries, consists of offences against property, and in respect of these a good and efficient police should be able to afford a large measure of protection, either directly by regular patrolling, or indirectly by exercising an adequate surveillance over bad characters. If all persons criminally disposed or addicted to crime were known to the police, and if proper supervision were exercised over them, the number of serious offences against property would be greatly diminished. To obtain this knowledge therefore, and to secure an efficient supervision should be the aim of every police system. These objects have not been lost sight of by the Indian police authorities, but their efforts to achieve them have not met with that measure of success which may reasonably be demanded. The causes of failure are to be found in defects in the law, defects in the police system, and defects in the recruitment of the force itself, quite as much as the defects and defaults in the application both of the law and the system.

How diminution of crime may be effected.

Varied nature of the work of the police.

The work of the Police however, is of a varied nature and as a rule they perform their duties creditably though instances are not wanting which have made the police the most unpopular and the best-hated of British institutions in India. The blunders of coercive or repressive policy into which the Government have at times fallen are supposed to be due absolutely to them for "Government can only act," writes Mr. Gwynn, than

whom a more competent and fairminded critic of Indian political ills and Indian conditions I have not known, "through their agents, and they rely on them for information. Once the Government is committed to a policy of repression, the subordinate police becomes its eye and hand. There are many honourable exceptions, but, speaking generally, the subordinate police in India is unintelligent, incompetent, corrupt, and sometimes cruel. The result is that when the Government strikes it strikes the wrong man. Instead of instilling awe it merely rouses anger and makes men feel that the fight for freedom is not an empty phrase." The experience of the last few years tells us that the police would never miss an opportunity to sweep into their net a large number of wrong persons, quite as many innocents as guilty, the moment they get the order from the Government to start arresting on a grand scale as in the Punjab in 1919, or in Bengal, one half of whom would be released before trial for frailty and infirmity of evidence against them. The mistake no doubt is due to the undue reliance placed upon information supplied or collected by policemen in India, Europeans and Indians. "There is no part of our Government," said Sir John Woodburn, Lieutenant Governor of Bengal, in a letter No. 5453 J., dated the 12th of December 1901, to the Government of India, "of which such universal and bitter complaint is made, and none in which, for the relief of the people and the reputation of the Government, is reform in anything like the same degree so urgently called for. The evil is essential in the investigating staff. It is dishonest and it is tyrannical."

Methods of the Indian Police.

Distrust of the police natural.

Part III.

The Police and the People.

(a) The Real Trouble.

The people know very well that they incur great risk when they institute a case against the police and it does not appear to us that there is really a "tendency to bring false and frivolous charges against the police." The fact is, people go to the police for relief, but they do not really get the relief they desire at their hands and, what is more, sometimes tables are even turned against them. If some people have the hardihood to complain about it, it is alleged that the accusations are in many cases brought in order to obstruct investigation and prejudice the courts against investigating officers. If that is true, then there is no satisfactory explanation for the increased number of "convictions" of police officers all over the country. The public may be "obstructionists," but have the Magistrates also turned out to be "obstructionists!" That would be an absurd proposition. The real trouble is that the policemen under the present arrangement of the Government in India think that they are the "masters" of the people and not their "servants."

Where the police in India have failed.

If the police, instead of thinking that they are the masters of the public and not their servants, begin really to seek for co-operation with them, we are sure most of the so-called "obstructionist" cases against the police officer would disappear. Besides, there are several cases which are due to the low pay of the rank and file, to the enormous temptations which stand in their way, to the abuse of the enormous powers that they exercise and to the want of effective supervision of their conduct. The main causes leading to this unfortunate state of affairs

The police ought to be servants of the people.

are the abuse of the powers with which a policeman is invested by the law of the land. Clothed with these powers, very many of the officers and men of the police department consider themselves the masters of the public and never realise that in the discharge of their duties they have a responsibility, as keepers of peace and guardians of law and order in the country, to the children of the soil with whom their behaviour, to say the least, is discourteous. It is however, a great relief to find that some among the higher police officials realise that the behaviour of their subordinates towards the public is "discourteous," "rude" and "high-handed;" in short, they often commit ' zoolum ' on the people rather than protect them. These vices which make the police officers unpopular with the public have become so ingrained in the present members of the subordinate police,—some police witnesses before an official Committee went so far as to say that these vices are to be found from the constables right up to the highest officials,—that they cannot be removed by the mere issue of circulars from the department. What is wanted therefore, is really a change of the mentality of the entire police force, that they should realise that they are not the masters of the public but are the servants of the tax-payers, that they possess great powers, and have also great responsibilities, *i.e.*, they are the guardians of peace and order in the community, and above all that the essence of a policeman's duty is politeness. But mere platitudes of this nature will not mend the existing evils unless the higher officers show by their own conduct the example which the subordinate police are to follow. If the officers from the Head of the Department downwards strive to engender a sense of confidence and courtesy in the minds of the public, their subordinates are bound to behave themselves

Abuse of power by police officers.

Unpopularity of police officers in India.

Higher officers may set an example.

properly, causing a much desired change in the attitude of the public also. For a policeman, however able he may be, cannot hope to succeed in the discharge of his duties unless he receives the co-operation of the public in the detection of crimes and suppression of violence. Officers and men of the force should mix freely with the public which will give opportunities to both sides for a better common understanding and also for the realisation of mutual grievances and difficulties. This will remove to a great extent the mistrust and fear with which the public look upon the police force.

Co-operation of the people necessary.

One regrets that the relations between the police and the public are unsatisfactory, and there is mistrust and fear instead of co-operation and faith.

(b) *Why People shun the Police.*

People disinclined to have anything to do with the police.

It has been observed in resolution after resolution of the Government that " the continued decrease in the number of cognizable cases including fall of about 23 per cent. in the number of burglaries and about 16 per cent. in the number of thefts, is very gratifying." Why is there this sudden drop? Is it due to good harvest? Or have the criminals suddenly changed their character? Or is it due to the efficiency of the police? The head of the Police Department would attribute it to the organisation of patrols, the use of the preventive sections of the Criminal Procedure Code and vigorous action under the law relating to the criminal tribes and gangs. All these actions have been taken by the police systematically for some time past, but the " sudden " drop and decrease remain unexplained.

(c) *The Fault of the People.*

But after all are the people free from blame? Is not there undoubted evidence that as a rule they are not in-

clined to aid the police in investigations which accounts for the wholly unsatisfactory state of the reporting of crimes? It is a true bill, as the authorities in their despair observe, that the people of India are not generally actively on the side of law and order, and that, unless they are sufferers from the offence themselves their attitude is generally, at the very best, one of silent neutrality. We are not inclined actively to assist the officers of the law, even when they are not really the breakers of it. No doubt, police investigation often entails some measure of worry and annoyance, and the prosecution of cases involves interruption of work and of easy life, and is also a source of considerable trouble and expense, but these are mere inducements to silence and neutrality, an attitude of mind widely different from that of the people of England. The real cause of apathy however, is to be found in what the Police Commission condemned in unmeasured terms as the "defective character of police and magisterial work." The principal duty of the police is to keep public order, to patrol the streets in beats at stated hours, to render the commission of burglary and crime generally difficult, if not impossible, and to keep an intelligent watch over the movements of the most dangerous criminals, surveillance over whom is never complete or effective by the paying of one visit to the criminal or the suspect's house, or ascertaining by a personal interview that he is present there. He is relieved thereafter, for he is not looked up again that night, and as soon as the police have departed he is free to sally forth and commit his depredations and otherwise pursue his avocation with but little risk. All that routine has now been superseded by the activities of the Criminal Investigation Department who have instituted a most perfect system of secret-watching, plain-

The fault of the people.

Duties of the police.

The hateful system of secret-watching: the Spy system.

clothes patrols, and an intelligent endeavour to ascertain the real movements of a suspect or an anarchist. They also regulate the traffic in busy streets at fixed points. At night they examine empty houses which are sometimes made the base for burglaries, lest wicked characters should be hiding there. The policeman is not above the laws of the land, but is subject to punishment as much as anybody else for any breach of rules. Any incivility or impropriety in his conduct may be brought to the notice of his superiors, sometimes with good results. To the Police administration we owe the freedom of the country from the gangs of dacoits and Thugs and professional thieves. The days when men of position could commit murder with impunity or without being found out are gone for ever. The race of Thugs who strangled persons to death by putting handkerchiefs round the neck and tightening them till life was extinct, is dead. The honour of destroying this organised gang of criminals must belong to Lord William Bentinck and Sir William Sleeman. They are all things of the past.

The policeman subject to the laws of the land.

(*d*) *The Police Force.*

The entire police establishment under a Local Government is deemed to be one police force, and is formally enrolled, and consists of such number of officers and men as may be deemed necessary by the Local Government in whom is vested the general superintendence of the entire police administration. The principal officer of the administration is the Inspector General of Police, assisted by one or more Deputy and Assistant Inspectors General. Police administration in India, however, is further subdivided on the lines of the general administrative divisions so that, under the chief officers, you have in each district a Superintendent of Police and one or more Assistant or Deputy Superintendents of

Inspector General of Police.

Police who, so far as their local jurisdiction is concerned, are under the general control and direction of the Magistrate of the district, who issues to the police any orders he deems necessary to secure the efficient discharge of their duties in the preservation of the peace or, in the prevention or detection of offences, so that there is no limit to the interference of the Magistrate with the work of the Police. This is a rule of which, one feels sorry to say, both the scrupulous and the unscrupulous Magistrate feels tempted to take the fullest advantage, I must observe, some deliberately, others unconsciously. All police officers, other than those I have mentioned above, are subject to the sanction of the Local Governments appointed by them according as powers are delegated to them by a certificate of appointment. On the principle of the appointing authority being also the punishing authority they may dismiss, suspend, or reduce any police officer whom they have reason to think remiss or negligent in the discharge of his duty, and unfit for the same or, "may inflict any one or more of the punishments to any police officer who shall discharge his duty in a careless or negligent manner, or who, by any act of his own, shall render himself unfit for the discharge thereof, namely,—

The interference of the Magistrate is limitless.

Powers of Local Government over police officers.

(*a*) fine to any amount not exceeding one month's pay;

(*b*) confinement to quarters for a term not exceeding fifteen days, with or without punishment, drill, extra guard, fatigue or other duty;

Power of Local Government to punish.

(*c*) deprivation of good conduct pay;

(*d*) removal from any office of distinction or special emolument."

But the Inspector General has, in addition to these, got the power to deprive all police officers below the rank of

Inspectors of approved service of increment or of promotion, enter a black mark against the officer's name to censure or reprimand him. Inspectors, Sub-Inspectors and Head Constables are, of course, treated with greater consideration.

Prevention of crime and maintenance of law and order.

The first and most important duty of the police is the prevention of crime and the maintenance of law and order. The great mass of crime consists of offences against property, against which the police affords a large measure of protection, either directly by regular and efficient patrolling, or indirectly by the exercise of a proper surveillance over bad characters. To obtain a knowledge of the persons addicted to crime and to maintain adequate supervision over them is the aim of every member of the force. The successful detection of such crime as the police cannot or do not prevent is a matter of the most vital importance. It does not necessarily follow therefore, that an officer is judged by his percentage of successes in the investigation and prosecution of offences, which is to some extent a matter of fortune, but by his display of method and intelligence in detection, his general efficiency and keenness, his management of his subordinates, and above all by his knowledge and control of the local charge committed to him.

PART IV.

POWERS OF THE POLICE.

(a) *Extraordinary Powers for Protection of Life and Property.*

The English control us against ourselves.

For further protection of life and property and maintenance of peace and order, the British Government in India, without whose presence, whatever other grievances Indian people may have against them, there is every likelihood of India reverting to hopeless anarchy,

chiefly the Moslems flying at the Hindus and the Hindus retaliating with vehemence, such as has been witnessed in Calcutta, the Second City in the Empire (during the whole of April, 1926) though for much of it a weak, incompetent, comfort-loving and fretful, because of the loss to him of the high office of Viceroyalty to which he had aspired from his University days, Governor is responsible, and recently at Dacca, have from time to time taken powers in addition to what they have under the Criminal Procedure Code. With the aid of these ever since the days of the East India Company the Government, either through the police or other executive authorities have exercised unusual jurisdiction, without making their officers liable for any misuse or misapplication of them. All persons who may be impleaded in any action or process, civil or criminal, for acts done under orders of the Governor-General in Council in writing are completely exonerated. If the officer of the Government whose conduct or act comes under discussion, should be in a position to produce the order in writing and able to show that he has in no way overreached the limits of the order, such production would be a complete defence. Such was the trend of the arguments advanced before the High Court of Calcutta in 1862, and attacked with vehemence by Mr. Anstey, the ablest constitutional lawyer that ever came out to India to practise. It was in the great Wahabi Case that the provisions of the Statute were discussed threadbare and appear to bind the High Courts in India. And the power of the Police to arrest persons suspected of having carried on a dangerous correspondence with a view to their trial upon warrants issued by the Government, is as old as 1793. A subsequent Regulation however, gave the police as the Agent of the Government, the largest conceivable power,

Disturbances in Calcutta and elsewhere.

Power of the police to arrest persons.

to confine any person, for reasons of State, as a State prisoner, and it will be remembered that the deportation of the Natu brothers for the ill-fated and wicked murders of Lieutenant Ayerst and Mr. Rand at Poona in 1897, was the first application of the Regulation against Indians on political grounds in Indian history. The police administration moreover, has power (delegated power) to issue orders prohibiting any dramatic performance which is of a scandalous, defamatory, seditious, obscene or scurrilous nature. In such cases it serves the order on the intending performers as well as the owner of the place in which the play takes place. With the permission of the Local Government the head of the police in the Presidency towns or in the province expels from the province a Goonda or a dangerous character who has or is about to commit an offence of criminal intimidation or involving a breach of peace or which causes danger or is likely to cause alarm to the people of the locality. The warrant that is served upon him ordering him to withdraw is usually in the form prescribed by law.

A Draconian regulation.

It will be noticed that the order which directs him to leave the province on pain of imprisonment also directs for what period he must retire, and he must make his exit by a route or routes prescribed for him by the authorities. All great cities are infested with dangerous characters. Even London and Paris and New York are not free from them. And it is found that their ejection conduces to the restoration of public tranquillity and confidence. With a view to achieve that end, in case of persons who do not come within the purview of the existing laws, or if, in cases of extreme emergency the state of which has got to be declared along with the circumstances connected therewith, and the reasons for the declaration, it is found that the procedure under

The Goondas.

them is slow and cumbrous, the Commissioner of Police and the District Magistrate, both in Bengal and in Bombay may, always subject to the control of the Local Government, eject dangerous persons from the Presidency area and, if not *bona fide* inhabitants of the province, from the province altogether. This power however, is limited in each case of emergency to a prescribed period which varies in different provinces. Before making an order of expulsion the Commissioner of Police or the District Magistrate as the case may be, gives the person against whom the order is proposed to be made an opportunity to be heard, after which proceedings against him may be dropped. If however, it is still deemed to be for the security of the area from which the person must be expelled the order, reasons for which are submitted to the Local Government, goes. The order is appealable, not to the judiciary but to the executive, that is to say, Local Government, who may conform, modify or revoke the order.

Removal of Goondas under the Act.

(b) Extraordinary Powers.

All this, in addition to the substantial powers, the police have, for, under the Act of 1861, the Local Government along with their declaration that a particular area subject to its authority is found to be in a disturbed or dangerous condition may, as a matter of expediency, employ any police-force in addition to the ordinary fixed complement to be quartered in the area specified in the declaration or proclamation.

Wide powers already possessed.

That however, is not the point. The point is to penalise the inhabitants of the disturbed area from whom is levied the entire cost of such additional police-force.

And, in order to meet the ends of justice the Magistrate of the district, after such enquiry as he deems fit, apportions the cost among the inhabitants who are, if

not exempted by reason of good conduct or otherwise, liable to bear the same.

In the event of any death, or grievous hurt, or loss of, or damage to, property being caused by the misconduct of the inhabitants of such area it shall be lawful for any person, being the person claiming to have suffered injury from such misconduct, to demand compensation, the amount of which is fixed by the Magistrate, to be paid by the inhabitants in such proportion as he deems equitable.

Every declaration or assessment made, or order passed by the Magistrate of the district, is subject to revision by (the Commissioner of the Division or) the Local Government, and no civil suit is maintainable in respect of any injury for which compensation has been awarded.

(*c*) *Power to deal with Dangerous Characters under the Criminal Procedure Code.*

Dangerous characters may be dealt with under the Criminal Procedure Code.

Under the preventive sections of the Code of Criminal Procedure the police deals with dangerous characters by proceeding against them and also by raiding cocaine and gambling dens where they frequent. And because these courses are full of difficulties power has been taken for the exclusion of these criminal and violent elements from a province, provided the Governor-in-Council before passing an order for his exclusion from a province is satisfied from a report by the Commissioner of Police that a person, other than a person born in the province, is so desperate or dangerous as to render his presence hazardous to the peace and order of the town, and thereby he may pass an order excluding such person from the province.

(*b*) *Power to institute Searches.*

Similarly under the Criminal Procedure Code when

the executive authority such as a Magistrate makes a general search of premises in view of an enquiry, or otherwise carries out his duties in an illegal and improper manner, he only acts in the discharge of his judicial functions and may therefore claim the protection given him under the Statutes, one such being Act XVIII of 1850. But he may not make a search for arms under the Indian Arms Act without complying with the preliminary condition laid down in that Act. These however, are topics of constitutional law, pure and simple, and as such are outside the purview of our subject.

Search under the Arms Act.

(*e*) *Criminal Investigation.*

The Criminal Investigation Department in a province is controlled by the Deputy Inspector General of Crimes, Rivers and Railways whose business it is to make a thorough inspection of the headquarters of every railway and river police district once a year, while it is the duty of the Superintendents of police in charge of the Intelligence Branch of the department, to inspect the working of the arrangements for the collection of intelligence in every district once in two years. The functions of the department have been laid down to be the collection and distribution of information relating to (*a*) dacoity, (*b*) highway, railway or mail robbery, (*c*) counterfeiting coins or stamps, forging notes, altering coins, stamps or notes or being in possession of counterfeit coins or stamps or forged notes, discoveries of counterfeit coins or stamps or forged notes, (*d*) drugging or poisoning by professional poisoners, (*e*) swindling by professional swindlers, (*f*) murder for gain, (*g*) certain cases under the Indian Penal Code such as belonging to a gang of dacoits or to a wandering gang of thieves, (*h*) certain proceedings under the Criminal Procedure

Control of the Criminal Investigation Department.

Code such as concealment of the presence of suspected persons or harbouring of habitual offenders, (*i*) proceedings against members of criminal gangs, and (*j*) prosecutions arising out of the institution of false civil suits. Information relating to the occurrence of serious crimes are received chiefly through special reports and telegrams required to be submitted to the Deputy Inspector General, or through reports received from the Commissioner of Police relating to serious crimes committed in Presidency towns. These and other miscellaneous reports are supplied weekly to the department for publication in the *Criminal Intelligence Gazette*, which is the ordinary medium for their distribution among members of the Police force. Strangely enough, one of the primary functions of the Criminal Investigation Department is to maintain an up-to-date list of all approvers in the various criminal cases, to watch if those on their list are at home, if they are leading honest lives, and if they have been suspected or convicted during the previous year, and generally to keep an effective watch over the movements of approvers and leaders of gangs residing in their jurisdiction. The Criminal Investigation Department with which the Intelligence Branch could be profitably amalgamated also deals with inter-provincial and inter-district crimes.

Criminal Intelligence Gazette.

Photographic and finger-print bureaus are maintained in every province, including the more important Indians States, where photos and finger marks of criminals or accused persons are preserved for use in the detection of crimes, but these are details which do not come within the purview of the present course of lectures. I shall therefore, pass on to the other branch of the Criminal Investigation Department, namely, the Railway police, the particular duties entrusted to whom are (*a*) the prevention, detection and prosecution of offence cog-

Records of criminals kept.

nizable by the police within Railway limits, (*b*) the arrest of offenders in cases cognizable by the police and the detention of offenders in other cases until they can be taken before a Magistrate, (*c*) the reporting of non-cognizable cases to the proper authorities as also, all instances of oppression or fraud on the part of Railway subordinates or others, (*d*) the entry in police diaries of offences of all descriptions brought to the notice of the police, (*e*) the maintenance of peace at stations, (*f*) the watching of passenger trains when at stations, (*g*) the reporting to the proper authority, railway or civil, of all instances in which bye-laws of the line are infringed and (*h*) the prosecution on behalf of the management of non-cognizable offences under the Railway Act. The Railway police moreover, is always on the alert to look out for illicit conveyance of opium and other excisable articles, and for persons travelling with unlicensed arms, as much as for the movements of travellers. Its officers have to keep an eye upon him who raises some sort of suspicion about him and to communicate the circumstances which give rise to the suspicion to his immediate superior, or if necessary to the District Police. Though a separate establishment, the Railway police always acts in harmony with the Railway administration, and in co-operation with the District police with whom there is no variance in the nature of their work, only in the sphere of their activity. In other words, they help each other. The surveillance however, of bad characters, remains with the District police, and the watching of them arriving and departing by train and generally within railway limits, is a matter of co-operation between the District and the Railway police.

Work of the Railway Police.

The larger cities of Calcutta, Bombay and Madras have their own police force independent of the Inspector General, and under the control of a Commissioner of

Presidency towns police inde-

pendent of the Inspector General.

Police to whom the general provisions of the Criminal Procedure Code do not apply, assisted by two or more Deputies or Superintendents, each in subordinate charge of one of the divisions into which the city, for police purposes, is divided. Each division again is subdivided into a number of police stations, each in charge of an Inspector who has on his staff Sub-Inspectors, Head Constables, Constables and where necessary, European Sergeants.

(f) *Civil and Military Police.*

Police divided into Civil and Military.

The Police force in a Presidency or province consists of the Civil Police and the Military Police. The Civil Police (we are not concerned with the Military Police) consists of the District Police, the Rural Police, the Railway Police, the River Police, the Criminal Investigation Department and officered by the Inspector General of Police, Deputy Inspectors General of Police, Superintendents of Police, Assistant Superintendents of Police, and Deputy Superintendents of Police among gazetted officers, and Inspectors, European Sergeants, Sub-Inspectors, Head Constables and Constables among non-gazetted subordinate staff. Of the River Police one word need be said, that it is an addition which has played out its utility, but is maintained as a necessary appendage without any very responsible work to do, but having much to do in the way of enjoyment and the lightening of the monotony and tediousness of life at the cost of a people, not more than 7 per cent. of whom are literate and, over 20 per cent. of whom do not know from year's end to year's end what it is to have a full meal a day. There is no River Police in Western Bengal and there is no riverine crime there either. In the 18th century riverine crime on a small

River Police.

scale prevailed in Eastern Bengal, the rivers of which used to be frequented by pirates in very long boats oared by a large number of men, sometimes as many as 200, who attacked cargo boats. As an effective check on piracy Lord Cornwallis made the possession of such boats unlawful and penal. That was an effective check indeed, and things went on smoothly till the ill-fated partition of Bengal by Lord Curzon in 1905, ostensibly as an administrative measure, but really, to weaken the political influence of Bengal over the rest of India, and what was more wicked and reprehensible, to set one Bengal against the other which gave rise to a fierce and violent agitation in the country. Bengal found itself in the grip of a set of irresponsible idealists, fired with intense patriotism and selfless devotion to motherland, misnamed anarchists, who started a campaign of river dacoities by means of boats. This occasioned the establishment of a huge police force on the Eastern Bengal rivers with a number of branches, floating police stations and other conveniences. Anarchism as an organised crime is dead but the River Police force, whether river, extra or enlarged, is there. For a similar reason it is difficult to understand why the Railway police should not be amalgamated with the regular police under the District Superintendent who may be supplied with the necessary staff for the purpose of policing the lines running through his district, ensuring the exercise of better control and the speedier detection of crimes.

Government always suspicious of the people.

Multiplication of police force, staff, method and procedure is unfortunately the result of distrust of the people. An alien government can never place implicit reliance upon the loyalty of the people. It is not in the nature of things, or else, the subversion of the most powerful and gigantic Empire the world has ever seen by an assembly of two people conspiring to bring it about, is inconceivable, nay absurd. Looked at from all aspects

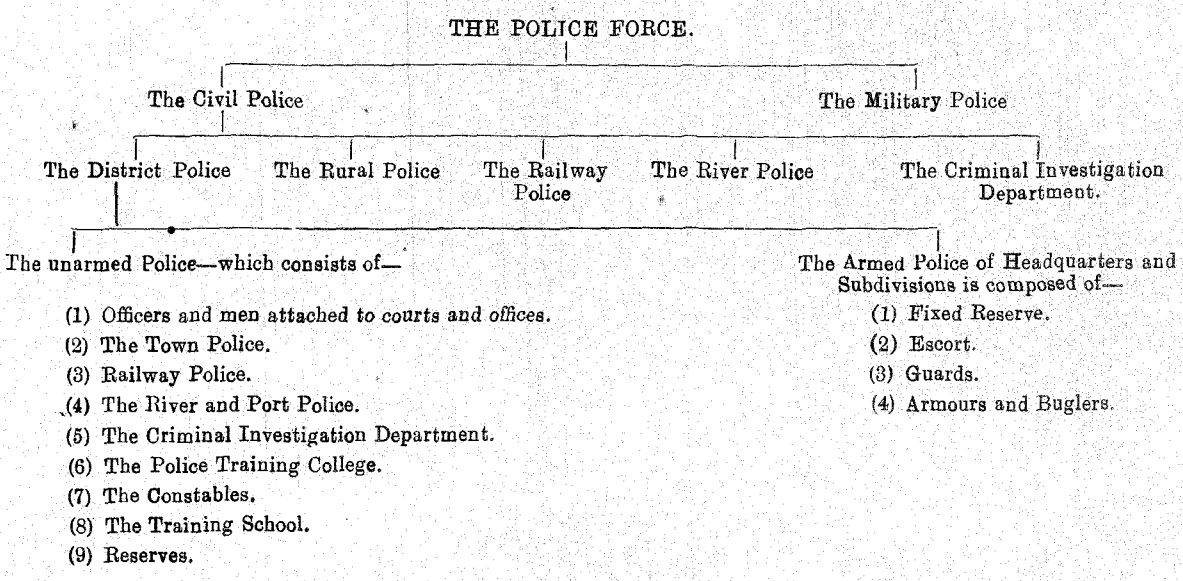
the conclusion that the Police force in India is maintained more for political reasons, as is evidenced by the variation of its strength with the growth of political movements, than for the protection of the life and property of the people, is irresistible.

Harmony of work between Provincial police and Presidency towns police.

A system of harmony between the Provincial Police, and the Presidency towns police, is maintained by the Deputy Inspector General in charge of the Criminal Investigation Department, and the Superintendents of Railway police and of the districts round a Presidency town, endeavouring to keep in close touch with the Commissioner of Police, and maintaining regular communication with the Town Police regarding the occurrence of crime and the movements of criminals. Usually there is a monthly co-operation meeting at the private residence of the Commissioner of Police.

To obey and execute orders and warrants lawfully issued by a competent authority, to collect and communicate intelligence affecting the public peace, to prevent the commission of offences and public nuisances, to detect and bring offenders to justice and to apprehend all persons whom he is legally authorised to apprehend, and for whose apprehension sufficient ground exists, to pursue a person to be arrested, to search any place entered by a person to be arrested, to break open the door of a house and search therein, to search the person of the arrested person and to seize offensive weapons and other properties, are among the various duties of a police officer who, to discharge any of the functions, may lawfully enter and inspect any drinking shop, gaming house, or other places to which loose and disorderly characters usually resort. It is the police officer who lays information before the Magistrate and applies for summons, warrants, search-warrants or other legal processes as may be lawfully issued against a person committing an offence.

Composition of the Provincial Police Force.



CHAPTER VI.

The Army in India.

Part I.

Introductory.

Patriotism cannot come into conflict with our duties towards humanity. It has never done so. Effective patriotism depends upon the performance of those duties. They are a necessary condition. "The best way of loving our fellow-men is," says a great European patriot who contributed so largely to the making of the modern history of France, "first of all to love that section of humanity which is nearest to us, which includes us, which we best know." Far better that we should concentrate them and employ them usefully in that corner of the globe in which Nature has planted us, and has given us birth, than that we should be scattering our affections and wasting our energies for the brotherhood of man.

Composition of the Indian Army.

Our ancestors have left us a glorious heritage, a moral and material heritage, our native land. In our turn we must leave it to our descendants. It includes not only our native soil but also our national soul, our common hopes, aspirations and anxieties, our triumphs and our trials, our literature and our philosophy, our arts and our sciences, our social and religious traditions: all the joys and feelings that are awakened in us by the mere mention of her name, our Mother India.

(a) *Periods of Development of the Indian Army.*

The Indian Army at present is composed of the regular British forces, the regular Indian forces, the Auxiliary Force, the Indian Territorial Force, the Army in India Reserve, and the Indian State Forces, when placed at the disposal of the Government of India. A historical retrospect may be conveniently divided into the following periods :—

Development divided into periods.

First period.—The initial phase, 1600-1708 A.D., when the forces of the East India Company were isolated and unorganised entities.

Second period.—The Presidency Armies under the Company, 1709-1857.

Third period.—The Presidency Armies under the British Crown, 1858-1894.

Fourth period.—The period of Union, after the abolition of the Presidency Armies, 1895-1920.

Fifth period.—The period of consolidation, 1921 to the present day.

(b) *First Period of Development.*

The first Charter.

During the first period of weary 100 years, between the two Queens of England, Queen Elizabeth who granted the first charter, and Queen Anne, the Association of Merchant Adventurers who styled themselves, "The Company of Merchants of London trading unto the East Indies," had succeeded in establishing their trade in India, under the protection of their principal fortified positions,— the island of Bombay,

The Early history of the Indian Army.

Fort St. George in Madras, and Fort William in Calcutta. After various vicissitudes, during which the previous agencies of the Company had in turn attained and lost not only the dignity of a Presidency but also the precedence over its fellows, the three Presidencies had been definitely established. They were independent of each other, answerable only to the Court of Directors at Home and with full sovereign rights within their own spheres, including the organisation and disposal of their military forces, which had now progressed from a mere unorganised handful of miscellaneous and ill-disciplined Europeans to a force consisting of small but organised military units. The Army in India of those days was composed of Europeans recruited in England or collected locally, of Indian Sepoys and of other Indians of mixed descent, Goanese Topasses. These Sepoys were armed mainly with their own native weapons, wore their own native dress and were commanded by their own native officers. While every manner of reorganisation was being planned and discussed by the Company's servants in India the Board of Directors decided to reorganise the artillery on the lines of the European system. The artillery had an indefinite origin, and at first it is probable that the guns, and almost certainly that the expert gunners were provided by the company's ships. About the year 1748, the Board of Directors at home without reference to the authorities in India realised that the "gunner and his crew" was an unsuitable organisation. They accordingly, issued orders to the three Presidencies that each was to maintain one company of artillery with establishment, such as five British officers and one hundred and ten British rank and file. They also appointed a Captain and Engineer to command all the three artillery companies. This is

First Military establishment in the Presidencies.

the first C. R. A. in India of whom we have any record, and his appointment is regarded by military authorities even to this day as certainly an advance in organisation. The Presidency authorities were foolish to have considered his appointment an encroachment upon their rights of organisation which through forty years had matured into a prescription, for, the command of this newly appointed office cannot have been very effective by reason of total absence of communications or inefficient facilities for transport. He could not have been very much more than an Inspector-General or a technical adviser.

Inauguration of the Royal Artillery in India.

(c) *Second Period of Development.*

But such as it was, the vanity of the Presidency authorities must have received a rude shock when, in the same year, Major Stringer Lawrence "the father of the Indian Army," arrived at Fort St. David and took up his appointment as Commander-in-Chief of all the Company's forces in India. From the moment that the post of the Commander-in-Chief in India was instituted, the Presidency Armies began to improve their organisation; and this appointment constitutes the first link in the long chain of the consolidation of the Indian Army, of which the last link was not forged till 1922.

"The Fother of the Indian Army."

Promotion in the armies was ordered to be by seniority, and this rule could not be departed from, unless expressly sanctioned by the Governors of the respective Presidencies. The Armies of India comprised Company's troops only,—European and Indian. The European portion of the army remained organised in separate companies though in Bombay they had adopted the battalion system. The Indian troops were little better than armed police force who were commanded by their own officers,

Rule of seniority to prevail.

all gentlemen of birth and position. Shortly however, before the battle of Plassey, Clive, who succeeded Stringer Lawrence in the Chief Command, preceded for a short time only by Colonel John Adlercron, began to reorganise the Indian troops under his command, by forming them into regular battalions with a small number of British officers. He armed and dressed the men in a fashion somewhat resembling that of the Europeans. The first battalion of the Indian Army was thus organised and nick-named "Lal Paltan," the Indian expression for the English word "platoon." It will be appreciated that Clive's organisation was evolutionary not revolutionary, a fact which accounts for certain features of his system having survived far into a century after him.

Commencement of the europeanisation of the Army.

(*d*) *Indian Army to this Day.*

Then followed a period of augmentation necessitated by further acquisition of territories and additional responsibilities therewith. The forty years succeeding the battle of Plassey were marked by the extension of the Company's territories in every direction. The balance of power became unstable throughout India, and the continent is said to have become a vast camp of conflicting races and warring tribes and armies. It is asserted by European writers that in opposition to the express policy of the Company's Directors at home, and even contrary to their own wishes, the company's agents, in their self-defence and in support of their own interests decided further to increase their armies to the extent of 24,000 troops in Bengal, a similar number for Madras and 9,000 for Bombay. The reorganisation which followed reduced the strength of the native armies, but the most important changes were the great increase in the establishment of

Machinations of the Company's Officers in India.

British officers in units, the creation of artillery battalions, and the formation of double battalion regiments from the independent battalions then in existence. The period between this first general reorganisation, namely of the year 1796, and the outbreak of the Great Mutiny in 1857, has an importance all its own, in its effect on the evolution of the Army in India. The great acquisitions to the Company's territories, made during this period, involved the expansion of the sphere of action of the three Presidency Armies to such an extent as to lead eventually to the abolition of those armies; and the same cause made it necessary to raise irregular corps and local contingents, some of which rendered conspicuous assistance to the forces of law and order in quelling the Great Mutiny. The Presidency Armies, the total strength of which in 1805 was no more than 154,500 (24,500 British troops and 130,000 Indian troops), came to be augmented to 277,746 of which not more than 53,654 were Europeans of all ranks and denominations and the rest Indians.

General organisation begun.

Presidency Army in 1805.

To meet the difficulties involved in arranging for the occupation of territories acquired during the period (1709-1857), and to guard against a recrudescence of bitter consequences which resulted therefrom, namely, the Indian Mutiny, one of the expedients adopted was to raise local bodies of troops for a particular service in particular localities. Of these perhaps, the best known are the Hyderabad contingent, and the Punjab Irregular Force which afterward became the Punjab Frontier Force. Thus, at the end of the second period, we find that the Army in India comprised certain units of the British Imperial Army (King's Royal Troops), the Company's three Presidency Armies, consisting of British and Indian units, and various local forces and contingents. The strength of the entire British army

Introduction of local recruitment.

in India immediately prior to the Mutiny was considerable. It was nearly 300,000 strong of all ranks.

(e) *Third Period of Development.*

The third period of development of the Indian Army between the years 1858 and 1894 is of considerable importance, for, it was during this period that the authorities had to face some of the most difficult problems upon the solution of which depended the successful constitution of the Indian Army as an effective fighting force. Immediately upon the transfer of the Government from the Company to the Crown two problems presented themselves for solution, namely, the status and organisation of the European and Indian forces, respectively, of the late Company. The first problem presented considerable difficulties: whether the British forces of the Army in India should thenceforth merge in the Imperial British Army and form part of it, the units taking their turn in garrisoning India, or whether they should become localised forces with home and headquarters in and active service confined to India alone. Naturally there were advocates on both sides, but it was eventually, after much deliberation, decided that the "British Army serving in India" should form part of the Imperial British Army. Such a decision necessitated the transfer of the Company's troops to the Service of the Crown. All distinction which had existed for a hundred years, between the "Royal Troops" and the "Company's European Troops" was extinguished and the latter became a part of the British regiments of the line. The Bengal, Madras and Bombay artillery became merged in the Royal Artillery and it was not until 1860 that the reorganisation of the British forces in India was completed

Problems of the Army with which the Company was faced.

Army in India a part of the British Army.

with a possible decision that their strength in India should not exceed 80,000 men.

Then was taken up the problem of the reorganisation of the Indian troops. It did not take the authorities long to arrive at a decision. Drastic changes were made. Seven cavalry and infantry units were disbanded and others were amalgamated with one or the other, but the most momentous decision of all was the extermination of the entire Indian artillery with the exception of five batteries in the Punjab Frontier and four in Hyderabad. When reorganised the Indian forces of the Crown stood in 1861 as the three Presidency "Staff Corps" of Bengal, Madras and Bombay, the Punjab Frontier Force, the Hyderabad contingent and some minor local Corps such as the Central India Horse, the Deoli Irregular Forces, the Malwa and Meywar Bhil Corps and the Bhopal Levy.

Problem of re-organisation.

(f) *Security of India is a Direct Charge on the Government of India.*

The next stage in the development of the Indian Army was in 1872 when the problem of the maintenance of the British Forces was sought to be solved by the famous Cardwell Scheme. In assuming direct control of the Government of India, the British Crown had also accepted direct responsibility for the security of India. A large portion of the British army was already serving outside the United Kingdom in the Colonies and Dependencies, and the added liability of having to provide an army of any number up to 80,000 men, as the garrison of India, brought to a head the problem of maintaining such large forces overseas. Indeed, the maintenance of overseas garrisons in

The Crown and the direct responsibility for the security of India.

The Cardwell Scheme.

India and the Colonies became the chief duty of the Imperial Army in peace. The problem was solved by what is known as the Cardwell Scheme of 1872, whereby the two portions of the British Army were divided in more or less equal portions, one serving at home and the other abroad. All this transpired during the third period of the development of the Indian Army.

(g) *Fourth Period of Development.*

Abolition of the Presidency armies, and the division of the Indian army into four Commands.

In 1895 the Presidency Armies were abolished by a general order of the Government of India which divided the Army of India into 4 distinct Commands, the Punjab Command (including the North West Frontier and the Punjab Frontier Force), the Bengal Command, the Madras (including Burma) Command and the Bombay (including Sind, Quetta and Aden) Command. At the head of each command was placed a Lieutenant-General who was responsible for the efficiency of the troops and they were all to be under the direct control of the Commander-in-Chief in India, an office of high antiquity, having been as we have seen before instituted in 1748, when Major Stringer Lawrence, "the Father of the Indian Army," arrived at Fort St. David and took up his appointment of Commander-in-Chief of all the Company's Forces in India.

Modern reorganisation begins in 1895.

The history however, of the composition of the Indian Army from about the close of the last century, is of considerable intricacy and is, not unnaturally, not fully appreciated by the lay public. To arrive at the present stage of intensive reorganisation of the Army in India the authorities had to begin in the year 1895 (the order of the Government of India in the Army Department was numbered 981, dated the 26th October, 1894

and the Presidency armies abolished from the 1st April, 1895), a readjustment of the various commands at a time when there was still the Military Member present in the Governor-General's Executive Council with a Secretary in the Army Department, a Director-General of Ordnance (India), a Director-General of Military Works, a Commissary-General-in-Chief (Commissariate and Transport) and a Director of Army Remount Department directly under him. The Commander-in-Chief was also a Member of the Council, but unlike his Military colleague, the Military Member of the Council, without a portfolio, so that he was an advisory rather than an executive Member of the Council. As Commander-in-Chief however, he had the three Military officers, the Adjutant-General, the Quarter-Master-General, and the principal Medical Officer, each with a considerable department of his own, under him. As Commander-in-Chief again his control over the entire army in India comprised in the various Commands was undisputed. These commands combined with the staff and troops of the Hyderabad contingent, of Chitral and of Gilgit composed the fighting forces of India before the fateful controversy between a masterful Viceroy, Lord Curzon, and a no less imperious Commander-in-Chief, Lord Kitchener. They were guided by a Defence Committee of which the Commander-in-Chief himself was the President and the Adjutant-General, the Quarter-Master-General, the Director-General of Military Works, the Director-General of Ordnance, the Inspector-General of the Artillery in India and the Assistant Quarter-Master-General in the Intelligence Branch were the ordinary members, and the Director of the Royal Indian Marine and the Inspector of Submarine Defences were additional members, to consider measures of coast defences only.

The constitution.

The advent of the Defence Committee.

PART II.

(a) *Reforms of Lord Kitchener.*

Lord Kitchener and his principles of reforms.

Immediately upon his appointment as Commander-in-Chief Lord Kitchener took up the question of army reforms in India. The reorganisation and redistribution of the Army in India mapped out by him involved four great principles :—

(1) That the main function of the army was to defend the North West Frontier against an aggressive enemy.

(2) That the army in peace should be organised, distributed and trained in units of command similar to those in which it would take the field in war.

(3) That the maintenance of the internal security was a means to an end, namely, to set free the field army to carry out its functions.

(4) That all fighting units, in their several spheres should be equally capable of carrying out all the roles of an army in the field, and that they should be given equal chances, in experience and training, of bearing these roles.

In the meanwhile he carried out the following important changes :—

Some important changes.

(1) On the 1st of January, 1903, the designation, " Indian Staff Corps " was abolished, and officers belonging to that Corps were designated " Officers of the Indian Army."

(2) Eight days later the Burma first class District was separated from the Madras Command and constituted a separate independent Command, designated the Burma Command.

(3) On the 1st of April following, the Hyderabad contingent was broken up and delocalised. One cavalry regiment, the 3rd Lancers of the Hyderabad contingent, was absorbed into the other three, which were transferred to the Bombay Command, while the 6 infantry regiments of the Contingent were transferred to the Madras Command, and

(4) On the same date the Punjab Frontier Force and Frontier District and its territorial area were distributed between the Peshawar, Kohat and Derajat Districts.

This arrangement continued until the duel between Lord Curzon and Lord Kitchener in which the Viceroy was sacrificed by Mr. St. John Brodrick (afterwards Viscount Middleton), Secretary of State for India, and worsted by the powerful personality of the Commander-in-Chief, when the Military Member of the Executive Council was put in charge of the Department of Military Supply and at the head of the Secretariate in the Army Department with the Director-General of Ordnance, the Director-General of Military Works, the Director-General of Contracts and Registration, the Director of Army Clothing and the Director of Remounts under his control. The position of the Commander-in-Chief in the Council was raised with greater powers of control over the army. He had at the headquarters the following staff officers. The Chief of the Staff, the Adjutant General, the Quarter-Master-General and the Principal Medical Officer were all under him. The Central feature of Lord Kitchener's original scheme was to divide the army in India into three Army Corps, exclusive of Aden, the Burma District, Chitral, Kohat and the Derajat. Each Army Corps was to consist of three Divisions, each of which was to be complete in field army troops and in troops for internal defence. His distribution of the

Duel between Curzon and Kitchener over the position of the Commander-in-Chief.

Features of Lord Kitchener's scheme.

Army Corps was to be the Northern Army Corps which was to comprise the first Peshawar Division, the second Rawalpindi Division and the third Lahore Division; the Western Army Corps which was to consist of the fourth Quetta Division, the fifth Mhow Division and the sixth Poona Division, and the Eastern Army Corps which was to be made up of the seventh Meerut Division, the eighth Lucknow Division and the ninth Secunderabad Division.

In September 1904, the Secretary of State for India sent out his sanction for the carrying out of any part of the scheme which did not involve any extra expenditure. The nine Divisional Commands were thus established, and the Madras Command, then commanded by a Lieutenant-General, which was found superfluous to the scheme, was abolished. This reorganisation however, was not completely adopted, and about the beginning of 1905, we find the distribution of the Army in India to have taken place under the following groups :—

Establishment of Divisional Commands.

Northern Command—
1st (Peshawar) Division.
2nd (Rawalpindi) Division.
3rd (Lahore) Division.
Kohat, Burma and Derajat Brigades.

Western Command—
4th (Quetta) Division.
5th (Mhow) Division.
6th (Poona) Division.
Aden Brigade.

Eastern Command—
7th (Meerut) Division.
8th (Lucknow) Division.
9th Secunderabad Division and Burma Division.
These latter however, the Secunderabad and Burma Divisions were not included in a Command.

It is evident from the rapid changes in the organisation that took place of the Indian Army that the Military authorities did not know their own mind, for, before the reorganisation of 1905 was three years old, it was replaced by another in 1908, by which the Army in India was divided up into two great Commands of the Northern Army and the Southern Army in which was respectively included the 1st (Peshawar) Division, the 2nd (Rawalpindi) Division, the 3rd (Lahore) Division, the 7th (Meerut) Division, the 8th (Lucknow) Division, the Quetta, Burma and Derajat Brigades and the 4th (Quetta) Division, the 5th (Mhow) Division, the 6th (Poona) Division, the 9th (Secunderabad) Division, the Burma Division and the Aden Brigade, each under a General Officer of the rank of Lieutenant-General, who was responsible for command, inspection and training, but had no administrative functions or responsibilities, and consequently, no administrative staff. The ten Divisions constituting the two Armies were made directly subordinate to the Army Headquarters for administrative purposes, and there was little, if any, decentralization of administrative duties.

Frequent changes in organisation.

The Defence Committee which, under the new arrangement, was reconstituted, continued to be in function with the Commander-in-Chief as President and the members detailed in Annexure C. to the present chapter. It is necessary however, to notice here, that the Committee was empowered to co-opt two additional members in the persons of the Director of the Royal Indian Marine and the Inspector of Submarine Defences to advise them to undertake measures of coast defence. The Officer-in-charge of the Strategical Branch was moreover attached to the Committee as the Secretary thereof. To other bodies of this nature in the Military history of India two Sub-Committees came to be added, namely, the Mobili-

Reconstruction of the Defence Committee.

sation Committee with the Commander-in-Chief as President and other Officers as Members, of whom notice has been taken in the annexure and the Advisory Council with the Commander-in-Chief as President and the Members, some of whom will be found to be common in both, as will appear from a comparative view of the annexures appended hereto. But the Secretariate of the former was placed in charge of the Officer-in-Charge of the Mobilisation Branch while that of the latter in charge of the Officer-in-Charge of the Military Operation Section.

Re-adjustment of the Advisory Committee.

(b) *Further Development.*

We now arrive at the next stage of development of Military reorganisation in India in 1908 when the control and charge of the Military Supply Member was left undisturbed except that he was relieved of the department of the Director-General of Contracts and Registration. The responsibilities of the Commander-in-Chief for the various departments remained as they were in 1905, in spite of the reconstitution of the Army in India into two notable Commands of the North and the South. No reconstitution of the Mobilisation Committee and of the Advisory Council was thought necessary to be made, but the Defence Committee did not continue to be that of 1906. The Inspector of Coast Defence replaced the Inspector-General of Artillery in the list of ordinary Members, and the Inspector of Submarine Defences was eliminated from the list of additional co-opted Members. With these minor changes the Defence Committee continued to function as of old, until we step into the year 1914, when the Great War began the Signal for a serious re-consideration of the entire constitution and organisation of the Indian Army,

Military Supply Member left undisturbed but relieved of certain powers.

Minor changes in the Defence Committee.

as would enable it to cope with the situation. The composition of the two great armies, each under a General Officer Commanding, of the North and the South was found to be working so satisfactorily that it was thought it would be a mistake to disturb the existing arrangement. Here however, all the committees disappeared as being superfluous, and much of their responsibilities were ›wn upon the Advisory Council, which, being retained, as reconstituted in the way indicated in Annexure D. ıe Commander-in-Chief remained the President of the Council and the Director of Military Operations its Secretary.

Disappearance of the Committees except the Advisory Council.

(c) *Defects of the Kitchener Scheme.*

The defects of Lord Kitchener's scheme manifested themselves during the Great War of 1914-18, and the strain which it imposed upon the resources of every country engaged in it, revealed, however, even greater defects in the organisation of the Army in India, than those which had hitherto been discovered, and grave defects also in its equipment. To enable the authorities to start the work of organisation a strong Army in India Committee was appointed in 1919, and their recommendations, as modified by the Montagu-Chelmsford Reform Scheme, and the recommendations of the Inchcape Retrenchment Committee, are being carried out, with the result that the Army in India has reverted to the system of Commands, each under a General Officer Commanding being made responsible for the command, administration, training and general efficiency of the troops stationed within his area, and also for all internal security arrangements. The Northern Command with its Head Quarters at Murree, the Southern Command with its ·d Quarters at Poona, the Eastern Command with its

Lord Kitchener's plan defective.

Head Quarters at Naini Tal, and the Western Comman with its Head Quarters at Quetta, are now the four commands of the entire Indian Army.

PART III.

(a) *Post-War Developments.*

A momentous change however, was made in th constitution of the Indian Army in the year 1921, as a result of the defects felt and discovered in the Militar system which was responsible for the conduct of the Great War. With the introduction of the constitutional Reforms moreover, the Military Supply Member disappeared from the Council and the Commander-in-Chief became the Member of the Governor-General's Executive Council for his own department with the Military Secretary, the Chief of the General Staff, the Adjutant General, the Quarter-Master-General and the Director-General of Ordnance directly under him in charge of the various departments of army administration. A return was made to the old order of things. The Commands were made smaller but larger in number, namely, the Northern Command with headquarters at Murree, and coinciding roughly with the Punjab and North West Frontier Province; the Southern Command, with headquarters at Poona and being roughly identical with the Bombay and Madras Presidencies and part of the Central Provinces; the Eastern Command, with headquarters at Naini Tal and agreeing roughly with the Bengal Presidency and the United Provinces and the Western Command which has its headquarters at Quetta, covers Sind, Rajputana

Commander-in-Chief replaces the Military Supply Member and becomes the Military Member of the Council.

Reorganisation and re-distribution of the Commands.

Baluchistan. Each of these Commands is under a General Officer Commanding-in-Chief of the rank of a Lieutenant-General who is responsible for the command, administration, training and general efficiency of the troops stationed within his area, and also for internal security arrangements. To enable these additional duties to be carried out, each General Officer Commanding-in-Chief has been provided with a carefully organised and well proportioned staff, while the staffs of districts have been so constituted, that a certain residue is earmarked to carry on the normal routine when mobilisation takes place. The introduction of the four Command system has been followed by a considerable delegation both of administrative and financial authority, and in every other respect also the organisation has been framed in such a way as to give effect, so far as practicable, to the fundamental principles on which it is based. Apart from the four Commands, the only formations directly controlled by the Army Headquarters are the Waziristan and Burma districts and the Aden Brigade. It is proposed that Waziristan will eventually merge in a Command area, though for the time being it is separate for, since 1919, it has been an area of active service operations of an unusual character, with the conduct of which questions of high policy, requiring the direction of the Government of India, were closely allied; while Burma and Aden, mainly because of their geographical situation, cannot conveniently be included in any of the four Command areas. These three areas are small and obviously necessary exceptions to a scheme which is otherwise, so far as the physical conditions of India permit, symmetrical and well proportioned. While all this has transpired with regard to the troops in or to be put in active service the reconstruction of the Advisory Council has not been neglected. It has been re-inforced by the

Result of the Four Command System.

Further reconstruction

of the Advisory Council.

introduction of the Air Officer Commanding the Royal Air Force into its membership and, with a view to keep it in closer touch with the Military organisation, the Deputy Secretary, Army Department, became the Secretary of the Council, in place of the Director of Military Operations.

(b) *The Present Formation.*

The Indian Army therefore, as at present constituted, represents the Commander-in-Chief at the head of the four Great Commands of the Northern Command, the Southern Command, the Eastern Command and the Western Command, each under a General Officer Commanding-in-Chief, and the Burma and Waziristan independent districts and the Aden Brigade. The units that each one of them includes are described hereunder for ready reference. As supreme head of the Army in India the Commander-in-Chief has the Military Secretary, the Chief of the General Staff, the Adjutant General, the Quarter-Master-General, and the Master General of Ordnance under his orders, and as Member of the Executive Council he has the entire army department including its Secretariate under him, the Finance Member of the Government of India controlling the expenditure, and as a whole looking into the financial affairs of the Military Department through an officer of his own, but attached to the department designated the Financial Adviser, Military Finance. A Military Council with the Commander-in-Chief as its president and other officers whose acquaintance we may make in Annexure E. hereto takes the place of all the old Committees and Councils with whom we have gained familiarity in the last pages. The present form of the Military Council is on the basis of the recommendation of the Esher Committee which was not

Departments under the Commander-in-Chief.

Financial Adviser an Officer of the Finance Department.

without its apprehensions, lest in recommending its retention in an improved form, it should introduce an anomaly, in theory at any rate, of a situation being given rise to in which the Army Member might reject a recommendation which he had approved as Commander-in-Chief. As a matter of fact however, a situation of this kind has never arisen, and is not likely to arise. As an advisory body the Military Council is constituted for the purpose of assisting the Commander-in-Chief in the performance of his administrative duties. It has no collective responsibility. It meets only when convened by the Commander-in-Chief for the consideration of cases of sufficient importance and difficulty to require examination in conference. The heads of the minor independent branches of Army Headquarters and the Directors of technical services attend when required. Accordingly, at an early stage in the consideration of any large question of policy, the Commander-in-Chief is in a position to obtain, by an extremely convenient procedure, a combination of authoritative advice on its Military, administrative and financial aspects, in the light of which he decides broadly the course of action he will maintain whether as Commander-in-Chief or as Army Member.

Anomaly of the situation.

The potency of the Commander-in-Chief.

(c) *Internal Security of India.*

Internal security troops are a necessary feature of every military organisation. That they are specially necessary in India, is a matter of common knowledge, emphasised in recent times by the Moplah rebellion of 1921, and the numerous occasions on which in the years 1919-22, troops were called out in support of civil administration, though some of them, such as the cruel massacre of a crowd of unarmed and helpless British subjects,

Internal security troops.

The monstrosities of the Jallianwalla Bagh.

debarred from all means of esctpe, and the atrocious bombing from aeroplanes, of areas inhabited by non-combatant women and children, enclosed and included in the Jallianwalla Bagh, in April 1919, an incident which the Home Member of the Government of India from his place in the Council Chamber in 1921, characterised as " the darkest blot on British administration," are utterly without justification. In times of external peace, the field army is available to assist in internal security duties. In time of war, the field army must be free to carry out its legitimate role, undisturbed by internal calls. It should not be forgotten that, there are in India some 4,000 miles of strategic railway to be guarded, the working of which must be ensured on mobilization.

Expenditure of the revenues of India on Military operations beyond her external frontiers.

Section 22 of the Government of India Act provides that, " except for preventing or repelling actual invasion of His Majesty's Indian possessions, or under other sudden and urgent necessity, the revenues of India shall not, without the consent of both Houses of Parliament, be applicable to defraying the expenses of any military operations carried on beyond the external frontiers of those possessions by His Majesty's forces charged upon these revenues." The purposes for which the Army in India is maintained are specifically limited, and that in a grave emergency, it would be a recognised liability of His Majesty's Government to come to India's assistance with the armed forces of the United Kingdom; and it is obvious, therefore, that the defence of India must be regarded as one of the permanent problems of Imperial strategy. These are the considerations which determine that His Majesty's Government and the Secretary of State, as one of His Majesty's Ministers, should have a special responsibility and authority in regard to the military administration of India.

PART IV.

(a) *The Secretary of State and the Army.*

Secretary in the Military department is the adviser.

The Secretary of State's principal adviser in Indian Military affairs is the Secretary in the Military Department of the India Office. The office is filled by a military man of high rank, usually a Lieutenant-General, with recent Indian experience. He has other Staff Officers to assist him, and has to keep himself in touch with current Indian affairs. The Secretary of State further has the benefit of the advice of a retired Indian Army officer of high rank who, by convention, has come to acquire a seat in his council. The relations of the India Office however, with the Government of India, are no doubt 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. The working of this system undoubtedly caused delay in dealing with military questions that frequently required rapid settlement, both in the interests of efficiency and of the contentment of the Army in India. Taking into consideration this important problem and eager to solve it, the Esher Committee recommended that greater latitude should be allowed to the Governor-General in Council in deciding questions of a military character, provided they did not influence by reflex action the administration of the British Army at home.

Parliamentary control illusory.

Recommendation of the Esher Committee.

Rule honoured but relaxed during the War.

The rule which required all communications of a military nature, between the Commander-in-Chief and the War Office, to pass through the India Office, had always been respected, but relaxed in favour of the same passing between the two direct during the war, with a view to arrive at speedy conclusions. Facilities now exist for that freedom of communication which cannot yet be said to be placed on a permanent footing of official basis. At present it is limited to communications between the Commander-in-Chief and the Imperial General Staff, the Secretary of State being kept informed of such communications.

(*b*) *The Governor-General and the Army.*

The Viceroy's Executive Council and the Military department.

Next come the Viceroy's Executive Council which exercise in respect of Army administration the same authority and functions, as they exercise over the administration of the other departments of the Government, though under the Montagu-Chelmsford Reforms Scheme, said to be the first phase of representative institutions in India, Army expenditure and the direction of military policy have been excluded from the control of the Legislature. The next authority in the chain of administrative arrangements is His Excellency the Commander-in-Chief, who, by custom, is also the Army Member of the Viceroy's Executive Council. His present position, and the process by which in recent times his present functions have been determined, have thus been explained by the Esher Committee :—

" Prior to 1906 there were two members of the Executive Council, the Commander-in-Chief, who was

responsible for command and executive work, and who had under him 3 principal staff officers,—the Adjutant General, the Quarter Master General and the Principal Medical Officer—and the Military member, also a soldier, who was responsible for the administrative work of the army. Under this arrangement the Government of India had two military advisers. That system was abandoned in 1906, in favour of an arrangement under which a department of Military Supply was created and placed in charge of another soldier, with the rank of Major General, who also had a seat in the Executive Council." Three years later, the latter department was abolished, and the present system under which all the works connected with the administration of the Army, the formulation and execution of the military policy of the Governor-General of India, the responsibility for maintaining every branch of the Army, combatant and non-combatant, in a state of efficiency and the supreme directions for all military operations to be carried out in India, are centred in one authority, the Commander-in-Chief and Army Member, was introduced.

Formerly two Members to represent the Military department.

(c) *The Army Department.*

The Principal Staff Officers and the other independent heads of branches at Army Headquarters have two separate functions of a well-defined character. In one direction they are staff officers of the Commander-in-Chief, responsible for the administration of their departments, for staff duties, for conveying to the subordinate commands the executive decisions of the Commander-in Chief, and ensuring that these decisions are carried out. In their other aspect, they are responsible for initiating and pursuing, under the direction of the Commander-in-

The Army Department.

Chief proposals relating to the better administration of the army, and the welfare of the troops, which require the decision of the Government of India or the Secretary of State. It is here that the dual nature of the Commander-in-Chief's position manifests itself: because, when such proposals are ripe for submission to Government, they come before the Army Department, a Department organized in the same way and possessing the same functions and authority as the civil Departments of the Government of India, the portfolio being in charge of the Commander-in-Chief in his capacity as Army Member of His Excellency the Viceroy's Council.

The Secretariate of the Army Department.

The staff of the Army Department consists of a Secretary who, like the Secretaries in the civil departments, is a Secretary to the Government of India as a whole, possessing the constitutional or, to be more accurate, the conventional right of access to the Viceroy, a Deputy Secretary, an Establishment officer and two Assistant Secretaries. Until 1921, the Army Secretary was a military officer usually of the rank of Major-General. The Esher Committee took exception to this feature of the system, as they considered that to vest in a military officer the constitutional authority of a Secretary to Government was liable to impair the independence of the Commander-in-Chief as the sole military adviser of Government: and by an indirect result of one of their recommendations the post is now held by a civilian, an arrangement which is not open to the same objection, and which, incidentally, is more in tune with the advance of political institutions in India.

Functions of the Army Department.

The Army Department deals with all army services proper, and also the administration of the Royal Indian Marine and the Royal Air Force in India, in so far as questions requiring the orders of the Government of India are concerned. The Army Department has no direct relations with com-

manders or troops or the staffs of formations subordinate to Army Headquarters: it has continuous and intimate relations with Army Headquarters in all administrative matters. The Army administration is represented in the Legislature by the Army Member in the Council of State, and by the Army Secretary in the Legislative Assembly.

Secretary responsible to the Viceroy.

The Secretary is responsible to the Viceroy for the proper working of the Army Department. All proposals requiring the orders of the Government of India have to be referred to him for that purpose, and he is required to examine them from the administrative standpoint and with special reference to their bearing on the general civil administration. It is his duty to see that the Rules of Business of the Government of India are observed. Like other Secretaries to the Government he has to wait upon the Viceroy every week on the day allotted to him. To him he takes army cases requiring His Excellency's orders. He, like the Civil Secretaries, has the statutory right to submit cases at any stage to the Governor-General. He is also the Secretary to the Government of India in the Marine Department, and in this capacity administers, on behalf of the Government of India, and under the direction of the Army Member, the Royal Indian Marine, the executive head of which is located at Bombay. He corresponds weekly with the Secretary, Military Department at the India Office. He is also a Member of the Legislative Assembly and finally he is a Member of the Military Council. In short, his position is exactly analogous to that of the Civil Secretaries to the Government in other departments.

Rules of business.

PART V.

(a) *Composition of the Indian Army.*

Composition of the British Army in India.

The British Army in India is composed of the Cavalry, European and Indian, Infantry, European and Indian, the Horse, Field, Heavy and Mountain artillery, the Corps of Royal Engineers, Indian Pioneers, Sappers and Miners, the Signal troops, the Royal Tank corps of which the armoured car section is a part, the Royal Army Medical corps, the Indian Medical Service, the Indian Medical Department (in military employment) of Assistant and sub-assistant surgeons, the Queen Alexandra's Imperial Military Nursing Service, the Indian Military Nursing Service, the Indian Hospital corps, the Indian Army Service corps, including Mechanical and Animal transport, the Indian Army Ordnance corps, the Indian Army Veterinary corps, the Army Remount Department in India, the Army Educational corps, the Auxiliary Force, the Indian Territorial Force, including the University Training corps, the Indian State Forces and the Royal Air Force, including the Air Medical Service. These form the Active Army of India, a consideration of the various methods of whose recruitment would be beyond the scope of the present lecture. We may however, for a moment consider the training provided for the Army, and the provisions made for the supply of officers, and the Indianisation of the Army in India.

The various Corps.

(b) *The Cavalry and Infantry.*

I will give a description of them a little more in detail. The British Cavalry and the British Infantry units

Units of the British Army.

of the army in India are units of the British service. No individual British service units is permanently stationed in India. The story of those which serve in India from time to time is essentially a story of the British Army. Recruits for the British cavalry are trained at the Central Cavalry Depot at Canterbury, for fourteen weeks, in dismounted work and education only. They are then sent to regiments in the United Kingdom, where their training is carried on until such time as drafts are prepared and they are drafted to regiments serving overseas. And, as in the Cavalry, so in the Infantry, annual drafts are prepared by the Home authorities and despatched to overseas battalions, in order to make good any wastage that may have occurred during the past year. These drafts are fed and replenished by the Regimental depots, situated in suitable towns in areas in the United Kingdom, from which regiments are recruited. The chief functions of these depots are the training of recruits, the custody of reservist equipments, and the reception of reservists on mobilisation, provided, they have, upon first enlistment, received instructions in drill and elementary musketry, and are taught discipline and the general duties of a soldier.

Regimental departments and their functions.

The Silladar System.

With the outbreak of the Great War the Silladar system which in its origin is akin to the yeomanry system, under which the individual soldier supplied and maintained his horse, clothing, equipment, arms (other than his rifle), and lines, receiving in return a higher rate of pay than the non-silladar soldier, whose needs were furnished by Government, fell into disuse. Such is the basis of recruitment of the Indian Cavalry at the present day, while the Indian Infantry are recruited in a few well-chosen areas in the Punjab, the Frontier Province, in the Bombay Presidency, in the Central Provinces, in the Malabar and other centres.

(c) *The Royal Engineers.*

The Engineering work.

For the performance of duties such as the overcoming of obstacles preventing the rapid progress of the army, by constructing or improving roads, railways, bridges, and other means of communications on the one hand, and, on the other, by providing means to impede the progress of the enemy, to demolish all facilities that exist for his advance, and by placing every possible obstacle in his path as well as to construct such defences as are necessary, and to improvise accommodations for the troops. When in camp an exceptionally high standard of qualification and duty is required for arrangement of the supply of water, maintenance of sanitation and other essential services. Such and many others of a kindred nature are the duties and responsibilities of the Military engineering service. It is essentially a service which from its technical Military character cannot be improvised in war, and must be maintained in a high state of efficiency during peace. These are the principles on which the Engineer organisation of the army consisting of two main branches of the " Sappers and Miners and Pioneers " and the "Military Engineer Services " is based. In war it is essential that both branches should be under one control in all Military functions and formations. In peace, unity of control is equally desirable in order to ensure adequate preparedness for war : and the system of peace administration of the Engineer Services, has in the British Indian Army been reconstructed to this end.

The Engineer organisation.

Control in War.

(d) *Recruitment of Engineers.*

Corps of Royal Engineers.

The great majority of the officers employed in the military engineering organization in India are drawn

from the Corps of Royal Engineers, which is a part of the British Army. In the days of the East India Company, India maintained her own Indian Corps of Engineers, the officers of which were recruited and trained in England. This corps was divided into three branches, one for each of the Presidencies of Bengal, Bombay and Madras. In 1860 the Indian Corps of Engineers was amalgamated with the Imperial Corps of Royal Engineers, and the system thus inaugurated continues to the present day.

Recruitment and training of Royal Engineer officers.

It is necessary, on the other hand, to describe the manner in which the Royal Engineer officer, who serves in India, is recruited and trained. Between the ages of $17\frac{1}{2}$ and $19\frac{1}{2}$ a candidate has to qualify, in a competitive examination, for admission to the cadre of Royal Engineers.

On arrival in India, the young officer is attached to one of the corps of Sappers and Miners for a few months, where he learns how to work with Indian troops. He is then permitted to elect for service in the Sappers and Miners or the Military Engineer Services, or he may be permitted to enter one of the civil departments of Government, *e.g.*, the Public Works Department, the Railway Department, the Survey of India or the Mints, where he obtains a varied experience of engineering work, and still remains available for war.

(*e*) *Sappers and Miners.*

Sappers and Miners—A Retrospect.

The need for employing special engineer units as part of an army arose from the inability of the infantryman to overcome an enemy, who was entrenched behind strong fortifications, where sapping and mining was needed under the direction of skilled engineers. In the

early days of the Indian Army, engineer units were raised by detaching selected men from other units, and these temporary units were broken up on the close of the operations. At the commencement of the nineteenth century, it was found to be more convenient to retain these units in peace as pioneer regiments, and they developed later into three corps of Sappers and Miners, one for each of the three Presidencies of Bengal, Madras and Bombay. These three corps have survived to the present day, though their titles and organization have been varied from time to time. They are known as—

The three Corps of Sappers and Miners.

King George's Own Bengal Sappers and Miners, with headquarters at Roorkee.

Queen Victoria's Own Madras Sappers and Miners, with headquarters at Bangalore.

Royal Bombay Sappers and Miners, with headquarters at Kirkee.

Recently the Burma Company of Sappers and Miners has been detached from the Madras Corps and installed as the Burma Corps of Sappers and Miners, with headquarters at Mandalay.

The organization of the Sappers and Miners.

The personnel of the corps consists of Royal Engineer officers, Indian officers holding the Viceroy's commission, a certain number of British non-commissioned officers, Indian non-commissioned officers and Indians of other ranks. The first three corps are commanded by a Lieutenant-Colonel, who is assisted by two Majors, as Superintendents of Park and Instruction, an Adjutant, a Quartermaster, two Subedar-Majors, a Jemadar Adjutant and a Jemadar Quartermaster. The staff of the Burma Sappers and Miners is proportionately less.

Obviously a trained sapper cannot be produced at short notice : and the full period of training is two years.

For this reason no difference is maintained between the peace and war establishments of a Sapper and Miner unit.

Organization and training of Pioneers.

The pioneer is not a "tradesman." He is trained in elementary field engineering, more especially in road construction.

(f) The Military and Engineer Services.

The Military Engineer services—a retrospect.

The history of the Military Engineer Services has an interest all its own. In the eighteenth century and the earlier part of the nineteenth century, the engineering requirements of the army preponderated over those of other departments, and, as conditions became more stable, there came into being a Public Works Department under the control of the "Military Board." The department was manned by the Indian Corps of Engineers, who were entirely military in character. Civil works gradually began to assume a greater importance, notably with the construction of the Grand Trunk Road from Calcutta to Delhi, and of the Ganges Canal from Hardwar to Cawnpore; civilian engineers commenced to be employed in increasing numbers: and provincial Governments began to be dissatisfied with the military control over works executed on their behalf. In 1851 the Public Works Department was brought under civil control, but no separate organization was believed to be necessary for military works, as it was considered to be more economical for the same agency to execute both military and civil works. After 1860 there was a boom in the construction of civil works: the Public Works Department was greatly expanded and large numbers of civilian engineers were engaged. In 1899 the Public Works Department system of grading officers, which clashed with the system of military rank, was abolished

Civil Control.

The Military Works Services.

and the Military Works Department became entirely military in character. The department was then designated the Military Works Services, and its head the Director-General of Military Works.

Organization of the Military Engineer Services.

The Military Engineer Services are divided into 3 branches, *viz.*, "Buildings and Roads," "Electrical and Mechanical" and "Stores." The unit in the Buildings and Roads branch is the sub-division, which is in charge of a Sub-divisional officer (Military or Civilian upper subordinate), who is assisted by one or more Sub-overseers (lower subordinates, civilians). The Military Engineer Services control all military works in India, Burma, the Persian Gulf, and Aden, except in the case of a few small outlying military stations, which are in charge of the Public Works Department. They control all works for the Royal Air Force and for the Royal Indian Marine : and they are charged with all civil works in the North-West Frontier Province and Baluchistan, under the orders, in each of these two areas, of the Chief Commissioner and Agent to the Governor General. They also control civil works in Bangalore, under the Mysore Government, and in Aden.

(*g*) *The Signal Service.*

Definition of the Signal Service, and its functions.

The Signal Service of an army is constituted for the purpose of giving commanders in the field the means of communicating with each other. It consists of signal units allotted to military formations : and the equipment of each unit depends on the type of formation it has to serve.

In a modern army many different means of communication are employed, and the use of one or the other is determined, amongst other things, by the degree of

proximity to the enemy. "Signals" in the technical military sense include the human messenger, carrier pigeons and dogs, the telephone, the "fullerphone," or buzzing instruments with a light cable, wireless telegraphy, telegraphs worked by hand, that is to say, the transmission of messages in the Morse code by means of flags or by the heliograph, which is a mirror reflecting the sun's rays, and, lastly, high speed automatic telegraphy. In modern times the invention of aeroplanes has helped to stimulate the development of signalling science on the military side, since, in order to secure effective co-operation between the Royal Air Force and the army, it is essential that there should be some reliable means of transmitting messages between aeroplanes in the air and the troops on the ground. The Signal Service is one which, from its peculiar character, cannot be improvised in war, but must be maintained in a high state of efficiency in peace time.

The experience of the Great War demonstrated nothing more conspicuously than the paramount importance of rapid and reliable means of inter-communication, and this has been recognized in the British Army by the formation of the Royal Corps of Signals, on which the Indian Signal Corps is now modelled.

The Indian signal corps has only recently been created in its present form and is still in its infancy. There are difficulties to be overcome before the degree of efficiency which is necessary, can be achieved. Certain details of organisation and establishments have yet to be settled; progress is necessarily retarded because many of the personnel lack experience: and even without these handicaps it would not be an easy matter to keep pace with the rapid developments in technical appliances and in wireless equipment especially. Moreover, there is still a danger that new invention will quickly render ob-

Efficiency must be kept up to date.

solete even a recent pattern of signal equipment : and for this reason a cautious and deliberate rate of progress is, in the case of the signal service, definitely advisable. At the same time, the newly created organization has already been tested by service in Waziristan, and has shown that it contains the germs of success.

(*h*) *The Royal Tank Corps.*

The Tank Corps, Tank and Armoured Car Companies.

The Tank Corps which is the successor to the Machine gun corps abolished in 1921, comprises two distinct categories of fighting machine. Firstly, there is the fighting tank itself. This is a heavy armoured vehicle mounted on flexible tracks and equipped with semi-automatic quick-firing guns and Vickers machine guns, which is primarily intended for work in co-operation with cavalry or infantry against strongly entrenched and wired enemy positions. The tank is independent of roads and can move across all ordinary country. So far tanks have not been actually adopted as part of the Army in India's equipment. Experiments have been made to find a tank which will be reliable under Indian conditions of temperature and terrain. But it is held that the conditions of warfare on the frontier do not at present render the provision of fighting tanks a first essential, though, when reliable tanks can be produced, they will undoubtedly be of great potential value.

Armoured transport.

Secondly, there is the armoured motor car. Though the movements of the armoured car are restricted to roads, or to comparatively level and open country, yet as we have already indicated this type of vehicle is invaluable under Indian conditions : and its introduction is a real economy, in that its use renders it possible to reduce more expensive cavalry establishments.

(*i*) *Medical Services.*

Composition of the Medical Services.

The military medical services in India are composed of the following categories of personnel and subordinate organizations :—

(*i*) Officers and other ranks of the Royal Army Medical Corps serving in India.
(*ii*) Officers of the Indian Medical Service in military employment.
(*iii*) The Indian Medical Department, consisting of two branches, *viz.*, (*a*) Assistant surgeons and (*b*) Sub-assistant surgeons.
(*iv*) The Queen Alexandra's Military Nursing Service for India.
(*v*) The Indian Troops Nursing Service.
(*vi*) The Indian Hospital Corps.

Of these categories, the officers and men of the Royal Army Medical Corps, the assistant surgeons of the Indian Medical Department, and the Queen Alexandra's Military Nursing Service for India are primarily concerned with the medical care of British troops : while the officers of the Indian Medical Service, the sub-assistant surgeons of the Indian Medical Department, and the Indian Troops Nursing Service are concerned primarily with the medical care of Indian troops. The Indian Hospital Corps serves both organizations.

Units of the Medical Services.

In the staff and administrative appointments of the medical services, officers of both the Royal Army Medical Corps and the Indian Medical Service are employed without distinction of duties; and while, in the case of executive duties, the normal peace time arrangement is to provide separately for the needs of British and Indian

troops respectively, in the manner which has been indicated. In times of emergency the Royal Army Medical Corps officer attends to Indian troops, and the Indian Medical Service officer to British troops, as the occasion demands.

Functions of the Medical Services.

An essential duty of the medical services is to attend the sick and wounded of the army in hospital; but, under present-day principles of military administration, at least equal importance is attached to the prevention of disease and to promoting hygiene in the life of the army. The object aimed at is to maintain in the soldier a high standard of physical health and fitness, and to increase his powers of resisting disease. For this reason, the medical services are required to concern themselves with every department of the soldier's life, with the climatic and hygienic conditions of the cantonments in which the troops are stationed. A medical officer in the army is expected to see more of the troops in their barracks, in their lines and during manœuvres, than in the hospitals; and the successful medical administrator in peace time is he whose hospitals contain the smallest number of sick.

The Royal Army Medical Corps.

The officers and other ranks of the Royal Army Medical Corps serving in India are drawn from a powerful and highly efficient corps forming part of the British Army. They are deputed to India on a tour of duty, and are entrusted with the medical and sanitary care of the British troops serving in India.

Officers of the Indian Medical Service in military employment.

The Indian Medical Service is primarily a military service. But after the officers have learnt their first military duties, those that are in excess of the peace requirements of the Indian Army are lent to the civil Government for employment in civil departments until such time as they are needed on the outbreak of war: and these constitute the war reserve. Those who remain in

military employment, are, like officers of the Royal Army Medical Corps, employed on executive, staff and specialist duties, their executive duties being, however, normally performed with Indian troops.

Indianization of the Indian Medical Service.

The Indian Medical Service is a service in which Indianization of the personnel has proceeded with relatively greater rapidity than has so far been attained in almost any other Indian service of the same status. The total strength of the Indian Medical Service officers in both civil and military employment is 681. Of these, 135 are Indian officers, of whom 102 have been recruited since 1915. The Indian officer in the Indian Medical Service, like his British confrère, holds the King's commission, and is required to possess the same registrable qualifications.

Assistant Surgeons of the Indian Medical Department.

The assistant surgeons of the Indian Medical Department are Europeans and Anglo-Indians who possess certain medical qualifications, which are not, however, registrable in the United Kingdom. They are principally employed to hold subordinate medical charges in British station hospitals in connection with the care of British troops. The senior assistant surgeons hold the ranks of lieutenant, captain and major.

Sub-Assistant Surgeons of the Indian Medical Department.

The sub-assistant surgeons of the Indian Medical Department are all Indians. They also possess certain special qualifications which are not registrable in the United Kingdom, and they are employed to hold subordinate medical charges in the station hospitals allotted to Indian troops. Those in the senior grades hold rank as Indian officers, that is to say, as subedar-major, subedar, and jemadar.

The Queen Alexandra's Military Nursing

The Queen Alexandra's Military Nursing Service for India consists of a Chief Lady Superintendent, a number of Lady Superintendents, and nursing sisters to

Service for India.

the number required by the strength of British troops in India. The Chief Lady Superintendent is an administrative official; the others nurse sick and wounded British soldiers themselves, and they also instruct in nursing duties the male nursing orderlies and supervise their work. The Nursing Service also supervise the matrons employed in the family hospitals, which exist for the care of the families of British officers and soldiers.

The Indian Troops Nursing Service.

The Indian Troops Nursing Service is an innovation introduced since the war. The duties of the service are mainly to instruct nursing orderlies of the Indian Hospital Corps, and to supervise their work in Indian station hospitals.

The Indian Hospital Corps.

The Indian Hospital Corps has absorbed the Army Hospital Corps and the Army Bearer Corps of the pre-war period. It is organized in five sections, namely, (*a*) a clerical section, which carries out clerical and office duties, connected with the administration of hospitals and medical administration generally; (*b*) a storekeeper's section, which is employed in the holding, issuing and taking care of hospital stores, such as bedding, furniture, etc.; (*c*) a nursing section, which provides the nursing orderlies for Indian station hospitals; (*d*) an ambulance section, which performs the duties previously carried out by the Army Bearer Corps; and (*e*) a general section, which provides certain menial and domestic servants for both British and Indian station hospitals.

The system of administration.

The medical services are administered and controlled by the Director of Medical Services in India, an officer of the rank of Major-General on the staff of Army Headquarters, subordinate to the Ajdutant-General in India. Under a convention recently introduced, the appointment of Director of Medical Services is to be held alternately by an officer of the Royal Army Medical Corps and an officer of the Indian Medical Service. The Director of

Medical Services is assisted by a Deputy Director, who is also Director of Hospital Organisation, a Director of Medical Organisation for War, a Director of Hygiene and Pathology, an Assistant Director, who deals with personnel, another Assistant Director who deals with accommodation and equipment; a Deputy Assistant Director and the Chief Lady Superintendent. For administrative medical duties, each of the Army Commands has a Deputy Director of Medical Services, of whom two belong to the Royal Army Medical Corps and two to the Indian Medical Service. Administrative and supervisory duties in Districts and Brigades are entrusted to Assistant Directors and Deputy Assistant Directors of Medical Services according to the peculiar necessities of each.

(*j*) *The Indian Army Service Corps, and the Mechanical Transport Service.*

Introductory.

The Indian Army Service Corps is the counterpart of the Royal Army Service Corps of the British Army. It has developed from the Commissariat Department of an earlier period, and its immediate predecessor was the Supply and Transport Corps, by which name the service was known up to a short time ago. The Indian Army Service Corps is administered by the Quartermaster-General, and is one of the principal services included in the Quartermaster-General's Department.

Supply and Transport Corps.

The Indian Army Service Corps is constituted in two main branches, namely :—

(*a*) Supply;
(*b*) Animal Transport;

and it is supplemented by the Mechanical Transport Service, which, in India, is constituted upon a special

basis, but which is, generically, a sub-division of Army Service Corps organization.

(k) *The Indian Army Ordnance Corps.*

The personnel of the Ordnance Services.

From the earliest days in India, until quite recently, the ordnance service had been inseparably allied to the artillery arm. Indeed, in its beginnings, the ordnance formed an offshoot of the train of the artillery. Accordingly, a hundred years ago the Presidency ordnance organizations were staffed in every rank from the East India Company's artillery. The officers served for a term in the ordnance and returned to their batteries; the other ranks, after a period of probation, were permanently posted to the ordnance and served for pension on special terms.

Their early history.

After the Mutiny, when the East India Company's artillery ceased to exist, and the Royal Artillery took their place, the old system of staffing the ordnance continued. The Royal Artillery officer served a term in an arsenal or factory, and returned to his battery : while the non-commissioned officers of that battery furnished the recruits for the lower ranks of the department. In 1884, therefore, when the reorganization took place, it was not a very difficult task to amalgamate the Presidency lists of Royal Artillery officers. These officers retained their regimental military rank and promotion, and it was only the departmental grading which required to be adjusted. A material change was that the Royal Artillery officer became liable to serve in any part of India and in any arsenal or factory. Subsequently, it was found desirable for technical and other reasons to retain Royal Artillery officers continuously in the Ordnance Department : and a system of continuous service was introduced

in 1890. The new conditions of service continued to govern the recruitment of Royal Artillery officers for the Ordnance Department for 30 years : and the next important change of system came in 1922 when the ordnance services were opened to officers belonging to all branches of the army and the monopoly of the Royal Artillery officers came to an end.

On the other hand, the subordinate European, and also the subordinate Indian establishment, had been attached permanently to the Ordnance Department, and accordingly they were borne upon their respective Presidency lists. When the reorganization of 1884 took place, the problem of amalgamating these establishments arose : but the difficulties of adjusting the different conditions of service proved too formidable, and, in the end, the department was left with the handicap of the subordinate personnel belonging to three separate establishments being made to continue to be governed by different factors in respect of their promotion.

Reorganisation thereafter took place in 1884 and 1912.

The Great War.

Specially heavy responsibilities however, devolved upon the Indian Ordnance Department at the outbreak of the Great War. These continued while the war lasted, and indeed, for a long time after the conclusion of hostilities, the Ordnance Department had a stupendous task to perform in disposing of accumulations of war material, and generally in evolving peace time order out of the chaos of the war and its aftermath.

The Indian Ordnance Department

The final result was the separation of the Ordnance Department into two organizations, namely, the Indian Ordnance Department and the Indian Army Ordnance Corps. The Indian Ordnance Department is controlled by the Director-General of Ordnance in India, and its functions are the manufacture, and the inspection during the

course of manufacture, of lethal munitions and of other military equipment, except clothing. The Director-General of Ordnance consequently retains the control of the ordnance factories, the conduct of which is now definitely organized upon a commercial and industrial basis, civil officers being employed to a very large extent in replacement of the former staff of Royal Artillery officers.

The Indian Army Ordnance Corps.

The Indian Army Ordnance Corps is administered by the Director of Equipment and Ordnance Stores, under the supervision of the Quartermaster-General in India. Its functions are the storage, and distribution to the troops, of army supplies, derived from the ordnance factories and other sources, and the manufacture of clothing for the army. The Director of Equipment and Ordnance Stores, acting under the orders of the Quartermaster-General, controls the arsenals, ordnance depôts and clothing depôts, and is responsible for furnishing the troops, in barracks and in the field, with arms, equipment, clothing and boots.

Inspection of Ordnance.

In addition to supplying the troops, the Director of Equipment and Ordnance Stores is responsible for the inspection of ordnance, equipment and clothing in the hands of the regular army, the Royal Air Force, and the Auxiliary and Territorial forces. This is the final development of the system which, as we have seen, was introduced in a rudimentary fashion in 1911. In carrying out this new service, the Director of Equipment and Ordnance Stores is assisted by two Deputy Directors of Ordnance Services attached to the Army Commands and by a Deputy Assistant Director of Ordnance Services in each of the military districts, except Burma. The Deputy Assistant Directors of Ordnance Services, in addition to inspecting equipment, other than technical equipment, are inspecting ordnance officers for ammunition and explosives. Inspectors of Ordnance Machinery located in

various arsenals inspect artillery, ordnance vehicles and connected equipment in the areas allotted to them, and similarly the Civil Chief Master Armourers (or Circuit Armourers) inspect small arms, machine guns and bicycles.

(*l*) *The Army Veterinary Corps.*

The pre-war arrangements were obviously of an arbitrary and makeshift description, and the more regular and scientific plan on which the whole army was reconstructed after the war, naturally included the formation of a self-contained Army Veterinary Corps, India, which combined in one organization all personnel required for the veterinary supervision and treatment of the animals of the Army in India. The pre-war system of divided control was abolished and the Army Veterinary Corps, India, was made responsible for the veterinary care, in peace and war, of mounted British troops, Indian cavalry and artillery, I. A. S. C. units, the remount department (excluding horse-breeding operations), etc. The Corps now includes therefore :—

The Post-War System.

Divided control—a Pre-War System.

(*a*) The establishment of Royal Army Veterinary Corps officers, serving on a tour of duty in India.

(*b*) The establishment of warrant and non-commissioned officers, India Unattached List.

(*c*) All veterinary assistants.

(*d*) The clerical establishment of the Army Veterinary Service.

(*m*) *The Army Remount Department.*

The functions of the department were limited to purchasing, rearing and issuing remounts to British

cavalry and artillery units and the 3 non-silladar regiments, and to the supervision of horse, mule and donkey breeding in certain selected areas. To all intents and purposes the interest of the department in an army horse ceased once the animal was issued from a remount depôt. In particular it was charged with no responsibility for the following matters :—

Pre-War organization and duties.

(*a*) Army transport animals, except for their actual purchase.
(*b*) The organization of the animal resources of the country for war.
(*c*) The fitness of the animal life of the army and all its contingent questions.
(*d*) The mobilization of fighting units or of transport.
(*e*) The mobilization of remount units for the field.
(*f*) The provision of officers' charges except the issue of a very small number.
(*g*) The control and distribution of horses in units.

Post-War organization and duties.

As a result of the experience gained in the Great War, and of the changes in army organization resulting therefrom, certain additional responsibilities have been imposed on the remount service, of which the most important are :—

(1) The mounting of the whole of the Indian cavalry.
(2) The provision of camels and draught bullocks for all units and services.
(3) The maintenance of 68,344 animals as against 53,579 pre-war.
(4) The enumeration throughout India of all animals available for transport in war.

(5) The animal mobilization of all units, services and departments of the army.
(6) A general responsibility for the efficiency of all the animals of the army both in peace and war.
(7) The administration of the remount squadron formed in 1922 as a nucleus for expansion into three squadrons on mobilization.
(8) Breeding operations of a direct character and a new horse-breeding area

(*n*) *The Auxiliary Force and the Territorial Force.*

The Auxiliary Force, India, is a new name for a force which originally existed in India more than half a century ago. A volunteer force first made its appearance in India in 1857. The Madras Guards are the oldest regiment in the force, having been raised in 1857 as the Madras Volunteer Guard. After three or four years, other infantry regiments were constituted. In the next decade mounted volunteer corps made their appearance. Artillery came into being in 1879, the Madras Artillery Volunteers being raised in Madras, and the Rangoon Volunteer Artillery in Rangoon in that year. The big railway companies in India commenced the formation of Infantry battalions from railway personnel in 1869, when the East Indian Railway raised a battalion, known as the East Indian Railway Volunteer Rifle Corps. The Auxiliary Force, India.

When these regiments were first raised, they were all included under the general heading of "volunteers." They were recruited from Europeans and Anglo-Indians, resident or domiciled in India, and organized on the same lines as the regular regiments of the British Army. They

were trained for the special object of local security, this having been the rôle of volunteers in India since the original formation of the force.

Merits and demerits of the volunteer system.

The volunteer system in India before the Great War was not regarded to be conspicuously efficient, and, when the war commenced, it became evident that steps would have to be taken to improve matters. Volunteers were being used in many cases to relieve regular garrisons of their ordinary routine work, but the regulations limited their use to local boundaries, and for this and other reasons the force could not be employed as a whole or to its full capacity. In 1917 the Indian Defence Force Act was passed. This was a war measure to introduce compulsory service for European British subjects in India, to meet the needs of an Imperial emergency. Under the Act all European British subjects, with certain exceptions, between the ages of 18 and 41 became liable for military service. At the same time certain units of the Indian Defence Force were opened to volunteers, who were British subjects but not Europeans.

The Defence Force.

The Act remained in force till 1920, with various amendments concerning the age up to which men should serve, and the territorial limitations of service.

Composition of the Auxiliary Force.

The Auxiliary Force comprises all branches of the service, cavalry, artillery, engineers and infantry—in which are included railway battalions, machine gun companies, and the R. A. S. C. sections. The organization is that of regular units of the British Army, a regular adjutant being appointed to each regiment, battalion, and artillery brigade. The composition of each regiment and battalion has been defined but is liable to alteration, where necessary, to suit local conditions. An infantry battalion is not necessarily composed entirely of infantry, nor a cavalry regiment wholly of cavalry. In the composition

of any one of these may be included sub-units of any branch of the service.

The Indian Territorial Force.

The constitution of the Indian Territorial force, under an Act passed in 1920, was primarily the outcome of the new political conditions introduced into India by the Montagu-Chelmsford Reforms of 1919. Self-government cannot be a complete reality without the capacity for self-defence, and, when the first phase of representative institutions was established, the political leaders of India naturally claimed that Indians should be given wider opportunities of training themselves to defend their own country. The Territorial force is, in fact, one of the several aspects of the Indianization of the military services, which has been previously mentioned as an important feature of the present-day history of the Army in India. The force is intended to cater, amongst other things, for the military aspirations of those classes of the population with whom military service has not hitherto been a hereditary profession. It is intended, at the same time, to be a second line to, and a source of reinforcement for, the regular Indian army. Membership of the force for this latter reason carries with it a liability for something more than purely local service or home defence. It may, in certain circumstances, involve service overseas.

The force is the direct successor of the Indian section of Indian Defence Force created during the War. It has been modelled on the old militia in England. The essence of its scheme of organization consists in training men by means of annual embodiment for a short period in successive years.

University Training Corps.

The Indian Territorial Force consists at present of two main categories, Provincial battalions, and the University training corps battalions. The latter are recruited from the staff and students of the Indian Universi-

ties. They train all the year round, and they are equipped with a permanent staff of British instructors. On ceasing to belong to a university, a member of the corps is discharged. In the case of the University training corps battalions, it is not intended to enforce the liability to render actual military service. Their purpose is mainly educative, to inculcate discipline and form character. But incidentally they are expected to be a source of supply of both officers and men for the Provincial battalions.

Provincial battalions.

The members of the provincial battalions accept the full liability for service which has been mentioned. Seven such battalions were constituted in the first instance. The number has since been raised to twenty, and, though the unit establishment has not been completely filled in all cases, the movement has already achieved a greater degree of success than might have been anticipated at so early a stage. It is in contemplation to diversify and extend the scope of the force by constituting some ancillary units. Although, for the present the infantry arm only, has been created, the force by law may include every other army service. The infantry battalions already raised are organised generally on the same lines as regular Indian infantry battalions, and are each affiliated to a regular Indian infantry regiment. The total strength of the force is at present limited to about 20,000.

Increase in the number of battalions.

Periods of training and control.

Men enrol in the provincial battalions for a period of six years, the period being reduced to four years in certain cases. On the completion of the first period they can re-enrol, voluntarily, for further specified periods. During his first year, every man does twenty-eight days preliminary training, and during every year he receives twenty-eight days periodical training. Training is carried out by a special training staff consisting of re-

gular Indian officers and other ranks, loaned by regular regiments, or of pensioners, who may be engaged for the period of the training. During embodiment or training, the Indian ranks are treated as regards pay, discipline. etc., as are the ranks of the regular Indian Army. The system of training described has, however, been modified for certain special reasons in its application to the two Parsi pioneer battalions of the Force.

Indian Territorial Force officers receive, at present, as a provisional arrangement, two forms of commission: an honorary King's commission in His Majesty's Indian Land Forces, and, for purposes of command, a Viceroy's commission as an Indian officer in the Indian Territorial Force.

(o) *The Indian State Forces.*

The Imperial Service troops of pre-War days.

The Indian State Forces, formerly designated "Imperial Service Troops," consist of the military forces raised and maintained by the Rulers of the Indian States at their own expense and for State service. It has been the custom in emergency for State troops to be lent to the Government of India, and the Government of India have on many occasions received military assistance of great value from this source. But the rendering of such aid is entirely at the discretion of the Ruling Princes and Chiefs. Government, on the other hand, provide permanently a staff of British officers, termed "Military Advisers and Assistant Military Advisers," to assist and advise the Ruling Princes in organizing and training the troops of their states. The head of this staff is the Military Adviser-in-Chief, a senior military officer whose services, in a consultative capacity, are at the disposal of all the Durbars which maintain State troops.

Loan of troops during the Great War.

Although the standard of efficiency of the Imperial Service Troops was high, their peace and war establishments differed from those of the corresponding units of the Indian Army. During the Great War when, with the characteristic loyalty and generosity of the Ruling Princes of India, the military forces of the Durbars were placed at the disposal of His Majesty's Government, and served in the field by the side of regular troops, the dissimilarity mentioned proved a source of weakness : and after the war had ended, the Indian States, like the Government of India, undertook a military reorganization, which, in a number of cases has already been carried out. The principal feature of the new arrangements, as adopted more or less generally, is that in future the Indian State Forces should be composed of three categories of troops, namely :—

Post-War organization and establishment.

Composition of the State Forces.

Class A.—Troops in this class are organised on the present-day Indian Army system and establishments, and, with some exceptions, are armed with the same weapons as corresponding units of the regular Indian army.

Class B.—These troops consist of units which are, in most cases, little inferior in training and discipline to troops of Class A; but they are not organised on the basis of the present-dav Indian Army establishments. They have, as a rule, retained the system of the pre-war formations. Their standard of armament is pitched lower than that of Class A troops.

Class C.—These troops consist in the main of militia formations which are not permanently embodied. The standard of training, discipline, and armament, prescribed for this

class, is generally lower than the standard prescribed for Class B troops.

As a result of homogeneity and improvement in armament and training, it may be anticipated that the value and effectiveness of the State troops will be greatly enhanced

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PART VI.

The Royal Air Force.

The present organization and system of administration of the Royal Air Force in India. Control by the Commander-in-Chief.

The Royal Air Force in India has been from the beginning, and still is, controlled by the Commander-in-Chief in India as part of the defence services of the Indian Empire. The Air Force budget, as shown in a later chapter of this book, is incorporated in the army estimates. The Commander of the Air Force, the Air Officer Commanding in India, is an Air Vice-Marshal, whose rank corresponds to that of a Major-General in the Army. The head-quarters of the Air Force is closely associated with Army Headquarters, and is located with the latter at the seat of the Government of India.

Royal Air Force headquarters.

The Air Officer Commanding has a headquarters staff, constituted in three branches, namely, air staff, personnel, and technical and stores. The system of staff organization is similar to the staff system obtaining in the army. Broadly speaking, the duties assigned to the three divisions mentioned are those which are performed by the General Staff Branch, the Adjutant-General's and Military Secretary's branches, and the Quartermaster-General's branch, respectively, of Army Headquarters.

The formations subordinate to Royal Air Force Headquarters are :—

Subordinate formations.

(1) The Wing Commands, which in their turn, comprise the squadrons of aeroplanes.

(2) The Aircraft Depôt.

(3) The Aircraft Park.

The potentialities of the Air Force.

The principal tasks required of the air force in war are to bombard the enemy's camps and bases : to harass the enemy's troops by bombing and machine-gun fire and, if possible, to divert them from their objective : to observe and make photographic records of hostile terrain : and to obtain by reconnaissance, and communicate continuously to the troops on the ground, information regarding the enemy's dispositions and movements. If the enemy engaged has an air force, the primary task is, of course, to counteract its activities and if possible to destroy it.

The assistance which land troops derive from the air force is of the greatest possible value : and, in particular, troops that fought in the Great War have come to reckon upon the additional protection which they receive from the air arm. The pilot, from his coign of vantage in the air, reports to the army below concentrations of the enemy's forces, and the direction from which an attack may be expected. He observes the results of artillery fire, and, by communicating messages to the batteries with which he is co-operating, enables them to select their target and correct their aim. It may safely be said, that, if the air force performed nothing more than reconnaissance, it would still add enormously to the defensive and offensive powers of the troops on the ground.

The value of the air force has been conspicuously demonstrated in operations on the frontier of India where action from the air is able to overcome, in a special degree, well known and formidable difficulties of terrain. The rapidity with which aeroplanes can carry out an attack constitutes another military advantage of great importance. It is held that the extensive use of the air arm, where this is practicable, is also economical, as the force does not require the maintenance of the same elaborate land lines of communication as are necessary for ground troops. It has indeed been claimed that the air force can be used with success as a primary and independent weapon, in whole or partial substitution for ground troops. But the truth of this proposition has not yet been fully tested, and in India the Royal Air Force is at present employed as an auxiliary to the army.

Part VII.

(*a*) *Training of the Army.*

Army training.

Properly equipped institutions have been provided for the training of the Army in India. At Quetta the Staff College undertakes to afford selected officers higher instruction in the art of war than is obtainable in a unit, and instruction also in the duties of the staff. At Belgaum, the Senior Officers' School purposes to disseminate and inculcate sound tactical principles, to give senior officers of all arms an opportunity of interchanging ideas on all matters connected with the training and administration of units, to give higher tactical training to senior regimental officers of all arms, and the Army school of

education has for its object the study of suitable methods of adult education and the instruction of officers, commissioned and non-commissioned, in the principles laid down for the education of serving soldiers. There is a School of Artillery which instructs commissioned and non-commissioned Artillery officers in practical gunnery, while at Saugor the Equitation School teaches equitation in all its branches. The two small arms schools situated at Pachmarhi and Satara train officers, warrant and non-commissioned, to act as instructors in the use of small arms, such as rifles, bayonets, pistols, Lewis Hotchkiss guns, hand and rifle grenades. There is a school of physical training, and an Army Veterinary school at Ambala, a Machine Gun school and a Royal Tank corps school at Ahmednagar, an Army Signal school, Army school of cookery and an Army Veterinary school at Poona. The Indian Army school of Education which performs the same functions as the British Army School of Education at Belgaum, is established at Wellington.

The different Schools.

(*b*) *The Officers.*

Officers holding King's Commission and Viceroy's Commission.

There are two main categories of officers in the Indian Army; those holding the King's Commission and those holding the Viceroy's Commission. The latter are all Indians and have a limited status and power of command, both of which are regulated by the Indian Army Act, and the rules made thereunder. A large number of them are men promoted from the ranks. The King's Commission is a commission in the Army. It is granted by His Majesty the King-Emperor, and the status and power of command of the officers who hold it are regulated by the Army Act, an Act of the British Parliament, and by the rules made there-

under. These officers are obtained from among the cadets who pass through the Royal Military College at Sandhurst and by the transfer to the Indian Army of officers belonging to British units. The former is the principal channel of recruitment, the latter being only resorted to when, owing to abnormal wastage, or for some other special reason, requirements cannot be completed by means of cadets from Sandhurst. A cadet qualifying at Sandhurst and receivng his commission, becomes in the first instance an officer of the Unattached List, and is posted for a period of one year to a British battalion or Regiment in India, when he receives his preliminary training in military duties. At the end of the year he is posted as a Squadron or Company Officer to a regiment or battalion of the Indian Army. The promotion in rank of commissioned officers of the Indian Army is regulated by a time-scale up to the rank of Lieutenant-Colonel, but is subject also to certain professional examinations and tests being successfully passed. This rank, in normal course, is attained in 26 years, promotion beyond being determined by selection.

Their recruitment.

Part VIII.

(*a*) *The King's Commission.*

The King's commission is a commission in the army. It is granted by His Majesty the King-Emperor, and the status and power of command of the officers who hold it are regulated by the Army Act, an Act of the British Parliament, and by the rules made thereunder.

Until recent years, Indians were not eligible for King's commissions; and, as may be gathered, the establishment of every unit of the Indian army includes officers holding the King's commission, and officers holding the Viceroy's commission, in certain proportions.

The King's Commission.

King's commissioned officers for the Indian Army are obtained, as has been observed elsewhere, from two sources:—(*i*) from among the cadets who pass through the Royal Military College at Sandhurst, and (*ii*) by the transfer to the Indian Army of officers belonging to British units. The former is the principal channel of recruitment; the latter being only resorted to when, owing to abnormal wastage or for some other special reason, requirements cannot be completed by means of cadets from Sandhurst. When a cadet has qualified at Sandhurst and has received his commission, he becomes, in the first instance, an officer of the Unattached List, and is posted for a period of one year to a British battalion or regiment in India, where he receives a preliminary training in his military duties. At the end of the year, he is posted as a squadron or company officer to a regiment or battalion of the Indian army. Administrative services and departments of the army draw their officers from combatant units, as it has hitherto been regarded as essential that every officer should, in the first instance, receive a thorough grounding in combatant duties, and acquire at first hand an intimate knowledge of the requirements of the combatant arms.

Training of commissioned officers.

The promotion in rank of King's commissioned officers of the Indian Army is regulated by a time-scale up to the rank of Lieutenant-Colonel, but is subject also to certain professional examinations and tests being successfully passed. The rank of Lieutenant-Colonel is in

normal course attained in about 26 years' service; promotion beyond this rank is determined by selection.

The grant of King's Commissions to Indians.

One of the most momentous decisions of the Great War, so far as the Indian Army is concerned, was that which rendered Indians eligible to hold a King's commission in the army. This departure, from the point of view of Indian political opinion, and perhaps from other points of view also, was a natural consequence of high appointments in the civil branches of the public service having been thrown open to Indians, and generally of Indian political evolution. From a more exclusive point of view, the decision was taken as an appropriate and just recognition of the loyalty and gallantry which had been displayed by all ranks of the Indian Army during the Great War. It was proposed that King's commissions should be obtained by Indian gentlemen in the following three ways :—(*i*) by qualifying as a cadet through the Royal Military College, Sandhurst; (*ii*) by the selection of specially capable and deserving Indian officers or non-commissioned officers of Indian regiments who had either been promoted from the ranks or joined their regiments on direct appointment as jemadars; (*iii*) by the bestowal of honorary King's commissions on Indian officers who had rendered distinguished service, but whose age and lack of education precluded their being granted the full King's commission.

How recruited.

Honorary King's Commissions.

A number of honorary King's commissions are still granted annually to a limited number of Viceroy's commissioned officers of the class described in the third category mentioned above. Their commissions, as the name implies, are granted *honoris causa* and they are not regarded as augmenting the effective establishment of King's commissioned officers. The second of the sources of selection mentioned has since been almost entirely

The Viceroy's Commissions.

abandoned for the reason that a Viceroy's commissioned officer of his class cannot, as a practical matter, hope to have a normal career as a King's commissioned officer. They must necessarily be commissioned in a junior rank to start with, but cannot be expected to prove their fitness for a King's commission before they have reached an age greater than the age of the 2nd Lieutenant or Lieutenant who enters the army by the ordinary channel. A Viceroy's commissioned officer is further handicapped by lack of the educational advantages which alone would enable him to pass the subsequent tests prescribed for King's commissioned officers. Accordingly, the promotion of Viceroy's commissioned officers does not afford a solution of the problem of Indianizing the higher ranks of the Army, which is satisfactory either to the individual or to the service. It is the first of the three avenues of selection mentioned which gives the fullest opportunity to the Indian of satisfying a military ambition and of enjoying a military career on terms of absolute equality with the British officer, who, as a general rule, also enters the army by qualifying at Sandhurst.

King's Commissions to start with have their advantages.

It was recognised that, in the first instance, there might be difficulties in the way of obtaining Indian candidates for the King's commission, who would be able to compete on equal terms with British candidates for the same career. In the United Kingdom the profession of arms has been followed by members of practically every class of society for many years, whereas in India, in recent times, the profession had been confined to what are known as the martial classes, who are admittedly backward in education. The system of education obtaining in India is, moreover, not sufficiently diversified or specialised to prepare boys adequately for Sandhurst. To put the matter in a nutshell, an army

career as a King's commissioned officer, and the most efficient means of embarking upon it, were propositions new and unfamiliar to Indian experience.

Seats reserved for Indians at Sandhurst.

In order to overcome these difficulties, it was decided that, in the first instance, ten vacancies at Sandhurst should be reserved annually for Indian cadets. The Indian candidates for these vacancies are required to compete amongst themselves in an examination, the standard of which is intended to approximate to that of the entrance examination for Sandhurst held in the United Kingdom. The Indian candidates are also interviewed personally by a selection board, and in the end by the Commander-in-Chief.

(*b*) *Tardy Recognition of Indian Claims.*

King's Commissions for Indian Subjects.

Until recently His Majesty's Indian subjects were not eligible for King's Commissions, however well qualified they might otherwise be. A momentous decision, however, of the Great War, so far as the Indian Army is concerned, was that which rendered Indians eligible to hold the King's Commissions in the Army. From the point of view of Indian political opinion this departure from what had been the settled rule for two hundred years, was a natural consequence of high appointments in the civil branches of public services having been thrown open to Indians. It was a tardy appreciation of India's political evolution, and from a more exclusive point of view, the decision was taken as an appropriate and just, though, much belated recognition of the loyalty and gallantry which had been displayed by all ranks of the Indian Army during the Great War.

Tardy appreciation of India's loyalty.

The preliminary tests prescribed for Indian students desiring to proceed to Sandhurst, are not

of a serious nature and to facilitate matters further for our boys, a Military College has been started at Dehra Dun, where the necessary preliminary education is imparted to prepare them for their career at Sandhurst, where they are required to satisfy precisely the same tests as their British comrades. The process of Indianization is proposed to be carried further by the announcement of the Commander-in-Chief on behalf of the Government of India in February 1923, that eight selected units of cavalry and infantry have been decided to be officered by Indians, apart from those who qualify for the King's Commissions, which, in any event, will entitle them to be included in the other units of the Indian Army.

Recognition not yet complete.

Belated no doubt is the recognition of the claims of the children of the soil to be able to defend their land and to fit themselves by training and discipline for the purpose, it leaves yet much to be desired. They are admitted into the ranks of the Cavalry, Infantry, Pioneers, and Sappers and Miners. But the door-way to the Tank Corps and Armoured Car Companies is still closed against the children of the soil. In the Artillery they are not admitted as Gunners, any more than in the Royal Horse Artillery, the Field Artillery, or the Medium Artillery. They are allowed admission as Gunners only in the Pack Artillery, in the Frontier Garrison Artillery and in the Coast Artillery. They are conspicuous by their absence as officers in the Head-quarters or in the Staff Commands. They are not eligible for King's Commission in the Auxiliary Services, such as Supply and Transport, Medical, Veterinary, Ordnance and Clothing, Remounts, Military training and Educational. Their continued exclusion from the commissioned ranks of the Artillery, Air Force, and other branches of the Fighting Services is a sad commentary on the spirit in which the Government of India Act 1919, has been in-

terpreted and enforced by the Executive and Military authorities. The non-regular forces are made up of the Auxiliary force and the Territorial force. The former is for the benefit of Europeans and Anglo-Indians, while the latter consists of Indians only. Here again, it is impossible to overlook the distinction made, that while the Auxiliary force has most of the arms of the regular army, the Territorial force has one arm only, namely, the Infantry. I am told that steps are being taken to remedy some of these drawbacks, if not all.

Distinction made between Europeans and Indians.

The scheme by which India is gradually to provide an increasing number of her own officers for the Indian Army is no doubt right and just, but its success, it being no other than an attempt to produce these officers by sending Indian cadets to Sandhurst in the hope of turning out Indian replicas of British officers may be seriously questioned. "One can teach Indian Cadets," says a high authroity, " to crease their ' *slacks*,' and to wear their ' Sam brown ' belts with an air, but it is not by purely English methods and through the difficult medium of the English language that first-class commissioned officers can be made." Indian officers ought to be trained in India in an Indian military and Air College of high grade established for the purpose. Indian history, Indian literature, Indian culture, and Indian patriotism must alone be the bases of success.

Training of Indian youths ought to be in India.

Perhaps the discipline enforced in the Indian Army is hard and rigorous. But the Indian soldier like his European comrade cheerfully accepts it as the most sacred of his civic duties. An army without discipline would be an army ruined. To obey our hierarchical superiors in all they command us to do, for the good of the service and the execution of military rules, is merely to conform to the laws of the nation's life. Even if Indians as

citizens and men were free, they would gladly make the sacrifice of a portion of their liberty, just as the most free and the most freedom-loving people in Europe and America do in the defence of their country and in the maintenance of peace at home.

(c) *The Eight Unit Scheme.*

The Indianization of eight regular units.

Opinion in favour of Indianization of services including the Military has been gaining in strength for a considerable time past. In obedience to the pressure of that opinion the process of Indianization, culminated in a further decision of supreme importance, namely, a decision that eight units of the Indian Army should be completely Indianized. The decision was announced by Lord Rawlinson to the Legislative Assembly in February 1923, in the following terms :—

The Commander-in-Chief's announcement.

" Sir, with your permission I desire to make a statement to the House. Speaking in this Assembly on the 24th of January last, I expressed the hope that it would be possible to announce at no very distant date what measures are to be adopted in regard to the Indianization of the Indian Army. In the short interval that has elapsed the correspondence, which I then said was proceeding, has been concluded, and I am able to announce to the House the following decision. The Government consider that a start should be made at once so as to give Indians a fair opportunity of proving that units officered by Indians will be efficient in every way. Accordingly it has been decided that eight units of cavalry or infantry be selected to be officered by Indians. This scheme will be put into force immediately. The eight units to be wholly Indianized will be mainly in-

fantry units, but there will be a proportion of cavalry. They will be chosen judiciously so as to include as many representative types as possible of infantry battalions and cavalry regiments of the Indian Army. Indian officers holding commissions in the Indian Army will be gradually transferred to Indianizing units so as to fill up the appointments for which they are qualified by their rank and by their length of service, and the process of Indianizing these units will then continue uninterruptedly as the officers gain seniority and fitness in other respects, which will qualify them for the senior posts. I have given the House these few details because I think they will be of interest as revealing some of the practical aspects of the change. There is one other point, however, which it is necessary for me to explain. It is that, simultaneously with the Indianization of these selected eight units, Indians who qualify for King's commissions will continue as at present to be posted to the other units of the Indian Army. The number of Indian cadets now sent to Sandhurst each year, if all pass out successfully, is more than sufficient to replace the normal wastage in the eight units alone. I draw attention to this matter as it has a significance which the House I am sure will not fail to appreciate. Once more, before sitting down, I wish to express my gratification that this great step forward has been made. I hope that the people of India will appreciate the importance of the step and will realise also that it now rests with them to justify the decision of the Government. I hope that no effort will be spared to make the measure which has been approved, a solid and a conspicuous success. The responsibility which lies before these young men who will officer the Indianized regiments, is no light one. They will have in their hands not only the lives of their men, but also the task of maintaining untarnished the high and ancient traditions of

Lord Rawlinson's statement *re* the eight unit scheme.

the regiments to which they are appointed. I can assure them that in the new and in the wider career which will now lie open to them they will have the active and the generous support of the Government of India and of their British comrades in the Army. Their success or their failure will mean much to India. The initiation of this scheme constitutes an entirely new departure which, though limited in its scope is one which may have far-reaching results. I trust that the members of this Legislature and that the people of India as a whole will support the Indian officers of these Indianized regiments with living and practical encouragement, for by this means only can Indianization hope to deserve and to command success.''

The units selected for Indianization are :—

Units proposed to be Indianized.

7th Light Cavalry.
16th Light Cavalry.
2/1st Madras Pioneers.
4/19th Hyderabad Regiment.
5th Royal Battalion, 5th Mahratta Light Infantry.
1/7th Rajput Regiment (Q. V. O. L. I.)
1/14th Punjab Regiment.
2/1st Punjab Regiment.

The period within which a unit can be completely Indianized in its establishment of officers is determined primarily by the time which it takes an officer in normal course to rise from the rank of subaltern to the command of a regiment. For this reason the experiment embarked upon in 1923 is still in its infancy and it is impossible to gauge what measure of success will be achieved. The significance of the departure and the extent of its implications are self-evident.

Attempts however were, soon after the pronouncement, made to whittle down both the spirit and the practical effect of it and nothing could be more unwise than the authoritative expression of opinion on the measure by an eminent professor to his students, the cadets of the Royal Military College at Sandhurst. Among other things the Professor said :—

Eight unit scheme condemned by a high Military Officer and Professor.

" But in truth what does this measure amount to? Out of a total of 132 Indian battalions and twenty-one Indian cavalry regiments the Government have selected six infantry battalions and two cavalry regiments to be Indianised. They have said to India, ' Now, prove to us that you can produce Indian officers, who can administer these units in peace and lead them in war. We will give you every assistance, but until you can prove your case we will not further extend Indianisation, as to do so might jeopardise India.' "

And again the gallant gentleman continued,

" Indianisation is a different matter. It is a case of substituting one man for another, and, since officers in all ranks cannot be found ready made, they must be educated up. Indianisation of the other services can proceed more rapidly, as Indians have been employed in them for years, and Indians to fill the higher offices already exist. But with the Army it is not so, and Indianisation must be a very gradual process, and expansion, if it is decided eventually to expand, can only take place by giving more commissions as second-lieutenants."

This was soon after re-echoed by a distinguished publicist whose knowledge of India and her conditions was unrivalled but not always unbiassed.

Fear of an English publicist.

" But the racial feeling provoked by the question of Indianizing the Army is not confined to the Indians. Though the Army Department may wish now to approach it chiefly from the point of view of military efficiency, it has to reckon with the strong racial objections of British officers to being placed in the position of ever having to take orders from Indian officers. Nor can one ignore the danger of personal friction between British and Indian officers with their very different outlook and social habits if they are made to rub shoulders in a common messroom. But the feeling goes far deeper, and responsible and experienced British officers, not unnaturally proud of the confidence and even personal affection of their native officers as well as of their men, are found to declare that the Englishman's prestige with the native troops themselves will be gone if they are ever placed under other than British command." Indians whom education has trained to modern standards of self-respect resent deeply such a stigma of racial inferiority.

Valentine Chirol no friend of India.

Sir Valentine Chirol could not have done greater mischief to India or greater injustice to his own people than when he gave the above as his considered and deliberate opinion in his " India " in the Modern world series, an able book but hopelessly perverse and one-sided for the idea that as a result of the introduction of the "eight units scheme " no British officer will ever have to take orders from an Indian officer, is, apart from everything else, fallacious. Before the " eight units scheme " was adopted, there were Indian King's Commissioned officers in other units and they remain there and will continue to be senior to all British officers who join these units subsequently. Moreover regimental units are not watertight compartments : and there are numerous occasions in army life when the officers of one unit come into con-

tact with officers of other units : and on such occasions the senior officer, whoever he may be, takes precedence and command. But, however fallacious the idea may be, the mere fact that it is current is fatal to any prospect of success which the " eight units scheme " might otherwise have had. Suspicion and mistrust have been engendered which it will hardly be possible to remove without the scheme itself being abandoned.

Broad-minded Military outlook of Sir Andrew Skeen.

To counteract the mischief done and with a perfect sense of justice, equity and fairplay and in pursuance of a policy of the highest statesmanship the Indian Sandhurst Committee of which so eminent and distinguished a Military authority as Lieutenant General Sir Andrew Skeen, K.C.B., K.C.I.E., C.M.G., Chief of the General staff in India, was the President and Mr. E. Burdon, C.S.I., C.I.E., I.C.S., Secretary to the Government of India in the Army Department, was one of the members, unanimously recommended :—

The Recommendations.

(*a*) An immediate increase of 10 vacancies at Sandhurst, making a total of 20 vacancies reserved for Indians to become effective in 1928.

(*b*) A further increase of 4 vacancies at Sandhurst per annum up to 1933, making the total number of vacancies in that year 38.

(*c*) The establishment in 1933 of an Indian Sandhurst with capacity for 100 cadets, to which in that year and each of the two following years, 33 cadets are admitted for a 3 years' course of training.

(*d*) That when the Indian Sandhurst is established, Indian boys, who prefer it, do continue to be

eligible for admission to Sandhurst, but the number of vacancies at Sandhurst reserved for Indians is then reduced to 20 per annum.

(*e*) That the number of Indian boys admitted annually to the Indian Sandhurst do increase by 12 every 3 years, and, on the assumption that all cadets are successful, both at Sandhurst and the Indian Sandhurst, the number of Indians commissioned increases correspondingly until, in 1945, half the number of officers recruited annually for the Indian Army consists of Indians.

(*f*) That by 1952 half the total cadre of officers in the Indian Army shall be Indians.

Equally unanimously they further recommended that Indians should be made eligible to be employed as King's Commissioned officers in the Artillery, Engineer, Signal, Tank and Air arms of the Army in India and that for this purpose Indians should be admitted to Woolwich and Cranwell until such time as the occasion arises to create corresponding facilities for training in India. They would make it a condition that Indian boys seeking to enter Woolwich or Cranwell should be required to pass the same qualifying tests as British boys. If this condition is accepted, they can find no justification for the exclusion of Indians from the arms of the service which they mentioned. To exclude them is in fact inconsistent with other recent developments of military policy in this country. The refusal of commissions in the Air Force is in their opinion singularly indefensible because a number of Indians were actually employed as officers in the Royal Flying Corps during the Great War. They rendered efficient service. One was

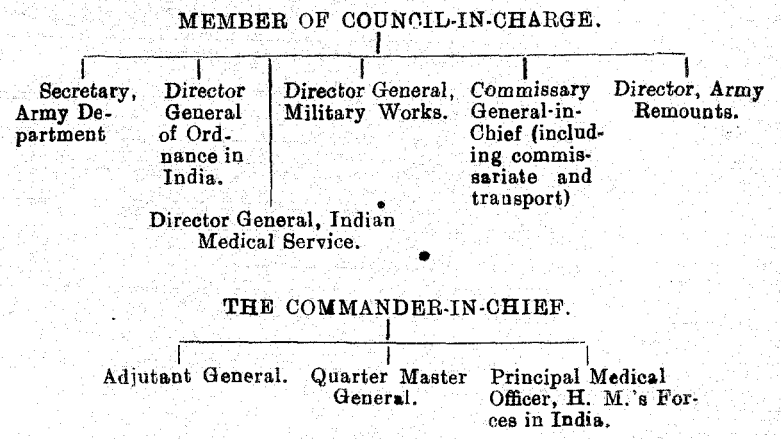
awarded the Distinguished Flying Cross, and he and another of the officers referred to were killed in action. As regards the military engineer services, it may be observed that, in the civil administration, Indians hold, and achieve distinction in, engineering appointments of the most responsible nature.

They recommended therefore, that in 1928 eight vacancies should be allotted to Indians at the Royal Military Academy, Woolwich, and two at the Royal Air Force College, Cranwell, and that these numbers should be increased progressively, in due proportion.

The Committee concluded their labours towards the end of 1926 and it is to be regretted that the Government have not yet taken any action toward bringing the wise, generous and statesmanlike recommendations of the committee into fruition, a consummation for which Indian youths of birth, character, position and education are hungry.

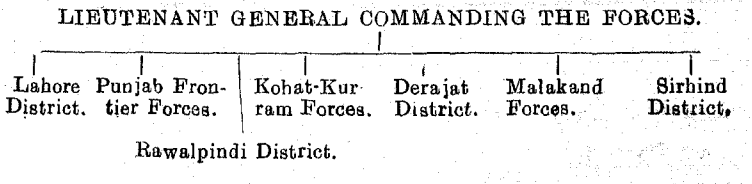
ANNEXURE A.

In the year 1900 the organisation of the Indian Army was as follows :—



The Different Commands.

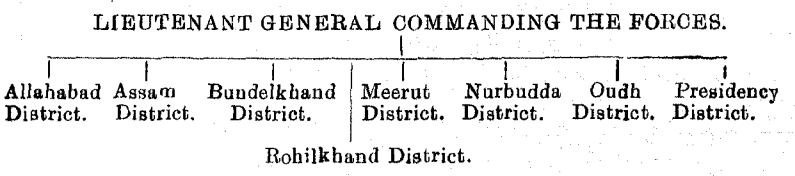
I. Staff and troops in the Punjab :



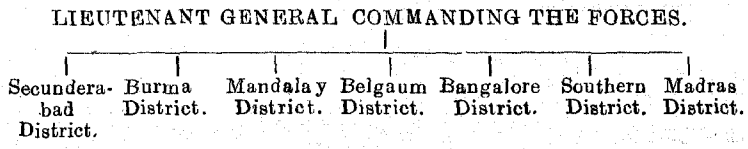
II. Staff and troops in Chitral.

III. Staff and troops in Gilgit.

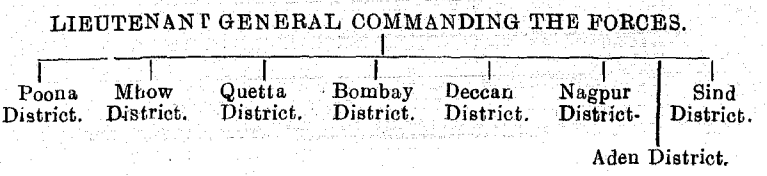
IV. Staff and troops in Bengal :



V. Staff and troops in Madras :



VI. Staff and troops in Bombay :



VII. Staff and troops of the Hyderabad contingent.

The Defence Committee for India in 1900 was constituted as follows :—

President.

H. E. The Commander-in-Chief.

Members.

The Adjutant-General.
The Quarter-Master General.
The Director-General, Military Works.
The Director-General of Ordnance.
The Inspector-General of Artillery in India.
The Assistant-Quarter-Master General.
(Intelligence Branch).

Additional Members for Coast Defences.

The Director, Royal Indian Marine.
The Inspector of Submarine Defences.

Annexure B.

In the year 1907 the Army in India came to be reorganised in the following manner :—

MEMBER OF THE GOVERNOR GENERAL'S EXECUTIVE COUNCIL-IN-CHARGE OF THE DEPARTMENT OF MILITARY SUPPLY.

Secretary, Army Department.	Director General of Ordnance.	Director General Military Works.	Director General of Contracts and Registration.	Director Army Clothing.	Director of Army Remounts.

Director-General, Indian Medical Service.

THE COMMANDER-IN-CHIEF.

Chief of the Staff.	Adjutant General.	Quarter-Master General.	Principal Medical Officer.

The army itself was divided into five great commands :

I. Northern Command :—

LIEUTENANT GENERAL COMMANDING.

Peshawar Division.	Rawalpindi Division.	Lahore Division.	Kohat Brigade.	Derajat Brigade.	Burma Brigade.

II. Western Command :—

LIEUTENANT GENERAL COMMANDING

Quetta Division	Mhow Division	Poona Division	Aden Brigade

III. Eastern Command :—

LIEUTENANT GENERAL COMMANDING

Meerut Division	Lucknow Division

IV. Secunderabad Division :—

LIEUTENANT GENERAL COMMANDING.

V. Burma Division :—

LIEUTENANT GENERAL COMMANDING.

THE MOBILISATION COMMITTEE

President.

H. E. The Commander-in-Chief.

Members.

The Supply Member of the G. G's Executive Council.
The Chief of the Staff.
The Secretary, Army Department.
The Secretary, Finance Department (Military Finance).
The Adjutant-General.
The Quarter-Master General.

Secretary.

The Officer-in-Charge (Mobilisation Branch).

THE DEFENCE COMMITTEE.

President.

The Commander-in-Chief.

Members.

The Supply Member of the Council.
The Chief of the Staff.
The Adjutant-General.
The Quarter-Master-General.
The Director-General of Ordnance.
The Inspector-General of Artillery.
The Director-General of Military Works.
The Officer-in-Charge of Military Operation Section.

Additional Members.

The Director, Royal Indian Marine.
The Inspector, Submarine Defences.

Secretary.

Officer-in-Charge, Strategical Branch.

ADVISORY COUNCIL.

President.

The Commander-in-Chief.

Members.

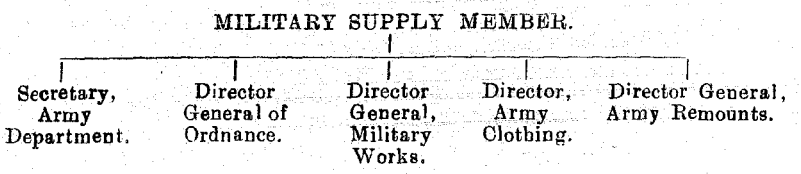
Chief of the Staff.
Secretary, Army Department.
Secretary, Finance Dept. (Military Finance).
Adjutant-General.
Quarter-Master-General.
Director-General of Ordnance.
Military Secretary.
Deputy Adjutant-General.
Deputy Quarter-Master-General.

Secretary.

Officer-in-Charge of Military Operation Section.

ANNEXURE C.

In the year 1909 the organisation of the Indian Army was as under :—



COMMANDER-IN-CHIEF.

Military Secretary.	Chief of the Staff.	Adjutant General.	Quarter Master General.	Principal Medical Officer.

The Army was divided into two divisions of the *Northern Army* and the *Southern Army*.

I. Northern Army :—

LIEUTENANT GENERAL OFFICER COMMANDING,

Peshawar Division.	Rawal-pindi Division.	Lahore Division.	Meerut Division	Lucknow Division.	Kohat Brigade.	Derajat Brigade.

II. Southern Army :—

LIEUTENANT GENERAL OFFICER COMMANDING,

Quetta Division	Mhow Division.	Poona Division.	Secundera-bad Division.	Burma Division.	Aden Brigade.

The *Mobilisation Committee* remained as in 1907.

The *Defence Committee* was reconstituted as under :—

President.

The Commander-in-Chief.

Members.

The Supply Member of the Council.
Chief of the Staff.
Adjutant-General.

Quarter-Master-General.
Director-General of Ordnance.
Director-General, Military Works.
Inspector of Coast Defences.
Officer-in-Charge, Military Operation Section.

Addl. Member for Coast Defences.

Director, Royal Indian Marine.

Secretary.

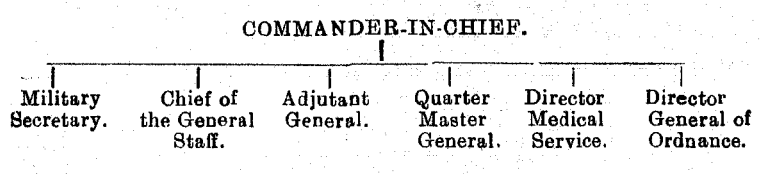
Officer-in-Charge—Strategical Branch.

Advisory Council as in 1907.

N.B.—Later in 1910 the Supply Member goes out of the Council and makes room for the Commander-in-Chief as Full Army Member.

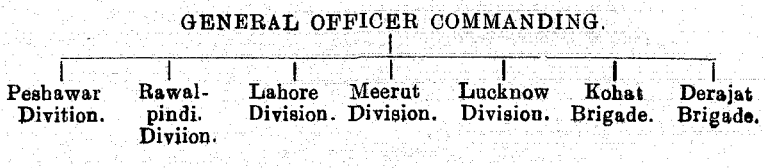
ANNEXURE D.

A reorganisation followed in 1915 as under—the Supply Member of the Council disappeared.

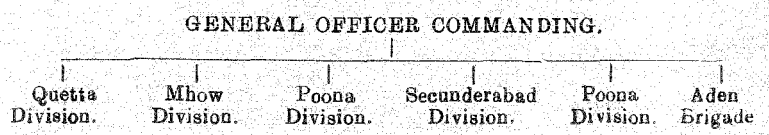


THE TWO DIVISIONS OF THE ARMY.

I. The Northern Army :—



II. The Southern Army :—



Advisory Council.

President.

The Commander-in-Chief.

Members.

Chief of the General Staff.
Secretary, Army Department.
Financial Adviser (Military Finance).
Adjutant-General.
Quarter-Master-General.
Director-General, Military Works.
Director-General of Ordnance.
Director, Medical Services.

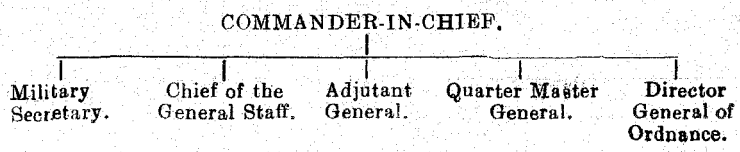
Associate Member.

Director-General, Indian Medical Service.

Secretary.

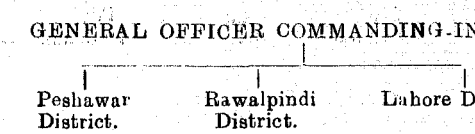
Director of Military Operations.

In 1922 the organisation stood thus :—



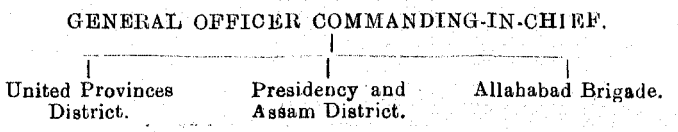
The Army was divided into four great Commander and an independent district.

I. Northern Command :—

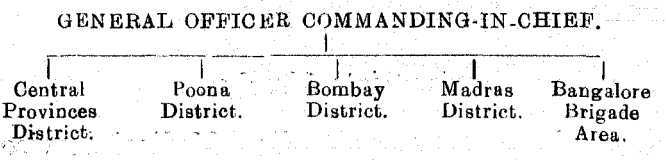


II. Western Command :—

III. Eastern Command :—



IV. Southern Command :—



V. Burma Independent District :

The Advisory Council.

President.

The Commander-in-Chief.

Members.

Secretary, Army Department.
Chief of the General Staff.

Financial Adviser (Military Finance).
Adjutant-General.
Quarter-Master-General.
Director of Military Works.
Director-General of Ordnance.
Director, Medical Services.
Air Officer Commanding the Royal Air Force.

Associate Member.

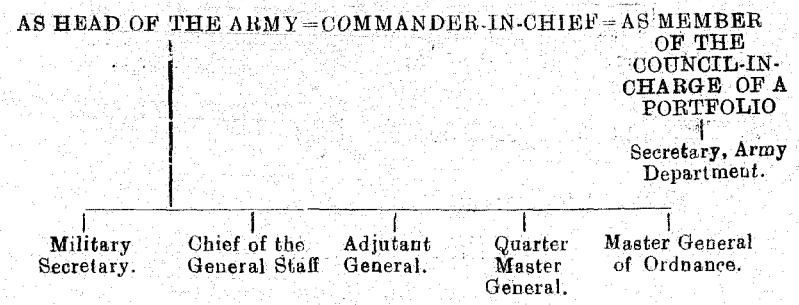
Director-General, Indian Medical Service.

Secretary.

Deputy Secretary, Army Department.

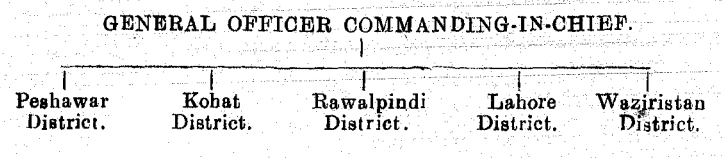
ANNEXURE E.

In 1925 the organisation came to be reformed and it stands thus :—

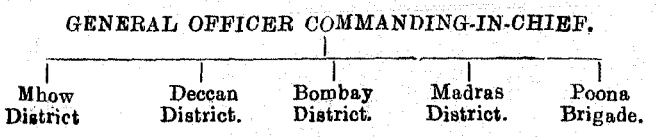


The Control of the Finance Department is exercised through the Financial Adviser, Military Finance, and the army itself came to be composed of 4 commands and an independent District the same as in 1921, but of different districts.

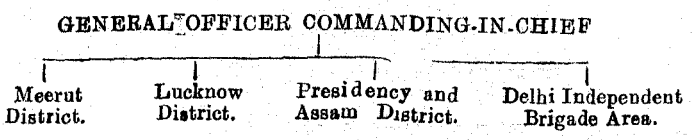
I. Northern Command :—



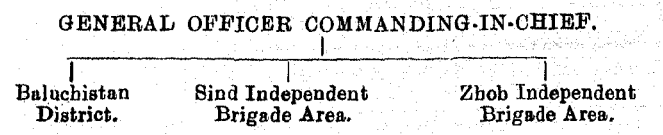
II. Southern Command :—



III. Eastern Command :—



IV. Western Command :—



V. Burma Independent District :—

GENERAL OFFICER COMMANDING-IN-CHIEF.

Military Council.

President.

Commander-in-Chief and Army Member.

Vice-President.

Chief of the General Staff.

Members.

Adjutant-General.
Quarter-Master-General.
Master-General of Ordnance.
Secretary, Army Department.
Financial Adviser (Military Finance).

Secretary.

Assistant General Staff Officer.

CHAPTER VII.

FINANCE AND REVENUE.

PART I.

(a) *Brief Outline of the English Financial System.*

System of English National Finance.

National expenditure in England consists of expenditure on Supply Services and expenditure on consolidated Fund Services. The former is based on estimates submitted to the Treasury, and subsequently to Parliament, by the Ministers in charge of the various departments. Consolidated Fund Services consist of the National Debt Services, and the King's Civil List and various other minor services. It must be well-known to students of constitutional politics that all expenditure in England must be sanctioned by the House of Commons, and this sanction finally takes the form of Finance Bills and occasionally also of Revenue Bills.

Upper house has no power over money Bills.

Under the Parliament Act of 1911 no Money Bill can be either rejected or amended by the House of Lords. The decision with respect to what is or is not a Money Bill rests with the Speaker of the House of Commons. Broadly speaking, all Bills which provide for the raising of revenue and for its expenditure are Money Bills. To talk therefore of the control of Parliament over finance is an anachronism: the control is that of the House of Commons alone. And, to talk also of the power of the House of Commons is almost as misleading, for, over expenditure it has little power against the government. In theory, no doubt, its power is absolute, in practice it

is but slight. A member of the House of Commons may offer criticism on a proposal for expenditure and go the length of moving to reduce it. He cannot move to enhance it or to authorise a new commitment. He may criticise a tax as much and as strongly as he likes and is even empowered to move to lower it, but he cannot move in the direction of increasing it or levying a new one. These are the prerogatives of the government alone. It is said that this rule is founded upon sound financial sense but it gives the government immense power over the House of Commons, which gains further strength from the convention which entitles the government to treat all questions of expenditure as matters of confidence, a discomfiture in respect of which is tantamount to a defeat on a point of principle upon which both self-respect and political integrity require the government to resign. This must not be mistaken for an acceptance on their part of the decision of the House; indeed it has the appearance of an acceptance though, in reality it overrides it, for, as has been well put by a former Secretary to the Treasury, the supporters of a government, who know that if they defeat it they will turn it out, are reluctant to do so. In practice therefore, the House accepts the financial proposals of the government, in other words it is compelled to do so. It is perhaps theoretically permissible to point to the divided function of the legislature and the executive, the former according its sanction to the expenditure and the levy of this import, and the latter collecting the cash and paying it out. Government here acts in a dual capacity. It is the executive: it also dominates the legislature; and the long struggle, "which began," observes Mr. Hills, "by refusing to one executive—the Crown—all financial powers, has ended by surrendering these powers to another executive, the gov-

Commons' power over money Bills

Secret of Government's power over Commons.

House of Commons not a free agent.

ernment. A different executive, truly; a government elected by a suffrage nearly universal." But still, an executive and an executive whose power cannot be denied or trifled with, a more powerful one than any Plantagenet or Tudor sovereign had ever been. Over expenditure the executive is supreme.

(*b*) *Public Income.*

A public authority may raise its income in various ways, chief of which are taxation, borrowing and the ownership of public property and the conduct of public enterprises. Most modern public authorities own very little property and conduct very few income-yielding enterprises. In time of peace they raise most of their income by taxation and in time of war by borrowing.

Direct and Indirect taxes.

There are various kinds of taxes of which a common distinction is between direct and indirect taxes, *i.e.*, between taxes which are paid by the person on whom they are imposed, and taxes, such as customs duties, which are imposed on one person and passed on to another by an increase in prices. This raises the question of the incidence of taxation, *i.e.*, the extent to which various kinds of taxes can be passed on from one person to another. Whatever that may be the system of taxation must be judged by its effects. In particular, it should check the production of wealth as little as possible and should be adjusted, as between different taxpayers, according to their ability to pay. These results are best obtained by a few substantial taxes rather than by a large number of trivial ones. There should be steeply graduated taxes on income and inheritance, a tax on land values, when land is not publicly owned, and a few taxes on commodities such as alcohol and tobacco.

It is possible that in future public authorities will obtain a much larger income than at present from public property and public enterprise. If so, they will be able to increase their expenditure without increasing taxation, or to reduce taxation without reducing expenditure.

How Governments finance themselves.

Some governments have partly financed themselves by inflation of currency and credit, and of these the Indian government is one. This is a form of concealed taxation, which raises prices and distributes the burden without any regard to ability to pay. It benefits businessmen and shareholders in industrial concerns at the expense of wage-earners and, still more, at the expense of people with fixed money incomes, *e.g.*, old age pensioners and debenture-holders. It also depreciates the value of the country's currency in terms of the currency of other countries. After a certain point, finance by inflation defeats its own object, since people lose confidence in a currency which is continually depreciating and make less and less use of it. The "flight from the mark" which recently took place in Germany illustrates this.

(*c*) *Public Expenditure.*

Military and debt services take in a large part of national funds.

Most national governments at the present day spend the greater part of their income in paying for armaments and the upkeep of armed forces and in paying interest on public debts incurred in past wars. A comparatively small part is spent on police, the administration of justice, and the maintenance of the ceremonial head of the State, and of diplomatic representatives abroad. Another part, of more recent origin and of growing importance, is spent on social expenditure, *e.g.*, on education, public health, housing, old age pensions and un-

Concerns of self-governing communities.

India an exception to the rule.

employment pay. In this budget of local authorities in England and other self-governing countries, social expenditure is relatively more important. This rule however, does not obtain in India where the authorities cannot yet be said to have awakened themselves to that high sense of responsibility which is the fundamental basis of all national governments.

Functions of national finance.

The principles which should determine public expenditure are, first, to cut down all expenses which are not beneficial, either directly or indirectly, to the economic and moral conditions of the people, and, second, to increase beneficial expenditure up to the point when the advantage from any further additions will be outweighed by the disadvantage of raising two funds required. Thus it will be desirable to reduce debt charges as much as possible, and to cut down expenditure on armaments, by international agreement, to the lowest level which may be practicable. On the other hand it will be desirable to carry social expenditure in many directions considerably further than it is carried at present.

(*d*) *Public Debts.*

Two kinds of Public debts.

Public debts are of two kinds, which are sometimes called reproductive debts and deadweight debts. Reproductive debts are those which have been incurred in the creation, or development of public assets, such as publicly-owned lands, forests, railways, tramways, power-stations or houses. Most of the debts of local authorities or local governments in this country and many of the debts of governments in newly settled countries such as Australia, are of this kind. Such debts impose no burden on the community, since they represent capital productively invested in public undertakings.

Dead-weight debts.

Deadweight debts are those which have no public assets behind them. War debts and debts incurred in order to cover a deficit in the Budget are of this kind and impose a burden on the community, which has year by year to pay interest on them, and possibly also for a sinking fund, out of taxation. The burden of deadweight debts may also take another form by leading to economies in social expenditure and thereby diminishing the opportunities and lowering the standards of the poorer sections of the population as regards education, public health, etc. The heavy burden of war debts is a prominent feature in the public finance of to-day, and has led to a demand for special features, such as a capital levy, the income tax, the super-tax, the death duties, taxation of land values and so on.

PART II.

(*a*) *Principles of Indian Finance.*

Indian finance like all governmental or public finance deals with the income and expenditure of public authorities, and with the adjustment of the one to the other. Public authorities include both national and local governments. Most ancient and some modern economists are strongly prejudiced against public expenditure and desire to restrict it within the narrowest possible limits. They believe that "every tax is an evil" and desire to reduce taxation to the lowest possible level. This is a one-sided view, which is now being superseded by the idea that many forms of public expenditure, insufficiently deve-

loped in the past, are much more beneficial to the community as a whole than the private expenditure which would take place if the money were left in the hands of taxpayers and not transferred by taxation to the hands of public authorities. Public finance largely resolves itself into transfers of purchasing power from individuals to governments and from governments to other individuals. The only real test of the soundness of any system of public finance is whether these transfers do more good than harm. Public expenditure should be carried just so far that the advantage of any additional expenditure is outweighed by the disadvantage of raising the necessary additional funds, assuming these to be raised in the most socially desirable way.

Scope of Public Finance.

(*b*) *Imperial Finance.*

The Mogul Financial System.

It is in their financial system that the English have scored over their predecessors in rule. With the exception of a system of finance introduced by Raja Todar Mull under the Emperor Akbar, India has not known a financial system through several centuries. And even the latter was more a revenue system than a financial system. It was the Regulating Act of 1773, which for the first time brought into being the Central Government in India, an institution which presupposed the existence of three separate governments of Madras, Bombay and Bengal, independent of each other, financially and administratively. It was a cumbersome arrangement which experience suggested should long have been done away with in the interest of economy and administrative harmony. The Regulating Act undertook to do it, investing the Governor-General with powers of financial

and administrative superintendence over Madras and Bombay. It failed in its purpose, for the superintendence was neither complete nor effective, in that it left the provincial governments enough discretion in the matter of administrative measures and expenditure. Then came the Charter Act of 1833, which to the satisfaction and glory of the Governor-General, made the respective Governors of Madras and Bombay full subordinates to the authority in Calcutta, no matter whether in administrative or financial affair in their charge. Under British rule, the system has grown to what it is. Before 1858 the entire control of the finance throughout India, was in the hands of the Supreme government, the smallest detail not excepted. A messenger worth Rs. 5 a month could not be employed without the sanction of the Governor-General in Council. Detailed projects of small and urgent works had to be submitted to the Government of India for approval and sanction. Expenditure was restricted but there was no budget estimate. The Act of 1858 gave the Secretary of State entire control over the revenues of India. He has only made over a part of his powers to the Government of India under the rules and regulations laid down from time to time.

Regulating Act invests the Governor-General with Financial powers.

(c) *Commencement of the Budget in India.*

It was in the year 1860 that the system of annual budget estimate was introduced by Mr. James Wilson. It included sanctioned grants for each subhead in every province and district. Under his system budget estimates for the whole of India were compiled from the sanctioned estimates for each province and department. The final estimates are made public before the beginning

Introduction of the budget system in 1860.

of the year. The rule is that, along with the budget estimate for the year, the accounts and revised estimates of the two preceding years are also published. The budget is laid before the Legislative Council to be discussed by the popular representatives there. They are entitled to make suggestions for its improvement and criticise its provisions. No tax could be reduced or increased without the sanction of our own representatives. This is a privilege which amounts in theory to a right which the people of India had never enjoyed before British rule. If the popular representatives can utilise this right properly and effectively it may lead to a stage of real nation-building, at present, an empty phrase. It is interesting to know how the budgetary right, if right it may yet be called, has come to be gradually extended by the Government on the one hand and realised by the people on the other. It is a right the recognition of which does not extend much beyond sixty years for, shortly after the taking over of the Government by the Crown from the Company, it was felt by Lord Canning that the basis of British rule in India must be broad, in order to be popular, if the recrudescence of a mutinous spirit in the people of the country must be avoided and made impossible for all times. In his desire to bring about the happy state of affairs, he was encouraged with all the zeal of a true liberal statesman, by Sir Charles Wood, afterwards Lord Halifax, the great man to whom all credit for the educational development of the country and advancement of the people, and therefore, of the political progress, and all that we see of the freedom movement around us is due, who conceived the idea that the first step towards the consummation of that liberal spirit was to introduce Councils for legislative purposes into the body politic of India. In this view he brought

Budget right as such has not yet come into being.

into being the Legislative Councils of the Governor-General as of the Governors of the Presidencies of Madras and Bombay, with power only to discuss questions of taxation, where the Finance Minister in the former and the Member in charge of the Finance department in the Presidency Governments proposed a new or to enhance an existing tax. For thirty years the Councils of 1861, continued to enjoy the meagre concession, until in 1892, Lord Cross brought in his Indian Councils Act, in which a further extension of the budgetary right was conceded, in that, the Members were allowed the privilege of offering a full and free criticism of the financial policy of the Government, without making it incumbent on the Government to accept any recommendation made by them. The Government may accept or reject the suggestions as they please.

Inauguration of Legislative Councils in India.

(d) Introduction of Budget Discussion.

It was not contemplated, said the Under-Secretary of State for India, Mr. Curzon (afterwards Lord Curzon), in 1892, from his place in the House of Commons, to subject the budget "to all the obstacles and delays Parliamentary ingenuity could suggest; but it was proposed to give opportunity to the members of the Councils to indulge in a full and free criticism of the financial policy of the government, and he thought that all parties would gain, because they would have the opportunity of explaining their financial policy, of removing mis-apprehensions, and of answering criticism and attack; and they would profit by the criticisms delivered on a public occasion with a due sense of responsibility and by the most competent representatives of unofficial

Budget in the last century did not lend itself to full and free criticism.

India. The native community would gain, because they would have the opportunity of reviewing the financial situation independently of the mere accident of legislation being required for any particular year, and also because criticism upon the financial policy of the government, which now found vent in the anonymous and even scurrilous papers in India, would be uttered by responsible persons in a public position. Lastly, the interest of finance would gain by this increased publicity and the stimulus of a vigorous and instructive scrutiny."

(e) *Change introduced by the Morley-Minto Reforms.*

Budgetary responsibility in India, child of Morley-Minto reforms.

From this state of affairs the change brought about by the Morley-Minto reforms in 1909, was an important one approximating to what we have at the present day, the only difference being in the fact that under the Morley reforms the council could be divided upon a resolution, which, now as before, has no more force than mere recommendation which may or may not be accepted, on any kind of revenue or expenditure, while under the Montagu reforms the House could be divided upon every demand for a votable grant, and its decision may be rejected or overriden only by restoration by certification for reasons specified in the Act. I shall discuss the subjects of restoration and certification in their proper place in the present lecture.

Budget is founded on revenue.

Every department is bound to keep expenditure within the sanctioned grant. It is a duty incumbent upon every official to see that such grant is not exceeded. Failure of crops, or famine, or sudden outbreak of war may prevent the fulfilment of the estimates of revenue approved and expected. In any of these cases the depart-

ment or the official concerned has to report to the authorities at once for orders. Without such orders he may not make any outlay in excess of the sanctioned grant, even if the same is necessary. That is the control of the Government of India, and behind it, there is the control of the Secretary of State for India in Council. He has laid down the principle that without his sanction no new office carrying with it a salary of more than Rs. 500 a month can be created. He allows no serious departure from the sanctioned budget estimates. Every large scheme involving fresh expenditure has to be laid before him for sanction before it can be launched.

Limit of sanction to grants.

PART III

(a) *The Secretary of State responsible for Indian Finance.*

The primary responsibility for the finances of India rests, as we have seen, with the Secretary of State, who, it is useful to repeat here, is ultimately accountable to Parliament and the British people. He superintends, directs and controls all acts, operations and concerns which relate to the government or the revenue of India, and all grants of salaries, gratuities and allowances and all other payments and charges, out of or on the revenues of India, but such powers as he possesses, are subject to the law embodied in the Government of India Act of 1919, and the rules supplementary to it, under which there are certain items of expenditure of which the Secretary of State is the final sanctioning authority, as against

Secretary of State's responsibility for Indian Finance.

A Financial Secretary at Whitehall to look after Indian financial business.

others in which he must have the majority of his Council with him. In order to enable him to discharge the responsibilities of Indian Finance, the Secretary of State is fully equipped with a Finance Department at Whitehall, under a Secretary, whose business it is to look to the disposal of financial business, such as questions relating to imposition of taxation, or to remission thereof, to general financial administration in India, to civil and military expenditure, to the finances of the India Office, to the currency policy, loans and sale of Council Bills, to the important subject of the financial relation of the various departments of His Majesty's Government, particularly with the War office, the Board of Admiralty and the Foreign office, to Railway and Irrigation projects and expenditure, and to audit in India by the Auditor General who, under the new dispensation is an officer not under the Government of India, but independent of them, in that, appointed as he is by the Secretary of State in Council, he is entitled to hold office during His Majesty's pleasure, as also by an Accountant General whose duties comprise the work of looking after the receipts in and disbursements from the India Office, and the preparation of annual estimates thereof. It is the duty of the Accountant General to see that annual accounts of the Secretary of State are correctly made and regularly submitted to Parliament, a monthly statement thereof being sent to the Government of India. The Secretary of State moreover is assisted by a Finance Committee, whose Chairman is a nominee of his, from among the members of the Council of India. Not entitled to claim larger powers than to advise the Secretary of State upon certain questions of financial administration referred to it by the Secretary of State, or any other officer exercising delegated powers, the Finance Committee, like other

Auditor General under the new arrangement: his duties and tenure of office.

Finance Committee of the India Office.

sister committees, is a Committee of the Council of India. In matters relating to any grant or appropriation of any part of the revenues of India or the sale, mortgage and purchase of any property for the purposes of the Government of India or any contracts for the purposes of the Act (of 1919), the Secretary of State cannot act without a majority of the Council of India with him. He is under a similar restraint in all matters affecting salaries of members of the Governor-General's Executive Council, or connected with rules affecting the pay, salary, allowances and leave of absence of persons in the service of the Crown in India, or any rules as to Indian Military appointments, the classification of the Civil Services in India, the method of their recruitment, their conditions of service, pay, allowances, discipline and conduct. The Secretary of State moreover, must have his Council with him in the matter of the appointment of the Chairman of the Public Services Commission, the determination of qualifications, the tenure of office of the members thereof, and the appointment including pay, powers, duties and conditions of employment of the Auditor General in India. And in the matter of allowing or sanctioning encroachments upon offices reserved for members of the Indian Civil Service, even the Secretary of State whose powers approximate to autocracy, is powerless. Here I must notice, that apart from the Secretary of State for India, but not independent of him, the High Commissioner for India, an office created under the Statute of 1919, who is maintained from the revenues of India, has considerable powers to incur expenditure in England as the Agent of the Central and the Local Governments in India. To this I shall revert later on. I will content myself for the present, with an account of how and what portion of the expenditure incurred in connection with

A committee of the Council of India.

Duties of the Committee.

The High Commissioner for India is an agent of the Indian Government.

the maintenance of the India Office, and of the High Commissioner for India, is met out of the revenues of India and what by the English Treasury.

(b) *Salary of the Secretary of State charged on British Revenue—an Innovation.*

Salary of the Secretary of State chargeable to British estimates.

One of the crowning achievements of Mr. Montagu in reconstituting the Governments in India was to throw upon the British estimates, the charge of the salary of the Secretary of State for India, and that of his parliamentary Under-Secretary, an arrangement for which India had been contending for nearly half a century, thus giving the British elector the chance of a direct voice in the administration of the Government of India by England. Before the Act of 1919, they were met from the Indian revenues. This enabled the Secretary of State to regard himself as not being under the direct influence of the electors in the sense his colleagues in the Cabinet were. He had not to come before their representatives year after year for his salary. The new arrangement therefore, of the payment of these salaries amounting to £6,500 a year in all (£5,000 to the Secretary at £1,500 to the Parliamentary Under-Secretary) from out of the Home estimates is an indication of the new spirit of British rule, the political importance of which cannot be exaggerated or overrated. The Treasury makes to the India Office an annual contribution equivalent to that part of the total estimated cost of the India Office (exclusive of the salaries of the Secretary of State and the Parliamentary Under-Secretary) which is attributable to the administrative, as distinct from the agency, work of the office. A part of this contribution, namely, of

Treasury contribution to Indian funds.

£40,000, used to be made by the Treasury before the Reform Act, under a readjustment suggested by the Welby Commission, but not in the form of a direct payment. It used to be allowed at one time in adjustments between the Treasury and the India Office in respect of certain divisible charges. Since the Government of India Act of 1919, this arrangement has been altered and made so as to suit the convenience of both the departments. Thus the direct and indirect contribution has been fixed in 1920, and rolled up in one contribution of £90,000 a year for a period of five years. It has since, with the concurrence of the Treasury, been raised to £1,36,000 a year at which rate it still continues.

Contribution consolidated under arrangement.

PART IV.

(a) *The Central Finance.*

As we have had occasion to observe before that the Central Government in India is under the direction and control of the Governor-General, assisted by his Executive Council, commonly and collectively called the Government of India. Even under the Montagu Reforms, their responsibility for the government of the country to the Imperial Government in England has, in no way, been subtracted from, and least of all in Finance. An important subject, it is placed in charge of a special member of the Council who is usually an expert in Finance and makes it his devoted business to devise means to improve the financial strength of the country and economise expenditure, wherever possible. In doing

Montagu reforms make no curtailment of the responsibility of the Government of India to Imperial Government.

so he has liberty, in consultation with his colleague, the Member for Commerce, to devise tariff proposals as to revise tariff arrangements, which seem best fitted to India's needs, as an integral portion of the British Empire. In keeping with the spirit of the reforms the Joint Committee laid it down, to be followed as a convention of the new constitution, that "the Secretary of State should as far as possible avoid interference on this subject when the Government of India and its legislature are in agreement, and they think that his intervention, where it does take place, should be limited to safeguarding the international obligations of the Empire or any fiscal arrangements within the Empire to which His Majesty's Government is a party." This is a convention upon which His Majesty sets his seal of approval when he instructs his Governor-General to exercise the powers of superintendence, direction and control over the Local Governments vested in him, or in his Council, with a view to furthering the policy of the Local Governments, where such policy finds favour with a majority of the members of the Legislative Council of the Province, unless grave reasons to the contrary appear. This proposition gives India practical financial autonomy, and here it may be profitable for us to divert for a moment, and ccompare the powers and duties of the Finance Minister in England called the Chancellor of the Exchequer, and the Finance Minister in India. The Chancellor of the Exchequer who is always an elected member of the House of Commons, has his duties to perform to the taxpayer by maintaining a strict scrutiny on his behalf, into the financial operations of the spending departments of the Government, that neither do they get more money than is absolutely necessary for the due discharge of the functions entrusted to them, nor spend

Instructions to the Governor-General.

Governor enjoined to respect the opinion of the Legislative Council.

more than they have been authorised by Parliament. And for the purpose of balancing the budget, of which he is in sole charge, he supervises the estimates of the various departments, and is invited to give his assent to every bill which has the effect of imposing a charge on any fund from which disbursements can be made only under the authority of Parliament. Such assent is a condition precedent, for, without it no such bill can be introduced into Parliament. In other words, his functions are concerned with how much money shall be asked for, and then to see, that the money asked for is granted, and thereafter to watch, that what has been granted is properly spent, and that the taxpayer has got what he has paid for. His supervision is of such a strict nature that, he may be said to be "living in perpetual conflict with servants of the State who want more pay than the Treasury thinks they are worth, with departments of Government, which want more money than the Chancellor is prepared to ask Parliament to grant, with the House of Commons which contests the amount demanded, and the mode in which it is proposed to be raised, and the taxpayer who wishes to have everything handsome about him, and does not like to pay for it." This passage from Sir William Anson expresses the duties and powers of the Chancellor of the Exchequer in a nutshell. As the working head of the Treasury Department he occupies perhaps the most important position, next after the Prime Minister, in the English governmental system, with a controlling power over both revenue and expenditure of the State, and having it in his power, to the exclusion of all other members, to submit plans for the raising of taxation to the vote of the House. The machinery in England is highly centralised. The Chancellor of the Exchequer has near him, or round about

Duties of the Indian Finance Minister compared with those of the English Finance Minister called the Chancellor of the Exchequer.

Chancellor of the Exchequer, custodian of the English revenue.

Also controller of expenditure.

him in London, all the heads of revenue and spending departments, through whom revenue is collected, or funds allotted for expenditure on public services. He receives daily accounts of the receipts, and charges on government account from the Bank of England, and is in a position to know the exact state of the finances at any time by personal consultation with his officers. Compared to that in India the system is decentralised. The Finance Minister has his headquarters at Simla and Delhi, but the work of collection of central revenues and expenditure on the administration of the Empire, is entrusted to nine provincial governments and some other administrative units, separate heads of the revenue and expenditure departments for such administrative units being located at the respective seats of the Governments scattered over the whole continent of India. The revenue receipts of the Government of India, instead of being lodged, as in England, into two Banking accounts, are paid into nearly 250 District Treasuries, and four times as many sub-treasuries, or collecting departments distributed over the country. It is only by means of special arrangements that, it is possible to obtain a monthly report of the progress of revenue collection and expenditure, for the whole of India. Theoretically, the powers of the Financial Member in India, on all questions of expenditure is complete, in the sense that he is at liberty to impress upon his colleagues the probable bearing on the finances of any measure placed before him. But the practical powers of the Financial Member, as they prevailed before the Frontier bogey appeared in 1885, were more or less complete, and were not altogether different from those of the English Chancellor of the Exchequer. Since 1885, they are said to be impaired for, "since the events of 1885, and the establishment of

English system centralised, Indian system decentralised.

Before 1885 the powers of the Finance Member in India were analogous to those of the Chancellor of the Exchequer

the Russian power in Central Asia, the balance of influence between the Financial Member and the other Members of Council, more especially I should say, the Military Member, has been radically disturbed by the very great preponderance given to Military considerations in consequence of the apprehensions raised in the minds of British Officials in India. If there has been any diminution of the powers of the Financial Member, it is due more to the fact that he has not got the legislature behind him which his English compeer has, than to the fact that responsible Statesmen composing the Government of India attach greater weight to Military considerations. A Member of Council, which like the Cabinet, is responsible for the government as a whole, is not wanting in his sympathetic support to his colleague the Financial Member, unless he is so sanguine about the proposal before the government as to lose all due sense of the importance of finance. The Indian system of government allows no obstinacy on the part of any member of Council, for the Viceroy wields a great power for good or for evil. "The department which secures the support of the Governor-General on big questions," said Sir David Barbour, at one time Financial Member of the Council before the Welby Commission, "would carry the day. If the Viceroy supports the Military Member, the Military department is the strongest. If he supports the Financial Member, the Finance department is the strongest, and whether great attention is paid to financial considerations or not, depends entirely, or almost entirely, on the Governor-General for the time being. If he is favourable to economy, the Government is economical; if he is inclined to be, not exactly extravagant, but liberal, the Government is liberal." There is no rule of office which gives the Finance Member a

Dissimilar since then.

The Viceroy can always override his Council.

power to check any item of expenditure approved by the Viceroy but disapproved by him just as the Chancellor of the Exchequer in England would be powerless if his colleagues in the Cabinet, but mind you colleagues only, were against him. The Viceroy who wields a great power, gives a certain unity of action to all the departments, a proposition which is illustrated by the fact that the Secretaries of all the different departments have direct access to the Viceroy for transaction of their departmental business. By this procedure the Governor-General becomes at once the harmoniser and the active head of the whole administration. All financial matters before the Executive Council are decided by the vote of the majority.

Governor-General the active head of the entire administration.

(b) *Finance Member, an Administrative Authority.*

Finance Member an administrative head.

Unlike the member in charge of the legal department the Financial Member has a portfolio of his own, and is an executive authority, having under him a department called the Finance Department controlled by a Secretary, a Deputy Secretary, an Under-Secretary and one or more Assistant Secretaries, to whom are allotted the various branches and items of public business according to their importance. The purely office part of the business is in charge of Assistant Secretaries and Superintendents to whom is entrusted the duty of preparing notes or of approving those made by ministerial officers, for submission to the Assistant Secretaries, or Under Secretaries as the case may be, according to the degree of importance, or the branch of public business assigned to each one of them. Cases of minor importance are dealt with first, by the junior officers of the

References made to him.

department and then, submitted for orders to the Deputy Secretary, who may at his discretion reserve a case, should it appear to him of sufficient consequence, for final orders of the Member-in-charge. These, in the usual course of routine come back to the officer at whose instance the reference was made, but the journey takes a different course from the track taken on their way up. They pass down through the Secretary who, as the responsible head of the department, thus enables himself to keep in touch with what is going on in it. Generally speaking, the Deputy Secretary deals with cases relating to expenditure, but all matters of principle and of policy, are dealt with by the Secretary himself, who functions his duties not as Secretary to the Honourable Finance Member, but as Secretary to the Government of India, which capacity he has a day in the week allotted to himself, for attendance upon the Governor-General with power to submit references for final decision independently of the Member-in-charge, and necessarily those in which they (the Member-in-charge and the Secretary) are in disagreement. Those which come under the latter category, are rather delicately handled in that, the Governor-General must submit those among them, in which he happens to disagree with the Member-in-charge, to his Executive Council, and may or may not submit others in which they (the Governor-General and the Member-in-charge) are in agreement with each other. The power, however, of the Governor-General is not exhausted here for, under the present system of Government he can always override a decision of his Council, if it appears to him that the safety, tranquillity and the best interests of British India may suffer, by the adoption of the measure suggested by the majority, subject to the proceedings thereof, including the note of dissent, if any,

Secretary is Secretary to Government, not to the Member-in-charge.

In overriding the decision of the Council the Governor-General can always take shelter under

the safety and tranquillity clause.

being submitted on a requisition by the dissentient to the Secretary of State. It is however ruled, that the Governor-General's agreement with the Finance Member in opposition to the opinion of another Member of the Council cannot, without a reference to the Secretary of State in Council, be regarded as the final stage of the proceedings. And if ever the principle of "he who pays the piper shall call the tune," comes to prevail in Indian polity adequate appreciation will undoubtedly be made of the system of Financial administration which the English have built up practically on the model of their own at home. There is no escape from the control of the Finance Department for, without a previous reference to it, no proposal involving an abandonment of revenue, for which credit has been taken in the budget, or involving expenditure which has not been provided for in the budget, or which, though provided for, has not been specifically sanctioned, except in cases requiring great secrecy and despatch, may even be considered by the Governor-General in Council, far less decided upon. And cases, coming under the rule of exception, must immediately after the order has been made by the Governor-General in writing, be notified to the Finance Department, whose control over all spending departments is complete inasmuch as none may incur or sanction any expenditure which consequentially implies the introduction of a principle or practice, not hitherto accepted, as cardinal, or acted upon, and likely to lead to increase of the same. "The effect of this principle," as has been laid down by the Feetham Committee, "is to give the Finance Department an opportunity of criticizing all new expenditure of any importance and also of inviting the department of the Government of India which is interested in the purpose of the expenditure to examine

Control of the Finance Department effective.

the project in its administrative aspects. It can challenge the necessity for expenditure; it can bring to notice obvious objections or extravagances; it can call for facts to which it considers that sufficient weight or sufficient publicity has not been given." This briefly is a summary of the powers of the Finance Department whose activities are suggestively, though not effectively, controlled by the Legislative Assembly. In this connection, I may also point out that, the departments of the Army, the Railway or the Posts and Telegraphs, are subject to the control of the Finance Department, exercising its power and influence through its own representatives, the Financial Advisers or Commissioners as the Official designation may be, attached to each department, and having a right to be consulted in all important matters of finance appertaining to it. All difference of opinion between the department concerned and the Adviser must wait, on a reference, for final decision by the Finance Member, before either of the conflicting opinions may be acted upon or given effect to. In short, under the Rules of Business, in various ways is the Finance Department enabled, observes a most competent authority, Mr. Wattal, "to keep its finger on the pulse of the finances of the Central Government; it controls expenditure as well as revenue and no proposals tending to increase budgetted expenditure or diminish revenue to any material extent can be given effect to without their coming at some stage or other to the cognisance of the Finance Department."

Summary of powers of the Finance Department.

Financial advisers in other departments, such as the Army, Railway, etc.

(c) *Finance Department and the Preparation of the Budget.*

Thus constituted the Finance Department of the Government of India requires the Provincial Accountants

Budget figures first compiled in December.

General, the Financial Administrative officers of the Central Government in each province, to compile in one or more forms the figures supplied to them by the Administrative or Controlling officers of each department, usually in December. These figures continue to be reinforced in the hands of the Accountant-General by supplementary or amended estimates till about the middle of February, when the Finance Department sets itself in right earnest to cast the budget upon the provincial compilations, leaving as small an interregnum as possible, between the final casting and actual preparation of the budget, and the execution thereof, thus ensuring greater accuracy of the details of the revenue and expenditure on which it is based. The estimates of the Central Government include those of the Civil Departments and territories under the direct control of the Government of India, and of the non-civil Departments, the Military, the Railways and the Posts and Telegraphs, as also those of the India Office and of the office of the High Commissioner, both in London. The Financial Adviser, Military Finance, is responsible for those connected with the military services, the Director of Railway Audit for those of the Railway Department and the Accountant-General Posts and Telegraphs for those of the Posts and Telegraphs. The India Office estimates are compiled by the Accountant-General, India Office, under the direction of the Secretary of State for India and those of the High Commissioner by his chief Accounts Officer.

They go on being supplemented till shortly before the presentation of the Budget.

When the estimates are prepared by the heads of offices in forms supplied by the Accountant-General, they are submitted to the departmental controlling officers for examination before transmission, for final scrutiny by the Accountant-General, the Administrative Department of the Government (the Central Government), and lastly,

by the Finance Department. An estimate of cash receipts and cash payments, the budget is nothing more or less than a forecast of actual receipts and payments, to be had and made, during the coming financial year, beginning from the 1st of April. The forecast is made in the light of the actuals received up to date during the current financial year, without losing sight of the actuals received and spent in the previous year, the budget estimate of the current year, as well as that of the ensuing year, and as later figures keep coming in, the career of the final budget is usually divided into two editions, the first which goes out of the office of the Accountant-General about the 2nd week of January and the second edition, as noticed before, in February following. Thereafter the Accountant-General communicates to the Finance Department very important corrections only in the light of actuals received after the despatch of the second edition.

Budget is a forecast of actual receipts and expenditures.

The January and February editions of the Budget.

PART V.

(*a*) *Presentation of the Budget—First Stage in the Proceedings.*

In presenting his budget, before the Legislative Assembly simultaneous presentation being made by the Financial Secretary before the Council of State, the Finance Member makes a lengthy statement reviewing the agricultural, trade and the general economic condition of the country during the year, out of which we are

Financial statement made by the Finance Member in presenting the Budget.

emerging. The statement includes all important modifications or variations, made upon the revenue and expenditure, and surplus and deficit of the closing year, as also the revenue and expenditure of the coming year, variations in the ways and means of the closing year from those suggested at the presentation of the budget thereof and the ways and means of the coming year. The presentation of the budget is followed, not on the day when the statement is made, by two important events, a general discussion of the principles of taxation and revenue, and ways and means, and the voting of demand for grants: this with regard to the general budget as distinguished from the Railway budget and the Military budget. It is in the power of the Governor-General to fix the date when the general discussion should begin, usually a week after the presentation of the budget, at which even the non-votable items may with the permission of the Governor-General, be brought under consideration and criticism. Without such permission, the channel of communication of the message granting it being the President of the Chamber concerned, neither the Assembly nor the Council of State may embark upon a discussion of them. The discussion in the Assembly enables the Government of India to measure the depth of feeling in the country, for or against the proposal in the budget. It is the opinion of the Assembly that counts, for the simple reason, that it is a Chamber composed of persons, the majority of whom are elected upon a fairly broad franchise and of considerable political influence in the country. As much cannot be said of the Council of State for the simple reason that the great bulk of its members, even though they are persons of considerable social influence, are not in sufficient touch with the course either of public opinion or of contem-

Principles of Budget considered after presentation, followed by voting of grants.

porary and progressive movements. It is moreover, not a representative body, even in the sense the Assembly is.

(b) *Second Stage in the Proceedings.*

Second stage of the Budget proceedings begins with the general discussion of principles.

The second stage of the budget proceedings begins almost immediately after the first stage, namely, when the general discussion is over, with the voting of grants for which the Governor-General at his discretion may allow as many as fifteen days, though in point of fact hitherto, not more than a week has ever been allowed. A legitimate grievance is made against the authorities, for the curb put on the right of discussion in this way, particularly when the members are apprised of the fact that, under the English budgetary rules not less than twenty days are allowed for the discussion of grants. No discussion of any particular demand can extend beyond two days, and if at 5 P.M. of the last day allotted for discussion, the last item of grants is not reached, the President of the Assembly is enjoined to put the entire lot of matters outstanding to the vote without discussion, though for the convenience of the members of the Assembly all important items are taken up and disposed of first, leaving the unimportant ones to take their own fate. And to avoid all misgiving and misunderstanding, a practice analogous to that which obtains in the House of Commons, has been introduced, of consulting beforehand the wishes of Members, as to what should be the most convenient order of bringing in the votes. The conference is informal, but is calculated to establish a constitutional practice the importance of which cannot be overrated.

Duration of discussion of grants.

(c) *Demand for Grants.*

Each separate demand for grant deals with a major head of account and is moved by a member of the Gover-

Major heads moved by Members-in-Charge themselves.

nor-General's Council, in charge of the department to which the grant belongs, and is in the form "that a sum not exceeding Rs. X. Y. Z., be granted to the Governor-General in Council, to defray the charge that will come in course of payment during the year ending the 31st of March, 1931, in respect of the "Major head of account." The expenditure side of the budget is always more vigilantly watched both by the Executive Government as well as by the Assembly, for, no charge upon the revenues of India may be created without the previous sanction of the Governor-General, and even when that sanction is given, the legislature is there to put a check upon it, if thought necessary. Votable grants recognise no expenditure which is not already upon the books, unless both the Executive Government and the Assembly are in accord with each other.

(*d*) *Voting of Grants.*

Voting of grants—the second stage in the Budget procedure.

The next stage in the budget procedure is the voting of Grants on which motions are made (in analogy of what takes place in the House of Commons), for their reduction to achieve either of two objects, namely, to economise expenditure, or to bring about a discussion, and elicit information, from the Government on any point of interest to the public, wherefrom the finger of reform might be introduced or that of abuse and injustice to the people of the country removed. Be it remembered that the vote of the Assembly is not the final word on the demand for grants unless the Governor-General elects to accept it as such, but if he does not, he is authorised to restore any original demand, reduced by however much by the Assembly, provided he is satisfied, and prepared to certify that without it he should not be able to discharge the responsibilities of his office. It is a large discretion, perhaps larger than the authority he

possesses of restoring any grant deemed, in his opinion, necessary for the safety or tranquillity of British India or of any part thereof. The restoration of the grant to meet the expenses of the Lee Commission (Public Services Commission) appointed for the purpose of enlarging the pay, pension, prospects and even social amenities and other comforts of Europeans in the service of the Crown in India, which was budgeted for, and which was unceremoniously thrown out by the Assembly is a case in point. And the lesser power is said to be available only when the Assembly is not in session as it has been explained by the Finance Member himself in the legislature that, were the Assembly to continue to be in session throughout the year, there would be no occasion for resort to subsection (8), which holds out that " notwithstanding anything in this section, the Governor-General shall have power, in cases of emergency, to authorise such expenditure as may, in his opinion, be necessary for the safety or tranquillity of British India or any part thereof." But it may arise, when the Assembly is not in session, that expenditure must be incurred. There are long intervals of time when the Assembly is not sitting and events may then occur which may affect the safety and tranquillity of British India. It is not possible to call a sudden meeting of the Assembly, and in those cases the Governor-General takes the place of the Assembly and authorises expenditure of money. In neither of the two cases may the Assembly discuss the action of the Governor-General on whose behalf the Finance Member simply communicates to it the fact of action having been taken. After all, the power of certification or of restoration, whether given to the Governor-General in Council (having regard to instances such as the culpable defiance of the deliberate opinion of the Assembly in particular, and of the country in general, in restoring the salt duty at the instance of a Finance Minis-

Viceroy's authority to restore rejected grants.

He may authorise expenditure necessary for the safety, etc.

Governor-General functions as the Assembly.

ter who blandly admitted his mistake in insisting upon the restoration by taking the earliest opportunity, which was the submission of the next year's budget, to reduce the figure to the one voted by the Assembly), or to the Provincial Governors who have, to say the least, exercised their reserved powers thoughtlessly and without circumspection, is a retrograde and impolitic negation of the spirit of the Announcement of the 20th of August. It is an open denial of the principle of responsible Government however progressively it has to be realised. There is a yet worse feature of the power with which the Governor-General is invested. It increases the independence of the Governor-General in Council of his Legislature, and gives him a *carte blanche* to take away any Bill or proposal or motion out of the hands of the Legislative Assembly, at any stage, by simply certifying that, it affects his responsibilities for peace, order and good government, or that, it is essential for the discharge of his duties, including sound financial administration, and pass it into law, or order it to take effect in any shape he pleases, over the heads of his legislature. The governmental arrangement which sanctions these increased powers of the executive must from the view-point both of constitutional politics and jurisprudence, be held to be disappointing and unsatisfactory.

When supplementary and excess grants may be asked for.

Demands for supplementary and excess grants are quite in order when an original estimate is found to be insufficient, for the purposes of the current year, or when a need arises during the currency of it for expenditure, for which the vote of the Assembly is necessary, upon some new service not contemplated in the budget for the year. When money may have been spent on any service, for which the vote of the Assembly is necessary during any financial year in excess of the amount granted for that service and for that year respectively, the

demands must on all points go through the same formalities as the budget.

(e) *The Finance Committee.*

Finance Committee, one of the several Standing Committees.

One of the most important standing Committees of the Assembly is the Standing Finance Committee, composed at present of ten elected members with a Chairman, nominated by the Governor-General with functions involving a scrutiny of votable expenditure in all departments of the Government, a readiness to advise the Finance Department when their advice is sought for, and a desire for reasonable economy and retrenchment in expenditure. It is not fair to say that this committee, is never let into the confidence of the department when matters of a confidential nature are in progress. Every paper and every matter relating to Finance that is proposed or in progress, is placed before the Standing Finance Committee, while those of a confidential nature are only marked " confidential " which, the honour and self-respect of the members require should be regarded as such.

Only an advisory body.

(f) *The Finance Bill.*

Finance Bill is the credit side of the Budget.

Thus completed the budget is an accomplished fact, though only in one part, namely, the debit side or the expenditure part, to meet which ways and means must be found, namely, the necessary funds for the credit side. This is done by means of ordinary legislation in the form of a Bill designated the Finance Bill, which is formally introduced immediately after the budget statement is made and the budget presented, on the same day. The Finance Bill therefore, is in the nature of an act for supplies which in the English constitution is known as the

Composition of the Finance Bill.

Appropriation Act. It embodies the ways and means of raising and collecting funds, including proposals for fresh taxation, as well as increase or modifications of existing taxation, and is carried through both chambers of the legislature in exactly the identical way in which ordinary legislation is consummated, clause by clause, with only this difference that, the title and preamble of the Finance Bill is settled after the text of it has been dealt with, by reason of the fact that, having regard to human nature, no bill whose purpose it is to devise ways and means of raising funds, should be expected to emerge out of the legislature of however moderate views and however willing to anticipate the wishes of the powers that be, unamended, uncut, unclipped and unmutilated. After all this severe handling, you know the net result, which is embodied in the preamble, and briefly in the title. It is of importance to know that in the Finance Bill, in consonance with the rule of English constitutional practice and procedure, demand for supply is made by the Crown.

Power of legislature over demand for supply.

The legislature may reduce the demand but may not in any way increase it. In giving his ruling upon the point the President of the Council of State very cogently argued that, " if that is so it seems to involve the necessary consequence that taxation to provide for such expenditure must also be initiated by the Crown. * * * I must, therefore, rule that an amendment, except by a member speaking on behalf of Government, which has the effect of increasing taxation proposed by the Bill, is out of order, unless it proposes taxation by way of equivalent to a tax brought by the Bill under the consideration of the Council. The point is this, that the Crown makes a demand, the Crown proposes taxation, the Council can reduce the demand or the taxation, but it can neither increase the demand nor can it increase the taxation, except at the instance of a member of the Govern-

Council cannot increase a demand or taxation over the shoulders

ment. But it is open to members who desire to vary what I may call the incidence of taxation imposed by the provisions of the Bill to propose an increase in one item compensated by a corresponding reduction in some other item.'' In this view the President of the Assembly concurred, that amendments which proposed increases of taxation were not in order. of the Government.

Statement of the Revenue and Expenditure charged to Revenue of the Central Government in India and in England :—

Heads of Revenue.	Heads of Expenditure.
I. *Principal Heads of Revenue.*	I. *Direct demand on the Revenue.*
1. Customs.	1. Customs.
2. Taxes on Income.	2. Taxes on Income.
3. Salt.	3. Salt.
4. Opium.	4. Opium.
5. Land Revenue.	5. Land Revenue.
6. Excise.	6. Excise.
7. Stamps.	7. Stamps.
8. Forest.	8. Forest.
9. Registration.	9. Registration.
10. Tributes from Indian States.	
II. *Railways.*	II. *Forest and other Capital outlay charged to Revenue.*
11. State Railways.	3A. Capital outlay on Salt works.
12. Subsidised Companies.	7A. Capital outlay in Central Stamp Store.
12A. Miscellaneous Railway receipts.	8A. *Forest Capital outlay.*
III. *Irrigation.*	III. *Irrigation etc., Revenue Account.*
13. Works for which Capital Accounts are kept.	14. Works for which Capital Accounts are kept.
14. Works for which no Capital Accounts are kept.	15. Other Revenue Expenditure.

Heads of Revenue.	Heads of Expenditure.
IV. *Posts and Telegraphs.*	IV. *Irrigation etc., Capital outlay charged to Revenue.*
15. Posts and Telegraphs (Indian Posts and Telegraphs and Indo-European Telegraphs).	16. Construction of Irrigations, etc., works financed from Ordinary Revenue.
V. *Debt Services.*	V. *Posts and Telegraphs, Revenue Account.*
16. Interest.	17. Indian Posts and Telegraphs (Indian Posts and Telegraphs Department and Indo-European Tel.).
VI. *Civil Administration.*	VI. *Posts and Telegraphs, Capital outlay charged to Revenue.*
17. Administration of Justice. 18. Jails and Convict Settlements. 19. Police. 20. Ports and Pilotage. 20A. Light-houses and Light ships. 21. Education. 22. Medical. 23. Public Health. 24. Agriculture. 25. Industries. 26. Miscellaneous Departments. 26A. Indian Stores Department.	18. Capital outlay on Posts and Telegraphs (Indian and Indo-European).
VII. *Currency and Mint.*	VII. *Debt Services.*
27. Currency. 28. Mint.	19. Interest on ordinary debt. 20. Interest on other obligations. 21. Reduction or avoidance of debt.

Heads of Revenue.	Heads of Expenditure.
VIII. *Civil works.*	VIII. *Civil Administration.*
30. Civil works.	22. General Administration. 23. Audit. 24. Administration of Justice 25. Jails and Convict Settlements. 26. Police. 27. Ports and Pilotage. 27A. Lighthouses and Lightships. 28. Ecclesiastical. 29. Political. 29A. Frontier watch and ward. 30. Scientific Departments. 31. Education. 32. Medical. 33. Public Health. 34. Agriculture. 35. Industries. 36. Aviation. 37. Miscellaneous Departments. 37A. Indian Stores Department.
IX. *Miscellaneous.*	IX. *Currency and Mint.*
33. Receipts in aid of superannuation. 34. Stationery and Printing. 35. Miscellaneous.	38. Currency. 39. Mint.
X. *Military Receipts.*	X. *Civil Works.*
36. Army (effective and non-effective). 37. Marine. 38. Military Engineer Services. 38A. Transfers from Military Reserve Fund.	41. Civil works.

Heads of Revenue.	Heads of Expenditure.
XI. *Provincial contributions and miscellaneous adjustments between Central and Provincial Governments.*	XI. *Miscellaneous.*
39A. Miscellaneous adjustments between the Central and Provincial Governments.	43. Famine. 43A. Famine Relief. 44. Territorial and Political Pensions. 45. Superannuation Allowances and Pensions. 46. Stationery and Printing. 47. Miscellaneous.
XII. *Extraordinary Items.*	XII. *Miscellaneous capital outlay charged to Revenue.*
40. Extraordinary Receipts. 40A. Transfers from Revenue Reserve Fund.	45A. Commuted value of Pensions.
	XIII. *Military Services.*
	48. Army (effective and non-effective). 49. Marine. 50. Military Engineer Services. 51. Transfers to Military Reserve Fund.
	XIV. *Contributions as in XI of Revenue.*
	51A. Miscellaneous adjustments, etc.
	XV. *Extraordinary Items.*
	52. Extraordinary Payments. 52(1) Transfers to Revenue Reserve Fund.

(g) *Money Bill in the Council of State.*

House of Lords accepts or rejects a Money Bill —It cannot add or alter it.

The principle which is deemed to be of supreme importance in the English Constitution, that a money bill cannot be interfered with by the Upper House which can accept or reject it as a whole, is what has been applied to the new Constitution of India. The legislature was wise, for their intention was to make the Council of State a safety valve, if the Assembly should prove obstreperous or

recalcitrant, and not a chamber for effective and sagacious legislation. It is therefore deprived of the power of sitting in judgment over a Budget. It enjoys the liberty to discuss it as a whole, but not of moving a motion on or amendment of it, nor to claim the right to vote on it, even though the Council made a frantic attempt in 1922, on the question of the Salt tax, to substantiate its subservience which the Government refused to recognise. The Council evidently thought that its vote in opposition to that of the Assembly would be accepted by the Government. To its credit and to the discredit of the Upper Chamber however, it did neither accept nor appreciate it. Thus a constitutional conflict and perhaps a possible deadlock was skilfully averted. That is only with respect to the budget, though the Finance Bill to be an Act must, as I have observed, take the ordinary course of legislation and hence, must pass through the Council of State before receiving assent of the Governor-General.

Principle adopted in the new Indian constitution.

The Finance Bill however is treated as an ordinary legislation.

PART VI.

(a) *Railway Finance.*

Railways which have a separate finance of their own comprise a most important part of the financial system of India. It is not all Railways in India which figure in Indian finance, but only those which are worked by the State. They are the East Indian Railway, the North-Western Railway, the Oudh and Rohilkhand Railway, the Eastern Bengal Railway and the Great Indian Peninsula Railway. With regard to the finance of those worked by the companies, the Government of India have nothing to do, except in the case of those among them, which stand on a footing of guarantee of compensation from the Government by way of an agreed minimum

Railway finance.

interest, on the capital outlay, in the event of their earnings not being sufficient to meet running and management expenses. They are otherwise called subsidised lines but are in fact State lines worked by subsidised companies. As against such guarantee, there is always a stipulation that if their gross earnings exceed an agreed percentage, the surplus belongs to the Government and forms part of the general revenue of India.

The Railway board—its composition.

Administratively State Railways in India are under a Railway Board composed of a Chief Commissioner who until the other day, was designated the President of the Railway Board, and four members including a member representing or watching labour interests. The Financial Commissioner is an ex-officio member of the Railway Board, and of the two others one represents the Traffic and the other engineering—the two technical departments. The Chief Commissioner is the administrative head of the Railway Board, in fact of the Railway Department, having power to overrule the decisions of the Board on his sole responsibility, in matters affecting the technical details of the Railways administration. The Railway department of the government forms part of the portfolio of the Department of Commerce for which there is a Member of Council. The Railway Board has to entertain a representative from the Financial Department in the person of the Financial Commissioner attached to it. He is an associate and colleague of the Chief Commissioner, rather than his subordinate, and is authorised to advise him on questions involving large expenditures of public money from the point of view of a financial expert and to suggest means of economy. His power to refer complicated or debatable points and issues of Railway finance to the Finance Member cannot be questioned for, he " acts generally as the watch-dog of the Finance Department,"

by which he is expected as their representative, to bring about a co-ordination of Railway finance with general finance. To the Board is further attached a Director, to audit Railway accounts, directly under the control and guidance of the Auditor-General. The responsibility of the Director extends beyond the limit of audit of Railway accounts, for it is he, who has to compile the Railway sections of the Finance and Revenue Account of the Government of India, as well as the Railway estimates. As the representative of the Auditor-General, it is his duty to see that neither the Board nor the Government exceed their powers of expenditure in respect of Railway administration, leaving the Financial Commissioner responsible for the accounting of Railway expenditure. In this task he has the assistance of a Controller of Railway accounts whose business it is to look after the Chief Accounts officers. While this remains in principle, it is suspected that the dual system of the Finance department exercising control over Railway Finance through a delegate of their own, namely, the Financial Commissioner has not worked satisfactorily, since a tendency has of late been discerned in the Commissioner to identify himself closely with the Railway department in proportion to his dissociation with the Finance department, so that, it is facetiously suggested that "he has lost his financial soul allowing his railway soul to predominate." The original idea behind the separation of Railway Finance from General Finance was that the Finance Member should ' bite ' where his representative the Commissioner would ' bark.' Responsible members of the Assembly are of opinion that he does not even ' bark ' now, so that the control of the Assembly, as that of the Finance department has been rendered illusory. The fact of the Finance department losing control over the Railway finance was then made the subject matter of

Financial Commissioner as the " watch dog."

severe animadversion by Sir Frederic Gauntlett before the Public Accounts Committee in September, 1929, when the Auditor-General observed that the Financial Commissioner and the Railway Board had such large powers of reappropriation that the Assembly's control was all farce. The net result was inefficiency in the Railway Administration, and that while there was a substantial improvement in the Army, he could not say the same thing in the Railways. He attributed this to the inefficient administration, nay,—not only inefficiency but extravagance.

Sources of Railway Revenue.

Sources of Railway revenue.

The principal sources of Railway Revenue are from goods and passenger traffic, and subsidiarily from telegraphs, ferry boats and other miscellaneous items, and from surplus over, received from subsidised companies. The principal heads of their expenditure are, (1) Working expenses which include maintenance of permanent way, Locomotive expenses, Carriage and Wagon expenses, Traffic expenses, General charges, steam boat services, (2) Interest on Railway debt, (3) Interest on capital contributed by Companies, (4) Annuities in purchase of Railways, (5) Sinking funds, (6) Charges on account of subsidised Companies, and (7) Other miscellaneous expenditures. On the basis of these, the Railway budget divided into three parts of the ' ordinary revenue,' the ' programme revenue,' and the ' capital expenditure,'' is framed, for each Railway by its Manager or Agent, in consultation with the Board by which they are finally incorporated into one whole. After passing through certain prescribed formalities, such as the programme part of the year having been submitted to and sanctioned by the Secretary of State for India, and the

Railway budget presented by the Commerce Member and

rest having been revised by the Finance Department, the Railway budget is ushered into public view by the Commerce Member as the ex-officio Member for Railways in the Legislative Assembly and by the Chief Commissioner of Railways in the Council of State, aided in the pilotage, chiefly by the Member for Finance and his staff. To bring the Railway Finance into line with up-to-date Financial Administration, on the ground that Railway revenue and expenditure in India, in their magnitude, do not fall far short of those which relate to general administration. Various committees were from time to time appointed, with instructions to suggest means. The last is what is known as the Acworth Committee, the recommendations of which were considered by a Finance Committee of the Legislative Assembly itself. These recommendations were adopted by the entire Assembly as its own, and are therefore accepted by the Government, with a resolve to bring some of them into immediate operation. They are practically upon the lines of the recommendations made by the Acworth Committee, principal of which are the complete dissociation of the Finance Department from the internal finances of the Railways, the introduction of a separate budget of their own to help them in developing a Railway policy in which India is more vitally interested than the " watch dog," which in all financial systems is a handicap, sometimes not very conducive to general prosperity or development of resources. The " watch dog " system or policy is fatally prone to follow a " penny-wise " though not necessarily a " pound-foolish " policy, when it really ought to be more generous in its distribution of doles.

piloted by the Finance Member and First Commissioner of Railways.

Finance department dissociated from the internal finances of the Railways.

(b) *Organisation of Railway Audit.*

The audit system that prevails over Railway accounts is practically the system that obtains in respect

Railway Audit is

on the lines of Commercial audit.

of the Civil Accounts of the Government of India but from a commercial aspect, so that, it may be styled "Commercial Audit." It makes a clear comparison of the results of a series of years, including those of the latest year for which audited figures are available. On the basis of the principles of commercial audit the Railway Administrations have been enjoined to present commercial accounts in which the railways as well as the collieries under them should be treated as commercial concerns disclosing results in the form of regular trading and profit and loss accounts and balance sheets, in spite of any technical difficulties there may be of allocating the correct interest chargeable to each Railway owing to the capital having been borrowed at different periods at different rates of interest. It is recommended that the Railway Department should, as far as possible prepare a summary of the reports of Agents, bringing out the features to which the Chairman of a Public Railway Company would draw attention in his speech at the annual general meeting of shareholders. Under the 'Commercial Audit' system it is proposed further to show the result of the working of strategic lines separately from commercial lines. Along with it the framing of the Railway budget might be improved by making separate demands for grants for the working expenses of Company-managed Railways and State Railways respectively.

'Commercial Audit' is a newly introduced system, and its main features are that it provides for a minimum amount of continuous test check at headquarters and at all workshops, and stores depots, and for inspection of accounts, records and surprise visits to engineering depots, sheds and stations, and in respect of Company-managed Railways the general relations of Government examiners to various authorities of the railway adminis-

trations remaining practically unchanged, while on the other hand the Chief Auditor and Accountant-General for Railways, being constituted the channel of communication between the Government examiners and the railway administrations.

Organisation experimental.

It was originally intended that this new scheme should be introduced as a permanent measure, but it has since been decided to introduce it in the first instance as an experimental measure for three years with effect from April 1, 1930. It was proposed, that so long as the total sanctioned cadre of gazetted and non-gazetted members of the railway audit department was not exceeded under each grade or class, the Auditor-General might be free to distribute them in any manner he should consider necessary from time to time, for the satisfactory discharge of his statutory responsibilities for the efficiency of the audit.

(c) *Status of Officers.*

Grades of officers.

The status of officers directly attached to the company-managed railways for audit work could not be raised without incurring considerable extra expenditure, and, as the officers in charge of the statutory audit on state-managed railways are already of a sufficiently high status, it is proposed that Government auditors on the company-managed railways with one or two exceptions, be placed under their supervision and that the latter, that is, the Chief Auditors of the state railways, be responsible to the Director of Railway Audit for supervising the work of Government audit on the company-managed railways also.

The scheme involves an extra expenditure of Rs. 2,00,000 and means the creation of some additional appointments in various grades. Posts of two officers (first class) in the Indian Audit and Accounts Service

and two assistant audit officers have been created while, there are a number of senior accountants, accountants, clerks and other inferior servants.

(d) *Powers of the Financial Commissioner of Railways.*

Financial Commissioner vested with powers of the Government of India.

Generally speaking the powers of all authorities in India from the Governor-General in Council downwards have been fully defined. Those of the Financial Commissioner of Railways however, have not been, except in a resolution of the Finance Department, dated June 21, 1926. This resolution sets out certain arrangements sanctioned by the Secretary of State for India under which the Financial Commissioner for Railways is vested with the full powers of the Government of India to sanction railway expenditure, subject to the general control of the Finance Member to whom he has direct access. It will be noticed, that as a result of this arrangement, the Financial Commissioner exercises far greater powers of sanctioning expenditure in the Railway Accounts Department than the Auditor-General does in the Indian Audit department.

Financial Commissioner's position identical with Financial Secretary.

The position, however, of the Financial Commissioner does not exactly correspond to that of the Auditor-General. With regard to railway expenditure his position corresponds more closely to that of the Financial Secretary with regard to other expenditure of the Government of India. The reason for this difference is easily explained; they both exercise powers delegated to them by the Governor-General who himself is, in respect of railway expenditure, invested with larger powers than he is in respect of expenditure on central subjects, without reference to the Secretary of State for India. In respect of the railway expenditure therefore, the Governor-General in Council may be said to have taken full

advantage of the recommendations of the Acworth Committee, as laid down in para. 125 of their report. But the powers delegated to the Financial Commissioner by the Governor-General, and exercised by him, are subject to the general control of the Finance Member, instead of the Finance Secretary, on the basis of the recommendations on which the Acworth Committee in paras. 58, 113 and 114 of their report put special stress, as making for a harmonious working and speedier development of state-managed railways in India. Here it may be observed, that these are the recommendations of the committee which the Legislative Assembly would not endorse, and in fact, after considerable deliberation, declined to endorse for, in the opinion of the Assembly or of any body of people having a sense of responsibility in a constitutional and orderly state of things, the control of the Finance Department over the Financial Commissioner should be real and not illusory, which under the present arrangement (since 1924 when the separation of railway accounts was given effect to), it must necessarily be.

Recommendations of the Acworth Committee.

Finance Department has no control over Financial Commissioner.

(*e*) *The Financial Commissioner may be regarded a Member of the Railway Board for certain Purposes.*

In accordance with the recommendations of the Acworth Committee, the Financial Commissioner is one of the officials of the Railway Board, and takes part with the Chief Commissioner and three members of the Board in all business which comes before the Board. Where the subject under discussion has no financial implications, he is, like the other three members of the Board, under the orders of the Chief Commissioner who, under the member of Council for Railways, is solely responsible for arriving at decisions on technical questions and for advising the Government on matters of railway

Is the Financial Commissioner a member of the Railway Board?

policy. Where however, the subject has financial implications about it, he has the right, should he not be in agreement with the Chief Commissioner or the Railway department on the financial aspect, to refer the case to the Finance Member to whom, as noticed above, he has free access. Needless to say that, in order to give effect to the view at which they arrived on a consideration of the Report of the Acworth Committee, that the financial control over the operations of the Railway department must be exercised, not from without but from within, and by an officer who would himself be responsible for the promotion of the efficiency and the economic working of the administration, these arrangements were adopted by the Secretary of State as a result of the recommendations made by the Government of India who cannot have overlooked the arrangement that subsists, for the control of the Army and the Postal Finance, without creating any difficulty, whether in the efficiency or in the economic working of those administrations. Be that as it may, in all railway matters having a financial aspect the Financial Commissioner has the same rights as the other members of the Railway Board to participate in its discussions and *decisions*, necessarily entitling him to be regarded as a member of the Railway Board.

Anomaly of the situation created.

(*f*) *Location of the Position of the Finance Member with Reference to the Railway Budget.*

The definition and location of the position of the Finance Member of the Government of India has seldom been clearly stated. It has consequently been enshrouded in. This question was raised upon various occasions, at meetings of the Public Accounts Committee and elsewhere with little or no result. It was however, reserved for the Public Accounts Committee for the year 1928-29 to

definitely settle the question which has long been outstanding. Rule 44 (3) of the Indian Legislative Rules lays down that the budget shall be presented in such a form as the Finance Member may consider best fitted for its consideration by the Legislative Assembly. Since it is the avowed object of the Reformed constitution-makers to as far as possible, bring Indian Constitutional practice into line with the practice obtaining in England, or at any rate approximate it as near as possible, it would be in consonance with English constitutional theory and practice to enjoin upon the Finance Department to consult the Public Accounts Committee to the exclusion of every other body connected with the legislature, should they desire to obtain advice or suggestion from outside the Finance Department. This principle would be rendered nugatory if, on the other hand, the resolution adopted by the Assembly on the 20th of September 1924, bearing on the separation of Railway from General Finances were given full effect to and otherwise rigorously adhered to. For then, the questions would arise what must be the form which the Railway budget should take, and what should be the details to be embodied in it, and what should be the number of demands for grants into which the total vote would be divided. These are questions no doubt for solution by the standing Finance Committee for Railways upon which a definite function is imposed. But there is no evidence to show that the Legislative Assembly in adopting this proposition, took into consideration the further implication of the intention altogether to exclude the form of railway accounts from the purview of the Public Accounts Committee.

Finance Member and the Railway Budget.

Railway budget separated.

"In any case, it appears to us," observed the Committee, "that the decision, however strictly interpreted, does not necessarily mean that the constitutional powers of the Finance Member and his right to act if so desired

in consultation with the Public Accounts Committee, are abrogated, and we submit that it would require very definite and explicit decisions based on due constitutional authority to abrogate such powers and rights."

The Committee, therefore, recorded the view that even now, that is to say, without any further affirmation from the Legislative Assembly being required, the position is that all changes in the form of demands for railway grants initiated by the Railway Board in consultation with the Standing Finance Committee for Railways may be subject to further consideration by the Finance Member who before arriving at a final decision, will be entitled to consult the Public Accounts Committee.

(g) Assembly Convention.

" In expressing this view," the Committee went on, " we do not at all wish to suggest encroaching on the powers or limiting the scope of the Standing Finance Committee for Railways. The main work will still be theirs and, normally, in view of the Assembly resolution and convention thereby adopted, the initiation and preliminary consideration of all proposals for changes in the form of railway accounts will rest with them. On the other hand it may on occasions happen that the Public Accounts Committee, while examining Appropriation Accounts of railways, may consider that some change is required in the form of demands for railway grants. In such a case it would be proper for the Finance Member, in deference to the arrangement authorized by the Legislative Assembly in 1924, to ask that the Standing Finance Committee for Railways should consider the suggestions of the Public Accounts Committee, leaving himself the liberty thereafter, if he thought it necessary, to make a further reference to the Public Accounts Committee before he came to his own final conclusion."

Statement of Railway Revenue and Expenditure.

Heads of Revenue.	Heads of working Expenses.	Heads of Expenditure.
XI. *State Railways.*	1. Administration.	XI. *State Railways.*
(*a*) Commercial lines.	2. Repairs and maintenance.	(*a*) Commercial lines.
(*b*) Strategic lines.	3. Operations.	(*b*) Strategic lines.
	4. Depreciation.	
	5. Suspense.	
XII. *Subsidised Companies.*		XII. *Subsidised Companies.*
Share of surplus profits.		Land and subsidy.
XIIA. *Miscellaneous Railway Receipts.*		XIIA. *Miscellaneous Railway Expenditure.*
(*a*) Commercial lines.		(*a*) Commercial lines.
(*b*) Strategic lines.		(*b*) Strategic lines.
		XIIB. *Surplus Railway Revenue transferred to Railway Reserve Fund.*

PART VII.

The Military Finance.

The level of military expenditure in 1913 and 1930.

The expenditure of the army and air force services in India in 1913-14, inclusive of outlay on military works, and after deduction of connected receipts, amounted to Rs. 29¼ crores. In the budget for 1930-31, the figure has risen to Rs. 59 crores. Both figures included sterling expenditure converted into rupees at 16 pence the rupee. It should be remembered that the figure stands at this after retrenchment. In 1923 the figure mounted up to 66½ crores.

For a considerable number of years, it has been recognised that efficient financial administration of the Military services demands the employment of machinery of a special kind. The reasons are not far to seek. The army is one of the largest spending departments of the Central Government. Its expenditure, though of a primary and obligatory character, is "unproductive," and is consequently regarded by public opinion as requiring, in peace time at any rate, a specially vigilant scrutiny and control. Moreover, the organisation of the army is, of necessity, exceedingly complex: and control has to be exercised not merely over expenditure of cash but also over consumption of a wide range of stores and commodities. It will be clear, therefore, that methods of financial administration, which may be sufficient in the case of many categories of civil expenditure, do not provide adequately for the effective control of military expenditure. The arrangements at present in force, which in their origin were adopted on the recommendation of Lord Kitchener, and which have since been expanded and strengthened as a result of recommenda-

tions made by the Esher Committee, will now be described. It will be seen that they are based upon a close association of the financial and administrative authorities, and, so far as the interior dispositions of the financial department is concerned, upon a close union of the financial and the accounting machinery.

An officer of the Finance Department, with the status of a joint Secretary to the Government of India, is located at Army Headquarters in charge of an outpost of the Finance Department Secretariate, known as the Military Finance branch, which deals with the finance of both the army and the air force. This officer is styled the Financial Adviser, Military Finance, and he has a staff of five Deputies, one of whom is also Controller of Air Force accounts, and six assistants. The Financial Adviser acts in a dual capacity. He represents the Finance Department at Army Headquarters, and is also expert adviser to the Commander-in-Chief and his staff officers in all matters of military finance and expenditure. His main functions are to prevent irregularities in expenditure and to ensure that financial principles are duly observed: and on the other hand to assist the Commander-in-Chief and his staff in the financial administration of the army services and in promoting economy in military expenditure, and to prepare for Army Headquarters, and the Army Department, budget and other estimates. It is his duty to scrutinise, with reference to financial principles and in the interest of public economy, all proposals involving military expenditure; to advise whether they should be accepted; and to ensure that the sanction of Government or of the Secretary of State, as the case may be, is obtained when such sanction is necessary under the rules. He is a member of the Military Council, and is, amongst other things, to use the words of the Esher Committee, a colleague of the

The Military Finance branch.

Duties of the Financial Adviser.

military heads of branches and not a hostile critic. The services of the Financial Adviser and his staff are available to officers of Army Headquarters for direct informal assistance in the preparation of cases. The Financial Adviser has the right of personal access both to the Commander-in-Chief and to the Finance Member of the Executive Council. All proposals involving expenditure not covered by regulations or by standing orders of competent authority have to be submitted for the scrutiny of the Military Finance Branch; and all indents for the purchase of stores by the headquarters authorities, whether locally or in England, require to be covered by a certificate, obtained from the Military Finance Branch, that funds to meet the expenditure are available without exceeding budget grants.

Financial Adviser entitled to direct communication.

The Deputy and Assistant Financial advisers, it may be noted, are in practice definitely allotted to the performance of financial duties in one or other of the branches of the Army Headquarters.

The military budget.

The annual military budget is prepared under certain main heads which is appended to this part, each being sub-divided into a number of appropriate detailed heads. The expenditure is recorded in the accounts under the same heads. Each main head is intended to record all expenditure incurred upon a particular class of units and formations, inclusive of pay, charges and other cash expenditure as well as the value of stores of various classes (*i.e.*, food, clothing, equipment, etc.) consumed by them, but exclusive of the cost of accommodation.

Administration of the different grants.

Each of the three principal staff officers, and certain other officers at Army Headquarters, are responsible for controlling the expenditure of the arms of the service and departments whose administration is entrusted to them. Thus, the Chief of the General Staff controls the expenditure of the staff at Army Headquarters, and

in Commands, Districts and Brigades, as well as the bulk of the expenditure on educational and instructional establishments and army education; the Adjutant General controls the expenditure of fighting services, of medical services (including working expenses of hospitals), of ecclesiastical establishments, of recruiting staff, hill sanitaria and depôts, etc.; the Quartermaster General controls the expenditure of the Indian Army Service Corps (including animal and mechanical transport, and supply depôts), arsenals and ordnance depôts, clothing and boot depôts (including clothing factories), veterinary and remount services, grass and dairy farms, embarkation and railway transport staff, military works, etc.; the Director General of Ordnance controls the expenditure of ordnance factories and of staff employed on ordnance inspection; the Air Officer Commanding controls the expenditure of the Air Force; and the Financial Adviser, Military Finance, controls the expenditure of military accounts offices.

Budget grant as a block vote.

The budget grant for each class of units and formations is in the nature of a block vote, and includes the cost of stores consumed by it. As the stores are mostly drawn from depôts, the stocks in which are replenished by the Quartermaster General or by Army Commanders and subordinate authorities, funds for the purchase of stores are made available through the Stock Account which is debited with the value of stores purchased, and credited with the value of stores consumed by units and formations. A similar arrangement applies to stores obtained by manufacture in manufacturing establishments of the army and air force (*e.g.*, ordnance factories).

Preparation of the budget.

In October each year, preliminary budget estimates for the ensuing year are drawn up at Army Headquarters, with the help of such information as may be re-

quired from subordinate authorities, showing the grants required under the various heads to meet the ordinary expenditure of the authorised establishments of the army and air force, and any special expenditure arising out of the policy of Government in particular matters. The estimates are prepared either by the Military Finance Branch with the help of the administrative branch concerned, or by the latter in consultation with the former; but in either case they have to be accepted by the head of the administrative branch, before they are formally transmitted to the Financial Adviser. Simultaneously, heads of branches concerned place before the Commander-in-Chief proposals for capital expenditure in the ensuing year on military works and equipment, and for expenditure on any new measures for which administrative and financial sanction have yet to be obtained. The budgets for established charges as accepted by the heads of branches, and the orders of the Commander-in-Chief in regard to capital expenditure and expenditure on new measures, are forwarded to the Financial Adviser who prepares a consolidated compilation of the preliminary budget and submits it for the Commander-in-Chief's consideration. The preliminary budget as approved by the Commander-in-Chief is then submitted by the Financial Adviser to the Finance Member of the Executive Council about the middle of December. Early in January, the Government of India allot provisionally a certain sum of money to meet the net expenditure of the military services (*viz.*, Army, Air Force and Marine) in the ensuing financial year, and the necessary modifications in the preliminary budget are made by the Financial Adviser under the orders of the Commander-in-Chief. A similar procedure is followed, if the Government of India decide to make any change in the net figure provisionally passed by them.

Preparation of the estimates.

Military budget before the Financial Member.

Check of actual expenditure against budget grant

The Military Finance Branch furnishes periodically to the heads of administrative branches information regarding the progress of expenditure, for the control of which they are responsible, to enable them to take steps to ensure that it does not exceed the budget grant for the purpose. All anticipated excesses and savings are brought to the notice of the Financial Adviser so that he may obtain the orders of the Commander-in-Chief, and, if necessary, of the Finance Member of the Executive Council. Generally speaking, no appropriation of savings, to meet expenditure on a measure for which provision was not made in the budget, is permissible without the concurrence of the Finance Department.

Financial procedure in Commands, etc.

In Commands, the Controller of Military Accounts of the military district in which the headquarters of the Command is located acts as financial adviser to the Army Commander in regard to expenditure which the latter is authorised to sanction; he renders to the Army Commander such assistance as he may require in the preparation of estimates and in controlling expenditure against grants placed at his disposal. The same arrangement is followed in subordinate formations such as districts. The powers of sanctioning expenditure delegated to Army Commanders and subordinate administrative authorities are limited, and are confined in the main to certain specific provisions of the Army Regulations. Certain other powers have also been delegated in recent years in regard to the sanction of expenditure on military works. But the bulk of the expenditure of the army and air force is of a class which, under the present system of organisation, must be controlled from Army Headquarters. It would be impracticable, for example, to give subordinate military authorities the power to vary the rates of pay and allowances of army personnel, their scales of rations, clothing, and equip-

Expenditure controlled from headquarters.

ment, all of which must necessarily be on a uniform basis. The question of increasing the financial powers of Army Commanders and subordinate authorities was re-examined by the Braithwaite Committee, but the only recommendation which that Committee found it desirable to make was that Commands should be given extended functions in regard to the purchase of supplies and transportation charges. In so far as the purchase of supplies is concerned, the recommendation has recently been carried out and the question of decentralising control over transportation charges is under consideration.

The Braithwaite Committee.

The arrangements for the supply of funds required for military disbursements, and for the maintenance of proper accounts of expenditure, are entrusted to an organisation known as the Military Accounts Department. The department formerly consisted of military officers obtained from the Indian Army. It is at present composed of a certain number of military officers, survivors of the previous system, and of European and Indian civilians. Present and future recruitments are confined almost entirely to the last mentioned class, *i.e.*, Indians with civilian status.

Military Accounts Department.

The department is supervised and controlled by the Finance Department of the Government of India through the Financial Adviser, Military Finance. Its executive head is an officer, attached to Army Headquarters and known as the Military Accountant General, whose principal functions, apart from administering the department, are the organisation of arrangements for the disbursement of pay to officers and men of the army and air force, and for an adequate audit of all charges, and the maintenance of a record of military expenditure and receipts in such form as is required by the administrative and financial authorities.

The Military Accountant General.

System of disbursement and of accounts.

The system of disbursement, accounts and audit obtaining in the department has been largely changed in recent years, as a result partly of changes in administrative and financial arrangements, and partly of certain recommendations made by the Esher Committee. The main features of the new system are the concentration of the issue of funds upon a limited number of central stations : the preparation of pay, accounts of units, of priced store accounts of units and store depôts, and of cost accounts of manufacturing establishments, by trained personnel of the military accounts department attached to the units and formations; and the audit of store accounts by a system of local audit which includes a continuous verification of stock.

Accounts offices.

Separate account offices have been formed for each of the fourteen military districts and for the independent brigade of Allahabad. Each office deals with the accounts of all military units and formations in the district or area, with the exception, firstly, of accounts relating to army ordnance factories and clothing depôts employed partly on manufacture, which are dealt with by a Controller of army factory accounts and, secondly, of accounts relating to the air force which are dealt with by a Controller of air force accounts. Accountants and clerks of the Military Accounts Department have, as previously stated, been attached to units and formations to prepare on the spot the pay accounts and the priced accounts of stores. The pay accounts are sent to the offices of the Controllers, who issue cheques to the officer commanding the unit in payment of the sums claimed and verified.

Cost accounting.

As has been explained, the accounts now record the whole expenditure of each class of unit and formation, including the cost of stores consumed but excluding the cost of accommodation. This change was introduced to

give effect to the Esher Committee's proposal to institute "block votes"; and it has facilitated, in a remarkable degree, the control of expenditure, particularly in regard to checking undue accumulation of stocks and irregularities connected with the consumption of stores. For this latter purpose, priced accounts of stores are maintained which exhibit the value of stores consumed by the various units, etc., the value of stores lost and the value of stocks held. This, in effect, represents generally the extent to which cost accounting has been introduced in the army and air force in India. For manufacturing establishments alone a more complete form of cost accounting has been introduced which is designed to ascertain the cost of production of articles manufactured.

MAIN HEADS OF INDIAN MILITARY BUDGET.

Army.

Part A.—Standing Army.

I. Maintenance of the Standing Army :—

Fighting Services.
Administrative Services.
Miscellaneous Units.
Miscellaneous Charges.
Payments in England.

II. Cost of Educational, etc., Establishments and working Expenses of Hospitals, Depôts, etc. :—

Educational and Instructional Establishments.
Army Education.
Working Expenses of Hospitals.

Working Expenses of Store Depôts, etc.
Working Expenses of Manufacturing Establishments.
Inspection of Stores.
Military Accounts Offices.
Ecclesiastical Establishments.
Administration of Cantonments.
Miscellaneous.

III. Army Headquarters, Staff of Commands, etc. :—

Army Headquarters.
Staff of Commands.
Staff of Districts and Brigades.
Embarkation Staff.
Railway Transport Staff.
Miscellaneous.

IV. Stock Account :—

V. Special Services :—

VI. Miscellaneous :—

Transport of Troops and conveyance of stores.
Miscellaneous.

VII. Non-Effective Charges :—

Rewards for Military Services.
Pensions (including gratuities).

Part B.—Auxiliary and Territorial Forces.

Staff at Army Headquarters.
Staff at Headquarters of Commands.

Staff at Headquarters of Districts.
Auxiliary Force.
Territorial Force.
Stock Account.

Part C.—Royal Air Force.

Maintenance of Squadrons.
Cost of educational, etc., Establishments and working expenses of Hospitals, depôts, etc.
Staff at Royal Air Force Headquarters.
Stock Account.
Miscellaneous.
Payments in England other than for Stores.
Works Expenditure.

Military Works :—

A. Works (capital expenditure).
B. Standing Charges.
C. Establishment and Tools and Plant.
D. Suspense.

PART VIII.

Interest and Sinking Fund Charges and other Non-votable Items.

Non-votable items in the budget.

I need not discuss here how non-votable items in the budget such as the interest and sinking fund charges on loans, statutory expenditure, salaries and pensions of covenanted servants of the Crown in India, of chief Commissioners and Judicial Commissioners, of expenses under heads ecclesiastical, political or defence are adjudicated upon. But there may always arise some doubt

as to whether a particular item does or does not come under the "non-votable" category by reason of its belonging to any of the heads laid down in section 67A, as not open to discussion by either chamber of the Indian Legislature without sanction of the Governor-General. A very interesting discussion took place between the Legislative Assembly and the Finance Member as representing the executive Government over the provision that,

Not open to discussion under Sec. 67A.

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

the Assembly taking up the position that, it was competent for the Governor-General to remove the distinction between "votable" and "non-votable" altogether, and order the submission of the entire budget to the vote of the Assembly, without waiting to be asked to exercise what is a discretion with him, to allow a part of it to be laid under discussion. The arguments urged on behalf of the Assembly were cogent and reasonable, that under the old constitution, the last page of which had been turned on the 1st of January, 1921, by the Morley-Minto Reforms, the Indian legislature had the right to discuss the whole budget, that the Montagu reforms were avowedly an extension of such constitutional rights of the people as existed. It was therefore but natural that the voting power on the budget had also been extended. The Finance Member of the Govern-

Assembly urges the lumping up of the votable and the 'non-votable.'

ment of India did not agree with this view and contended, that under no circumstances could the Governor-General direct the submission of the non-votable items to the vote of the Assembly, though he had a discretion to allow discussion on them, a view in which the law officers of the Crown in England, on a reference being made to them by the Secretary of State, concurred. It is a chapter of discussion of budgetary rights which is closed, and no useful purpose will be served by debating it here over again, but I must not fail to draw your attention to the point which is of supreme importance but which, from reference to the proceedings of the debate that ensued, it seems was lost sight of. It is that, under the Morley-Minto reforms, the representatives of the people were in a minority in the legislature, while the Montagu Act put them in the majority, a contingency which had to be provided for, in considering the safeguards to be introduced in the new constitution, making for the organisation for the maintenance of British rule in India not open to a successful attack. You should not be surprised if that was a contention which weighed with the law officers of the Crown who no doubt had the report of the Joint Committee before them, to the effect that they considered "it necessary (as suggested to them by the Consolidated Fund Charges in the Imperial Parliament) to exempt certain charges of a special or recurring nature, that is to say, the cost of defence, the debt charges and certain fixed salaries, from the process of being voted," as well as the statement of our own countryman Lord Sinha, as Under-Secretary of State for India, that "certain heads of expenditure are not to require the annual vote in much the same way as the consolidated fund in this country."

Legal bar to the suggestion being carried out

Opinion of the Joint Committee chiefly responsible for the rejection of the proposal.

PART IX.

(*a*) *The Audit Structure.*

The Auditor-General.

At the head of the entire audit system in India is the Auditor-General, who, up till the introduction of the Reforms had formed part of the Finance Department and was subordinate to his departmental chief the Finance Member. With the introduction of the Reforms it was thought desirable, for the better efficiency of the financial control, to make the Auditor-General quite independent of the Government of India upon whose spending powers and spending operations he is expected, and by virtue of the duties of his office commissioned, to keep a check. The Auditor-General has therefore been made a statutory appointment made by the Secretary of State in Council tenable during the pleasure of the Crown. His pay, powers, duties and conditions of employment are stated to be fixed by the Secretary of State in Council and he is debarred from holding any post under the Government of India after he has vacated office. This no doubt is a salutary change and it might have been better if the Auditor-General in India had been placed on a footing of equality with his prototype in the English administrative system. The Comptroller and Auditor in England is the servant of the House of Commons and is responsible to no Minister. This office, which was created by the Exchequer and Audit Act of 1866 made it impossible for any Government however strong, to override or dismiss him. He sees that no department either mis-spends or diverts a grant. His reports to the Public Accounts Committee criticise the spending departments with a refreshing candour. More and more in his work as Auditor is he concerned with efficiency—with

A statutory appointment.

Auditor-General in England.

the merits as distinct from the regularity of expenditure. He cross-examines the accounting officers on all the points where payments appear to him questionable, and as a result of his examination and enquiries he is often able to detect cases of waste and extravagance. All glaring lapses of spending or instances of misspending are quickly brought to light by his audit. He has neither the material nor the specialised knowledge required for such criticism. But in spite of this limitation his examination of expenditure is of great value, and is an important factor in the prevention as well in the detection of extravagance. There is yet another point. Should he discover anything wrong, should he find some department or member of the Government breaking the law, he should report to the Speaker, who would tell the House of Commons. A Civil servant, in similar case, would have to go to his political chief, himself a member of the delinquent government: the Comptroller and Auditor-General goes over the head of any government, straight to the House of Commnos.

Value of his examination.

Auditor-General in India not armed with full powers.

The Auditor-General in India is not so fortunately situated, nor is he armed with all those weapons and powers with which his English compeer is invested. The Auditor-General in India is appointed, as we have seen, by the Secretary of State in Council under rules framed on the 4th of January, 1921 whereby his salary is fixed at Rs. 5,000 a month without liberty on vacating office to be entitled or eligible to any other post under the Crown in India. He is the final audit authority in India and is responsible for the efficiency of the audit of expenditure in India from the revenues of India. In the discharge of his duties the Auditor-General has authority to inspect, either personally or by his deputies any office of accounts and audit in India and to arrange for test audit in any of them. As Auditor-General he passes

Test Audit.

orders as regards the conduct of business within, and the distribution, organisation, and discipline of the offices of accounts and audit in India, other than those which form part of an excluded audit department, by which is meant a department in charge of the accounts and audit of the transactions of the military departments in India, and any other specialised audit department which the Secretary of State in Council has declared to be excluded. The excluded audit department however, is not altogether removed from the reach of his long arms for he may always require such a department to arrange for submission of accounts to him in such form and at such time as he may prescribe. As administrative head of the Indian Audit and Accounts Service, he has a double set of functions to discharge; one in relation to audit and the other in relation to accounts. In connection with the former, his functions include what may be styled canons which enjoin upon him to see that every public officer in India exercises the same amount of vigilance in the expenditure of public money which a person of ordinary prudence exercises in respect of expenditure of his own money, and that, he sanctions no expenditure which directly or indirectly enures to his own advantage. Among other canons to which he is empowered to require obedience, the more important are that he shall strictly scrutinise every expenditure by an officer, which may involve further expenditure, beyond that officer's powers of sanction at a later date, and that allowances whether travelling or otherwise, to officers are fixed on such a scale as not to constitute a gain or source of profit to the recipients thereof. In the event of any breach of any of these canons on the part of any authority or officer, whether of the Central or of the Local Government, he is deemed to have discharged his duty when he has drawn the attention of the Government concerned to the breach,

Departments excluded from his audit.

His control over them.

leaving the Government interested to take such notice of it as they like. It rests entirely with the Auditor-General to decide whether the audit should be carried on in his own office, or in the office where the accounts to be audited originated, as well as to decide, in the event of difference of opinion between his department and the government, in respect of any expenditure not obviously covered by a grant, to require them to obtain the requisite sanction, or, in default to order the recovery of the amount under objection. Unlike the Comptroller and Auditor-General, the Auditor-General in India submits his report upon the expenditure of public revenues in each year to the Secretary of State, in whom the revenues of India under the law are vested, through the Governor-General in Council. This only for their information, for the Governor-General in Council is not empowered to withhold transmission of the report to its destination. The Auditor-General has the supreme voice in all matters of transfer, suspension or degradation of officers of the Indian Audit and Accounts service below the rank of a first class officer with respect to whose transfer his orders are held good when approved by the Governor-General in Council. All officers in that service other than those appointed by the Secretary of State in Council or the Governor-General in Council are liable to be dismissed by him for sufficient cause. His functions in relation to accounts are not less important, for accounts all over India have to be kept according as he directs and in the forms suggested by him. He lays down rules which prescribe the heads under which the respective expenditures have to be allocated. He compiles the annual revenue accounts of the entire country for submission to the Secretary of State in the form prescribed by the latter.

To whom the Auditor-General makes his report.

Powers and functions of the Auditor-General.

(*b*) *Audit System in India.*

Effective Financial control is the audit of accounts.

Audit of accounts is an agency of effective financial control in India as in all other countries, and it is, as Sir Guy Fleetwood Wilson once said from his place (as Finance Minister in 1913), in the Old Council, " the only way to ensure honest and sound finance " is to subject " the expenditure to the searchlight of independent " scrutiny and criticism. With this object in view, the Audit Department in India is organised in four main divisions of Civil (with which the Public Works is incorporated since) audit, the Military audit, the Railway audit and the Posts and Telegraphs audit, each in charge of an Accountant General. In open defiance however, of this honest and healthy principle, the authorities of the Railway Board, supported by the Government of India have made successful attempts to separate the Railway audit from the General audit, just as in the past, they succeeded in separating the Railway Budget from the General Budget. That was but the thin end of the wedge, whose ultimate objective was to remove the Railway funds from the control, such as it is, of the Assembly, and the strict scrutiny of the Auditor-General, in place of which provision for a specious compensation and safeguard in the form of " internal audit " has been offered. Under the new dispensation the Auditor-General is not permitted to do more than carry on "test audits " by his own staff, by way of consolation. The time-honoured pre-audit is done away with, thus removing the only check there was on unauthorised expenditure of Railway funds. The duplication of the process, namely, the internal audit and the Auditor-General's test audit, is a cumbersome procedure which makes for the creation of a large number of highly paid

Railway department removed from the purview of the Auditor-General to whom consolation by way of test audit is given.

offices. The object of the separation of the Railway audit, the Members of the Assembly, when the matters were under discussion, suspected and openly alleged to be no other than an attempt on the part of the Railway authorities to keep from public view any indiscreet expenditure, and occasionally of disappearance of Railway funds forming part of the General Revenue of India.

Auditor-General is the highest Civil and Military audit authority in India.

Except the Military Accountant-General, they are all direct administrative subordinates of the Auditor-General, who however, is the highest audit authority in India of military and civil accounts alike. Thus constituted, the Audit Department has charge of the audit of receipts on account of Railway, Posts and Telegraphs, Customs and Public Works, of the audit of Stores and Stock in which proper attention is paid to the purchase of articles under lawful authority and sanction for stores, and their entry in the stores accounts, to the fact that the prices paid for them are duly entered and that, they agree with the contract or accepted tender rates as the case may be, that no store has been issued except upon proper vouchers, and that the stock in hand tallies with the balance in the books. It is however, the audit of expenditure which is an important factor in the control over the finances of India. The main purposes of audit of expenditure are, to ensure what have been admirably summarised in the excellent work of Mr. P. K. Wattal, himself a distinguished officer in the Indian Audit and Accounts Department the " System of Financial Administration in India "—

Main purposes of Audit.

(*a*) " that the expenditure has been incurred by an officer competent to incur it;

(*b*) " that the expenditure has received the sanction, either special or general, of the authority competent to sanction it;

(*c*) "that, if it is votable expenditure, it is covered by an appropriation from a grant sanctioned by the Legislature, by re-appropriation within such a grant, or by a supplementary grant sanctioned by the Legislature;

(*d*) "that, if it is non-votable expenditure, there is provision of funds, sanctioned by a competent authority to cover it;

(*e*) "that payment has, as a fact, been made, and has been made to the proper person, and that it has been so acknowledged and recorded that a second claim against Government on the same account is impossible;

(*f*) "that the charge is classified under the correct head of account, and

(*g*) "that the expenditure does not involve a breach of the canons of financial propriety."

And the canon of financial propriety has been held to be that which an honest man of prudence would do in dealing with his own affairs, principal among them being that, he shall not sanction any expenditure to benefit himself directly or indirectly and that, he will sanction none for the benefit of a particular person or section of the community.

(*c*) *The Audit System—a Comparison.*

Difference between the audit system in England and India.

It will thus be seen that a fundamental difference exists between the audit system in India and the audit system in England. There the Comptroller and Auditor-General makes his report to the House of Commons which in financial questions is supreme, to the exclusion of the other limbs of the legislature, namely, the Crown

and the Lords. In constitutional countries, finance is the affair partly of the legislature and partly of the executive. The legislature authorises expenditure and imposes taxes while the executive collects the money and pays the bill. That in short is the theory, but the practice in the United Kingdom is different, and is, as I have here indicated, for, passing through the various stages of constitutional development and the people's control over the national purse, commencing from the exercise of the King's prerogative of taxation which came after considerable struggles to be curtailed and mutilated by the Magna Charta, until totally annihilated by the Bill of Rights, which secured to the Lords and Commons the sole authority over taxation, the House of Commons has secured to itself the sole right of taxation and of its expenditure. Here again I may remind you, that the House of Lords for a long time claimed equal control with the House of Commons over finance until 1860, when for the first time that right of the upper house was challenged by Mr. Gladstone. The matter did not come to a issue then. But it was under an evil star that the Lords claimed their right to veto the Finance Bill of Mr. Lloyd George in 1909. In grim earnestness Mr. Asquith took up the question and carried his Parliament Act of 1911 which for all practical purposes deprived the House of Lords of all power ever finance. It is therefore, observes Mr. Hills, at one time Financial Secretary to His Majesty's Treasury, "an anachronism to talk of the control of Parliament over finance: the control is that of the House of Commons alone." It may be argued therefore, that to talk of the power of the House of Commons is almost as misleading, for, over expenditure it has little power against the government. Its power over it, in theory, is absolute; in practice it is slight. A private member of the House of Commons can criticise expenditure or move to reduce

House of Lords deprived of powers.

it. He cannot move to increase it or to authorise a new commitment, any more than he can divert the course of a grant. He may criticise a tax or move for its reduction, but he cannot move to increase it or to levy a new one. This is the right, the prerogative of the government alone. It will be remembered that even in India also we follow the same rule which is founded on sound financial sense but it gives governments, in the case of England, immense power over the House of Commons, which is further enhanced by the fact that governments in all countries having a constitutional administration treat questions of expenditure as matters of confidence, any disagreement in respect of which would assuredly be regarded as tantamount to a want of it, leaving the Government the honourable alternative of having to resign. The apprehension of such an event would have the indirect effect of overriding the decision of the House where the supporters of the government are always reluctant to turn it out of office. In practice therefore, the House accepts the financial proposals of the government. Thus though it is theoretically permissible to point to the divided function of legislature and executive, the former allowing the expenditure and levying the impost, the latter collecting the cash and paying it out, the whole truth about the English system is not told, unless at the same time it is explained what the legislature means, and shown what the power of the government over it is. As the executive therefore, they dominate the legislature and their power over expenditure is supreme though their power over taxation is less absolute.

Members cannot alter a budget to enhance a grant.

Control of the Government over the legislature.

PART X.

(a) *The Public Accounts Committee.*

Public Accounts Committee.

The functions of the Public Accounts Committee is, to quote Professor Bastable, "to secure conformity to the determinations of the legislature." The Controller or Auditor-General of old was an officer of the Government of India. Always a member of the Indian Civil Service who had spent a considerable part of his service in the Accounts Department as Provincial Accountant General, he was a nominee of the Government of India and appointed as such by the Secretary of State for India by an order in Council. As an officer of the Government of India, not unnaturally would he look to higher offices and higher emoluments from the Government he served, and not infrequently was he preferred for such appointments at the hands of those whose accounts he was called upon to check, and upon the state of whose accounts he was invited to offer his comment. No arrangement could have been more objectionable, and the framers of the new constitution were resolved upon putting an end thereto, by making the office of the Auditor-General a statutory appointment to be made by the Secretary of State in Council, and to be held during His Majesty's pleasure, so that, the Auditor-General of to-day, has nothing to be afraid of from the powers of the Government of India, whose accounts he is in a position to fearlessly criticise, nor any favours to hope for from them, for he has been legally disqualified, after vacating office, from holding any other office under the Crown in India. The office under the present constitution is a particularly difficult one and calls for the display of uncommon high-mindedness, courage and

Auditor-General of old.

Old order of things changed for the better.

firmness as well as marked ability. The independence of the Auditor-General is quite rightly secured under the constitution so that he is responsible not to the Government of India, but to the Secretary of State for India. The nature and conditions of his work have perhaps inevitably brought him into conflict with the Government. On more than one occasion the last incumbent of the office, Sir Frederic Gauntlett, had to assert and emphasise the independence of his position, notably, not very long ago, when the Government of India rejected certain of his proposals and he had to seek the intervention of the Home authorities for, as he believed, the decision of the Government might hamper the course and efficiency of his audit. The reports of his department always form the basis for the enquiry and scrutiny of the Public Accounts Committee, a statutory body owing to the vigilance and labours of which, the taxpayer in India, may be sure that lakhs of his money are saved every year. The Auditor-General may be said to be the educator of the Public Accounts Committee whose grateful appreciation of, at any rate Sir Frederic Gauntlett's efforts, in the interest of India is quite refreshing.

Auditor-General an independent officer.

His reports to the Public Accounts Committee.

" In view of Sir Frederic Gauntlett's impending retirement " recorded the committee, and of the fact that this is the last session of the Public Accounts Committee that he will attend in his capacity as Auditor-General in India, we desire to place on record our great and genuine appreciation of the very valuable service which he has consistently rendered ever since the public Accounts Committee was instituted—service not only to the Public Accounts Committee but also to the Legislature and the Executive Government.

" Sir Frederic Gauntlett, by his devotion to his duties and by his able maintenance of efficiency and independence of Audit, has done much to strengthen the

financial control of public expenditure and, by advice and guidance which he has at all times generously given, he has greatly assisted the Public Accounts Committee in developing the exercise of its functions and in fulfilling the important part assigned to it under the constitution."

(b) *More about the Public Accounts Committee.*

To return to our topic. The Public Accounts Committee is a Committee of the Assembly or of the local Council, in both cases appointed at the beginning of the session. It consists in the case of the Assembly of twelve members including the Finance Member as Chairman, of whom not less than two-thirds are elected by the non-official members according to the principle of proportionate representation by means of single transferable vote and the remainder nominated by the Governor-General, and in the case of the local Councils of such number of members as the Governor may direct, the principle of election and nomination being identical. Its task is to deal with the audit and appropriation accounts of the Governor-General in Council in the one case, and the provinces in the other, and such other matters as the Finance Department may refer to the Committee. Its Chairman is always the Finance Member himself, unlike in England where he is generally a distinguished representative of the opposition, often a former Financial Secretary to the Treasury. Its service is onerous but sought after, a tradition which has been created by the genuine efforts of Sir Frederic Gauntlett, the first statutory Auditor-General in India. Many distinguished men have sat on it. Party differences affect it little. Meeting year after year, sitting in private, withdrawn from

Appointment of the Public Accounts Committee.

Chairman of the Committee.

clamour and publicity, its members acquire a sense of corporate responsibility and corporate self-respect. In England it was instituted in 1861 by Mr. Gladstone, and is reappointed every January or February when the session begins. As in England so in India its work is perhaps the most valuable part of the legislative control of finance. True, as appears from the proceedings of the committee at Simla and Delhi, it does not sit till long after the money has been spent, but it certainly renders future misfeasance difficult, if not altogether impossible. Its business is to see that money voted by the Assembly has been spent within the scope of the demand granted by the Assembly, and to bring to its notice every re-appropriation from one grant to another grant, every re-appropriation within a grant which is not made in accordance with the rules made by, or applying to the functions of, the Finance Department, and all expenditure which the Finance Department has requested should be brought to the notice of the Assembly. In the provinces it has moreover to look into every reappropriation which has the effect of increasing the expenditure on an item the provision for which has been specifically reduced by a vote of the Council. In short, its business is to see that all legislative grants, including supplementary grants, have been applied to the objects which the legislature prescribed. But in reality it does more. It looks into causes as well as consequences. It may censure improper expenditure as well as improper accounting. It exposes waste and inefficiency. It has before it the reports of the Auditor-General, and with these in view it carefully examines the accounts, administering advice, reproof and even punishment should it be necessary. The Auditor-General sits with it. Disagreements are rare, either among its members, or with the Auditor-General (or with his lieutenants, the Accountants General in the

Valuable work of the Committee.

Functions of the Committee.

provinces) or with the Finance Department. It can call for any papers and examine the Accounting Officers who, having signed the appropriation accounts, are responsible for their correctness. The Public Accounts Committee may question them as to the expenditure of the grants in their charge, and the Accounting Officers have to justify and explain the payments made by their departments. It will be remembered that they are themselves personally responsible for all expenditure from the grant, and unless some payment has been authorised by their superior against this advice and in the face of their written objection, the blame for misapplication or misspending of public money falls on them. This is a point which has not yet been fully and clearly realised by legislators in India, and the sooner they do it the better it is for better financial control. The practice of appointing a high officer, often the permanent head of the department, as accounting officer is of great assistance to the examination of the Committee for, such a person is conversant with the policy of the department and knows the reason why the adoption of a particular course of action was rendered necessary. He can put the case of the department with knowledge and understanding. In addition to the examination of the Accounting Officers, the Committee can call any other witness and examine him personally. Such examination must be a most unpleasant ordeal for the official concerned.

Powers of the Committee.

Committee should be re-organised.

Up to this point the Indian legislatures travel along with the British House of Commons. What transpires hereafter in the House has been described by a competent critic. "When it has finished its scrutiny," observes Mr. Hills, "the Public Accounts Committee reports to Parliament. These reports are exceedingly frank and plain spoken. On their receipt, there are two ways in which the sinner may be brought to book. The report

Parallel case with English practice.

can, and should, be discussed in the House of Commons. Very seldom is it discussed. Want of time, lateness in the session, the fact that the misdeeds disclosed are ancient history, and the natural wish of governments to escape blame, all tend to prevent it, and this way is little used. But there is another, very effective and always used: Treasury censure. The Treasury do not spare the rod. The Committee's reports are driven home with force and energy. A Treasury Minute, reporting what action has been taken, is presented to Parliament. The Treasury have probably been preaching the same sermon before, but their hearers have not listened. Now it is not they who thunder, but the mighty House of Commons." The procedure in our legislatures does not approximate the practice of the House of Commons described above, and in view of this fact and with the object of gaining further opportunity of discussing their reports the Pubilc Accounts Committee of the Assembly in their latest report recommend that their "report might be treated on the lines on which the King's Speech is dealt within the House of Commons. The motion for the Address to the King is not touched, but criticism or suggestion as to the Government's policy is always added as an addendum.

Procedure in Indian Legislature.

"The motion in the case of the Public Accounts Committee report might be that 'This House adopts the reports of the Public Accounts Committee and recommends to the Governor-General in Council to give effect to its proposals, in particular to the following (or with the following modifications); or, conveys to the Governor-General in Council its regret that, etc.'"

And even if the recommendation were acceded to would it improve matters? With all its powers over finance, with all its powers to pass judgment on the financial policy of the Government and to make it effec-

Has the House of Commons any effective control?

tive can it be said that the House of Commons has any substantial control over the way—inefficient or economic—in which public money is spent? I may invoke the authority of Sir Edward Hilton Young, one of the ablest of Financial Secretaries to the Treasury, to say that the House of Commons does not supervise expenditure in detail and that is borne out by the fact that half the yearly estimates are passed undiscussed. "Once the estimates have been published the taxpayer's fate is sealed." With the recommendation given effect to, would the Assembly be in a position to judge whether contracts are placed too high, whether labour costs are excessive, or whether any office is overstaffed? For the efficient solution of such problems and for the economy of day to day administration, one must rely upon the departments themselves and on the control of the financial department. Within the departments economy mainly depends on three persons,—the Member-in-Charge, the Secretary or the head of the department, and the Accounting Officer, who may or may not be the permanent head. Perhaps the Member-in-Charge has least influence over economy. It may be thought what has been very aptly put by Mr. Hills "that he bears the same relation to his Permanent Secretary as the board of directors of a big enterprise bear to their business manager, and if the one system results in efficiency and economy, why should not the other? But this analogy, as do all analogies between government and private enterprise, breaks down at the start, for a board of directors have two powers which do not belong to a minister. They can judge their manager's work by the definite measure of money profit: government offices produce no profit. They can dismiss their manager: a Civil servants' rights are, quite properly, protected more strongly. Therefore, though the influence of an able, broad-

Analogy between Government and private enterprise.

minded and experienced man of affairs at the head of a government office may be immense, though he may exercise a great power for good over the whole of the staff under him, he has neither the measure nor the control which an ordinary employer possesses." Consequently economy must be left entirely to the permanent head of the department who should be moved by two influences, an honest and inspiring belief in the importance of his office, and the desirability of extending its beneficent activities, and a warm and earnest desire to economise. Without the first he cannot be said to be inspired, without the second he must be condemned as expensive. His action is the resultant of the two conflicting attractions. If the permanent head is competent and so inclined, he has considerable scope for making the expenditure of his department efficient and worthwhile. But there is no measuring rod wherewith to judge him, and much must depend on the initiative and personality of the individual.

(*c*) *The Report of the Public Accounts Committee.*

Whatever may have been the fate of the report of the Public Accounts Committee in the past we owe it to the present Finance Minister, Sir George Schuster, who is more than ever eager that it should be an effective report exercising a potent influence upon the spending powers and financial arrangements of the Government. With that end in view he got the Committee to consider three definite proposals, namely :

Proposal of the Committee.

(*a*) That on a motion that the report be taken into consideration there should be general discussion on the report as a whole, analogous to that which takes place at the general discussion stage of the Budget;

(*b*) That, in addition, or possibly as an alternative to a motion that the report be taken into consideration,

there should be afforded to the Assembly an opportunity to discuss, on definite resolutions moved, special topics referred to or recommendations made in the report;

(*c*) That after the motion that the report be taken into consideration, there should be a further motion that the report be adopted and that it should be open to the Assembly to demand a vote upon the amendments moved to the report.

Upon these proposals the Committee recommended certain functions to be discharged by the Assembly.

(*d*) *Assembly's Functions.*

What the Assembly should do?

"We have, in the first place, given our very careful consideration," says the report, "to the course outlined in paragraph (*c*), which according to the report of the last conference of Presidents and Deputy Presidents of Provincial Legislative Councils, was the line of procedure favoured by that conference. We must, of course, attach considerable weight to such a recommendation, but nevertheless we venture to express the view that there are serious objections to this course if it follows the exact form suggested above.

"It seems to us that it would, in practice, mean that the Legislative Assembly must commit itself either to accepting or rejecting '*en masse*' every one of the recommendations made in the long report embodying opinions and recommendations on perhaps a hundred points of a varying nature, or that the Legislative Assembly should have power to amend the report, in which case it would cease to be the report of the Public Accounts Committee.

"As to the latter alternative, we think that the function which the Legislative Assembly would wish, and indeed ought to exercise, is that of calling the attention of the Executive Government to matters arising out

of the report to which it attaches special importance and to action which it considers ought to be taken on the Committee's recommendations, rather than that of making actual amendments in the text of the report which, as indicated above, when once made must remain in existence and cannot be unmade.

(e) Amendments Unnecessary.

"It must, of course, be open to the Legislative Assembly to criticise the recommendations of the Committee, but for this purpose it is not necessary that amendments should be moved to the report itself; nor does it seem to us that such action would be appropriate.

"For these reasons, we have felt that the choice should lie rather between courses (*a*) and (*b*).

"There is much to be said on both sides. It must be remembered, in the first place, that the time available for discussion will inevitably be limited (probably to one day), and a question of practical importance is how this limited time can be employed to the best advantage. Further suggestions.

"On the one hand, it may be argued that a general discussion would probably make it possible to cover more ground and bring to light practically all the points to which members of the Assembly attach importance; while, on the other hand, it may be said that discussion focussed on a certain specific recommendation would be more effective, particularly if this took the form of a debate on definite resolutions on which members could express their opinion by voting.

(f) Experimental.

"The opinion of the Committee on the choice between these two alternatives has been divided, but we

are all agreed," continues the report, " that it is desirable to avoid fixing any procedure without ascertaining the views of the Assembly."

Procedure to be altered in the light of experience.

" We further consider that whatever form of procedure may be adopted, at the outset it should not be regarded as rigid and unalterable, but rather as experimental, so that it can be varied in the light of practical experience."

" Subject to those reservations, we put forward the following proposal, *viz.*, that as a practical step it would be best at the outset to establish a convention analogous to that which is observed in settling the order of priority for the discussion of demands for grants during consideration of the Budget. We think it might be possible for each Party to consider the procedure which they wish to have adopted as a matter for special decision. If, for example, the general view in connection with a particular year's report is that it contains recommendations which deserve special and individual discussion, the procedure contained in alternative (*b*) could be adopted for the year and the choice of subjects taken and the order of priority as between them could be settled in the same way as is done in the case of demands for grants."

(*g*) *Likely to vary.*

" On the other hand, if, as is quite possible, on another occasion the balance of opinion is in favour of no more than a general discussion the procedure provided for in alternative (*a*) would suffice.

Form of discussion.

" We think, indeed, that the form of discussion which is desirable is likely to vary according to the nature of each report. But in any case, if the recommendation which we have made above is accepted, it will provide an elastic method of procedure which, after

a few years, is likely to crystallise into a regular and accepted form which has been approved by experience to be appropriate to actual requirements.

"We believe that this procedure would secure substantially the same object as that aimed at by those who have advocated alternative (*c*)."

"We wish to record, however, that we have also considered a further suggestion which approximates more closely to that alternative and which, if a suitable working convention could be established, might be adopted, involving the objections to which we have called attention above. We think, therefore, that this further proposal should also be considered by the Legislative Assembly."

(*h*) *Commons Model.*

"This further proposal is that the report might be treated on the lines on which the King's speech is dealt with in the House of Commons. The motion for an address to the King is not touched but criticism of suggestion as to Government policy is always added as an addendum. The motion in the case of the Public Accounts Committee's report might be that this House adopts the report of the Public Accounts Committee and recommends to the Governor-General in Council to give effect to its proposals in particular to the following (or with the following modifications, or conveys to Governor-General in Council its regret that, etc.). Practice followed in the Commons.

"If this procedure is followed, the objections to which we have called attention above in discussing the third alternative would not arise, provided that it is established as a regular working convention that the adoption of the report is automatic and that the recommendations

made by the Assembly take the form of an addendum. In fact, subject to this convention, the procedure would not differ very materially from the other suggestion which we have made, and we suggest that it should be worked on the same plan, so far as concerns the settling of special points which would be selected each year for consideration."

It will be seen that the advantages and disadvantages of the proposals are discussed by the Committee who are agreed that certain conventions obtaining in the House of Commons in relation to the report should be established, principal of them being, as I have observed before, that the report should be treated as the King's speech is treated by the Commons, so that it may be formally adopted as a matter of course, while policy is decided on motions arising out of it.

PART XI.

(*a*) *The Currency Administration.*

The Paper Currency.

The Indian currency at the present moment consists of two kinds of token, paper notes and silver rupees, which are mutually convertible. The paper note is in form a promise by the Government of India to pay to the bearer on demand a specified number of rupees, each one of which is a silver coin of specified grain in weight and fineness. In addition to these two kinds of token there are also sovereigns which by statute are legal tender for Rs. 10, and the Government is under an obligation to pay Rs. 10, when sovereigns are presented for encash-

ment. As, however, the price of gold is considerably above this parity, the sovereign has disappeared from circulation and is not issued by or tendered to Government. The value of both forms of token currency in relation to sterling is at present being maintained between the gold points corresponding to a gold parity of 1*s.* 6*d.* Coins are issued under the authority of the Indian Coinage Act and the Currency notes which are of the denominations of Rs. 5, Rs. 10, Rs. 50, Rs. 100, Rs. 500, Rs. 1,000 and Rs. 10,000 under that of the Indian Paper Currency Act. Until recent years the silver rupee was the main medium of exchange and the circulation of currency notes outside large towns was comparatively small. During the Great War, however, when there was a shortage of silver rupees, the use of currency notes, especially those of small denominations, was encouraged in every possible way, and notes have now to a considerable extent been substituted for silver rupees as the common medium of exchange. The rupee and the silver half-rupee are legal tender up to any amount and the subsidiary coins are legal tender for a sum not exceeding one rupee. Sovereigns and half-sovereigns are legal tender up to any amount at the rate of Rs. 10 to the sovereign.

Notes substituted for silver.

There are six Currency offices of issue in India, at Calcutta, Bombay, Madras, Rangoon, Lahore, Cawnpore and Karachi, and the Government is required by law to give rupees in exchange for universal currency notes, namely for Rs. 10, 50 and 100, at any of these places and for non-universal notes, namely of the denominations of Rs. 500, 1,000 and 10,000 at the particular Currency office from which they respectively are issued. In order to encourage the use of notes, however, Government has issued orders that currency notes should be

Currency offices in India.

cashed freely at any Government treasury or branch of the Imperial Bank of India, whenever this can be effected without unduly reducing the stock of rupees at a treasury or branch of the Bank, and the officers of the Currency Department have instructions to see that a sufficient stock of rupees is kept at each treasury and branch of the Bank to provide for exchanges of currency notes presented by the public.

Provisions of the Currency Act.

Under the Indian Paper Currency Act the amount of currency notes in circulation at any time may not exceed the amount of the metallic reserve together with the amount of the securities reserve, and also should not exceed twice the amount of the metallic reserve. The metallic reserve is represented by the total value of the sovereigns, half-sovereigns, rupees, silver half-rupees and gold and silver bullion, held for the time being on that account by the Secretary of State for India in Council, and the Governor-General in Council while the securities reserve consists of securities held by the Secretary of State for India and the Governor-General in Council, and must consist of securities of the United Kingdom, and securities of the Government of India, the amount of the latter being limited to two hundred million rupees. The portion of the securities reserve held in India is kept in the custody of the Controller of Currency and the portion of the metallic reserve is held partly in Currency offices, and partly in currency chests which are maintained at every treasury and at most of the sub-treasuries.

Mobilisation of Funds.

The mobilisation of funds between treasuries and sub-treasuries and branches and Local Head offices of the Imperial Bank of India is effected for the most part through the medium of the currency chests in which notes not in circulation within the meaning of the Paper

Currency Act are held, while coins held in a currency chest are a part of the reserve held by the Government against notes which are in circulation. A deposit of coins or notes in a currency chest thus enables Government to issue notes elsewhere up to the amount of the deposit without exceeding the limits of circulation laid down by the Act. If, therefore, a transfer of funds from the treasury balance at A to the treasury balance at B is required, this can be effected at short notice, and without the actual remittance of coins or notes by transferring money from the treasury balance to the currency chest at A, and transferring the same amount from the currency chest to the treasury balance at B. In this way transfer of funds between places where there are currency chests is effected without the actual remittance of coins or notes; and this is the normal method of putting branches of the Imperial Bank of India, treasuries and sub-treasuries in funds, and removing surpluses accumulating thereat to headquarters. The stock of currency notes and coins kept in a currency chest varies according to the needs of the respective districts. Remittances are made periodically from currency chests to Currency offices, and *vice-versa*, in order to keep the stocks at the necessary figure.

Facilities given by Government for transfer of money.

In addition to providing funds for Government payments at treasuries, Government gives facilities to the public for the transfer of money to and from places where there are Government treasuries. Under its agreement with the Government of India, the Imperial Bank of India gives every facility to the public for the transfer of money between places where it has branches at rates not exceeding those laid down by the Controller of the Currency, and the facilities for the transfer of money given by Government are limited to transfer to and from treasuries

where there is no branch of the Imperial Bank of India. The public can obtain telegraphic transfer or bills payable on demand, called supply bills. Telegraphic transfers are always paid from currency and adjusted through the accounts of the Currency Department. Supply bills are paid from the treasury balance and adjusted through the ordinary Government accounts. And the provision of Funds in London to meet the large payments which the Secretary of State for India has to make in England is an important part of the *ways and means* operations of the Government. The annual exports of India are generally in excess of her imports, and ordinarily there is a large demand from the public for remittance from England to India to adjust the value of the net exports. To meet this demand and at the same time to place himself in funds, the Secretary of State for India sells Council Bills and Telegraphic Transfers payable at Calcutta, Madras or Bombay. Usually a stated amount of these Council Bills and Telegraphic Transfers is offered for sale by competitive tender weekly and the rate each week is, within certain stated limits, determined by the public demand for remittance to India.

Council Bills and Telegraphic transfers.

It is the Controller of Currency who is responsible for the due performance in India of all the duties described above. In Madras and Burma the local Accountants General act as his deputies, but for other provinces there are Deputy Controllers of Currency unconnected with the accounts offices.

(*b*) *The Treasury at Work.*

The personnel of a district treasury consists of :

(1) The Collector or Deputy Commissioner of the district, according as the district is regula-

tion or non-regulation the distinction between which we have noticed before.

The District Treasury organisation.

(2) The Treasury Officer is generally a Deputy Collector. In non-regulation provinces he is designated the Extra-Assistant Commissioner.

(3) The Treasurer.

(4) The Accountant. There are also clerks, money-testers, messengers, etc.

The Collector is in general charge of the treasury and is personally responsible for its general administration, for the correctness of its returns, and for the safe custody of the valuables it contains. He however, takes no part in the daily routine of the treasury business. Under the Collector the Treasury Officer is in immediate executive charge of the treasury and under these two officers the treasury is divided into two departments, that of cash, stamps, and opium under the charge of the Treasurer, who always has to give security, and that of accounts in charge of the Accountant. The Treasury cannot be opened for the day except in the presence of both the Treasury Officer and the Treasurer to whom the locks and seals of the strong room are made over intact by the sentry guard. The strong room is then opened, each officer using his own key when sufficient cash and currency notes to meet the probable demands of the day are taken out, made over to the Treasurer, and entered in his accounts. The strong room is then again double locked and sealed as before. Issues from the strong room to meet further demands during the day are similarly made. Stamps and opium are issued to the Treasurer

from the double lock as required subject to the general rule that the value of cash, notes, stamps and opium in the hands of the Treasurer at any time shall not exceed his security.

Practice obtaining in a District Treasury.

When one has an occasion to pay any money into the treasury he has first to procure, at the treasury, a document known as the "chalan," in duplicate, one copy to serve eventually as a receipt and the other for record in the treasury. In the "chalan" he enters the nature of the payment as well as the person or the officer on whose account it is made. He then has the entries checked, and passed by the revenue department concerned. He then takes the *chalan* to the Accountant, who, if it is in order, initials it and directs the presenter to take it with the money to the Treasurer, who, after examining the Accountant's initials, tests and counts the money, enters the transaction in his account, and signs both copies of the *chalan* in token that he has received the money. The presenter then takes the *chalan* back to the Accountant, who, on the strength of the Treasurer's signature, enters the transaction in his accounts, and completes his signature on one copy of the *chalan* which then forms a full acquittance. In all cases of receipts for sums of Rs. 500 and upwards the Treasury Officer also signs the receipts.

The Treasurer.

In the same manner, all payments are made by the Treasurer after examination by the Accountant, but only upon an order to pay signed by the Treasury Officer himself. When a bill or other voucher is presented for payment it is received and examined by the Accountant, who enters it in his accounts and lays it before the Treasury Officer, who, if it is in order signs an order for payment on it. It is then passed on, together with the

payer, to the Treasurer's Department, and the Treasurer makes the payment and enters it in his account. The voucher is stamped "paid" and retained by the Treasurer for delivery to the Accounts Department at the end of the day, when the books are compared. It must be noted that before payment the bill or voucher has to be receipted by the payee.

Work of the Treasury.

The working of the treasury proceeds in this way from day to day, and the monthly process is completed by the cash (coin and notes) present in the district treasury on the last day of the month being verified by the Collector himself, or by a responsible assistant if he should not be at the headquarters, the cash in each sub-treasury being similarly counted by the local officer in charge. An actual cash balance report for the whole district is then drawn up with which the account balance is compared. These actual cash balance reports otherwise called monthly returns have to be regularly sent to the Accountant General. They consist of lists and a cash account supported by the cash balance report mentioned. These are written up *daily* in the treasury and the vouchers are day by day numbered, arranged, and put away under lock and key. On the 11th of each month a list of payments supported by the actual vouchers is sent to the Accountant General for the payments made from the 1st to the 10th of the month; and on the 1st of the succeeding month a second list of payments with vouchers is sent for payments from the 11th to the end of the month; and at the same time a cash account is sent, accompanied by the actual cash balance report alluded to, containing the receipts of the month and working up to the actual cash in the Treasury on the last day of the month as personally counted by the Collector. The list of payments and cash account described above as

Routine work.

sent from each treasury monthly to the Accountant General represent the first stage of compilation of public accounts. They cover conjointly the whole of the public transactions of the country, including departmental accounts and debt and remittance, and work up conjointly to the cash balance of the country at the end of each month. They may be said to be the primary fabric of the public accounts of the country.

The Imperial Bank as District Treasury.

At almost every station where there is a local Head Office or a branch of the Imperial Bank of India, Government deposits its treasury balances therein. The actual procedure varies according to the agency whereby Government authorises the Bank to accept receipts or to make payments. In a Presidency town there is no treasury and therefore the Accountant General alone issues the necessary authority. At other headquarters stations of provincial Governments there are both Accountants General or Controllers and treasuries, and in some cases the Accountant General issues the necessary orders and in others the Treasury Officer. There are also branches of the Bank at stations where there are treasuries but no Audit offices. At such stations the necessary orders are issued by the Treasury Officer, the Bank sending in a daily account with vouchers to the Collector who compiles monthly accounts in the ordinary way and sends them to the Accountant General. Wherever an Audit office intervenes, nearly every demand for payment is pre-audited and unless there is a special request for cash payment, all payments exceeding Rs. 20 are made by the Audit office by cheques drawn on the Bank which sends to the Audit office a daily account with vouchers. The monthly compilation is made in the office of the Accountant General.

(c) *Audit and Classification at the Treasury.*

We have seen before how the Treasury Officer passes a pay order in writing on each bill presented for payment at the treasury, *provided it is in order*. These italicised words connote the check or audit applied at the treasury to all bills before they are paid. The Treasury Officer has to satisfy not only himself but the Accountant General that the claim is valid; and has further to prove that the payee has actually received the sum charged. He has, therefore, to see that the claim is covered by general or special orders, that the voucher is in the proper form and properly drawn up, that it is signed, and if necessary countersigned, by the proper officer, that it is stamped if necessary, that the arithmetical calculations are correct, that the amount claimed is entered in words as well as figures, that there are no erasures and that all corrections and alterations are attested by the drawing officer. To all vouchers before they are paid at the treasury is applied such general check or audit the most important features of which are that it is applied *before* payment, *i.e.*, pre-audit, and that it secures that no claims not generally and *prima-facie* admissible shall be paid at a treasury; and that all bills shall be drawn and receipted by the responsible officers, and shall be in the proper forms and arithmetically correct. While this check is an indispensable element of the general arrangements in India for preventing irregular payments from the public funds, it must not be confounded with the audit applied in the Audit offices, which is generally audit *after* payment, *i.e., post-audit,* and includes a re-application of the checks applied at the treasury as well as a detailed examination of every item of expenditure with the sanctions, orders, and codes of the different departments.

Formalities to be observed at the Treasury.

Post-audit includes further check.

The lists of payments and cash account sent monthly by a treasury to the Accountant General have the broad (major) heads of account or classifications printed on them, and the great mass of the monthly receipts and payments are entered (by totals) against these printed heads from the subsidiary registers maintained at the treasury; but a few items occur every month which do not clearly fall under any of the printed heads, and these the treasury describes in detail in the body of the cash account or list of payments and leaves to the Audit Office to classify. The Audit Office does this and at the same time makes a much more minute classification of the items already broadly classified by the treasury. To this I shall return later.

Classification made by the Audit Office.

I have already given you the personnel and the executive arrangements of a treasury, every one of which is inspected at least once a year by a Gazetted Officer deputed from the Audit Office. The Inspection Report is sent to the Collectors in two parts, one relating to matters administered by the Deputy Controller of the Currency and the other dealing with all other points. The Collector reports the action taken by him on the first part to the Deputy Controller of the Currency and that on the second part to the Accountant General. These officers bring to the notice of the Commissioner, and of the local government where necessary, all matters in which they think that the action taken by the Collector is inadequate. In matters of accounts and audit the Collector, with the Treasury Officer under him, is responsible to the Accountant General, whose instructions he is bound to obey. The Accountant General does not, however, ordinarily interfere with the Collector's responsibility for its practical working further than by the annual inspection, and by constant correspondence with

Report of inspection by the Audit Officer.

him for the removal of irregularities detected in the accounts and returns submitted. The Deputy Controller of the Currency controls the "Resource" of the treasury, *i.e.*, keeps it supplied with a sufficiency of coins and notes and, when necessary, removes surplus funds elsewhere. In all matters relating to "Resource," the Collector is bound to carry out the instructions of the Controller of the Currency.

Control of the Resources.

Part XII.

(a) Provincial Budget and Lord Mayo's Financial Scheme.

With the growth of the volume of business of the administration the supreme Government found it difficult to exercise a detailed control over expenditure throughout the Empire. The Budget system no doubt imposed a strict limit on expenditure during any year, but it was recognised that the Local Governments had their administrative and other improvements to make, to effect which they found themselves in need of more funds at the end of the year, and indeed they pressed for more. In 1870, Lord Mayo decided that larger financial responsibilities and powers should be given or delegated to the Local Governments. He made over to the major Provincial Governments the entire management of certain heads of civil expenditure such as on the administration of police, jails, medical services, registrations, roads and buildings, and printing, and assigned to each a fixed sum from which such expenditure was to be met. Any increase in outlay was to be provided for by savings on

Financial reforms introduced by Lord Mayo.

existing charges, or by the imposition of local taxes. In respect to the services assigned to them, the Provincial Governments were given power subject to certain general conditions, to create appointments and raise salaries up to an individual limit of Rs. 250 a month. This delegation obviated many petty references to the Government of India. The Local Governments had power to allot the revenue thus assigned to them at their discretion, subject to general financial rules. The expenditure was placed under a single heading, "Provincial Services," in the Budget of India, and the Government of India did not check or alter the detailed Provincial estimates. All this, of course, was subject to budget rules and to the reservation of the powers of the Secretary of State. Local Governments came to have a complete control over expenditure from all funds raised for local purposes. The introduction of the system saved, as we have observed, much petty reference and correspondence and therefore friction. It had a most chastening effect, for it led to efficient administration and made the Local Governments eager to introduce important economic improvements which otherwise might have been neglected.

'Provincial Services" in the budget.

(*b*) *Provincial Settlement of Lord Lytton—The Terms.*

Resettlement by Lord Lytton in 1877.

In 1877-79 the Government of Lord Lytton made a material alteration in the terms of the financial settlements thus concluded with the Provincial Governments. While Lord Mayo's scheme of financial decentralisation had effected a large reform, it suffered from the defect that the services in which the Provinces were given a financial interest were relatively few, and that the Local Government had no interest in developing the revenues raised through their agency. The new settlements now

made gave the Provincial Governments financial responsibility in regard to other heads of expenditure, assigning to them the financial control of services connected with general administration, land revenue, excise, stamps, law and justice; and at the same time gave them, generally speaking, the revenues raised from law and justice, excise, stamps and the license (now income) tax. But any increase over or decrease in the revenues, as they stood at the time of the assignment, was to be shared with the Government of India. The Local Governments were still, however, not interested in the development of any revenues other than those covered by the assigned heads, which were far from sufficient to meet their liabilities, with the result that their income had to be largely supplemented by fixed grants. On the other hand, in view of the finance of the Local Governments being enlarged by these settlements, Provincial receipts and expenditures were again shown in greater detail in the Imperial Budget. They appeared then under the various budget heads, but there were separate columns to indicate the distinction between Imperial and Provincial monies.

Local Governments acquire responsibility.

Prominence given to provincial receipts and expenditure in the Imperial budget.

In 1882 fresh settlements were made with the Major provinces. The receipts from customs, salt, opium, post office and telegraph remained wholly Imperial. Receipts from forests, excise, license tax, stamps and registration were divided equally between the Government of India and the Provinces; while the receipts classified under the head Provincial Rates were made entirely Provincial and Local, and the receipts from law and justice, public works and education were also provincialised. The bulk of the receipts from railways and irrigation remained Imperial. The 1882 settlements were quinquennial and accordingly the Provincial settlements were revised in 1887, in 1892 and again in 1897, without very great changes in their allocation.

Provincial Settlement of 1882.

The year 1904 witnessed an important new departure, *viz.*, the initiation of the system of *quasi*-permanent settlement.

(c) *The Quasi-Permanent Settlement of Lord Curzon.*

The *quasi*-Permanent Settlement.

The new scheme which Lord Curzon introduced was a further improvement upon Lord Mayo's if not quite a development of the same. The cardinal feature of the new scheme was that the settlements made were of a permanent character, that is to say, no definite period was prescribed for their duration. The Imperial Government, of course, reserved the power to revise or modify the assignments in case of necessity and it was expected that, that revision would not be frequent. The advantages of the new scheme of qualified permanence to the provincial settlement system were, that the periodical discussions which attend the quinquennial revision would either disappear or be confined to rare occasions. No local government would be under an inducement to expend its resources in haste and without due forethought, in order to avoid their resumption or curtailment in favour of the Imperial Exchequer. The fruits of their good management would be secured to them with reasonable approach to permanence, instead of for a short time. Their financial independence was expected to be as real and complete as was compatible with the financial relations subsisting between them and the Imperial Government. It would moreover, be possible for them to guarantee from provincial revenues the funds required for the construction of local or provincial Light Railways, which are of such urgent importance for the development of the resources of the country. Under the previous arrangement of short-term settlement any such guarantee

Encouragement given to local governments to improve their finances.

would be illusory. The *quasi*-permanent settlement undoubtedly brought some relief to the mind of the provincial governments, who could henceforward feel free to devote their energies to economic developments in certain directions and economise in others, in order to strengthen their economic position, of an interference with which they were in constant dread under the old system. Their motive for economy was not powerful enough for the reduced standard might be taken as the basis of calculations for the next settlement. If they saved money, they knew they would be deprived of it by the process of resumption of cash balances. They lived in constant feud made worse every five years, with the Government of India whose insatiable thirst for every spare Rupee in their hands, they resented but not effectively. All this was brought to a close by the settlement which Lord Curzon devised.

Quasi-permanent settlement relieved local governments of financial interference from higher quarters.

(d) *The Permanent Settlement of Lord Hardinge.*

The effect of all this, generally speaking, has been as I have described, but never conduced to any satisfaction of either side. It was thereafter reserved for Lord Hardinge to make further advance in the direction of a more satisfactory economic arrangement for which he expected some suggestions from the Royal Commission on Decentralization, who however, did not make any recommendations for a radical change. But Lord Hardinge was not satisfied with what existed, and made up his mind to allow the provincial governments freer scope to develop their own resources and economise wherever possible, with a view to enable them to save more for rainy days, and for further economic and administrative developments. In

Final stroke from Lord Hardinge.

Permanent Settlement introduced by Hardinge in 1912.

1912, he made the settlements permanent and further, observed Mr. Montagu and Lord Chelmsford, "improved the position by reducing the fixed assignments and increasing the provincial share of the growing revenues; and conferred a minor, but still important, benefit on the provinces by curtailing their intervention in the preparation of provincial budgets." That is where we stood up till the day of the commencement of the Government of India Act of 1919.

(e) *Proposals for Re-adjustments.*

With the progress of the Great European War of 1914, it was increasingly felt that England's position in her World Empire was weak, in proportion to the advance the different parts of it had made in autonomous government. Particularly so in India, where no advance properly so called had been made during nearly 200 years of active British Rule, and naturally therefore, there was neither that volume, nor that fulness of enthusiasm in her people to resolve to save the Empire at any cost, a determination which her self-governing dominions, Canada, and Australia, and South Africa had displayed. His Majesty's Government therefore, after considerable deliberation, but mainly at the instance of Lord Hardinge, who, before his retirement from the Viceroyalty of India in 1916, had put in a strong plea for an immediate change in the method of Indian administration gradually making for self-government, and of Mr. Montagu, the Secretary of State for India, made the famous announcement of August 1917, in which it was foreshadowed that provincial autonomy in India was before long to be made a reality, under which it was inconsistent any longer to keep

Hardinge puts in a strong plea for reforms before retirement in 1916.

the provinces dependent on the Government of India for means of provincial development. In pursuance of the principle of the announcement, Mr. Montagu and Lord Chelmsford in their joint report upon Constitutional Reforms, recommended that because the provinces were the main domain in which earlier steps towards the progressive realisation of responsible government could be taken, some measure of responsibility should at once be given in part realisation of their aim to give complete responsibility as soon as conditions permitted. This proposition " involves at once giving the provinces the largest measure of independence, legislative, administrative and financial, of the Government of India which is compatible with the due discharge by the latter of its own responsibilities." This policy therefore, is stamped deep on the face of the Government of India Act itself, a part of the preamble of which runs as follows :—" And whereas concurrently with the gradual development of self-governing institutions in the provinces of India it is expedient to give to those provinces in provincial matters the largest measure of independence of the Government of India, which is compatible with the due discharge by the latter of its own responsibilities." It was therefore, proposed that an estimate should first be made of the scale of expenditure required for the upkeep and development of the services which clearly appertained to the Indian sphere; that resources with which to meet that expenditure should be secured to the Indian Government: and that all other revenues should then be handed over to the provincial Governments which would be held responsible for the development of all provincial services. In detail the provincial change which was effected by the abolition of divided heads of revenue, was retained as of old; but to the former income tax and stamps were added, and to the latter land

Delegation of responsibility is the principle involved in the announcement of Aug. 1917.

Permanent services are secured.

revenue, irrigation, excise and judicial stamps. It followed therefore, that expenditure on famine relief, and the protective irrigation works, fell upon the provinces, though in the matter of famine relief, the Indian Government could never wholly renounce responsibility in the case of any failure on the part of the provinces. To insure the Government of India against any deficit, an assessment of contribution to be made by each province to the Central Government by way of a percentage of the difference between the gross provincial revenue and the gross provincial expenditure, has been made by a committee which was appointed by the Secretary of State with Lord Meston, sometime Finance Member of the Government of India, as Chairman, and Mr. Charles Roberts, sometime Parliamentary Under-Secretary of State for India, and Commander E. Hilton Young. Their suggestions formed the basis of the contributions to be made by the provincial governments to the Central Government for the year at hand, namely 1921-22, and the contributions to be made thereafter. As an equitable arrangement the Committee decided that the rate of contribution to deficit must be a certain percentage specified and invariable except at the discretion of the Government of India. As a result of their labour they arrived at a conclusion under which Madras was called upon to pay 17 ninetieths, Bombay 13 ninetieths Bengal 19 ninetieths, Punjab 9 ninetieths, United Provinces 19 ninetieths, Burma $6\frac{1}{2}$ ninetieths, Behar and Orissa 10 ninetieths, Central Provinces 5 ninetieths, and Assam $2\frac{1}{2}$ ninetieths. The actual amounts payable during the year therefore were, Madras 348 lakhs, Bombay 56 lakhs, Bengal 63 lakhs, United Provinces 240 lakhs, Punjab 175 lakhs, Burma 64 lakhs, Central Provinces and Berar 22 lakhs, and Assam 15 lakhs, making an aggregate of 983 lakhs. It will be

Contributions to the Government of India by the provincial governments settled after enquiry by the Meston Committee.

Quantum of contributions.

noticed that Behar and Orissa have been left out and having regard to the fact that it is an impecunious and insolvent government which has to exist upon the bounty of the sister provinces, an exemption has been made in its favour under Devolution Rule 18 for all subsequent years. Thereafter the questions arose, what should be the measure of advance during each subsequent year toward fulfilment of the standard contribution and in what period of time that was to be achieved. The generosity of the Committee was manifest in having made due allowance for the gradual development of the finances of the provinces and adjustment of the budget to the conditions created by the Reforms. They were moreover of opinion, that fulfilment of the standard contribution should not be unduly prolonged, and recommended that it should be reached in seven years, and that the difference between the initial and the standard contribution should be made good in six equal annual stages beginning from the second year, namely 1922-23. This decision is known as the Meston Award under which the percentage assessed forms the first charge upon the provincial revenues.

The Meston Award.

(f) *What are Provincial Revenues.*

Here it may be necessary to briefly notice the demarcation of provincial revenues as they are at present. They are (1) Land Revenues (R). (2) Excise (except in Assam) (T). (3) Stamps (R). (4) Forests (T only in Bombay and Burma). (5) Registration (T). (6) Irrigation, including capital outlay not charged to Revenue (R). (7) General Administration, of which a portion is (T). (8) Administration of Justice (R). (9) Jails and convict settlements (R). (10) Police (R). (11) Scientific Departments (T). (12) Education (T). (13) Medical (T). (14) Public Health, including capital outlay not charged

Range of provincial revenues.

to revenue (T). (15) Agriculture (T). (16) Industries (T). (17) Miscellaneous Departments, such as inspection of factories, inspection of steam boilers, provincial statistics, etc. (R). (18) Civil Works, including capital outlay not charged to revenue a portion of which is (R). (19) Famine Relief and Insurance (R). (20) Superannuation and Pensions—a portion only. (21) Stationery and Printing—a portion only. (22) Interest on ordinary debt and (23) Sinking Funds. These are the heads of account producing revenue and in considering them you will not forget that not they but the subjects have been transferred.

Heads of Revenue.		Heads of Expenditure.	
V.	Land Revenue.	5.	Land Revenue.
VI.	Excise.	6.	Excise.
VII.	Stamps.	7.	Stamps.
VIII.	Forests.	8.	Forests.
IX.	Registration.	9.	Emigration.
IX A.	Scheduled Taxes.	9A.	Scheduled Taxes.
XII.	Subsidised Companies.	14.	Interest on works for which Capital accounts are kept.
XIII.	Works for which Capital Accounts are kept.	15.	Irrigation—other revenue expenditure financed from ordinary revenues.
XIV.	Works for which no Capital Accounts are kept.	16.	Construction of Irrigation, Navigation, Embankment and Drainage works.
XVI.	Interest.	19.	Interest on ordinary debts.
XVII.	Administration of Justice.	20.	Interest on ordinary obligations.
XVIII.	Jails and convict settlements.	22.	General Administration.
XIX.	Police.	24.	Administration of Justice.
XX.	Ports and Pilotage.	25.	Jails and convict settlements.
XXI.	Education.	26.	Police.
XXII.	Medical.	27.	Ports and Pilotage.
XXIII.	Public Health.	30.	Scientific Departments.
XXIV.	Agriculture.	31.	Education (Reserved).
XXV.	Industries.		Do. (Transferred).
XXVI.	Miscellaneous Departments	32.	Medical.
XXX.	Civil Works.	33.	Public Health.
XXXIII.	Receipts in aid of Superannuation.	34.	Agriculture.
XXXIV.	Stationery and Printing.		
XXXV.	Miscellaneous.		

Heads of Revenue.	Heads of Expenditure.
XXXIXA. Miscellaneous adjustments, *between the Central and* Provincial Governments.	35. Industries. 37. *Miscellaneous Departments.* 41. Civil Works. 43. Famine Relief and Insurance. 45. Superannuation Allowances and Pensions. 46. Stationery and Printing. 47. Miscellaneous. 51A. Miscellaneous adjustments. 52A. Forest Capital outlay not charged to revenue. 55. Construction of Irrigation, Navigation, Embankment and Drainage works (not charged to revenue) in India. 60. Civil works not charged to Revenue. 60B. Commuted value of pensions (not charged to Revenue).

On this fundamental basis provincial budget in the form of a statement of the estimated annual expenditure and revenue is presented to the Council on a day the appointment of which rests entirely with the Governor. On the day the statement is made there is no discussion for none is allowed, even though, as in the Assembly, here also the provincial budget is dealt with in two stages, the general discussion and the voting of demands for grants, but on a date subsequent to that and appointed for the purpose by the Governor, the Council takes up the budget for discussion only of the general principles of it, and without a motion being moved on any part thereof at this stage. And when we remember the fact that the budget is no more or less than the proposals of the Government as to how they suggest the allocation of provincial revenues under the different heads of expenditure, it seems a sound principle not to allow at this stage any voting which begins when separate demands are made in respect of grants proposed for each department, in the arrangement

Budget procedure identical with what obtains in the central legislature.

Budget is suggestion for the allocation of provincial revenues.

of which scrupulous care is taken to keep reserved and transferred subjects distinct from each other, so as to keep votable items separate from the non-votable. As in the Central Legislature so in the local legislature an individual demand for each grant, containing first, a statement of the total grant proposed, and then a statement of the detailed estimate under each grant, divided into items is Z be granted to the local Government under the head *a*, *b*, *c*, to defray the charges which will come in the course of *c*, to defray the charges which will come in the course of payment during the year ending in March 31, 1931," the financial year all over commencing from the 1st of April following. Needless to say, that such statements are of great assistance to the Members of the Council to enable them to realise the full import of the proposals made in the budget, a condition precedent to their being able to help in the discussion of it, at the end of which the Finance Member, as of right, makes a reply before winding it up.

Beginning of the financial year from the 1st of April.

(*g*) *Voting of Grants in the Legislative Council.*

Period allowed to voting of grants.

It is on the voting of grants for which usually about a week or ten days, but under no circumstances more than twelve days, are allowed, not more than two of which being allowed to the discussion of any one demand, and allotted by the Governor for discussion, that the President is required to be firm and alert. The rules leave him no option, not even discretion. Motions, save motions for appropriation which may not be made except on the recommendation of the Governor communicated to the Council, may, at this stage, be made either to omit or reduce any grant or any item in a grant. The rule necessarily makes it incumbent on the President to close all debate when the time limit of discussion on the particular motion is reached, and summarily put it to

the vote, as to bring up all outstanding demands, if there are any, for vote at 5 P.M. on the last day of the allotted days. No motion, the purpose of which is to increase a grant or alter its destination, may be made, and none to reduce or omit a grant *in toto* is made, before all others having for their object to reduce or omit particular items which are excluded from the jurisdiction or the purview of the Council; they are, as I have had occasion to observe before, "non-votable," such as contributions payable by the local government to the Governor-General in Council, the interest and sinking fund charges on loans, expenditure of which the amount is prescribed by or under any law, salaries and pensions of persons appointed by or with the approval of His Majesty, or by the Secretary of State in Council, and salaries of Judges of the High Court and of the Advocate General. These however, are questions so fine in their nature that doubts do often arise as to whether a particular item comes under any of the categories specified above. It is the Governor then who pronounces his opinion on the doubt and his is the final word.

When motion for reduction or omission is allowed.

'Votable' and 'non-votable' decision rests with the Governor.

(*h*) *Extraordinary Powers of the Governor over Finance.*

There yet remains to be mentioned the emergency powers vested in the Executive Government of the Governor-in-Council. These have reference to cases in which he should be of opinion that an adverse vote in the Council is prejudicial to the discharge of the responsibilities he has for the administration of the subject, where he certifies that the expenditure provided for by the demand is essential for such discharge. The other case in which he has authority to

Emergency powers may supersede vote in the Council.

They have reference to the reserved subjects only not to the transferred.

exercise his unlimited discretion is where in his opinion the authorisation of an expenditure may be necesssary for the safety or tranquillity of the province. He has no such discretion in relation to subjects on the transferred side of his government, though, whether reserved or transferred, his authority to incur expenditure for the purpose of the carrying on of any department is unquestioned. In the Legislative Assembly as in the Legislative Council, excess or supplementary grants have to pass through the same process as the ordinary grant in the budget, nor does the local Council possess any greater powers to initiate or increase expenditure than the Assembly which we have already discussed.

(*i*) *Control of Expenditure of Revenue.*

Provincial expenditure controlled by Secretary of State, the Government of India, the Finance Department and the Audit Department.

Expenditure of provincial revenues is controlled first by the Executive Government represented by the Secretary of State in Council, by the Governor-General in Council, by the Finance Department and next by the Audit Department. The Secretary of State no doubt has a general power of superintendence, direction and control vested in him. This is true of reserved subjects in connection with which the ultimate responsibility to Parliament is his, but in relation to transferred subjects these powers are considerably relaxed, in that they are now circumscribed within limits which entitles him to exercise his powers for certain purposes only which we have noticed before. It is his general powers of superintendence which enable him to control the expenditure side of provincial revenues in so far as the reserved subjects are concerned. Next comes the powers of the Governor-General in Council who like the Secretary of State is deprived of all control over provincial expenditure in con-

Transferred subjects do not come under

nection with transferred subjects, subject to certain safeguards prescribed under Devolution rule 49 noticed elsewhere, and in respect to reserved subjects, retains like his official chief all the powers of superintendence, direction and control over local expenditure. The actual practice however, is very different from the principle, for the Central Government hardly ever interferes with the discretion of the local government in sanctioning expenditure when such discretion is given them. Such expenditure on the reserved side which requires the sanction of the Secretary of State have got to be applied for, and submitted through the Governor-General in Council, who, by virtue of delegated powers within certain limits, enjoys the authority to accord sanction to it on behalf of the Secretary of State in Council. The delegation leaves them no option to reject the application which may at least be forwarded and sent up for consideration with their own note thereon. In reversal of the old rule of sanction having to be prayed for by the local Government for all appointments above Rs. 500, it is settled now that they are free to entertain proposals of all new appointments creating a permanent charge up to a maximum of Rs. 1,200 a month on the provincial revenue, but not of more than Rs. 500 a month for and on behalf of the Government of India, that is to say in connection with Agency subjects.

the general rule.

In actual practice the discretion of the local government is hardly ever interfered with.

(*j*) *Finance Department always Vigilant.*

But the most effective control over provincial expenditure is that of the Finance Department which, though a reserved subject in every province, keeps both the reserved and the transferred departments alike well in hand. Its functions are of a varied nature and may best be sum-

The most effective control is that exercised by the

Finance Department.

marised as nearly as possible in the words of Rule 37 of the Devolution Rules under the Government of India Act.

(*k*) *Duties of the Finance Department.*

Duties of the Finance Department.

It is the duty of the Finance Department in charge of a Member of the Executive Council assisted by a Secretary to have charge of the account relating to loans granted by the Local Governments, and to advise on the financial aspect of all transactions relating to all such loans, and look after the safety and proper employment of the Famine Insurance Fund ; to examine the report on all proposals for the increase or reduction of taxation and borrowals ; to frame rules for the guidance of the finance and revenue officers ; to prepare estimates of total receipts and disbursements of the year ; to examine and advise on all schemes of new expenditure, to prepare the budget statement, to examine and lay the audit and appropriation report and, if found necessary, to sanction re-appropriation of grants from one head to another. None but the Finance Department is responsible for all expenditure connected with the payment of interest and Sinking fund charges, the payment of salaries and pensions of all Imperial Service officers or officers appointed by the Secretary of State for India and of Judges of the High Courts. Finally, all changes in establishments, payment of allowances and salaries, grants of lands and concessions and abandonments of revenue must be referred to the Finance Department before effect can be given to them. It is moreover the duty of the Finance Department to see that sanction of the Secretary of State is received to expenditure requiring previous sanction which I have discussed in an earlier chapter, before the Council may be asked to vote supply accordingly. This rule is departed from only where the case is an urgent one, and there

Finance Department, and the sanction of the Secretary of State.

is not enough time to obtain such sanction even by wire, in which case the Governor in Council may exercise the power of the Secretary of State, subject to an immediate submission of a full statement to him. The rules of practice do not allow any variation either in the way of addition to, or reduction from the usual establishment charges, nor may any special or personal pay or allowance be sanctioned, any more than any grant of land or assignment of land revenue, not coming under the ordinary rules of the province without reference to the Finance Department which has certain other powers of control, into the details of which we need not go now. And in the discharge of its legitimate functions the Finance Department can always count upon the support of the Audit Department which never fails to keep its watchful eye fixed upon the expenditure out of provincial revenues, within the limits of the budget, or of appropriation, and re-appropriation, for which previous sanction of the administrative department concerned must be had.

Finance Committee of the local Councils.

The control of the Legislative Council over the budget estimates, supplementary or excess grants, is no other than what I have already described in relation to the control of the Legislative Assembly over the Indian budget and its offshoots. I will not therefore, burden you with further details but shall rest content by reminding you that here, as in Delhi, it is the Finance Committee of the legislature which keeps a vigilant eye on the debit side of the budget on behalf of their electorate and therefore of the taxpayer.

(*l*) *To sum up the Budget Procedure* :

The making of the statement is usually followed by a discussion on the general principles of the budget

Budget procedure in the local Councils.

ordinarily by way of criticism and suggestions only on a subsequent date, the voting of demands for grants coming later on. The budget therefore, is dealt with by the Council in two stages, the general discussion, and the voting of demands which are ordinarily separate from one another and made in respect of the grant proposed for each department of the Government, the Finance Member having it in his discretion to include in one demand grants proposed for two or more departments, or make a demand in respect of expenditure, such as, Famine Relief and Insurance and Interest, which cannot readily be classified under particular departments. Demands affecting reserved and transferred departments are, as far as possible kept distinct, and ordinarily about a week is allotted for the discussion of the demands of the Local Government for grants, not more than two of which may be employed for discussion of any one particular demand, and at the end of the allotted days of discussion the President may put one after another every question to dispose of all outstanding matters in connection with the demands for grants. He may act likewise in respect of any particular demand at the end of the two days' discussion of it.

The discretion of the Finance Member.

Appropriation of grants—reduction or omission of grants.

At this stage motions for appropriation only upon the recommendation of the Governor communicated to the Council, or for the omission or reduction of any grant or any part or item of it, the effect of which is not to increase or alter the destination of an entire grant, are taken up only when those for the omission or reduction of individual items in it are discussed and exhausted.

When the Local Government or the Governor exercises the power given him under section 72 D, clause 2 proviso (*a*), in regard to a demand appertaining to a reserved subject which, or any part of which, has been

rejected, or omitted or reduced, and restores it to its original position under his certificate that the expenditure provided for by the demand is essential to the discharge of his responsibility for the subject or under proviso (*b*), that the expenditure is in his opinion necessary to meet an emergency, for the safety and tranquillity of the province, or for the carrying on of any department, the Finance Member of the Government is required, as soon as possible after the date of certification in case of (*a*), or his authority in case of (*b*), to lay before the Council a statement showing the action taken by the Local Government, together with a copy of the certificate or the authority given or obtained. On this no motion can be entertained. A motion for a grant in excess of that originally sanctioned on the budget, upon the happening of the actual event or the incurring of the actual expenditure, is treated as if it were a demand for a grant, just as much as a supplementary or additional grant, which is an estimate meant to supplement the insufficiency of a budget grant for the purposes of the current year, or to supply a need arising during the current year for expenditure, for which the vote of the Council is necessary upon some new service not contemplated in the budget for that year.

Governor's power to restore rejected grants.

(*m*) *The Joint Purse—what it is.*

Funds to meet the expenditure of the two sides of the Government come out of what is known as the "Joint Purse," as opposed to the "Separate Purse," by which is meant that certain sources of revenue are allocated to reserved, and certain sources to transferred subjects, and which was suggested from some quarters ought to have been adopted as the basis of the provincial financial

"Joint Purse" and "Separate Purse."

system. The Joint Parliamentary Committee gave much attention to this difficult question, of the principle on which the provincial revenues and balances should be distributed between the two sides of the provincial government. I will give you their opinion as nearly as possible in their own words. The Joint Committee were confident that the problem could readily be solved by the simple process of commonsense and reasonable give-and-take, but they were aware that this question might, in certain circumstances, become the cause of much friction in the provincial government, and they were of opinion that the rules governing the allocation of these revenues and balances should be framed so as to make the existence of such friction impossible. They advised that, if the Governor, in the course of preparing either his first or any subsequent budget, should find that there was likely to be a serious or protracted difference of opinion between the Executive Council and his Ministers on this subject, he should be empowered at once to make an allocation of revenue and balances between the reserved and transferred subjects, which should continue for at least the whole life of the existing Legislative Council.

Governor may allot revenue to Reserved and Transferred departments.

(n) *Allocation of Revenues to "Reserved" and "Transferred" not approved of.*

"Separate Purse" rejected by the Joint Committee.

The Committee did not endorse the suggestion that certain sources of revenue should be allocated to reserved, and certain sources to transferred subjects, but they recommended that the Governor should allocate a definite proportion of the revenue, say by way of illustration, two-thirds to reserved and one-third to transferred subjects, and similarly a proportion, though not necessarily the

same fraction of the balances. Should the Governor desire to have assistance in making the allocation, he should be allowed at his discretion to refer the question to be decided to such authority as the Governor-General should appoint. Further, the Committee were of opinion that it should be laid down from the commencement of the new constitution that, until an agreement which both sides of the Government would equally support had been arrived at, or until an allocation had been made by the Governor, the total provisions of the different expenditure heads in the budget of the province for the preceding financial year should hold good.

Joint Committee suggests co-operation as the basis of ministerial responsibility.

They desired that the relation of the two sides of the Government in this matter, as in all others, should be of such mutual sympathy that each should be able to assist and influence, for the common-weal, the work of the other, but not to exercise control over it. The budget should not be capable of being used as a means for enabling ministers or a majority of the legislative council to direct the policy of the reserved subjects ; but on the other hand the Executive Council should be helpful to Ministers in their desire to develop the departments entrusted to their care. On the Governor personally devolves the task of holding the balance between the legitimate needs of both sets of his advisers. Here is another conundrum which is beyond human solution—that the Governor should ever suffer the transferred departments to be developed at the cost of those;—the reserved ones,—for the proper administration of which he is accountable to Parliament and therefore to the people of England upon whose opinion of him depends his future political career. Being human, he has all the frailties and weaknesses of human character, including the instinct of self-preservation and aggrandisement. The Joint Committee had no

right to expect any heroic conduct of him any more than from the popular representatives.

PART XIII

(a) *Provincial Government's Power to borrow.*

Local Governments have power to borrow.

The most important of the powers acquired by the Local Governments under the reformed system of administration is the power to borrow. The rules of the constitution have given them large powers to borrow money as well as to raise taxation on the proposal of the Council or the ministerial side of the Government. Neither however may be had recourse to, without a full conference of the entire executive Government, the Members of the Executive Council and the Ministers sitting together, the decision eventually arrived at resting with that part of the Government from whom the proposal for taxation or borrowal originated. With the sanction of the Secretary of State in Council, if of course, a loan is proposed to be raised outside India, but with the sanction of the Governor-General in Council only, if it is to be raised in India; as to amount and conditions thereof, a local government may raise loans on the security of the revenues allocated to it for the purpose of meeting capital expenditure on the construction or acquisition (including the acquisition of land, maintenance during construction and equipment) of any work or permanent asset of a material character in connection with a project of lasting public utility. The Governor-General in Council in every case will have to be satisfied that the expenditure

Sanction necessary.

contemplated to be met from current revenues, that the project is likely to bring in a revenue not less than a standard percentage he may prescribe and that arrangements have been made for the amortisation of the debt. The local government may also raise loans upon like conditions to meet any classes of expenditure on irrigation which have, under the rules in force before the passing of the Montagu Act (1919), been met from loan funds, for famine relief, for financing the Provincial Loan Account, and for the repayment or consolidation of loans previously raised, or for repayment of advances made to it by the Governor-General in Council. Every loan so raised and under such conditions shall be a charge upon the entire revenues of the province, and all payments in connection with the service of such loan shall have priority to all other payments except, 1st, the provincial contribution to the Governor-General in Council; 2nd, interest due on advances made by the Central Government out of the revenues of India to the Local Government; and 3rd, interest due on loans previously raised. Similarly, local governments are empowered, without previous reference to the Governor General, to levy for their own purpose tax on land used for purposes other than agricultural, on betting or gambling, permitted by law, on advertisements, on amusements, on any specified luxury, fee for registration and duty on succession or on succession by survivorship in a joint family and on stamps other than, but practically in excess of, what has been prescribed by the Indian legislature. Power moreover, has been taken by the local governments to authorise local authorities without previous reference to the Central Government to levy toll, tax on land or land values, on buildings, on vehicles or boats, on animals, on menials and domestic servants, on

Contribution to the Imperial Government, the interest charges of the Central Government and interests on debts previously incurred must be secured.

trades, on professions and callings, on private markets, taxes imposed in return for services rendered such as water rate, lighting rate, scavenging, sanitary or sewage rate, drainage tax and fees for the use of markets and other public conveniences, and octroi and a terminal tax on commodities imported into the local area, for the purposes of such local authority only.

(*b*) *The Loans Fund.*

Loans Fund in custody of the Government of India.

While on the subject of the power of the provinces to borrow it would be profitable to turn our attention to the latest introduction of supreme importance in the financial procedure of India under the Reforms. It is the inauguration of the Loans Fund maintained in the custody of the Government of India from which the provincial governments are entitled to borrow. We have made our acquaintance in the last section with the Provincial Loan Account which represents the loans and advances made by each provincial government to local bodies within its territorial jurisdiction for multifarious improvements of cultivation, village pasturage, co-operative banking and other activities of co-operative societies, of roads and highways in local board areas and sanitary and other municipal improvements. "Before the Reforms," says Mr. Gyan Chand one of the ablest exponents of the Indian Financial System, "the Provincial Governments received money from the Government of India for financing these transactions, which had to be repaid, and interest was paid for the amount outstanding on this account. Now the Provincial Governments have to finance their own loan transactions, but the amounts owed by them to the Government of India on the 1st of

Loan transactions of the Provincial

April, 1921, have been treated as an advance on which they have to pay interest and which have to be repaid in twelve years. It is open to any Provincial Government to repay in any year an amount in excess of the fixed instalments. The Government of India has also advanced money to the Provincial Governments since 1921, for meeting their deficits and some other heavy charges. The terms as to the interest on and repayment of the principal have to be settled in each case. These depend upon the rate at which the Central Government can borrow money. The purpose for which the loan is required and other relevant considerations have to be definitely agreed upon. The provinces can also raise loans on the credit of their own revenues." And then continues my authority, "The prescription of the purpose for which the loans can be raised, the retention of control over the conditions of the loans have been considered necessary to check the tendency of the public authorities to diminish their present burdens and add to their present resources, and avoid an unrestricted and wasteful competition among the borrowing authorities in India. Even when the provinces raise loans on the security of their allocated resources, the Government of India is responsible, though indirectly, for their repayment; for it may be assumed that the possibility of the Government of India allowing any Provincial Government to go bankrupt cannot even be contemplated. In view of this tacit guarantee which always must exist, it is desirable that the Government of India should approve of the conditions under which the loans are to be raised. The scope of the approval of the Government of India is limited to the examination of the borrowing proposals of the Provincial Government from the financial standpoint." And in order to systematize the arrangements for administering

Governments.

Government of India responsible for Provincial loans.

The Central Fund.

the advances made by the Central to the Provincial Governments a central fund has been created and established with effect from the 1st of April, 1925, which is called the "Provincial Loan Fund." All advances granted by the Government of India to the Provincial Governments are made out of this fund the scheme of which in operation may be outlined as far as possible in the words of the resolution of the Government of India itself.

All outstanding capital liabilities of the Provincial Governments to the Government of India were transferred to this fund at the time of its constitution, and this capital was prescribed to be increased from time to time as required by further advances from the Government of India. The rate of interest charged to the Government of India on advances to the fund is determined in the same manner in which the rate of interest charged by the Government of India on advances to the provinces has always been determined, that is to say, on the basis of the cost of new borrowing to the Government of India from time to time. If at any time there is a surplus in the capital of the fund not required, or not likely to be required at an early date for the purpose of the new advances, the fund is entitled to apply such surplus towards the reduction of the advances previously made to it by the Government of India under these conditions as are and may be determined by the Government of India according to the circumstances of the case.

Rate of interest charged.

The terms that had already been arranged between the Government of India and the provinces in regard to any advances sanctioned prior to the constitution of this fund has not been modified or affected in any way. The fund therefore, simply takes the place of the Government of India as one of the parties to these contracts *vis-a-vis* to the province concerned. The amount and the purpose

of every advance which may be made by the fund to this Provincial Government will be determined, as at the date of the creation of this fund, by the Government of India in the Finance Department, and the Legislative Assembly is asked to vote the necessary supply under the head "Advances to the Provincial Loan Fund." Receipts into and disbursements from the fund are recorded in the public accounts under the distinct head, "Provincial Loan Fund." Determination of the purpose of advance.

Advances for less than Rs. 5,00,000 for any scheme or group of work are not prescribed to be normally made from the fund as being excluded by the principle laid down in Rule 2, clause (*a*) of the Local Government (Borrowing) Rules, namely,

2. A local Government may raise loans on the security of the revenues allocated to it for any of the following purposes, namely :— Purposes for which loans may be raised

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

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

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

It will be seen that the proposed expenditure must be so large that it cannot be met from the current revenue.

The rules governing the grouping of the individual works for this purpose are the same as the rules which govern the grouping of works in order to determine the authority which is competent to sanction the total expenditure. The limit of Rs. 5,00,000, however, will not apply to capital expenditure: (*a*) on special works, (*b*) in a commercial department which is working at such a profit as to fulfil the test of productivity imposed by the Secretary of State, (*c*) in commercial departments whose accounts are maintained on a commercial basis.

No advances are made out of the fund to any Provincial Government which does not provide annually out of its ordinary revenues sums sufficient to redeem, within a period not exceeding eighty years from the date on which they were originally borrowed, and the loans or advances which they may from time to time obtain, or have obtained from any source other than the fund. This condition however, does not apply to the pre-Reforms debt. The standard rate of interest charged by the fund on the new advances will be so calculated, after taking into account repayments due to the fund or already existing advances, as to maintain the solvency of the fund. The standard rate will be charged by the fund on all advances required for capital expenditure which can be classed as productive under the rules on the subject approved by the Secretary of State. For all other purposes the rate is a quarter per cent. above the standard rate.

Ante-Reform and post-Reform debts.

All new advances made from the fund, and also all outstanding advances at present, that is to say at the date of the inauguration of the fund, other than the debt relating to irrigation works constructed before the Reforms, liability for which was transferred to the Pro-

vincial Governments under the Reforms Scheme, will be subject to eventual repayment. It is for the Government of India in the Finance Department to determine whether in any particular case repayment shall be by equated instalments of principal and interest, or otherwise, and whether due instalments may be postponed, or other exceptional arrangements made without threatening or prejudicing the solvency of the fund.

Determination of the mode of repayment.

The Government of India in the Finance Department maintains a schedule specifying the terms of years appropriate to the repayment of the advances required for various purposes and communicates to all provinces any additions to or modifications of that schedule at the time they are made. In the event of it being necessary to write off any part of the advance as irrecoverable, the loss shall not fall on the fund but shall be made the occasion of a special demand grant to be submitted to the Assembly. Be that as it may, the Government of India always retains full power to refuse or suspend advances to the fund in any way if the financial position of India makes it imperative that it should be done. The existing rights of the provinces to borrow otherwise than in the form of advances shall not be impaired.

Power of the Government of India to refuse or suspend advances.

In conformity with the recommendation of the Public Accounts Committee of the Legislative Assembly based on the observation of the Auditor-General it is proposed hereafter to levy an interest on larger drawings and all overdrafts of Provincial Governments on the Central Government. The services rendered by the Central Government to the Provincial Governments as their banker should be treated on a strictly commercial basis.

PART XIV.

(a) *Taxation and Revenue.*

Residuary powers of taxation are in the Government of India.

A schedule of taxation drawn up by the Government of India in consultation with the Provincial Governments indicates the subjects which are reserved for provincial taxation, the residuary powers being retained in the hands of the Government of India. A tax falling within the schedule does not require the Government of India's previous sanction to the legislation required for its imposition, but as a matter of practice the Bill is forwarded to the Government of India in sufficient time for the latter to satisfy itself that it is not open to objection as trenching upon the Central Government's field. Apart from that, the local Governments are expressly forbidden to impose any new tax unless the tax is one scheduled as exempted, such as a tax on land put to uses other than agricultural, a tax on succession or on acquisition by survivorship in a joint family, a tax on any form of betting or gambling permitted by law, a tax on advertisements, a tax on amusements, a tax on any specified luxury, a registration fee, a stamp duty other than duties on which the amount is fixed by Indian legislation or a toll, or a tax on land or land values, or tax on buildings, a tax on vehicles or boats, or tax on animals, a tax on menials and domestic servants, on octroi, a terminal tax on goods imported into a local area in which an octroi was levied, a tax on trades, professions and callings, a tax on private markets, a tax imposed in return for services rendered, such as a water rate, a lighting rate, a scavenging, sanitary or sewage rate, a drainage tax or fees for the use of markets and other public conveniences.

Taxes local governments are forbidden to impose.

(b) *Land Revenue Administration.*

The thing that concerns the welfare and the interests of the mass of the people of India most is land revenue administration and the system under which it is administered. Akbar's revenue system was only an improvement upon what was introduced by Sher Shah. The objects of the system were to obtain a correct measurement of the land, to ascertain the amount of the produce of each bigha of land and to fix the government demand. For the first object he introduced a uniform standard of measurement. He also improved the instrument of mensuration and appointed persons to make a complete measurement of all the cultivable lands of the Empire which were divided into three classes according to their productiveness. The amount of each sort of produce yielded by a bigha of each class was ascertained. The average of three years was assumed to be the produce of a bigha and one-third of the produce formed the Government demand. The quantity of produce due to the government being settled it was commuted into a money payment. Statements of prices current of the 19 years preceding the Survey were required from every town and the produce was turned into money according to the average rate shown in these statements. All these settlements were at first annual, and afterwards were made for 10 years because they were vexatious and expensive. Akbar also made a new revenue division of the country into portions. Each division yielded Rs. 2,53,000 as land revenue. This great reform of Akbar however, contained no principles of progressive improvement. It held out no hope or encouragement to the ruled to better their condition either.

Land Surveys.

Ratio of Government demand in Moghul times.

(c) *Settlements of Land Revenue.*

Settlements of land revenue under British rule.

Under British rule during the past fifty years revised settlements of land revenue demand have been made for long terms of years. Without exception they are on moderate and equitable principles. At these settlements careful surveys are made of all holdings and records of rights in the land. As in Akbar's time so under the English the periodical settlements were vexatious and expensive and to avoid all that inconvenience the English introduced a system of village records with the help of which the settlement officers can do their work with least inconvenience and trouble to the people themselves. Settlements are made now in a comparatively shorter time and at less expense. From the fact that even in thinly peopled tracts like Burma and Assam the cultivated area has doubled itself within 50 years it has been argued that the settlement is moderate. During the same period in the Central Provinces, Berar and in parts of Bombay it has increased by from 30 to 60 per cent. while even in the thickly peopled province of Oudh it has increased by 30 per cent. In the Punjab and Sindh great tracts of once barren lands have been brought under the plough by means of State canals. The extension of Railways and roads has provided outlets for surplus agricultural produce. It has caused a general rise of prices in remote districts which were land-locked fifty years ago. Without these the agricultural classes would not have received the vast sums of money they do receive now. The receipt of more money has enabled them to raise their standard of living and to pay their land revenue more easily than before. Harsh processes for the recovery of land revenue are rare for, as a rule, it is paid punctually. The famous

Increase in acreage under cultivation.

land settlement of Hindusthan made by Akbar was based on one-third of the gross produce of each field. The present assessments of the Punjab represent from $\frac{1}{10}$th to $\frac{1}{14}$th of the gross produce. In British India the present land revenue represents an average charge of eight annas a bigha of cultivated area. Fifty or sixty years ago land revenue formed half the total public income of the country. It is now less than one-fourth.

Provincial balances are ascertained on the 1st of January, 1921.

The sources of revenue which, in the case of Governor's provinces, are allocated to the local Governments as sources of provincial revenue, are balances standing at the credit of the province on the 1st of January 1921; receipts accruing in respect of any provincial subject other than matters pertaining to a central subject, in respect of which powers have been conferred by or under any law upon a local Government; share (determined in a manner provided under the rules) in the growth of revenue derived from income tax collected in the province, so far as that growth is attributable to an increase in the amount of income assessed; recoveries of loans and advances given by the local government and of interest paid on such loan; payments made to the local Government by the Governor-General in Council or by other local Governments, either for services rendered or otherwise; the proceeds of any taxes which may be lawfully imposed for provincial purposes; the proceeds of any loans which may be lawfully raised for provincial purposes apart from what has been termed the "sheet anchor of provincial finance," the Land Revenue, which is in obedience to the recommendation of the Joint Committee is being gradually brought more within the purview of the legislature, Excise Revenue derived from intoxicating liquors, opium, hemp drugs, cocaine and other intoxicants, the administration of which differs according to the needs of

different provinces, the Stamp Revenue derived from judicial or Court-fee stamps and non-judicial or revenue stamps, Registration, Irrigation and Forests and any other sources which the Governor-General in Council may by order define to be sources of provincial revenue.

(*d*) *Meston Award and Provincial Contribution to Central Government.*

Provincial contributions for Imperial upkeep.

For the upkeep of the Central Government the provincial Governments are required to make a contribution in the aggregate of 983 lakhs of Rupees a year, divided in the proportion of 348 by Madras, 56 by Bombay, 63 by Bengal, 240 by the United Provinces, 175 by the Punjab, 64 by Burma, 22 by the Central Provinces including Berar and 15 by Assam, provided always that the Governor-General has power under emergent circumstances to remit individual contribution or a portion of it for a specified period, as under similar circumstances they may be called upon to contribute more than their allocated share. It is but natural that these contributions should, as indeed they do, form a first charge on the allocated revenues and moneys of the local Governments concerned, but are paid in instalments the amounts whereof are fixed by previous arrangement. All moneys derived from sources of provincial revenue are paid into the public account, of which the Governor-General in Council is the custodian, and credited to the Government of the province.

Allocation of revenues for the administration of transferred subjects has hitherto been a difficult matter. The rule is that expenditure for the purpose of the administration of both reserved and transferred subjects

shall, in the first instance, be a charge on the general revenues and balances of each province, and the framing of proposals for expenditure in regard to transferred and reserved subjects will be a matter for argument between that part of the Government which is responsible for the administration of the transferred subjects, and that part of the Government which is responsible for the administration of the reserved subjects. Should there however, be any difference of opinion with regard to allocation between the members of the Executive Council in charge of the reserved subjects and the Ministers in charge of transferred subjects the matter is set at rest by arbitration either at the discretion of the Governor or with the advice of an authority appointed by the Governor-General in his behalf but upon his application.

CHAPTER VIII.

LEGISLATURE AND LAW-MAKING.

PART I.

The Indian Legislature.

(*a*) *Introductory.*

Gradual growth of the Legislative system in India.

The British Indian Legislative system is a plant of exotic origin the root of which is not to be found in the annals of the people of the country. "Constitutional History in India," says Professor Cowell, "has nothing to do with the steady and spontaneous growth of national institutions. It is a record of experiments made by foreign rulers to adapt European institutions to oriental habits of life, and to make definite laws supreme amongst peoples who had always associated government with arbitrary and uncontrolled authority." Previous to the year 1781, the history of the government by the English of their Indian possessions is one of military struggle and civil tumult interspersed with occasional efforts to organise society. The year 1781 marks a most important era in the administrative history of India. It terminated the long continued struggle between those who wished to see the English Law and Courts of Justice introduced at once into India and those who considered such a policy wholly impracticable. "It commenced the era," Professor Cowell goes on to say, "of independent Indian Legislation; of the authority of the Supreme Court as it

continued for 80 years—1781 to 1861; of the establishment of a Board of Revenue and of the recognition by Act of Parliament of the right of the Hindus and Mahomedans to be governed by their own laws and usages." The plan of government both as regards legislation and Courts of Justice assumed a definite shape in that year, and although many changes have since been introduced down to the present day, these have been for the most part changes of detail, though often of great importance, yet leaving unaltered the general character of the system introduced in 1781.

Personal laws recognised.

(b) *Settlement in Bengal.*

The capture of Fort William and the tragedy of the Black Hole, the happening of which is seriously doubted now, roused the vengeance of the settlement at Madras against Serajuddowla. Clive came to Bengal, recovered Calcutta and by the Battle of Plassey, destroyed the power of the ill-fated Nawab in 1757, and obtained possession of Murshidabad with authority over the whole of Bengal. Before however, the English assumed the sovereign powers and independence of the home or domestic authority, their position was extremely anomalous. Though their factories were part of the dominion of the Moghuls, their own law was administered in them and their national character imparted to them as completely as if they were parts of English territory. At the same time the Company, except on the coast of Bombay, held their territories as subjects owing allegiance and as tenants rendering rent to the sovereign authority of the Moghuls. As officers exercising by delegation a part of the authority of the home Government with whose

Fall of Serajuddowla.

Acquisition of territory by the Company.

permission they purchased from the owners of the soil the lands on which their factories were founded, they fortified them.

(c) *Legislative Authority of the Company during that Period.*

Acquisition of legislative and judicial authority by the Company.

Under these circumstances, it became necessary in the very early days of the Company, that the Crown should grant to them certain legislative and judicial authority to be exercised in their East Indian possessions. That authority however, it seems clear, was only intended to be exercised over their English servants, and such Indian settlers as placed themselves under their protection. Long before the Company possessed any territory or sovereign authority, the Charter of Queen Elizabeth in 1601 granted to the Governor and Company or the "more part of them being assembled, power, to make, ordain, and constitute such and so many reasonable laws, constitutions, orders, and ordinances, as to them or the greater part of them being then and there present, shall seem necessary and convenient for the good government of the said Company and of all factors, masters, mariners, and other officers employed or to be employed in any of their voyages, and for the better advancement and continuance of their trade and traffic." Eight years later, by his Charter, James I renewed the same power, both the Charters containing the proviso, "so the laws, etc., and penalties be reasonable and not contrary or repugnant to the laws, statutes, or customs of this our realm." Charles II's Charter of 1661 contained a similar provision. All these early Charters were surrendered when the two Companies were united in 1708. By the Charter of William III the Company were invested with the government of their forts, factories and plantations, the

Charter of James I, and renewal of power.

sovereign power being reserved for the Crown. By the Charter of 1726, George I empowered the Governors and Councils of the three presidencies to make bye-laws and rules and ordinances for the good government of the several corporations, and of the inhabitants of the several places and towns and to impose penalties upon offenders. Such laws and penalties were to be agreeable to reason, and not contrary to the laws and statutes of England. They were not to be enforced until the same had been approved and confirmed by order in writing of the Court of Directors. They were prohibited to make any bye-laws, rules and ordinances other than those that they were empowered by these presents to make. The Charter of 1753, gave them a similar power, but omitted this last provision.

Character of the laws.

The sources of the legislative powers of the East India Company were, (1) the Regulating Act of 1773, which for the first time defined the extent of the legislative authority of the Governor-General in Council, and placed it under the supervision of and made it subject to the *veto* of the Supreme Court; (2) the Settlement Act of 1780, which empowered the Governor-General and Council to frame Regulations for the Provincial Courts, without reference to the Supreme Court; and (3) the Act of William IV passed in 1833, rendering registration of Laws in the Supreme Court or in any Court of Justice, unnecessary. While these stand to the credit of the Governor-General and Council, the Governors of Madras and Bombay were not without their definite authority to legislate for the provinces in their charge. They were invested with the same legislative powers as those of the Governor-General and Council in 1800, and 1807, respectively. Here it may be observed that it does not appear that the Governor-General exercised any direct

Legislative power of the Company.

Bengal.

authority over the Governors in Council of Madras or Bombay in matters of actual law-making. He had no doubt control over them in political and fiscal matters.

Madras and Bombay.

A copy of every regulation, passed by the Governor-in-Council whether of Madras or of Bombay, was and had to be, sent to the Governor-General in Council, though it does not appear that he could claim to have it submitted for his approval, before or after its adoption. The legislative powers of the Governor-General were confined to the Presidency of Bengal only.

Extension of legislative power

The Charter Act of 1813, made a liberal extension of the legislative power already possessed by the three Councils of Calcutta, Madras and Bombay, the principal being to impose duties and taxes within the limits of the Presidency towns. The provisions of the Act were as follows :—(*a*) no new or additional imposition of any duty or tax upon the export, import or transit of any goods, should be valid until sanctioned by the Court of Directors ; (*b*) that all persons proceeding to the East Indies should, upon arrival, be subject to such Rules and Regulations as may be in force at the time ; (*c*) that copies of Regulations passed by the several Governments in India should be annually laid before Parliament ; (*d*) that the Governments of Fort William, Madras and Bombay should be deemed to have full power, to make all such Rules and Regulations and Articles of War, as they might think fit, and (*e*) that the Governors of the three Presidencies of Bengal, Madras and Bombay were authorised to impose duties and customs upon all persons in respect of goods. A further source of legislative power was not vouchsafed until the year 1833, when by the new Charter Act, it was enacted that the laws and regulations passed by the several Councils—and these had grown in such volume that in not a few cases were they in conflict with

one another—should be made subservient to the Supreme Council in Bengal. Local legislation was abolished.

Reform of the Council in 1853.

The Charter Act of 1853 is a great landmark in the history of Legislative Councils in India. In recognition of the principle of representation it introduced representative members from the sister presidencies. It enlarged the size of the Council as it made the assent of the Governor-General, to every regulation, no matter whether he was present in or absent from the Council, a *sine qua non* to it coming into operation. By the last Charter Act, it was provided that all laws which had been previously sanctioned by the Crown were to be considered valid. Power also was given to Her Majesty to appoint a commission, to consider the recommendations of the Law Commissioners. Besides what has been stated above the new Act made other provisions of a far-reaching character. It enlarged the Council by the addition of new Members, two of whom were to be English Judges of the Supreme Court of Calcutta and the rest appointed by the Local Governments. The Law Member was for the first time admitted to the Executive Council of the Governor-General, but only to sit and vote when the Council met for making Laws and Regulations. The business of the Legislative Council was thrown open to verbal discussion in public, instead of as hitherto in private or in committee, and prescription was made for reference of its bills to Select Committees.

Effect of the New Act.

The Legislatures of 1833 and 1853 compared.

Under the Act of 1833, the business of law-making was performed by the Governor-General and Council, which comprised of four members; of these three were appointed from the Covenanted Service and the fourth was to be a person unconnected with the service of the Government, and this was the Law Member. He formed no part of the Executive Council and was invited to

attend its meetings only when a proposed legislation was under discussion. His functions were advisory and this rule, even with his introduction to the Executive Branch of the Council, has not been departed from. But by the Act of 1853, the duties of the fourth member were performed severally by the Members appointed by the Governments of Madras and Bombay. These members were allowed access to the Executive Council. The advantages of the new system were that Legislative Councillors obtained the power of voting for or against any subject brought before the Executive Council whose proceedings were to remain under the seal of confidence, and a power also was given to them of proposing or opposing any law. And notwithstanding these improvements, it became necessary to reconsider the whole subject of the establishment and exercise of legislative authority. Madras and Bombay complained of the enormous preponderance of authority which Bengal enjoyed through the Supreme Council. Difficulty also was felt about the satisfactory settlement of questions by the Supreme Council, the majority of whom lacked the local knowledge of the wide extent of the territory subject to its legislative dominion. Another cause which impelled Madras and Bombay to insist upon a local legislature of their own, was that the Supreme Council had assumed the character of a representative body, who contributed, what was of little practical utility, vigour and energy to the debate.

Advantages of the new system.

Desire for local legislation.

Then came the momentous despatch of Lord Canning of 1859, in which the great Viceroy observed that the chief fault of the legislature, as it then existed, was the adoption of forms and methods of procedure in imitation of the House of Commons, which, instead of doing any good, converted the legislative body into a debating

Despatch of Lord Canning and his proposals.

society. He therefore, proposed that, (*a*) each Presidency should have a separate Legislative Council of its own; that, (*b*) means should be found of making it convenient for the India Council to meet at places other than Calcutta; that, (*c*) the business should be conducted in a way, to enable Indians not well-versed in English, to take part in the discussions of the Council; that, (*d*) with the exception of revenue questions all other questions relating to administration, could be considered by the Local Councils; that, (*e*) all revenue questions should be kept reserved for the consideration of the Governor-General and his Council; and that, (*f*) separate Legislative Councils should be formed in Bengal, North-Western Provinces (now the United Provinces of Agra and Oudh), Bombay and Madras.

Indian Council Act of 1861.

Lord Canning's proposal was at once taken up by Sir Charles Wood, the Secretary of State for India who took immediate steps to get passed through the Houses of Parliament the first Indian Councils Act in 1861, which provided among other things that the Governor-General's Council would henceforth consist of not less than six, nor more than twelve additional members, half of whom should be persons independent of and unconnected with the Government, either European or Indian, besides the Ordinary Members, namely, the Members of the Executive Council; that the Council should, when occasion arises and expediency suggests, meet at places other than Calcutta; that Local Councils be established, with the Governor-General's Council having supreme power over them, and that the Governor-General's Council would have power to pass or enact laws for the whole of India. With reference to the Provincial Councils it was provided that, they would have the power of passing or enacting laws on local matters only, and

The Supreme Council.

The Provincial Councils.

that their Councils, like that of the Governor-General, would have the same number of additional members, half of whom must be men unconnected with the Government. It was further enacted by this Act that the Supreme Council should observe the following rules and regulations :—

Rules to be observed by the Supreme Council.

I. The Governor-General should appoint the time and place of the meetings of the Legislative Council.

II. The Governor-General should make rules for the conduct of the business of the Legislative Council.

III. The rules are to be subject to the approval of the Secretary of State in Council.

IV. The Legislative Council should concern itself with matters purely legal.

V. The previous sanction of the Governor-General must be had on all questions affecting :

(*a*) The Public Debt or Public Revenue of India ;
(*b*) the religion or religious rites of Her Majesty's subjects ;
(*c*) the discipline or maintenance of Her Majesty's military or naval forces ;
(*d*) the relations of the Government with Foreign States.

VI. The assent of the Governor-General should be made essential for the validity of any law or regulation, although not his presence.

VII. The Governor-General should either assent to any measure or reserve it for Her Majesty's consideration, in which case her assent was absolutely necessary.

The legislative powers of the Council were, by the Act of 1861, extended to the repeal, alteration and

amendment of all laws and regulations, as much as to the making of laws for all persons, British or Indian, foreigners or others, and for all Courts of Justice, for all places and things within the Kingdom (India did not become an Empire until 1877), and for all servants of the Government of India. Their powers did not include any authority to repeal or affect any provisions of any Act of Parliament, passed at any time after 1860, nor to pass any law or regulation, affecting the authority of Parliament. They could moreover, consider no law passed by the Governor-General in Council, invalid by reason that it affected the prerogative of the Crown, or that it was made in respect of a non-regulation province and on that ground not to have a general application. And in matters of emergency the Governor-General was vested with the authority to make and promulgate ordinances for the peace and good government of the British Territories. These ordinances were to have validity for the space of six months, from their promulgation.

Legislative powers of the Supreme Council.

Extra-ordinary powers of the Governor-General.

(d) The Local Legislatures of Madras and Bombay.

With regard to the Local legislatures of Madras and Bombay it was enacted that the Governors with whom the powers of framing local laws would rest, should nominate their own Additional Members. The power of appointing the time and place for the meeting of their respective Councils was left entirely to the discretion of the Governor, whose approval of a piece of legislation, whether present in or absent from the Council, was a condition precedent to the assent of the Governor-General in Council being accorded to it. Without such assent it had no validity.

Local Legislatures at Madras and Bombay.

Their legislative powers.

The legislative powers of these Councils extended to the repeal or amendment of any law, made prior to the Indian Councils Act (1861), affecting their respective presidencies, but not to do anything or legislate, so as to affect the provisions of any Act of Parliament.

The Governor-General's previous sanction was made necessary, before either of such Councils could take into consideration any law or regulation for any of the purposes, such as,

Sanction of the Governor-General necessary to certain measures.

I. Public debts, Customs duties, or any other tax in force;

II. Regulating any of the current coins, or the issue of any bills, notes or other paper currency;

III. Regulating the conveyance of letters or papers by Post, or messages by electric Telegraph;

IV. Altering in any way the Penal Code of India;

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

VI. Affecting the religion or religious rites of Her Majesty's subjects in India;

VII. Regulating patents and copyright.

VIII. Affecting the relations of the Government with Foreign Princes or Indian States.

Events that led to the passing of

The events which may be said to have led to the passing of the Indian Councils Act were the differences that arose between the Supreme Government, and the

Government of Madras, on the Income Tax Bill then upon the legislative anvil, the doubts which prevailed as to the validity of laws introduced into the Non-Regulation Provinces, and certain correspondence that passed between the Secretary of State and the Supreme Government. The character of these Lgislative Councils was simply this, that they were Committees for the purpose of making laws, by means of which the Executive Government obtained advice and assistance in their legislation, and the public derived the advantage of full publicity being ensured at every stage of the law-making process. The Local legislatures which existed before the Act of William IV were complete by themselves; their legislations needed no assent of the Governor-General; but by the Indian Councils Act all laws or regulations were required to be assented to by the Governor-General, before coming into force.

the Indian Councils Act of 1861.

Character and functions of the Councils.

(e) *Constitution of Early Councils in India.*

The structure of the legislative Councils, as they were constituted up till the end of the year 1919, was based upon the Indian Councils Act of 1909, the passage of which would ever be associated with the name of Lord Morley of Blackburn. Under this, as under the previous Act of 1892, known as Lord Cross' Act, the Council was authorised to discuss the annual financial statement, but under the latter unlike under the former, it enjoyed no power to move resolutions nor to divide the Council upon them even though the resolutions, as now, had no more than a recommendatory force which might or might not be acted upon by the government. The right of interpellation was secured in both, while in the latter, that right was extended to supplementary questions, subject

Composition of early Councils.

Powers given by Lord Cross' Act of 1892.

always to disallowance as to questions and supplementary questions by the President who was the head of the Government himself, and in his absence a member of his Executive Council nominated by him to act as the President, usually the senior Member. The Act of 1861, gave five ordinary members to the Viceroy's Executive Council, and the Commander-in-Chief, if appointed, to be an extraordinary member along with the Head of the administration of the Presidency where the Council may or should at the time be sitting, a Lieutenant-Governor of a Province and the Chief Commissioner of an administration being no more than an "additional member," should the Council be meeting within his territorial jurisdiction, so that he had no position in the Executive Council of the Viceroy under any circumstances. The Act gave to the Council moreover, twelve additional members of whom six were non-officials. Be it remembered, that the Act of 1861, which for the first time admitted the Law Member of the Viceroy's Council into its executive deliberations, as a full Member, was in modification of that of 1853, and the "Legislative Councillors," including the Chief Justice and another Judge of the Supreme Court of Calcutta, were appointed by the Government of India and the local administration to assist in legislating for the whole country. The Judicial element was ousted by the Act of 1861, and since then legislation in India went on without the assistance of the Courts, except as consultants in matters relating to the objective law of the country. The nominees of the Government were invariably either officials or retired officials of the Government, or gentlemen of rank and position, or commercial people without any knowledge or training essential for purposes of the technical details of legislation. Seventeen years'

The Executive Council under Act of 1861.

Admission of the Law Member into the Executive Council.

of experience of the reforms of 1892, was on the whole favourable, and intelligent public opinion loudly called in 1906 for the reforms associated with the names of Lord Morley and Lord Minto. Lord Minto's government envisaged the problem as one of fusing the two different elements which they discerned in the origins of British power in India, namely, the principle of autocracy derived from Asiatic sources, and the principle of constitutionalism derived from Parliament. They hoped to create what might be described as a constitutional autocracy into which conservative opinion would crystallise but offer substantial opposition to any further change. In this scheme representation by classes and interests was deliberately adopted as the only practicable means of embodying the elective principle in the Councils. Certain elements and interests, such as the Corporations and the Universities were provided with electorates of their own. The representation of large and important minorities presented great difficulty, but the Mahomedans, believed to be at the instance and instigation of Lord Minto, pressed for, and obtained from him a promise that they should elect their own members in separate communal constituencies, a decision the grave and momentous consequences of which must tell heavily upon the prospects of representative institutions in India and impair their usefulness until done away with. Similarly, to their discredit, large landowning interests claimed and were given special electorates, based on a high franchise. The residuary constituencies, which constituted the only means of representation for the people at large, were constructed out of the Municipalities and District Boards voting in groups. The official majority in the provincial Councils was abandoned but retained in the Governor-General's Council. The elective principle

The Morley-Minto Reforms.

Creation of separate electorates.

Recognition of the elective principle.

was legally recognised. No formal change was made in the legislative powers of the Councils, but their deliberative power was strikingly enlarged by the grant of the power to move resolutions upon the budget and upon all matters of general public importance. It will be seen that the elective element in the Councils was very considerably increased and that it was unequivocally recognised as an important factor in the progressive realisation of responsible government in India, a phrase reputed to have been introduced into the announcement of 1917, by no less a person than Lord Curzon himself. Elaborate arrangements, varying in each province were made for the representation of minorities and special interests such as the Mahomedan population, the tea and jute industries, and the community of Anglo-Indian planters. The main object of the Act was to obtain as far as possible, a fair representation of the different classes and interests in the country and the regulations and rules were framed accordingly. Lord Morley's Act enlarged the powers of the provincial and central legislative councils in that it allowed resolutions to be moved in the councils, advocating changes in the budget, before that measure was finally drafted, and allowed a vote of the Council to be taken on the resolutions. The Act further allowed the member asking the original question to put a supplementary question in Council—an improvement upon the provision of the Act of 1892. Finally the Act gave to private members the important right of moving resolutions in the Council in regard to matters of general interest, and of having such resolutions put to the vote. These in brief were the main features of the Morley-Minto reforms of 1909, which were designed as a continuation of the Charter Act of 1853 and the Councils Act of 1861 and of 1892.

Fair representation of all interests.

Development of constitutional principle.

The reforms thus brought about carried constitutional developments an important stage further. They admitted the need for increased representation, also the desirability of generally securing non-official approval for Government legislation. They frankly abandoned the old conception of the Councils as mere legislative committees of the Government, and they did much to make them serve the purpose of an inquest into the doings of the Government, by conceding the important rights of discussing administrative matters and cross-examining the Government upon them. In spite of Lord Morley's personal disclaimer, both Mr. Montagu and Lord Chelmsford were obliged to say, that those features of 1909 reforms did constitute a decided step forward on the road leading at no distant date to a stage at which the question of responsible government was bound to present itself.

Part II.

Legislation in India and Progressive Countries.

History of Legislation is a history of the national mind.

In countries where the representative element exists in the governmental system, legislative activity is no more than an echo of the wants and needs of the community who entrust their welfare and interest into the hands of their representatives in the legislature,—the history of their constitution or legislation being a record of their progressive history, and an unmistakable index to the growth and development of their national institutions. A history of representative institutions, which

includes the history of legislation also, need not concern itself with war or peace, material or moral progress, Commerce, Finance or Education, Hygiene or Sanitation; no more need it concern itself with the various classes of the community, and still less with the general condition of the country. They will all be faithfully reflected in the deliberations and the acts of the assembly convened for the purpose of making laws. Such, however, is not the case in India. Here, unlike in other civilised countries, the whole business of legislation is entirely in the hands of a small but able body of officials, who represent in the great Presidencies and the Provinces comprising British India, but who, by position, education, official and social habits of life are removed from the people of the country for whom they undertake to legislate. The critics of the Government delighted in saying that they (the officials), were as far removed as the Olympian Gods were from the mundane concerns of the mere mortal. It was maintained that the independent classes were represented but inadequately, so that the influence that the representatives of the independent classes were able to exert upon the deliberations of the Indian legislative assemblies was but infinitesimal. Their powers and privileges were circumscribed within very narrow limits, and the limitations placed upon the liberty of speech even in the Council Chamber itself, were such as to minimise the usefulness of the noble institution which we owe to the British Government in India. In the Council there were in addition to officials and representatives of independent classes gentlemen known as nominees of the Government.

Work of early legislation entrusted to officials.

Powers and privileges of representatives.

PART III.

Morley-Minto Reforms.

Morley-Minto reforms are a modification of bureaucratic principles.

The reforms of 1909 however, did not satisfy Indian political aspirations, nor did they afford the answer to Indian political problems, even though, so distinguished a son of India as the late Mr. Gopal Krishna Gokhale, described them as modifying the bureaucratic character of the government, and offering the elected members responsible association with the administration. He looked to local self-government as the school where the Indian politician of the future must receive his early training. He referred to the everyday problems of administration, legislation, and finance, as constituting the centre of the position, and in respect of these he believed that the reforms would amount almost to a revolution. In place of silent administrative decisions there would be open discussion; for the control of the Government of India over finance there would be a largely substituted control by means of discussion in the Councils. Such concessions were large and generous, and imposed responsibilities in their turn. There must be co-operation with the Government, and the new powers given to the Indians must be used with moderation and restraint. Nevertheless, the Morley-Minto changes encouraged no sense of responsibility in the use of the vote. Responsibility for the administration remained undivided. Governments were far more exposed to questions and criticisms, but questions and criticisms were not informed, no more were they weighted with any real sense of responsibility. The power remained with the Government; the Councils could only criticise. It followed that there was no reason

Morley-Minto reforms a great step forward.

Growth of sense of responsibility.

to loosen the hands of superior official authority which subjected local governments to the Government of India, and the latter to the Secretary of State. The reforms were in the view of Mr. Montagu and Lord Chelmsford the final outcome of the old conception which made the Government of India a benevolent despotism, tempered by a remote and only occasionally vigilant democracy. Parliamentary usages had been initiated and adopted up to the point where they caused the maximum of friction, but short of that at which by having a real sanction behind them, they begin to do good. In 1919 we had in India not the best of the old system, nor the best of the new either.

Government of India, a benevolent despotism.

PART IV.

The Post-War Reforms.

(a) Announcement of the 20th August 1917.

Such was the state of affairs in the legislative partnership between the rulers and the ruled in India, when the famous pronouncement of the British Government, while the great European War was still raging with all its ferocity and brutality on the part of the Central Powers, was made by Mr. Montagu in the House of Commons on August 20th, 1917.

The Announcement of the 20th of August 1917.

"The policy of His Majesty's Government, with which the Government of India are in complete accord, is that of the increasing association of Indians in every branch of the administration and the gradual develop-

ment of self-governing institutions with a view to the progressive realisation of responsible government in India as an integral part of the British Empire. They have decided that substantial steps in this direction should be taken as soon as possible, and that it is of the highest importance as a preliminary to considering what these steps should be that there should be a free and informal exchange of opinion between those in authority at home and in India. His Majesty's Government have accordingly decided, with His Majesty's approval, that I should accept the Viceroy's invitation to proceed to India to discuss these matters with the Viceroy and the Government of India, to consider with the Viceroy the views of Local Governments, and to receive with him the suggestions of representative bodies and others.

"I would add that progress in this policy can only be achieved by successive stages. The British Government and the Government of India, on whom the responsibility lies for the welfare and advancement of the Indian peoples, must be judges of the time and measure of each advance, and they must be guided by the co-operation received from those upon whom new opportunities of service will thus be conferred and by the extent to which it is found that confidence can be reposed in their sense of responsibility.

"Ample opportunity will be afforded for public discussion of the proposals, which will be submitted in due course to Parliament."

Four propositions made in the Announcement.

The momentous declaration may be set out in four distinct propositions :—

(1) That there should be, as far as possible, complete popular control in local bodies, and the largest possible independence for them of outside control.

First proposition.

Second proposition.

(2) That the provinces are the domain in which the earliest steps towards the progressive realisation of responsible Government should be taken. That some measure of responsibility should be given at once, and that the aim of the British Government is to give complete responsibility as soon as conditions admit. That proposition involves at once giving the provinces the largest measure of independence, legislative, administrative and financial, of the Government of India, which would be compatible with the due discharge by the latter of its own responsibilities.

Third proposition.

(3) That the Government of India must remain wholly responsible to Parliament, and saving such responsibility, its authority in essential matters must remain indisputable, pending experience of the effect of the changes to be introduced in the provinces. In the meantime the Indian legislative Council should be enlarged, and made more representative, and its opportunities of influencing the Government increased.

Fourth proposition.

(4) In proportion as these changes take effect, the control of the Parliament and the Secretary of State over the Government of India and provincial Governments must be relaxed in view of its eventual withdrawal.

Principle of provincial autonomy recognised.

These proposals have given the Provincial Governments the liberty of financial action which has been found to be indispensable. To be consistent, these governments must be secured against unnecessary interference by the Government of India in the spheres of their legislative and administrative activity. Accordingly, while the Government of India retained a general overriding power of legislation, for the general protection of all the interests for which it is responsible, the provincial legislatures are to exercise the sole legislative power in the spheres marked

off for provincial legislative control. It is recognised now as a matter of constitutional practice that the Central Government is not to interfere with the operation of the provincial legislatures, unless the interests for which it is itself responsible are directly affected.

(b) *Mont-Ford Proposals.*

Montagu's announcement on behalf of the British Government.

The announcement of August 20th marked a clear break with the old policy in accordance with which India had hitherto been governed by Great Britain. Hitherto, India had been ruled by a system of absolute government, although her people were given an increasing share in the administration of the country, and larger opportunities of influencing and criticising Government. But a historical survey of the development of English administration in India shows, that despite the growth of local institutions, of legislative councils, and of Indian elements in the services, the country continued still, to all intents and purposes, under an absolute government. This was hardly the fault of the administrators, who pleaded that the ultimate responsibility for India lay not with them, but with the British Parliament, and until Parliament took action, no radical change, such as was absolutely necessary in order to open the way for the conversion of an absolute into a progressively responsible government, was possible at all. But when Parliament chose to take action they hesitated not the least to strain every nerve to whittle down the proposed reforms as best as they could. So late as 1909, when the Morley-Minto reforms were introduced, Lord Morley himself emphatically repudiated the idea that his measures were in any sense a step towards parliamentary Government, or else he

Lord Morley repudiates the theory of Parliamentary

Government in India.

could not hope to carry with him the House of Lords which has ever in its history been the real stumbling block to all healthy progress in the body politic, even of England and far more of India. Lord Morley was plainly right, for the reforms themselves were based upon the principle that the executive government should retain the final decision on all questions. It is true that some small degree of popular control over legislation was established by the provision of non-official majorities in the provinces; but this step was in no way in the direction of progressive realisation of responsible Government. The Morley reforms were essentially a continuation of the system which had previously existed. Such however, was not the case with Mr. Montagu's announcement, nor with the reforms that resulted from that announcement. They are something quite new; and from them the future historian of India will probably date the successive epochs of constitutional developments in the country.

Montagu reforms different from Morley reforms.

Part V.

(a) *The New Legislature: the Upper House or the Council of State.*

The Legislature of India has been reorganised so as to fit in with the principles laid down in the announcement of August 20th. In place of one Supreme Legislative Council the Indian Legislature is now bicameral, and is divided into two houses—the upper and the lower. The upper house of the Indian Legislature, called the

Composition of the Council of State or the Upper House

Council of State is composed of sixty members, of whom not more than twenty-seven including twenty officials, may be nominated by the Government and the rest, namely, thirty-three elected from among persons who satisfy the prescribed qualifications of belonging to a community which has a communal representation or represent a special interest, and the holding of land paying a minimum land revenue, or income tax, or membership past or present of a legislative body, or tenure of office past or present in a local authority, or university distinction past or present, or present tenure of office in a co-operative Banking Society, or the holding of a title conferred for learning and scholarship. Bengal and Bombay commerce has each a representation allotted to it but a residence qualification is a *sine qua non* in some provinces and the possession of a place of residence is insisted on in others.

(b) *The Second Chamber—Council of State.*

Power of the Council of State over Finance Bill.

The capacity of the Government of India to obtain its will in matters essential and deemed necessary for the good government of the country, is secured by the creation of a second chamber known as the Council of State which has acquired the character of a body of elder statesmen. Like the English House of Lords it is a body which can do but not undo by far too much. It can do mischief such as it has, like its English prototype, often done, and always of far-reaching, enduring and permanent consequence. It takes its part in ordinary legislative business and is the final legislative authority in matters which the Government regards as essential. It cannot vote or veto a budget which is simply placed before it but not voted upon. Its competency

however, to work to the detriment of the best interests of the people is great and is not circumscribed within narrow limits such as are now the powers of the English House of Lords. But whatever the demerits of the Council of State as it is constituted may be, the fact that the bicameral system has its advantages over the unicameral legislature which has a tendency towards radicalism and coming into direct conflict with the executive, cannot be denied. The bicameral system which gives opportunity for a double and independent deliberation appears to have taken firm root upon every constitutional system of the world more because it helps to ascertain what the law ought to be according to the dictates of the reason and common consciousness of the people as distinguished from popular demands. This, in short, is the fundamental purpose of the legislature both chambers of which, unless swayed by national passions or prejudices, are less likely to fall into errors, or unreasoned generalisations, or crude judgments than a single chamber, a solitary incident in which may turn its sanity altogether out of balance. The importance of a Second Chamber cannot be better emphasised than in the words of Sir James Marriott, one of the greatest living authorities on constitutional politics, as "the necessity of counterpoise to democratic fervour, the advisability of a check on hasty and ill-considered legislation of the Lower House, the safety which lies in sober second thoughts, the value of an appeal from Philip drunk to Philip sober, the liability of a single chamber to gusts of passion and autocratic self-regard." The healthy rivalry which exists and ought to exist between the two as a natural circumstance of their life, prompts one to subject the proposals of the other to sifting examination, careful scrutiny, and above all, to destructive criticism and is, moreover, another

Conflict with the Executive.

Advantages of bicameral and unicameral legislature compared.

factor which has conduced so largely to the success of the bicameral system to whose credit much hasty and ill-digested legislation cannot be voted. The bicameral legislature, which according to Sir Henry Maine " is not a rival infallibility, but an additional security " properly constituted, prevents on the one hand legislative usurpation, just as effectively, as it precludes executive usurpation which is the most objectionable, because abominable feature of every administrative system that lends itself to it. These are the high purposes of the Upper House but the Council of State, as a revising Chamber has a comparatively small scope for useful work. Nevertheless, its history of the first ten years is replete with instances and occasions when, not altogether to its credit, it allowed itself to be exploited by the bureaucracy for purposes of their own, unprogressive and reactionary, all to stifle the invigorating activities of the Assembly, so that, it may safely be suggested that, till electors are educated up to what may be called the common political consciousness, it will continue to act an inglorious part in the political history of the country. Bills therefore, ordinarily take their course through both the Assembly and the Council, the object being to make assent by both bodies the normal condition of legislation. Any difference of opinion between the two Chambers is solved by the Governor-General himself Exercising his right of certification in favour of the form of the disputed bill passed by either Chamber and approved of by him. The provisions which empower him to do so are to be found in Section 67B, of the Government of India Act. They are in the following terms :—

Council of State a weak body.

Section 67B. " (1) Where either chamber of the Indian legislature refuses leave to introduce, or

Provision for case of failure to pass legislation.

fails to pass in a form recommended by the Governor-General, any Bill, the Governor-General may certify that the passage of the Bill is essential for the safety, tranquillity, or interests of British India or any part thereof, and thereupon;

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

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

"(2) Every such Act shall be expressed to be made by the Governor-General, and

shall, as soon as practicable after being made, be laid before both Houses of Parliament, and shall not have effect until it has received His Majesty's assent, and shall not be presented for His Majesty's assent until copies thereof have been laid before each House of Parliament for not less than eight days on which that House has sat; and upon the signification of such assent by His Majesty in Council, and the notification thereof by the Governor-General, the Act shall have the same force and effect as an Act passed by the Indian legislature and duly assented to:

"Provided that where in the opinion of the Governor-General a state of emergency exists which justifies such action, the Governor-General may direct that any such Act shall come into operation forthwith, and thereupon the Act shall have such force and effect as aforesaid, subject, however, to disallowance by His Majesty in Council."

And for the peace and good government of any part of British India under a local government the Governor-General in Council is empowered, without reference to the legislature, to frame regulations, the arbitrary character of which is not less far-reaching than the provisions under notice. Such power is derived from Section 71 which runs as follows:—

Power to make regulations.

Section 71. (1) The local Government of any part of British India to which this section for

the time being applies may propose to the Governor-General in Council the draft of any regulation for the peace and good government of that part, with the reasons for proposing the regulation.

(2) Thereupon the Governor-General in Council may take any such draft and reasons into consideration; and when any such draft has been approved by the Governor-General in Council and assented to by the Governor-General, it shall be published in the Gazette of India and in the local official gazette, if any, and shall thereupon have the like force of law and be subject to the like disallowance as if it were an Act of the Indian Legislature.

(3) The Governor-General shall send to the Secretary of State in Council an authentic copy of every regulation to which he has assented under this section.

(3A) A regulation made under this section for any territory shall not be invalid by reason only that it confers or delegates power to confer on courts or administrative authorities power to sit or act outside the territory in respect of which they have jurisdiction or functions, or that it confers or delegates power to confer appellate jurisdiction or functions on courts or administrative authorities sitting or acting outside the territory.

(4) The Secretary of State may, by resolution in council, apply this section to any part

of British India, as from a date to be fixed in the resolution, and withdraw the application of this section from any part to which it has been applied.

(c) *Eligibility of Members.*

Qualifications and disqualifications.

The rules require that a person shall not be eligible for election as a Member of the Council of State, or of the Legislative Assembly, or generally of any of the local legislatures if he is, (*a*) not a British subject, or (*b*) a female, or (*c*) a member of any of the legislative bodies constituted under the Act, or (*d*) a person who has in the case of the Council of State taken his oath in the Legislative Assembly and *vice versa*, or (*e*) a legal practitioner whose name has been taken off the rolls of such practitioners, or who has been suspended from practice as such by order of a competent court, or (*f*) a person who is adjudged by a competent Court to be of unsound mind, or (*g*) an insolvent (undischarged), or (*h*) a person who has not received from the Court a certificate to the effect that his insolvency was caused by no lack or misconduct on his part, or (*i*) a person against whom a conviction by a competent Criminal Court is subsisting, or (*j*) one who has been found upon a proper enquiry to be guilty of corrupt practice in connection with his election, or (*k*) an "official" and as a whole-time servant of the Crown in India whether in Civil or Military employ is in receipt of a remuneration either by way of salary or fees or (*l*) is under the age of 25 years. These are the broad general rules of disqualification some of which may be removed by order of the Government in that behalf.

(*d*) *Qualification to sit.*

No person is permitted to sit in either chamber whether an elected or a nominated member unless he has taken the oath of allegiance to His Majesty the King Emperor in the prescribed form, namely :—

Members must swear or affirm allegiance.

> "I, A. B. having been elected/nominated a member of this Council do solemnly swear (*or* affirm) that I will be faithful and bear true allegiance to His Majesty the King Emperor of India, His heirs and successors, and that I will faithfully discharge the duty upon which I am about to enter."

To be a member of both houses is not permissible.

Similarly no person may sit in both chambers and should anybody happen to be elected to both, he must before taking seat in either elect to remain a member of one or the other whereupon his seat in the other chamber is declared to be vacant. The Council of State is composed of sixty members of whom thirty-three are elected on a fairly high franchise amongst others of property qualification, or revenue-paying qualification, or income tax-paying qualification or fellowship of an University, or being Chairman or Vice-Chairman past or present of a Municipality, and twenty-seven nominated of whom not more than twenty may be officials. The Legislative Assembly is composed of one hundred and forty-four members including forty nominated in the proportion of not more than twenty-six officials, and fourteen non-officials, and the remainder, namely, one hundred and four elected upon a sufficiently broad franchise, of which the principal are the payment of property

tax and the payment of income-tax, both however, smaller than in the case of the Council of State, or a small Municipal tax. The President of the Council of State is a person appointed by the Governor-General from among the members, while that of the Assembly as well as his Deputy are elected by the members thereof from among their number and approved by him. Qualification of Members.

(e) *The Constituencies*

The rules further lay down certain broad principles upon which all elections, whether of the Council of State or of the Legislative Assembly shall take place, the most important being the appearance of the name of the candidate upon the electoral roll for that Chamber from his province. For election to the Council of State, nowhere except in Madras is a residence qualification insisted on, and it is sufficient for the candidate to be able to show that he has a place of residence within the constituency. This is what is known as the "residential" qualification, not strictly a 'residence' qualification for, under the rules a person is deemed to have a place of residence in a constituency if he ordinarily resides in the constituency, or has a family dwelling house in it and occasionally occupies it, or maintains in the constituency a dwelling house, ready for occupation, or in charge of his agents and occasionally occupies it. In the Presidency of Madras however, the case is different for the candidate does not bring himself within the qualification clause, unless he can show to his credit an actual residence in the constituency of a hundred and twenty days during the year immediately preceding the election. The Electoral roll. Residence in the constituency.

The same principle runs through the entire scope of the election of representatives from a general consti-

Principle of representation in a general constituency.

tuency in every presidency or province save Madras, the Punjab, Assam and Delhi, qualifications other than residential remaining the same, with slight variations, for the details of which I would refer you to the rules themselves as published in the Gazettes, Central and Provincial. There are in addition to the general constituencies, special constituencies for commerce in Bengal, Bombay and Burma for both the Council and the Assembly, and for the landholders of Bengal, Bombay, Madras, the United Provinces, the Punjab, Behar and Orissa and the Central Provinces for the Assembly. The Assembly moreover, entertains representation from the Indian Commerce, and from the European communities of Madras, Bombay and Bengal. The representatives of the various constituencies are elected to either the Council or the Assembly, upon a broad franchise the holders of which are qualified voters upon the electoral roll, prepared on the basis of rules which require certain conditions as to payment of income tax, of Government revenue, holding of a title or office, etc., to be fulfilled before they may be said to be entitled to it. A consideration of their position however, does not come within the purview of my subject and I would therefore drop it here.

(f) *Meeting of the Council of State.*

Meeting of the Council of State how called.

The ordinary life of the Council of State does not run concurrently with that of the Assembly for, while a period of five years is allotted to the former from its first meeting, one of three is the portion of the latter, and the Governor-General is empowered to invite them, first by a notification, and then by summons issued on his behalf by the Secretary to the respective chamber to meet on a certain date, and at a certain place, invariably either

Simla or Delhi. And the difference in the lengths of the respective tenure of the two houses is based upon a fundamental principle. "The short term," observes an eminent political philosopher, Dr. John Burgess, "and total change tend to produce a body too prone to adhere to precedents, too averse to striking out upon new paths. Either alone would be likely to interpret but one side of the common consciousness. Either alone would be likely to destroy in the end the foundations of its own existence; for, true conservatism requires the constant repair of the old, and true progress the constant adjustment of the new." The divergence in the life of the two houses therefore, helps on the part of the legislature, a more faithful interpretation of the national consciousness, or the common consciousness of the State, which helps to keep off revolution and unrest produced by too long an adherence to the forms of a past phase of social and political development, and neutralises reaction engendered by too sudden and racial formulation of the existing phase. The difference of terms, therefore, may be said to rest upon sound philosophy as upon successful practice. The authority which summons the Council or the Assembly is also the authority which terminates a session by proroguing it. And, to the same authority is vested the power of prolonging its life if in any special circumstances he thinks it fit to do so. It should be remembered that prorogation is not the same thing as adjournment under which the same session is continued, but with a break short or long. With prorogation a session comes to a close, and upon the termination of a session of the Council, all notices of motions or resolutions automatically lapse so as to require fresh notice, if it is desired that they should be taken up for consideration at the next session. This rule, however, does not apply to

Fundamental principle of the difference in their respective lives.

Lapse of motions and resolutions.

bills introduced in a session but not passed. They are usually carried over, but not taken up except by a separate motion. This is a rule from which the Assembly is free, though, there is much in common between the two, such as dissolution of both chambers which takes place by order of the Governor-General, or that, on the expiration of the natural life or dissolution of either, a general election upon a direction by notification of the Governor-General, so timed, as to allow the new chamber to meet within six months from the date of dissolution. No political system may be said to be well-arranged which makes it an invariable rule and in keeping therefore, with the traditions of parliamentary system, the rule is departed from when found necessary for emergent reasons.

(*g*) *Business in the Council.*

Oath and affirmation.

We have noticed before how the Council is summoned, what is its ordinary life, how it is prorogued and prolonged and how it is dissolved to render it possible for a new Council to be constituted. On the constitution and thereafter meeting of a new Council, the first thing that takes place is the taking of oath or making an affirmation, to one or the other of which every member whether nominated or elected must subscribe, before taking his seat in the following form :—

> I, A. B., having been elected/nominated a member of this Council, do solemnly swear (*or* affirm) that I will be faithful and bear true allegiance to His Majesty the King, Emperor of India, His heirs and successors, and that I will faithfully discharge the duty upon which I am about to enter.

The Council which has now met at the commencement of a session, with the President appointed by the Governor-General from among its members in the chair, proceeds to nominate from among them a panel of not more than four Chairmen, any one of whom could be authorised by the President to preside over the Council during his absence. Needless to observe, that such Chairman of the Council, while in the chair, performs all the powers and functions of the President appointed by the Governor-General who, also appoints by order in writing a Secretary to the Council, and such other assistants as may be deemed necessary.

Meetings of the Chamber.

Ordinarily commencing its sitting at 11 A.M. and terminating at 4 P.M. the Council may be adjourned at any time in the course of the day, by the President, whose business it is to see to the carrying out of the non-official business of the Chamber upon days allotted to it by the Governor-General. Government business however, usually takes precedence and is arranged in the order prescribed by the Governor-General in Council, the relative precedence of notices of bills and resolutions given by non-official members being determined by ballot the procedure in connection with which is described in Part VII, Section (*b*) hereafter.

(*h*) *List of Business.*

List of business.

In the usual course the Secretary to the Council prepares a list of business before it from day to day. This list is made available to every member who is thus enabled to watch it on the next day allotted for the class of business to which the list of the day belonged and was left unfinished.

(i) *Questions.*

Interpellations.

The rules under which the right of interpellation is granted to the members of the Council of State, do not differ very much from those obtaining in the local legislative Councils which I propose to discuss later in this chapter. I need refer here only to the subject-matters on which there is divergence. A question may be asked for the purpose of obtaining information on a matter of public concern within the special cognizance of the member to whom it is addressed, provided that no question is asked in regard to any matter affecting the relations of His Majesty's Government, or of the Governor-General in Council, with any foreign State, or any matter affecting the relations of any of the foregoing authorities with any Indian Prince or Chief, under the suzerainty of His Majesty, or relating to the affairs of such Prince or Chief or to the administration of the territory of such Prince or Chief, and any matter which is under adjudication by a Court of law having jurisdiction in any part of His Majesty's dominions. And, naturally the Governor-General is the final authority to decide whether a question is within or without the restrictions enumerated, but the President is the person to decide, whether a question addressed to a Member of the Government relates to public affairs with which he is officially connected, or to a matter of administration for which he is responsible. He also decides if a question, before it is admitted, has infringed any of the restrictive rules, namely, that it shall not bring in any name or statement, not strictly necessary to make the question intelligible, or that it does not contain arguments, inferences, or ironical expressions, or defamatory statements, or that it does not ask for an

Subjects forbidden.

expression of opinion, or the solution of a hypothetical proposition, or that, it does not purport to ask as to the character or conduct of any person except in his official or public capacity, and that it is not of excessive length. The President holds every member putting a question responsible for the accuracy of any statement he makes in it, in other words, the President is the sole authority to decide upon the admissibility of questions other than those falling within the jurisdiction of the Governor-General. All questions in the Council admit of supplementary questions, solely for the purpose of further eliciting or elucidating any matter of fact arising out of an answer given, but so as not to infringe the rules as to the subject-matter of questions. No discussion is permissible on the question whether supplementary or otherwise, or its answer.

Framing of questions.

Part VI.

(a) *The Lower House or the Legislative Assembly.*

The lower house called the Legislative Assembly, is composed of one hundred and forty-four members, of whom not more than forty-three, including twenty-six officials, may be nominated by the Government, leaving a hundred and four seats for election. The Council of State which has a President appointed by the Governor-General from among its members whether elected or nominated continues for five years, and the Legislative Assembly which has the power to elect its own President in the manner of the British House of Commons (the first President having been appointed by the Governor-

Composition of the Lower House or the Legislative Assembly.

President and Vice-President of the Assembly are elected.

General for four years only), lasts for three years from its first meeting unless sooner dissolved. Upon every election of the President or the Deputy President from the body of elected members only of the Assembly, the Governor-General is required to set his seal of approval. It is provided that, both the elected President and Deputy President shall vacate their seats if they cease to be members of the Assembly. Provision has been made for a limited increase of members by statutory rules, and also, to vary the proportion of representation as between the different communities. This rule applies to the Assembly only for, in its case the present number of one hundred and forty-four is the *minimum* as against the *maximum* of sixty in the case of the Council of State. Every member of the Governor-General's executive Council is nominated a member of either the one or the other house, but not of both, having of course the right to attend and address the other chamber of which he is not a member. To rules made under the Statute much of the matters relating to the constitution and composition of both the Legislative Assembly and the Council of State are left. They are as laid down in Section 64 of the Act that,

Rules for the constitution and composition of the Legislatures.

(*a*) " the term of office of nominated members of the Council of State and the Legislative Assembly, and the manner of filling casual vacancies occurring by reason of absence of members from India, inability to attend to duty, death, acceptance of office, or resignation duly accepted, or otherwise ; and

(*b*) " the conditions under which and the manner in which persons may be nominated as members of the Council of State or the Legislative Assembly ; and

(*c*) "the qualification of electors, the constitution of constituencies, and the method of election for the Council of State and the Legislative Assembly (including the number of members to be elected by communal and other electorates) and any matters incidental or ancillary thereto; and

(*d*) "the qualifications for being or for being nominated or elected as members of the Council of State or the Legislative Assembly; and

(*e*) "the final decision of doubts or disputes as to the validity of an election; and

(*f*) "the manner in which the rules are to be carried into effect."

and again in a later clause, Section 67, we have it that

Business and proceedings in Indian legislature.

"Provision may be made by rules under this Act for regulating the course of business and the preservation of order in the chambers of the Indian legislature, and as to the persons to preside at the meetings of the Legislative Assembly in the absence of the president and the deputy-president; and the rules may provide for the number of members required to constitute a quorum, and for prohibiting or regulating the asking of questions on, and the discussion of, any subject specified in the rules.

The Legislative Assembly has a complete secretariate of its own now and is no longer in the leading strings of the Home Department nor a branch of the Legislative Department. The Legislative Assembly Department is in direct charge of the Governor-General, with this healthy difference in the Secretariate procedure

The Legislative Assembly Department.

that, unlike Secretaries in other departments the Secretary in the Legislative Assembly Department is not according to every constitutional theory and fundamental moral principle, entitled to free access to His Excellency on matters relating to his department, in respect of which he is responsible only to his Chief, the President of the Assembly and to nobody else.

The supremacy of the President within the precincts of the Assembly.

It may further be noted here that the authority of the President within the inner precincts of the Assembly is, like the authority of the Speaker of the House of Commons, sole and undisputed so that, in order to secure the protection of members and visitors in what are known as the inner precincts, he is responsible. And to effect this purpose the Government deputes to the service of the Assembly a Senior Police Officer who is responsible to the President for regulating all the matters relating to the protection of the Assembly. Within the inner precincts for the purpose of his Assembly duty this officer is designated the ' Watch and Ward Officer ' of the Assembly. The staff which this officer has under him is a part of the Assembly establishment, subject to the control of the President, exercised through the Watch and Ward Officer. They could wear such uniform as the President on behalf of the Assembly should direct.

The Government places at the service of the Assembly and under the orders of the officer such police who are always distinguished by the wearing of a special armlet at the discretion of the President.

Thus within the Assembly Chamber the President is recognised as the supreme authority even in the matter of policing—just the position for which the President of the Legislative Assembly fought. Government members would do well to study parliamentary manners and methods ; if they had done that, the disputes which have

occasionally arisen between the President and the Government would not ensue at all. Used to bureaucratic methods and traditions, Government members sometimes find it difficult to reconcile themselves to a President who may have the courage to act independently.

The President in his turn always welcomes and is guided on matters affecting the security of the House by the considered advice which the authorities may tender to him.

(*b*) *Budgetary Powers of the Indian Legislature.*

Larger budgetary powers have yet to be noticed. They are embodied in Section 67A of the Government of India Act, 1919.

Indian Budget.

67A. (1) "The estimated annual expenditure and revenue of the Governor-General in Council shall be laid in the form of a statement before both chambers of the Indian legislature in each year.

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

Budgetary powers.

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

consideration, unless the Governor-General otherwise directs :—

(*i*) interest and sinking fund charges on loans ; and

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

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

(*iv*) salaries of Chief Commissioners and Judicial Commissioners ; and

(*v*) expenditure classified by the order of the Governor-General in Council as—

(*a*) ecclesiastical ;
(*b*) political ;
(*c*) defence.

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

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

(6) The Legislative Assembly may assent or refuse its assent to any demand or may reduce

the amount referred to in any demand by a reduction of the whole grant.

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

(8) Notwithstanding anything in this Section, the Governor-General shall have power, in cases of emergency, to authorise such expenditure as may, in his opinion, be necessary for the safety or tranquillity of British India or any part thereof.''

Excepted items.

It will be seen that very important and vital items of expenditure are excluded from discussion by the Council, though, it appears, from the course of debate in the Council that, there is a ready disposition on the part of the Government to bring the tabooed subjects more and more under the consideration of the representatives of the people of the country, if only to avoid a fierce conflict between them and the bureaucracy, and perhaps to offer them greater opportunities to realise their own sense of responsibility.

(*c*) *The Powers of the Indian Legislature.*

The Indian Legislature, as it consists therefore of the Governor-General, the Council of State and the

Area of functions of the Legislature.

Legislative Assembly legislates for all persons, for all courts, and for all places and things, within British India, and for all subjects of His Majesty and servants of the Crown within other parts of India, and for all native Indian subjects of His Majesty, without and beyond, as well as within British India, and for all Government officers, soldiers, airmen, and followers in His Majesty's Indian forces, wherever they may be serving, in so far, of course, as they are not subject to the Army or the Air Force Act, and for all persons employed, or serving in or belonging to the Royal Indian Marine Service, and for the purpose of repealing or altering any laws which for the time being may be in force in any part of British India. The Indian legislature cannot interfere with any Parliamentary enactment passed after 1860, relating to the Army or the Air Force enabling the Secretary of State in Council to raise money in the United Kingdom for the Government of India, any more than it can interfere with the authority of Parliament and with the unwritten laws and constitution of the United Kingdom of Great Britain and Ireland or with the sovereign right of the Crown over every part of British India. It has no power to form a government or replace a government in which it has no confidence. It has no power to appoint or dismiss ministers. It is without power of the purse; without power to shift a nail or a screw in the 'Steel-frame,' and without power over the Viceroy, who can defy the chosen representatives of the people, instances of which are to be found in the certification of the Finance Bill by that astute lawyer-Viceroy, Lord Reading, over their heads and locking up their bodies in prison in defiance of all law and order.

It should also be noted here that the principle of representation which finds favour in the Assembly, is founded upon the basis of population while that which

is in higher favour in the Council is representation of local governmental organisations, and that, in neither is the representation instructed, with the result that the confederated assembly of the lower house has lost all its potency and virtue for having allowed itself to be dragged along the chariot wheel of ill-considered and ill-formed political shibboleths the nature of whose inconsistency is manifest in the soul and motive of their operation. The position thus created is assailable from the point of view of political philosophy. There is another little point of which notice may be taken, and that is that office and administrative mandate have not been made incompatible with membership of either Chamber of the Indian legislature, not even in the provinces where the thin end of parliamentary government is attempted to be introduced, though the presence of the heads of administrative departments in the Chambers as members thereof, must be considered to be of great advantage, whenever the ways and means of administration are the subjects of legislation or of discussion. With the previous consent however, of the Secretary of State in Council the Indian legislature may extend its activity to empowering a Court, other than a High Court, to sentence to the punishment of death any of His Majesty's subjects born in Europe, or the children of such subjects. The Indian Legislature and the Secretary of State in Council conjointly, may abolish a High Court. Without the previous sanction of the Governor-General neither of the two Chambers can entertain any measure affecting the public debt or the public revenues of India or imposing any charge on the revenues of India; or the religion or the religious rites and usages of any class of British subjects in India; or the discipline or maintenance of any part of His Majesty's Military, Naval or Air Forces; or the relations of the Government with Foreign Princes or States;

Basis of the principle of legislation.

It may not legislate to affect the Public Finance without leave of the Governor-General.

or any measure regulating any provincial subject, or any part of a provincial subject, which has not been declared by rules framed under the Government of India Act to be subject to legislation by the Indian legislature; or repealing or amending any Act of a local legislature; or repealing or amending any Act or ordinance made by the Governor-General. It may be repeated here, that the periods of five and three years unless sooner dissolved are the natural lives respectively of the Council of State and the Legislative Assembly, though, in special circumstances the Governor-General may always extend the periods either as an emergent temporary measure or, by rules framed under his rule-making powers as a permanent measure in the duration of the Legislature. After dissolution however, of either Chamber the date of the meeting of the next session of that Chamber cannot, except with the sanction of the Secretary of State, be put off beyond six months, and under no circumstances beyond nine months.

Natural life of the two houses.

(*d*) *Wide Powers of Legislation.*

The powers conferred upon the Indian legislature for the purpose of making laws are of a wide character and may for our purpose be summarised in the words of Section 65 of the Government of India Act. The Indian legislature has power to make laws—

Powers of the Indian legislature.

"(*a*) for all persons, for all courts, and for all places and things, within British India; and

(*b*) for all subjects of His Majesty and servants of the Crown within other parts of India; and

(*c*) for all native Indian subjects of His Majesty, without and beyond as well as within British India; and

(*d*) for the Government officers, soldiers (airmen), and followers in His Majesty's Indian forces, wherever they are serving in so far as they are not subject to the Army Act (or the Air Force Act); and

(*e*) for all persons employed or serving in or belonging to the Royal Indian Marine Service; and

(*f*) for repealing or altering any laws which for the time being are in force in any part of British India or apply to persons for whom the (Indian legislature) has power to make laws."

Limitations of the legislature.

This however, is not an unrestricted power, and the limitations placed upon the Indian legislature are those suggested by considerations of Imperial policy which prescribes primarily, that the authority of the Imperial Parliament to legislate for all parts of the British Empire must be left unfettered. It is only as a limb of the British Empire that certain powers have been delegated to her save those which have for their object the repealing of or interfering with

" (*i*) any Act of Parliament passed after the year one thousand eight hundred and sixty and extending to British India (including the Army Act, the Air Force Act and any Act amending the same); or

(*ii*) any Act of Parliament enabling the Secretary of State in Council to raise money in the United Kingdom ' for the government of India ;' ''

Restrictions.

The Indian legislature moreover, cannot claim to have any power to make any law affecting the authority of Parliament, or any part of the unwritten laws or constitution of the United Kingdom of Great Britain and Ireland whereon, may depend in any degree the allegiance of any person to the Crown of the United Kingdom, or affecting the sovereignty or dominion of the Crown over any part of British India.

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

Further restrictions.

Further restrictions upon the powers of the Indian legislature are to be found in the provisions which make the sanction of the Governor-General a condition precedent to the introduction of any measure affecting

'' (*a*) the public debt or public revenues of India or imposing any charge on the revenues of India ; or

(*b*) the religion or religious rites and usages of any class of British subjects in India ; or

(*c*) the discipline or maintenance of any part of His Majesty's military, (naval, or air) forces; or

(*d*) the relations of the Government with foreign princes or states:

or any measure—

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

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

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

It will be seen therefore, that subject to the conditions laid down, the power of the Indian legislature to legislate for the provinces and to repeal or alter any laws which may be in force in any province is unrestricted and if, in spite of Section 67, the provisions of which we have examined before, the Indian legislature should have encroached upon the province of the local legislature, the powers of which we shall examine later in this chapter, the Act provides that it shall not be void. In actual administration such a thing has not hitherto happened, and if by any chance it should happen, the best way out of the anomalous situation is suggested to be for the local legislature concerned to adopt the same as its own.

(*e*) *The Certificate Procedure.*

There is what is known as the "Certificate Procedure" in the Indian constitution, but the certificate

What must be certified.

must testify to the bill in the approved form being "essential for the safety, tranquillity or interests" of British India or any part thereof. A certified bill, before it finds a place upon the statute book is required to be placed on the table of each House of Parliament for not less than eight days during a session of that House when only it may be said to be ripe for receiving the assent of His Majesty the King Emperor in Council. Hereupon it acquires the force and effect of an Act passed by the Indian Legislature, and duly assented to by the Governor-General who, in exceptional cases and emergent matters is invested with the power of bringing such legislation into operation, subject of course, to disallowance by His Majesty in Council, namely, the Privy Council. The Crown reserves to itself the right to disallow any enactment of the Indian legislature, even those passed in accordance with its normal procedure. But however expedient the 'certificate procedure' may be, it is unquestionably an open denial of the principle of responsible government. It tends to increase moreover, the independence of the Governor-General in Council of his Legislature, and gives him a *carte blanche* to take away any bill from the Assembly at any stage by simply certifying that it affects his "responsibilities for peace, order and good government," including sound financial administration and pass it into law in any shape he pleases, over the shoulders of his legislature.

Governor-General's power to "certify."

A still more potent constitutional method of making legislation is the Viceroy's power to make and promulgate ordinances.

(*f*) *Ordinances.*

This power has been reserved under Section 72 which is as follows :—

Section 72. "The Governor-General may, in cases of emergency, make and promulgate ordinances for the peace and good government of British India or any part thereof, and any ordinance so made shall, for the space of not more than six months from its promulgation, have the like force of law as an Act passed by the Indian legislature, but the power of making ordinances under this section is subject to the like restrictions as the power of the Indian legislature to make laws; and any ordinance made under this section is subject to the like disallowance as an Act passed by the Indian legislature and may be controlled and superseded by any such Act."

It is difficult to realise how and why the power so reserved to the Governor-General to meet cases of emergency cannot be deemed sufficient.

(*g*) *The Assent of the Governor-General.*

Governor-General's assent may be withheld.

And like the Provincial Governor the power of the Governor-General to withhold his assent to a Bill, or check the further progress of any Bill or amendment which he certifies to affect the safety or tranquillity of the country, is certain and definite, but there is some difference in their relations with their respective legislatures. "The Governor's relations," we are told by Lord Meston, "with his legislature in regard to reserved subjects differ in degree, but not in kind, from the Viceroy's relations with the Central legislature in regard to all his business. On paper each of them has a wide discretion and an indefeasible authority. In practice

Governor differently situated.

each of them must walk warily indeed if he is to avoid a habit of conflict which may render the whole scheme of reform nugatory. For the Governor the position is eased by the existence of a field in which the will of the legislature is supreme, and where accordingly it can exercise its administrative ambitions. For the Viceroy's protection there is no such safety-valve." The answer is that such a safety-valve was never contemplated and its idea was even flouted when suggested, as it is being resisted ever since.

PART VII

(*a*) *Meetings of the Legislature*

Meeting of Legislature.

During session both the Council of State and the Assembly meet ordinarily at 11 A.M., and terminate for the day at 4 P.M., while the business of the chamber and the allotment of days to official and non-official business are arranged for by the Secretary, under the direction of the Governor-General himself, though the first hour of every meeting is devoted to the asking and answering of questions. Thereafter the list of business previously made, a copy whereof is available to every member and from which no departure is permitted except with the leave of the President, is taken up. Members are expected to give notice of business they propose to bring before the chamber, and for this purpose are required to leave intimation thereof in writing at the notice office between the hours of 11 A.M. and 3 P.M. The order of Government business is arranged by the Secretary, while that of non-official business is determined by

Arrangement of business in Council.

ballot, in accordance with a procedure which has been laid down to be as follows :—

(b) Balloting Motions in the Council of State.

Balloting of Motions

"For the first two days of the session, whether the Council actually meets or not, there will be kept in the Council office under the control of the Secretary a numbered list. On this list and during those days and at hours when the office is open, any member who wishes in the current session to give notice or has given notice of a Bill or resolution may have his name entered once only on the list against a number."

"On the third day a ballot will be held in the committee room before the Secretary, at which any member who wishes to attend may do so."

"Papers with numbers corresponding to those against which entries have been made on the numbered list will be placed in a box."

"A clerk will take out at hazard from the box one of the papers and the Secretary will call out from the list the corresponding name, which will then be entered on a priority list. This procedure will be carried out till all the numbers have been drawn."

"Priority on the list will entitle the member to have set down in the order of his priority either a Bill or a resolution but not both, of which he has either given notice or of which he may give notice on the day after the ballot, on any day in the month in which the session commences, available for the disposal of non-official business after the necessary notice for the Bill or the resolution, as the case may be, has expired."

"A member may select, subject to the priorities of the list, any day allotted for the disposal of non-official

business. But he or some other member authorised by him must state then and there at the time of the ballot, the Bill or resolution that he wishes to have set down and the date on which he wishes it set down and, if he has not already given notice, must do so on the day next following or he will lose all priority."

"To determine the priority of non-official business during the remainder of the session, ballots shall be held for such days and on such occasions as the President may from time to time appoint, and due notice shall be given to members of any proposed ballot. Subsequent ballots shall be taken in accordance with the procedure hereinbefore set out."

(c) *Ballot Procedure in the Assembly.*

Ballot procedure in the Assembly.

The ballot procedure for business in the Assembly runs very much upon those lines except that, the Secretary here has to place the numbered list in the Assembly open for entries to be made therein for seventeen days before each day allotted for non-official business. All business left unfinished at the end of the day, is not carried over to the next day allotted for the class of business to which it belongs, and unless it has already been begun and left over, part having been gone into, it loses its place altogether in the ballot list on the next day it is entitled to be on the agenda. This rule varies with that which prevails in the Council of State. In other words the rule in the Assembly is that for the business left outstanding to be taken up on the next succeeding day on which such business may be taken up it has got to be ballotted for again to gain priority.

(*d*) *Right of Interpellation.*

Right of interpellation exercised with care and caution.

Under the rules of business every latitude is given to members whether of the Council of State or the Legislative Assembly to exercise their right of interpellation, though not quite on a line enjoyed by Members of the House of Commons. Upon the proper use of the right by members of the Chambers at Delhi will no doubt depend the further extension of it, and it may with confidence be asserted, that the right of interpellation has never been improperly used in India. Members have in every case rigorously adhered to the rule which requires ten clear days' notice of every question being given unless, in a proper case and with the consent of the member-in-charge of the department to which the question relates, it has been relaxed in favour of short service by the President, whose power to disallow a question on the ground that, " it relates to a matter which is not primarily the concern of the Governor-General in Council " is unquestioned. Questions to be entertained must not be in reference to a matter which has any bearing on the relation of His Majesty's Government, or of the Governor-General in Council, with any foreign State or affecting the relations of any of the authorities mentioned, with any Prince or Chief under the suzerainty of His Majesty, or relating to the affairs of any such Prince or Chief, or to the administration of the territory of any such Prince or Chief, or which is under adjudication by a Court of law having jurisdiction in any part of His Majesty's dominions. And of questions which do or do not come under these categories, the Governor-General is the sole and final judge, so that his government may not be asked to make more than a bare statement of facts, or of any difference of opinion between him and

Questions not permitted.

Questions how to be framed.

the Secretary of State, or between him and any local government. For a question in order to be admissible must satisfy the restricted form and contents thereof, in other words, it must keep clear of any name or statement not strictly necessary to make the question intelligible, nor shall it be argumentative or inferential in character, or ironical in expression, or defamatory in statement. No question asking for an expression of opinion, or the solution of a hypothetical proposition, or as to the character or conduct of any person except in his official or public capacity, or of excessive length can be tolerated, nor can the questioner be permitted to make an irresponsible statement, so that, for the accuracy of every statement made the member is held responsible.

Admissibility of questions decided by President.

As in every other representative assembly, in the Indian legislature the President is the authority who pronounces his final decision on the admissibility of questions which, if allowed, are called up in the order in which they appear in the list of questions for the day. The right of being able to put supplementary questions for the purpose of eliciting further facts and of elucidating any matter of fact regarding which an answer has been given, is one of recent origin, and is exercised for the purpose for which it is accorded, subject to the authority of the President to invalidate it, if, in his opinion it infringes the rules as to the subject-matter of questions on which, as upon its answer, no discussion is permitted.

(*e*) *Motions for Adjournment of the House.*

Motions for Adjournment of House—a new innovation.

A valued privilege always enjoyed by parliamentary institutions only obtained under the Reforms is that of the right to move the adjournment of the house to discuss a definite matter of urgent public importance, and

in conceding this privilege to legislative institutions in India, whether Central or Provincial, Parliament cannot have had any object in view other than the gradual development of self-governing institutions in India. Both the Council and the Assembly enjoy the privilege, but under five proper checks so as not to allow any abuse of it being made or attempted. They are that not more than one such motion may be made at the same sitting, that not more than one matter may be discussed on the same motion which is restricted to a specific matter of recent occurrence, that it does not re-open a question discussed in the same session, that in it no anticipation has been made of a matter which has been previously appointed for consideration or which is the subject-matter of a previous notice, and that it has nothing to do with a matter which under the rules is excluded from being made the subject-matter of a resolution. Apart from these specific checks the member moving the adjournment of the house has got to be singularly alert and punctilious in asking for leave. He shall have before the commencement of the sitting of the day, left with the Secretary a written statement of the matter proposed to be discussed, immediately after the question hour, but before the agenda of business of the day is taken up, or else, he loses his chance, but the leave, if granted upon a challenge by not less than fifteen members in the Council and twenty-five in the Assembly, is set down for actual discussion at the hour when the business of the day terminates, but not later than 4 P.M. when it has got to be taken up whether the day's programme is over or not, and continued for not more than two hours. During the discussion no speech shall have exceeded fifteen minutes in duration. At the end of the period the debate automatically comes to a termination without

Motions for Adjournment allowed under proper checks.

Proper time for such Motions.

the question being put, unless in the meantime the question in the prescribed form "that the Council" or "the Assembly," as the case may be, "do now adjourn" is put. The most powerful lever however, upon a motion for adjournment, is in the hands of the Governor-General who, in his discretion may disallow it on the ground that it relates to a matter which is not primarily the concern of the Governor-General in Council, and wider still, that it cannot be moved without detriment to public interest.

Governor-General's discretionary authority to disallow motions for Adjournment.

(*f*) *Select Committees.*

Composition of Select Committees.

An important matter in the legislative procedure is the appointment of Select Committees, in the composition of which the Member of the Government to whose department the Bill in question relates, the Member who introduced the Bill, and the Law Member of the Governor-General's Executive Council, if he is a Member of the Chamber where the Bill originates, must form part, while others may be nominated by a motion with a prescribed quorum. Should the Law Member happen to be a member of the Committee he is to preside over its meetings and, if he is not there the rules provide for the appointment of some other member of the Committee as Chairman thereof. The details of these rules ought to be made the subject-matter of close study by the serious student of legislative business and procedure in India. It is sufficient for our purpose to notice the event that takes place after the appointment of the Select Committee.

Report of the Committee.

In submitting the report of the Committee the member-in-charge is permitted to make only a brief statement of facts, without entering into any details, or raising a debate which is postponed till it is time for the Chamber

to consider it, the report in the meantime having been printed and circulated to all members. The report may then be taken into consideration provided, certain preliminary conditions have been fulfilled, or it may be re-committed for consideration by the Committee with respect to a particular clause or clauses or additions. It may also be ordered to be re-circulated for further opinion.

Clause by clause submission.

Notwithstanding all this the President of the Chamber has a right, both inherent and statutory, to submit a Bill clause by clause, upon a motion being made that the Bill be taken into consideration. When this course is not taken advantage of, and the motion that a Bill be taken into consideration is allowed to pass unchallenged, the member-in-charge is entitled to move at once that the Bill be passed. It should be remembered that any withdrawal of a bill after introduction is not permissible except with the leave of the house. Bills introduced in the house but not passed by it before the termination of the session are carried over to the next. This rule however, does not apply to Bills which have not gone through before the dissolution of the house. With dissolution all Bills lapse.

PART VIII

(a) *The Quorum and Decorum*

Number for Quorum.

No meeting of the Council can be held to be valid unless a quorum of 15 members and of 25 of the Assembly is present throughout, that is to say, at any time during a meeting. On a count being demanded the

Quorum for the Council and the Assembly.

President ascertains if the required quorum is present, and if found that it is not, he adjourns the chamber to its next meeting day. Members are usually seated in the order prescribed by the President, but have to be on their legs when addressing the chamber which includes the occasion when they have to offer an explanation, or ask for an explanation on the matter under consideration, or raise a point of order in which the decision of the President is final. On all occasions a member, as is the vogue in every other meeting, addresses the President and not any other member, or the Chamber through the President in English, unless the President has permitted a member, unacquainted with English to address it in a vernacular language. The anomaly of the linguistic situation, particularly in the Council Chambers and class rooms in India, is a potent one, and a reproach upon the efficiency and the system of education in British India. "In a country," said an estimable gentleman, himself a man of high English culture, yet an Indian to the core for all that, "where the language of the Schools and Colleges, of the Council Chamber and the Courts, of commerce and trade, of posts and telegraphs, and of daily intercourse between the rulers and the ruled, as well as of her better instructed men at congresses, conferences and public meetings, is other than that of the people of the soil, as a rule, all avenues to the development of real manhood must necessarily remain closed even to the most deserving of its sons."

"Paper Eloquence" an anomaly.

And the unnational and unnatural system of education has made its largest contribution towards a perfection of simulation on the part of the members of the various legislative bodies, Imperial and Provincial. You may rest assured that there is a very large number of them who, by reason of insufficient and imperfect knowledge

of English, have to take recourse to what Lord Curzon termed as "paper eloquence," not infrequently not even properly read out because not adequately rehearsed, prepared as they are so often not by themselves but by their friends or Secretaries. These again are the men whose knowledge of their own vernacular is of so poor a quality that if left to themselves they may be safely trusted to lend themselves to ridicule by riotous use of expressions, and allowing rules of grammar to run riot with each other. On the other hand if the vernacular, in the local Councils at any rate, had been made the official language, for which the need to-day is greater than before, when the importance of making the people's point of view clear to the governing powers who have not a sufficient acquaintance with the language of the country, or the sentiments and traditions of the people they are called upon to rule was greater than the present rule of making their point of view clear to a people only six per cent. of whom can read and write, and a still smaller percentage is capable of reading or understanding English, we might have seen better and more capable men coming forward as representatives of the people. The country in its self-consciousness cries for men of stern character and common sense with competent knowledge of local affairs and conditions and not unmoral and unscrupulous party agents.

Plea for the use of vernaculars in the Councils.

(*b*) *Freedom of Speech.*

To return to our main topic of procedure followed in the chambers in the lower of which absolute freedom of speech is recognised, without making the speaker who restricts himself to the various conditions of not referring

Limitations on Freedom of Speech.

to any matter of fact on which a judicial decision is pending, or not making a personal charge against a member, or not making use of offensive expressions regarding the conduct of the Indian or any local legislature, or not reflecting upon the conduct of His Majesty the King, or the Governor-General, or any Governor, as distinct from the Government of which he is the head, or any Court of law in the exercise of its judicial functions, or not uttering treasonable, seditious or defamatory words, or not using his right of speech for the purpose of wilfully and persistently obstructing the business of the chamber, liable to any proceedings in any court by reason of his speech or vote in the Assembly. The restrictions are enjoined upon members of both the Council of State and the Legislative Assembly. No question or motion so long as it is not a repetition of, or identical with the one on which the Chamber has pronounced its opinion in the same session, except motions for taking a Bill into consideration or its reference to a Select Committee, where an amendment to a previous motion of the same kind to the effect that the Bill be circulated or re-circulated for the purpose of eliciting opinion on it has been carried; or, for the amendment of a Bill which has been re-committed to a Select Committee, or, re-circulated for the purpose of eliciting opinion on it; or, for the amendment of a Bill made after the return of the Bill by the Governor-General for re-consideration by the Chamber; or, for the amendment of a Bill which is consequential on, or designed merely to alter the drafting of, another amendment which has been carried; or, which has to be or may be made within a period determined by or under the rules or standing orders, may be put to the vote of the Chamber. At the discretion of the President such vote may be taken either by voice or by division, but whether it should be the one

Other restrictions.

Order in which Speeches are made.

or the other is decided by the President himself. An unheard of procedure is that which allows the member of the Government, in either Chamber, to have the last word upon a motion moved by a non-official member, no matter whether the member to whose department the matter relates has previously spoken in debate or not. In all other respects the order of speeches, provided the right of reply of the mover is not interfered with, is regulated by the President. The ordinary rule is that an amendment which is neither frivolous nor has a negative effect upon the motions, and which is relevant to the motion, is entitled to be moved just as a member has a right, having regard of course, to the right of reasonable debate, to move the closure at any time with the words, "that the question be now put," which, if carried, makes it incumbent upon the Chairman to close the debate and put the question. Finally, it may be noted that to the President solely belongs the authority to preserve order in the Chamber, from which he may for sufficient cause order any member, as also all strangers from the visitors' and Press galleries, but not the officials from the official gallery, to withdraw.

(c) *Spirit of the Announcement of August 20th and the Process of Legislation.*

Process of legislation.

While the spirit of the announcement of August 20th may be said to have influenced every sphere of activity, even in the Central Government, the Central Legislature remains practically unaffected. No departure, upon a close examination, is discernible from the state of affairs that ever existed. In the process of legislation certain liberal rules have been introduced including the one which makes for larger powers in respect of

financial legislation being vested in the lower or the more popular chamber by reason of the fact that, the members who represent the bulk of the tax-paying public, should have a potent voice in the raising of taxes and expenditure thereof, but they are hedged round by so many conditions and safeguards that their utility has been completely neutralised. For instance, no measure can be introduced in the Assembly, the more important of the two Chambers, affecting the public debt or the public revenues of India, or one which imposes a charge on the revenues of India, or, which affects the religion or religious rites and usages of any class of His Majesty's subjects in India, or, which interferes with the discipline or maintenance of any part of His Majesty's military, naval or air forces, or, which affects the relations of the Government with any foreign prince or state, or, which purports to interfere with a provincial subject, the administration of which has devolved upon the local government or any part of it, or, which repeals or amends any Act of a local legislature or an Act or Ordinance made by the Governor-General, with the assistance of his "certificate power." In every other case of legislation projected by a private member, a motion is first made for leave to introduce a Bill, preceded by the service of a notice of it along with a full statement of its objects and reasons which is usually subjected to a close examination of whether it conforms to all the rules of bar. After introduction all bills are published in the Gazette for general information and public criticism. The fate of a motion for leave to introduce a Bill largely depends upon the debate that takes place on it on the day the motion is made, and subsequent days to which the debate may be postponed. Here the principles of the Bill are discussed, so that, an amendment to it or to any clause of

Statement of objects and reasons of a bill.

it at this stage would be out of place. When the next stage is arrived at, namely, the submission of a motion to take the Bill into consideration or refer it to a select committee, the constitution of which runs along the invariable lines of inclusion of the Member of the Government to whose department the Bill relates, the mover of the Bill, and the Law Member if he happens to be a member of the Chamber where the motion is made, then amendments are entertained. The Committee is completed by the appointment of a few others by the Chamber itself, and it is presided over by the Law Member when he is of the Committee, and failing him by the Deputy President in the case of the Assembly, or a Chairman of the Chamber, who, under the rules has a place in the Committee assigned to him. And, even if the Law Member does not belong to the Committee, he has larger and wider powers of attending and taking part in its deliberations, as if he were a member thereof. The report of the select Committee is presented to the House by the Member-in-charge of the Bill, not sooner than three months from the date of its publication in the Gazette, unless it is a taxation Bill, with an observation from the Committee itself, indicating the extent of alterations made by them, to enable the Council to decide whether it requires re-publication by reason of such alterations. After presentation of the report and the carriage of the motion that the Bill be taken into consideration, suggestions and amendments of all descriptions are entertainable. Notice however, of these has to be given at least two clear days before the Bill is taken up. These amendments are not taken up *pall mall* but in the order of the clauses of the Bill to which they respectively relate as the House goes on considering clause by clause. All this is preliminary to the passing of the Bill upon a motion that it be passed, and the passing of

Principles of a bill discussed at introduction.

Select Committee stage.

Report of the Select Committee.

it is authenticated by the signature of the President thereon.

(d) *Leave of the House necessary for Withdrawal of Bill.*

Withdrawal of a Bill.

With the leave of the House a Bill may at any time be withdrawn, but except upon dissolution and, unless it is carried over from the pending list of one session to the list of business of the next, and then without being sponsored, is similarly carried over through two complete sessions, a Bill lapses unless a motion for its continuance is carried by the member interested in the next session of the Chamber. All difficulties however, are avoided when the Governor-General certifies that a Bill, or any clause of a Bill, or any amendment to a Bill, affects the safety or tranquillity of British India or any part thereof and directs that no proceedings or no further proceedings shall be taken thereon and all notices of motions in connection with the subject-matter of the certificate shall lapse, and if any such motion has not already been set down on the list of business, it shall not be so set down. If any such motion has been set down on the list of business, it is the duty of the President to inform the House of the Governor-General's action. The House thereafter forthwith proceeds to the next item of business.

Certificate puts an end to all discussions.

(e) *Form of Resolutions.*

Form of Resolutions.

Provided it is cast in the form of a specific recommendation addressed to the Governor-General in Council, and is expressed in clear and precise language, and raises substantially a definite issue, and does not

contain arguments or inferences or ironical expressions or defamatory statements, and does not refer to the conduct or character of persons, except in their official or public capacity, every resolution of which fifteen clear days' notice, unless the President with the consent of the Member of the Government has allowed short service thereof, has been given, is entitled to be moved in either chamber of the Indian legislature, subject always of course, to the right of the Governor-General to disallow any of them on the ground of it being detrimental to the public interest, or because it relates to a matter which is not primarily the concern of the Governor-General in Council. To these general conditions are added further restrictions, of which the sole deciding authority is the Governor-General himself. They are embodied in three categoric rules, namely—that no resolution purporting to (*a*) affect the relations of His Majesty's Government, or of the Governor-General or the Governor-General in Council, with any foreign State; or, (*b*) affect the relations of any of the foregoing authorities with any Prince or Chief under the suzerainty of His Majesty, or relating to the affairs of any such Prince or Chief, or to the administration of the territory of any such Prince or Chief; or, (*c*) interfere with a matter which is *sub-judice* in a Court of Law, will be entertainable.

Resolutions barred.

(*f*) *Governor-General may allow or disallow.*

Save in so far as is otherwise provided for, or in any case in which a communication is to be made to the Governor-General under any provision of the Government of India Act, or, of the rules thereunder, no discussion of a matter of general public interest shall take place, otherwise than on a resolution moved in accordance

Allowance or disallowance of Resolutions.

with the rules governing the moving of resolutions, except with the consent of the President and of the Member of the Government to whose department the motion relates. The discretionary powers of the Viceroy are further extended when it is ruled that it shall not be permissible for the President or for the Member of the Government concerned to give his consent to the moving of any motion in regard to any of the subjects, with respect to which a resolution cannot be moved, and the decision of the Governor-General on the point whether any motion is or is not within the restrictions imposed by rules shall be final and that, the Governor-General may disallow a motion or part of a motion on the ground that it cannot be moved without detriment to the public interest or on the ground that it relates to a matter which is not primarily the concern of the Governor-General in Council and if he does so the motion shall not be placed on the list of business.

(g) *President decides upon the Admissibility of Resolutions.*

Allowance or disallowance by President.

Generally however, it always rests with the President to decide upon the admissibility of a resolution having regard to the various rules of exclusion or of inclusion. He may allow a resolution to be withdrawn or moved by a Member other than the Member in whose name it stands. Lest interminable debate should be a hindrance on public business, no speaker on a resolution is permitted to occupy more than fifteen minutes, except the mover himself and the Member of the Government to whose department it refers. They are allowed not less than thirty minutes each when speaking on it

for the first time, but always limiting themselves strictly to the subject-matter of the resolution. All matters relating to amendments to a resolution, are governed by practically the same rules as have reference to amendments in course of legislation with a further proviso that a matter which has been the subject-matter of a resolution may not be made the issue of another within one year from the date of the original.

I have fully detailed in another chapter the procedure that obtains in connection with the introduction and discussion of the budget and all matters pertaining to it generally.

Communications from the Crown to the House and *vice versa*.

Under the English constitution, communications from the Crown are made by speech from the Throne in the House of Lords to which the Commons are invited. Here in India, such communications are made by the Governor-General to the Assembly only, never to the Council of State, either by a speech from the throne at the foot of which the Governor-General has invited the Members to attend or, by a written message delivered to the President by a Member of the Government, and read to the Assembly by the President or informally through a Member of the Government. Communications from the Assembly to the Governor-General are made by formal address, after motion made and carried in the Assembly, and submitted through the President.

(*h*) *When does a Bill become an Act.*

Enactment of a Bill.

No Bill however, can be deemed to have passed into law unless it has passed both Houses of the Indian legislature either without amendments or with such amendments as may be agreed to by both Chambers. That is the fundamental law compliance with which has been provided for, in that, a Bill passed by one

chamber is without loss of time sent over to the other to be taken up for consideration at its next following meeting, and laid on the table, whereupon, with a margin of three clear days any member may move that it be taken into consideration when only, the general features and not the details of the Bill are permitted to be discussed. It is then referred to a select committee of the chamber and made to pass precisely through the same process we have described above but, if the second chamber agrees to it, simply a message to that effect is sent up or down as the case may be, and, where amendments have been suggested, the Bill is transmitted to the originating chamber with a request for its concurrence in them. In considering the suggested amendments the originating chamber has to strictly follow the rules of procedure, much on the lines of those observed by the second chamber, at the time of receiving it from the originating chamber. If amendments are accepted by the originating chamber or counter-amendments by the second or originating chamber as the case may be the procedure is simplified. In the event of continued disagreement, the Governor-General at his discretion may call a joint sitting of the two chambers, at which the President and the prevailing procedure must be those of the Council. Such a procedure, the starting point of which must necessarily be where the originating chamber left the matter, must follow the natural course of events namely, that the matter will be decided by a simple majority of the Members of both Houses present at such sitting. Members of the two chambers themselves may desire to meet each other in equal number at a conference to settle a point of dispute. Whether the two chambers meet in joint session or not, the " Certificate power " of the Governor-General remains unaffected.

Procedure followed in case of difference of opinion.

(i) *Dissolution.*

On the question of dissolution it is necessary that we should digress for a moment, if only to draw your attention to the divergent practices prevailing in India and England. Here in India the Governor-General, or the Governor as the case may be, is the undisputed master of the situation. There in England the Crown dissolves with the advice of the Prime Minister. But has the Prime Minister the unrestricted power of advising the Crown in the exercise of the prerogative of dissolution? The common belief has hitherto been that this responsibility rests entirely with the head of His Majesty's Government for the time being. Constitutional jurists have challenged the assumption that the Prime Minister can advise a dissolution of Parliament when he pleases, irrespective of the views of his colleagues in the Cabinet. If a Prime Minister speaking for himself alone, were endowed with such a right "his influence always great would become overpowering, and would make him instantly master of a House of Commons whose very existence would depend on his sole will or pleasure." Mr. Gladstone on two occasions desired a dissolution of Parliament, but was unable to advise the step owing to the opinion of his colleagues in the Cabinet being adverse. Mr. Buckle, the well known ex-Editor of the "Times," makes an interesting contribution to the discussion on this point. He was greatly struck in reading Mr. Baldwin's statement in the House of Commons by his "invariable use of the first person singular throughout." We can, Mr. Buckle suggests, doubt that the decisions taken to bring about a General Election forthwith are those of the Cabinet as a whole, but it is noteworthy that Mr. Baldwin in the statement referred

Dissolution—a prerogative of the King.

Not of the Prime Minister or of the Cabinet.

to, never once used the customary phrase " His Majesty's Ministers," " the Cabinet " or " we." " It is all I." Mr. Buckle thinks it may safely be asserted that none of Mr. Baldwin's great predecessors,—Peel, Palmerston, Gladstone, Disraeli, Salisbury, nor indeed Lord Rosebery, Lord Balfour or Lord Oxford would have framed a policy in this fashion. It will be noticed that Mr. Buckle does not include Mr. Lloyd George in the list, and the omission seems to be intentional, for, he asks, whether Mr. Baldwin's language is not to be attributed to the " enormously exaggerated importance acquired during Mr. Lloyd George's war Dictatorship by the Office of Prime Minister. Once he was " *primus inter pares*;" now even when he himself is far from courting the limelight, his Cabinet have become rather lieutenants than colleagues." In view of the fact however, that the Viceroy has the inherent right to exercise the prerogatives of the Crown in India, he may be said to have the power to dissolve the legislature also, apart from the fact that it has been conferred upon him by Statute. Not so the Provincial Governor who derives his power to dissolve from the Statute alone.

Part IX.

(*a*) *Local Legislatures.*

Development of legislative methods.

In each province is set up an enlarged legislative Council with a substantial majority of members elected by direct election on a broad franchise, with such communal and special representations as have been found to be necessary for the protection of interests. The result of investigations made during an electoral survey has all been embodied in the regulations upon which the struc-

ture and constitution of the Legislative Council is based. Indirect elections which obtained in India up till the year 1920, are now a thing of the past and the franchise has been determined rather with reference to practical difficulties than to any *a priori* considerations of education or wealth. Communal electorates and communal representatives continue though it is admitted on all hands, except by those who fear limelight and are in fear of facing a critical public out in the field, but must, to be recognised as important persons, come into the Councils of the nation through backstairs and the inner apartments of either a communal or special electorate. Nothing takes India farther from her goal of responsible government, as the communal representation upon which one particular community more than any other in India is insistent. The mistake that the politicians of India made was in 1916 at Lucknow. In a hurry they created a permanent Ulster there, rather than wait for the time when the backward communities have shorn themselves of their misgivings, prejudices and narrow outlook, and were educated enough to march along with and not against their more advanced brothers for political spoils. It is opposed to the teachings of history, as perpetuating class distinctions, as stereotyping existing relations, and, in fact, as a very serious hindrance to the development of self-governing principles. Trade, Commerce and the landowning interests have each their special representation and in the present state of India's political development the total elimination of the official element is rightly deemed to be undesirable. But officials or no officials the most formidable canker in the constitutional health of India, as I have said, is the representation on communal basis, whether in the Indian legislature, or in the Local legislatures, or in the local bodies, such as Municipalities and the Boards. After the Lucknow

Lucknow *pact* a great mistake.

blunder the cry is, for further widening of the gulf. The principle sought to be adhered to was unpolitical,—a principle carried beyond its legitimate plane by the enthusiasm of one of India's most powerful political leaders, who was otherwise a person of shrewd common sense, remarkable political insight and foresight and great will power, by what is known as the *pact*, which, in view of incidents immediately following it would better be described as an *impact* brought about by the best organised political party in the whole of India. Self-government cannot be won by tricks, and tricks have never achieved an enduring end in the history of man. A far more sensible view is that taken by the Indian Christians and the Parsis, either of whom as a community are not negligible. They have never been for communal representation and we have it on the authority of the President of the Christian conference held in Bombay in December 1924, that they were quite prepared to throw in their lot with their non-Christian compatriots, trusting them to safe-guard their interests. They were one with the latter in all their national aspirations, in so far as they were in keeping with the principles of human religion and human feeling of the brotherhood of man between one Indian and another. The attitude of the Parsis of India, a most advanced and influential community, has always been equally patriotic. This, however, is not the place where I need discuss the merits and the demerits of a question which is fraught with grave political consequences to a country which is the motherland of us all.

Bengal *pact* a worse mistake.

Better examples.

(*b*) *Strength of the Provincial Councils.*

Upon such assumption as has been enumerated above the local legislatures are based. Bengal has 140 members

Constitution of the Provincial Councils.

of whom 114 are elected, and 26 are nominated. The nominated members are the 18 officials, including the 4 *ex-officio* members of the Executive Council, 6 non-officials to represent important minorities, 1 representing the Indian Christian community and another the depressed classes. Madras has 127 of whom 98 are elected, and 29, including 4 members of the Executive Council, 19 officials, and 6 representing various minority communities and inhabitants of backward tracts are nominated. In Bombay we have 111 members of whom 86 are elected, and 25, including 4 members of the Executive Council and 16 officials and 5 representing the Anglo-Indian community, the Indian Christian community, the labouring classes, the depressed classes and the cotton trade, are nominated. In the United provinces of Agra and Oudh they have a Council of 123 members of whom 100 are elected, and 23 nominated including 2 members of the Executive Council, 16 officials and 3 non-officials to represent the Anglo-Indian, the Indian Christian and the depressed communities, while the Punjab Legislative Council is composed of 93 members of whom 71 are elected, and 22 nominated including 2 of the Executive Council, 14 officials, 2 to represent the European and Anglo-Indian communities, 1 the Indian Christian community and 1 the Punjabi officers and soldiers of His Majesty's Indian forces. The Behar and Orissa Council is composed of 103 members with 76 elected, and 27 nominated in whom are included 2 of the Executive Council, 18 officials, 2 to represent the aborigines, 2 the depressed classes, 1 the industrial interests other than planting and mining, 1 the Bengali community domiciled in the province, 1 the Anglo-Indian commnuity, 1 the Indian Christian community and 1 the labouring classes; similarly the

minor territories of the Central Provinces have a Council of 70 members of whom 37 are elected and 33 nominated including 2 of the Executive Council, 8 officials and 17 others to represent various classes and interests found as a result of the elections to have been unrepresented. Finally, the Assam Legislative Council is 53 strong being made up of 38 elected and 15 nominated in whom are included the 2 of the Executive Council, 5 officials and 1 to represent the labouring classes and another the backward tracts. And even these members may, by and under statutory rules, be increased many-fold provided that the proportion of representation established in the Act of 1919 of twenty per cent. being officials, and not less than seventy per cent. being non-official elected members is maintained.

These members, some of whom have hitherto been men with a highly discreditable past and as such are no better than adventurers and are by a distinguished writer on Indian Polity termed 'carpet-baggers,' are elected on a franchise basis which vary but immaterially in different provinces, the substratum being the same everywhere.

(c) *The Franchise.*

Basis of Franchise.

The second and third elections under the Reforms have convinced the student of constitutional politics that the people of the country are coming to attach greater importance to the ballot box than to local or personal influence which had hitherto been the only passport to a seat in the Council or in a local body. The idea of a political structure broad-based upon the people's will in

India is no longer a moonshine. There is no denying the fact that this is not enough. Mr. Montagu himself knew it, and those who supported the scheme were conscious of it but they,—certainly he,—wanted the best men of India to go into the Council if only to use it as a lever for further concessions. Respond where you can and oppose where you must, and extort more power is the principle suggested by the scheme itself. The basis of this franchise is not sufficiently broad. This fact provides an argument against further expansion of the Reforms in India even though history teaches a different lesson. That lesson has been very lucidly and effectively put in their dissent note by the minority of the Muddiman Committee. Therein it is pointed out that, " Previous to 1832 there were less than

Franchise in England in 1832.

> 500,000 persons who had the right to vote in the election of members of Parliament. The Reforms Act of that year increased the number to nearly 1,000,000; the Act of 1867, increased it to 2,500,000; the Act of 1884, increased it again to 5,500,000; and last of all, the Act of 1918, increased the number of electors to over 20,000,000."

Unfair statement of Indian case.

It may be, and perhaps is, suggested that if Britain has taken over 80 years to bring the electorate to its present position India need not be in a hurry. And India is reminded of the fact that the British took six hundred years to reach the present form of government. To that the answer is that Athens reached the perfected state of her government in a generation and France in six months. " During six months," says Lord Acton, " from January 1789 to the fall of the Bastille in July, France travelled as far as England in the 600 years be-

What has been achieved elsewhere.

tween the Earl of Leicester and Lord Beaconsfield.'' Once the ground is explored and rails laid down the pilgrim travels with the speed of the Flying Dutchman. Many centuries elapsed before Newton discovered the law of gravity. Every schoolboy now learns it without much difficulty. As in physics so in politics. When a Positive State '' is once definitely established in any single centre, its extension to the race requires in no case a repetition of the phases proper to the primary movement.'' The opponents of Indian reforms and Indian progress would perhaps exclaim that Auguste Comte was not as wise as Birkenhead or Reading or Churchill. The point however is more than that: whether Britain was considered unfit for self-government when the electorate represented a very small percentage of the population. As Dr. Annie Besant observes, was it not an oligarchy which ruled Britain in those days, especially considering the fact that the House of Lords, the Second Chamber, the powers of which had not been curtailed at that time, was mostly composed of hereditary Peers? Would England have then preferred to be ruled by an efficient bureaucracy which was neither controlled nor manned by her own people instead of, by a Monarch acting on the advice of Ministers representing a limited section of her own people? She moreover adds very appropriately:—

> '' However small the electorate in India may be, is it not infinitely more representative than the British Civilians? The electors live for the most part the same lives as the rest of the people, mix with them every moment of their lives, and share with them the same languages, the same religions, customs,

sentiments and outlook, whereas the British Officer is divided from them in every one of these respects, if not also by National interests. Representative capacity does not depend on number alone."

To be an elector in a non-Mahomedan or Mahomedan general constituency, and none but an elector is eligible to be elected as a member of the Council, one must satisfy a residence qualification in the constituency itself, and shall have paid during and in respect of the previous year, municipal rates and taxes if in an urban area, or public works or other cess if in rural area, or income tax, or must be a retired, pensioned or discharged officer, non-commissioned officer or soldier of His Majesty's regular forces. Upon a close examination of the proceedings before the Joint Committee it is evident that, they did their best to allot seats on a basis to which no exception could be taken. The rural population as distinct from the urban received its full measure of justice along with the wage-earning class in the urban areas. The depressed classes, the non-Brahmins of Madras, the Mahrattas of Bombay, the Landholders and the Universities arrested their attention in a manner which speaks of the high sense of political justice which the Joint Committee brought to bear on the discharge of their duties. It seems however, from the distribution and allotment of seats that communal representation will, or is meant to be a permanent feature of Indian Parliamentary elections for years to come, and that, the Indian Ulster counties or constituencies of more or less significance will not be, as they cannot be, done away with in a hurry. The mistake was committed by the elder statesmen at Lucknow in 1916, and the situation is made worse and the outlook hopeless in Bengal by a mons-

Basis of distribution of seats.

The Bengal *pact* of 1923.

trous *pact* in 1923, which allows the minority community, who, on the most authoritative admissions are of community first and of India next, by those from whom greater political foresight and insight should be expected, and which has given a community *carte blanche* to exploit for all times those who are of India first and of community next, if at all. "Nothing can be more undemocratic," says a most competent authority, "than the Hindu caste-system, which still holds a great part of India in its grip, and Mahomedanism has never risen beyond the conception of brotherhood in the faith within the Mahomedan world—a brotherhood that has constantly broken down in practice—and of the whole non-Mahomedan world as an irreconcilable world of war." The relations between the Hindus and Mahomedans of India are more strained than ever before; and this condition may be said to have been produced by the aftermath of Khilafatism. Sir Valentine Chirol made a correct diagnosis when he said that "Mr. Gandhi, without stopping to probe the merits of the case bestowed his blessings on the Khilafat movement as a great demonstration of religious faith on the part of his Mahomedan fellow countrymen. He, of course, did not fail to preach to them the duty of non-violence. But he had reckoned without the militant spirit of Islam, and the Khilafat movement was responsible for more outbreaks of violence than Gandhi's own Hindu revivalist campaign." It is true that Mr. Gandhi lent the great weight of his support to the Khilafat movement to help Turkey in her struggle for preserving territorial integrity and that, at a time, when it was vanishing, perhaps never to revive again, little realising that the Khilafat movement would make the Moslems of India more Islam-conscious than India-conscious. It has given a new impetus to the Pan-Islamism of Indian

Moslems and has dragged religion into Indian politics, more than ever before. It is said, unjustly and without any reason whatsoever, that the Bureaucracy in its selfish struggle for preservation has driven into the body politic of India the wedge of Communalism, which is destructive of all *patriotism*, and the most dangerous impediment to the realisation of responsible self-government. That is no doubt a perverse view of things, but even if it were so, the people themselves are no less responsible for the result that has ensued. Their leaders have out-heroded the bureaucratic herods and the situation, be it said to their credit, has assumed such proportions that, it can be improved by none other than a person as great and resourceful as he who created it. There is however, a total dearth of men of his courage, character and calibre. The pact instead of making for an unification of the communities bids fair to perpetuate and stereotype their differences which the Joint Committee recommended should be fully explored, "so that there may be material for consideration by the statutory commission when it sits at the end of ten years."

The European constituency.

In communal constituencies neither the European, nor the Anglo-Indian, by which term is meant a person who is a British subject and resident in British India, but is either of European descent in the male line yet not an European, or of mixed Asiatic and non-Asiatic descent, whose father, grand-father or more remote ancestor in the male line was born in the continent of Europe, Canada, Newfoundland, Australia, New Zealand, the Union of South Africa or the United States of America, and who is not an European, is exempt from the qualifications of an elector we have here enumerated.

Other special constituencies.

In the special constituencies of landholders, the annual payment of a prescribed minimum land revenue or cess is considered a sufficient qualification entitling one to be

on the electoral roll, as in the University constituency a seven years' standing as a graduate, or a fellowship or membership of the Senate thereof, is insisted upon. Commerce and Industry constituencies are limited to the recognised Chambers of Commerce, Indian and European, and the Trades constituencies to the Trades Associations. Credit must be given to the genius of the English people for formulating a Constitution such as that of India, which requires not a Redistribution nor a Franchise Act without which England herself cannot rearrange her representation, nor broaden her franchise. We here are enabled to do all that, either by a special Parliamentary Statute or by an Indian legislative enactment. We are told in Section 72 A, Sub-clause (4) that,

Readjustment of representation.

> "(4) Subject as aforesaid, provision may be made by rules under this Act as to—
>
> "(*a*) the term of office of nominated members of Governor's Legislative Councils, and the manner of filling casual vacancies occurring by reason of absence of members from India, inability to attend to duty, death, acceptance of office, resignation duly accepted, or otherwise; and
>
> "(*b*) the conditions under which and manner in which persons may be nominated as members of Governor's Legislative Councils; and
>
> "(*c*) the qualification of electors, the constitution of constituencies, and the method of election for Governor's Legislative Councils, including the number of members to be elected by communal and other electorates, and any matter incidental or ancillary thereto; and

"(*d*) the qualifications for being elected and for being nominated a member of any such Council; and

"(*e*) the final decision of doubts and disputes as to the validity of any election; and

"(*f*) the manner in which the rules are to be carried into effect:"

provided that, rules as to any such matters as aforesaid may provide for delegating to the local government such power as may be specified in the rules for making subsidiary regulations affecting the same matter. No official, who has been defined and described in an earlier portion of the present work may be regarded as qualified for election to the Council, any more than an elected member may remain as such when he accepts an office in the service of the Crown in India. Ministers and Council Secretaries are excluded from this rule. Principal among positive disqualifications is to be mentioned conviction in a criminal offence entailing a sentence of more than six months' imprisonment, though it is not a permanent exclusion that is contemplated. Dismissal from the service of the Government in India, used to be a disqualification under the old rules, but was relaxed in the case of Babu (later Sir) Surendranath Banerjee by Sir Edward Baker as Lieutenant Governor of Bengal. It is well, that these rules are what they are, though they might have been a little more liberal to enable some of the more prominent men in the country to come into the Councils, and contribute their share toward the building up and consolidation of the Indian nation. If however, they had been more stringent, the Councils would have been the poorer for the absence of Bal Gangadhar Tilak, Lala Lajpat Rai, Sir Surendranath Banerjee, C. R. Das and even of Pandit Moti Lal Nehru.

Qualification of Members.

Disqualifications.

(*d*) *Duration of Councils, and the Procedure followed therein.*

Life of the Councils

The statutory life of a Legislative Council is prescribed to be three years from the date of its first meeting unless, it is sooner dissolved or extended, during its statutory life, by the Governor, up to a period not exceeding one year, if he deems it necessary, but he cannot dispense with the services of a Legislative Council for more than a period of nine months with the sanction of the Secretary of State. Ordinarily, the Council is required to meet within six months from the date of dissolution. The Governor may appoint such time and place for holding the session of his Legislative Council as he thinks fit, and may also, by notification in the local Gazette prorogue the Council as he may prolong its tenure to a limit of one year before the actual expiry of its natural or statutory life, if in any special circumstances, the details of which are specified in a Gazette Notification, he thinks it fit to do so. Following the procedure of the House of Commons, the Legislative Council is adjourned by the President, and all questions are decided by a majority of votes of the members present, other than the President who has a casting vote in case of an equality. The provision that the Council shall have a President of its own choice came into force in January, 1925, the first President whose term of office extended for four years only having been appointed by the Governor. This in itself, is a privilege worth any struggle for the reform of the constitution particularly in the face of the definite and deliberate opinion of Mr. Montagu and Lord Chelmsford to the effect that, the Governor should still continue to be the President of the Council. The Joint Committee were equally definite in

Parliamentary procedure followed.

their opinion that the "Governor should not preside," and, it is upon their advice that for a period of four years only, the President was prescribed to be a person of the Governor's choice, and as far as possible with Parliamentary experience, though as a matter of fact, not one of the first Presidents in the different Councils has been a person with Parliamentary experience, unless Sir Evan Cotton (with only five months' membership of the House of Commons from July to November, 1918), who followed Sir Syed Shamsul Huda in the Presidential chair of the Bengal Legislative Council, upon the death of the latter, may be said to be a man of Parliamentary experience. The Joint Committee attributed the greatest importance to the question of the Presidency of the Legislative Council for, as they said, it would conduce very greatly to the successful working of the new Councils, if from the start they were imbued with the spirit and conventions of Parliamentary procedure as developed in the Imperial Parliament. The President is in the position of a judge, always resolved upon holding the scales even between the Executive Government on the one hand, and the various political parties on the other. Like Caesar's wife he must be above suspicion. His actions must be irreproachable and, in order to carry out the functions of his office with transparently honest intentions he must be morally courageous and fearlessly independent. He will fall short of these high qualifications of his office in proportion as the bait of higher executive appointments, which are entirely in the gift of executive authorities, is held out to him and to which he is known not infrequently to have succumbed to his own discredit, to the disappointment of his countrymen and to the injustice of constitutional purity and propriety. During more than seven centuries of Parliamentary government in England there never has been a

President of Parliamentary experience.

Election of the President.

President to be above reproach.

Bad precedent set by the bureaucracy in India.

solitary instance of the President called the Speaker of the House of Commons being raised to Cabinet appointment, any more than a Judge of the High Court being ever made the recipient of Cabinet honours, or in any way being tempted to look for high administrative appointments or emoluments. But the authorities in India with childlike simplicity have a way of doing things which are politically injudicious and constitutionally insupportable, and of leading eminent and estimable men into committing blunders from the stifling effects of which they never recover. The rule that no election of the President, when the choice is left to the Council is valid without the approval of the Governor, is a safe method of securing the election of the proper person.

Salary of the President and the Vice-President.

The salaries of both the President and the Deputy President whose election rested with the Council from its inception, are determined by the Council, but that of the first or appointed President was fixed by the authority appointing him.

PART X.

(*a*) *Legislative Business and Procedure.*

Business before the Legislature.

Apart from the ordinary course of legislation, the business that comes before the Council for its consideration, the estimated annual expenditure and revenue of the province every year in the form of a statement, and the proposals of the local government for the appropriation of provincial revenues and other moneys in any year, are submitted in the form of demands for grants to the vote of the Council. These latter may be rejected, reduced or accepted, the local government reserving to itself the power to restore the original position and figure of any particular demand if it should relate to a reserved sub-

ject, on the strength of a ' certificate ' obtained from the Governor himself to the effect that, the expenditure provided for by the demand is essential to the discharge of his responsibility for the subject. Expenditure in cases of emergency is provided for by a similar ' certificate ' from the Head of the Administration saying that, it is necessary for the safety and tranquillity of the province, or for the carrying on of any department, but the Council has the right to receive communications of all ' certificates ' and recommendations of the Governor for appropriation of revenue. It is a statutory right. The legislative function of the local legislatures extends beyond the scope enumerated. The scheme of Government inaugurated by the new Constitution being, as far as possible, to emancipate the local governments and legislatures from central control, and year by year to gain a step forward towards responsible government in the provinces, the confines within which the local legislatures can move without the previous sanction of the Governor-General, are strictly circumscribed. And as a purely educative measure standing Committees, or ordinary Committees, of the Council have been established with a view to bring the representatives of the people into more direct touch with the actual problems of the administration. One of the best gifts of the new Constitution yet remains to be noticed. It is the freedom of speech in the Council, bringing the rule of privilege up to Parliamentary level, for, it is laid down in clear and distinct terms that no person shall be liable to any proceedings in any Court of law by reason of his speech or vote in the Council, or by reason of anything contained in any official report of the proceedings of the Council. Generally speaking, each may legislate for the peace and good government of the territories for the time being constituting it, and may repeal, amend or alter as to that province, any law made

Certificates for demands

Freedom of Speech.

by any authority in British India other than that local legislature, and with the previous sanction of the Governor-General, may make or take into consideration any law imposing or authorising the imposition of any new tax, unless the tax is one scheduled as exempted by rules, or affecting the public debt of India; or, the customs duties, or any other tax or duty for the time being in force, and imposed by the authority of the Governor-General in Council for the general purposes of the the Government of India; or, affecting the discipline or maintenance of any part of His Majesty's Naval, Military, or Air Forces; or, affecting the relations of the government with foreign princes or states, or regulating any provincial subject which under the rules in force is wholly or partly subject to legislation by the Indian legislature; or, affecting any power expressly reserved to the Governor-General in Council by any law for the time being in force; or, altering or repealing the provisions of any law which, having been made before the commencement of the present Government of India Act (of 1919), by any authority in British India other than a local legislature, is declared by rules to be a law which cannot be repealed or altered by the local legislature without previous sanction; or, altering or repealing any provision of an Act of the Indian legislature made after the commencement of the Act which by the provisions of the former, may not be repealed or altered by the local legislature without previous sanction; or, affecting any Act of Parliament.

Subjects not within the purview of local Councils.

(b) *Procedure* re *Finance.*

Procedure followed in respect of Financial matters.

The Council is relieved of consideration of all expenditure relating to contributions payable by the local government to the Central Government, to interest and sinking fund charges on loans, to expenditure, the

amount of which is prescribed by or under any law, to the salaries and pensions of persons appointed by or with the approval of His Majesty or by the Secretary of State in Council, and to the salaries of Judges of the High Court of the province, and of the Advocate-General. Any doubt or dispute, as to whether an item of expenditure relates to a subject excluded from the consideration and vote of the Council can be set at rest by the Governor alone, who moreover, has the authority under the Statute to stop by a 'certificate' the introduction or progress of a Bill, or any amendment thereto, if either the one or the other is likely to affect the safety or tranquillity of his charge or any part of it, or of another province.

(c) *Meeting of the Council.*

Time for meeting of the Council.

It is incumbent on the Governor to convene a meeting by notification in the Gazette, whenever it appears to him that the Council should assemble, each member being personally invited by summons to attend. The Governor has the power to state the hour when they should meet. It is ordinarily 3 P.M. in deference to the wishes of the members. It is prorogued similarly by notification. A meeting of the Council begins only when the quorum is present, usually, between 20 and 25 members according to the size of the Council in the different provinces, presided over by the President, and in his absence by the Deputy President, or in the absence of both by one of a panel of four Chairmen nominated by the President from among the members of the Council at the commencement of each session. Members are bound by the usual limitations on debate, and, on all points of order, the President is the final authority to decide whether that limitation has been abused or exceeded. Allotment of days for official and non-official business is made by the

Governor, and business set down for any day but not disposed of on that day, stands over till the next day of the session available for business of the class to which it belongs. Opportunity however, is always given to a member who has resigned the office of Minister, with the consent of the President, to make a personal statement in explanation of his resignation which shall be made after questions, and before the list of business for the day is entered upon. On this no debate is permissible, and a member of the Government is always entitled after the member has made his statement to make on behalf of the Government a statement pertinent thereto.

(*d*) *Questions*

Questions in the first hour.

Usually the first hour of every meeting is devoted to the asking and answering of questions of which a fortnight's notice is insisted upon, the President having it always within his competence to disallow a question or part of a question, on the ground that it relates to a matter which is not primarily the concern of the local Government. Certain broad principles are laid down for the framing of the questions which must not be defamatory, or ironical, or inferential, or argumentative in their expressions or statements, nor must they interrogate an expression of opinion, or demand the solution of a hypothetical proposition, any more than be couched in language touching the character or conduct of any person except in his official or public capacity. It is incumbent on the member asking questions to see that they are not of excessive length and that the statements made therein are accurate. Scope of questions relating to affairs which are the subject-matter of controversy or negotiation between the Home, Central and Local

They must not be framed in improper language.

Governments may not extend beyond the exposition of facts. In the Indian legislative bodies the right of interpellation has been carried almost to the Parliamentary stage, in that, any member may put one or more supplementary questions for the purpose of further eliciting or elucidating any matter of fact regarding which an answer has already been given, though the member of the government may ask for notice of same, if he is not prepared to give an answer offhand and immediately. However framed, and however put, the President remains the ultimate authority to allow or disallow a question or its supplement.

(*e*) *Motions.*

Debates on Motions.

Motions of which not less than ten days' notice has been given, and upon the admissibility of which the President has given his decision, may be moved in the Council during its session. A most healthy feature of the debate upon a motion is the time limit imposed upon every speaker; the mover in moving his motion and the Government member in charge of the Department to which it relates in his reply are alone entitled to thirty minutes, the rest being allowed fifteen minutes each, in such order as the President may direct before it can be put to the vote which may be by voices or by show of hands and, should a member demand it, by a division. Closure of a debate on a motion after it has been under discussion for some time may be moved by any member, with the simple words, "that the question be now put" without a speech, for, no debate is permissible upon a closure motion. It has to be put by the President, unless it should appear to him that the request is an abuse of the rules of the Council, or an infringement of the rights of reasonable debate. Unlike other motions, a closure motion is required to be carried by a two-thirds

Time limit of speeches.

"Closure."

majority of the members present and voting. A safeguard however, has been provided in favour of reserved subjects of the Government when there is a motion on a Bill relating to them, and the member having the carriage of proceedings connected with the Bill in his hands moves the "closure." On being similarly satisfied, the President has to put the question forthwith without taking a vote of the Council. The Member-in-Charge of the motion is possessed of larger powers for, a mere motion on his part to close the debate is enough. It is a just observation made by an eminent constitutionalist that the liberal character of the Morley-Minto Reforms was rendered nugatory by the rules made by the Government of India in exercise of their rule-making powers thereunder. How the same powers enable the Government to curtail the liberty of the legislature are exemplified by the rules that,

"A motion expressing want of confidence in a Minister or a motion disapproving the policy of the Minister in any particular respect may be made with the consent of the President and subject to the following restrictions, namely :—

"(*a*) Leave to make the motion must be asked for after questions and before the list of business for the day is entered upon.

Rules vitiate the spirit of the Act.

"(*b*) The member asking for leave must before announcement of the sitting of the day, leave with the Secretary, a written notice of the motion which he proposes to make.

"(2) If the President is of opinion that the motion is in order he shall read the motion to the Council and shall request those members who are in favour of leave being granted to rise in their places and if not less than 42 members rise accordingly, the President shall intimate

> that leave is granted and that the motion will be taken on such day, not being more than ten days from the day on which leave is asked as he may appoint. If less than 30 members rise the President shall inform the member that he has not the leave of the Council."

These are not all. The rules which empower a provincial government to choke all discussion on any matter which is unpalatable to them are identical with those I have noticed when considering the rules governing the procedure of the Indian legislature. They may be profitably repeated here.

> "Save in so far as is otherwise provided by these rules or in any case in which a communication is to be made to the Governor under any provision of the Government of India Act or of these rules no discussion of a matter of general public interest shall take place otherwise than on a resolution moved in accordance with the rules governing the moving of resolutions except with the consent of the President and of the Member of the Government to whose department the motion relates."

and again that,

> "It shall not be permissible to the President or to the Member of the Government concerned to give his consent to the moving of any motion in regard to any of the subjects in regard to which a resolution cannot be moved and the decision of the Governor on the point whether any motion is or is not within the restrictions imposed by sub-rule (1) of rule 23 shall be final."

and finally that,

> "The Governor may disallow any motion or part of a motion on the ground that it cannot be moved without detriment to the public interests or on the ground that it relates to a matter which is not primarily the concern of the local Government and if he does so the motion shall not be placed on the list of business."

With regard to other Provincial Councils, the minimum number of members who should rise to signify consent, the figures are as follows :—U.P. 40, Bombay 36, Bengal 45, Punjab 30, Burma 34, Behar and Orissa 34, Central Provinces 22, and Assam 16.

(f) *Bills.*

Bills in Local Councils

Bills are prescribed to be introduced in one of two ways. By motion for leave to introduce a Bill or, under the orders of the Governor by the publication of the same with the statement of objects and reasons in the Gazette. A reasonable amount of debate is permitted on the former. It cannot be exhaustive. If such a motion relate to a Bill connected with a transferred subject a notice of fifteen days is necessary, and of a month, or under the directions of the Governor himself of two months, if it has reference to a reserved subject. None but a Government member may claim dispensation with the "motion for leave" method of introducing a Bill, so that, it is a procedure to which private members in all their legislative activities must submit. The principle of the Bill is brought under discussion on the motion for leave to introduce it and no clause of it may be relied upon beyond what is necessary for the purpose of explaining the principle. Logically therefore, amendments to the Bill, or to clauses thereof, are entertainable only after the Bill has been referred to a Select Commit-

First in the Committee itself and then after it has

tee, for its consideration and has emerged out of it, and a motion made by the member in charge of it to the effect "that the Bill as reported by the Select Committee be taken into consideration," and not before. The deliberations of the Select Committee are, in their nature, all confidential and may not be made use of outside the Committee room and this is an aspect of legislation to which rigorous adherence ought to be insisted upon. In the meantime the Council may have agreed to a circulation of the Bill for the purpose of eliciting public opinion thereon. After the Committee stage a full discussion on the Bill is allowed, clause by clause, but when the Governor 'certifies' that a Bill, or any clause of a Bill, or any amendment to a Bill affects the safety or tranquillity of a province or any part thereof, and directs that no proceedings, or no further proceedings shall be taken thereon, all notices of motions in connection with the subject-matter of the certificate shall lapse, and if any such motion has not already been set down on the list of business, it shall not be so set down. And if it is already set down, the President simply draws the attention of the Council to the action of the Governor when that item is reached and invites the Council to proceed to the next item of business. As we have observed before 'certificate procedure' may be taken advantage of by the reserved departments alone, not by the transferred.

emerged out of it and submitted to the Council by the Member in Charge of it with the motion that the Bill as reported by the Select Committee be taken into consideration.

(g) *Resolutions.*

Resolutions are of a class with motions with application of many of the rules regulating their discussion, in addition to a stricter scrutiny into their admissibility. They must refer to matters of general public interest only, and may not encroach upon spheres of relationship with

Resolutions must refer to what.

His Majesty's Government, or with the Government of India, or with the Governor, or with the Governor-in-Council, or with a foreign State. Every resolution is in the form of a definite and specific recommendation addressed to the Government, which it may or may not accept. Here it may be profitable to attempt to dissipate a popular and otherwise common impression that, a Government which does not accept a Resolution passed by the legislature for the purpose of carrying it out is a villainous one; that a Resolution is binding on the Government. Under no constitution in the history of the world has a resolution of its legislature had a binding force on the Government. By way of illustration, I will recall Mr. Herbert Paul's resolution in favour of holding the Indian Civil Service Examination, simultaneously in England and India, in the House of Commons in 1893. The resolution was accepted by the House but given the go-by by the Government (the Liberal Government of which Mr. Gladstone was the head and the Earl of Kimberley, the Secretary of State for India) of the day, on the flimsy ground of impracticability, considered feasible and attainable however, twenty-five years later by the pressure of public opinion in India, and certainly the sense of justice of the Englishman at home in 1916, on the recommendation of the Public Service Commission presided over by Lord Islington. And be it remembered that there is no constitution in the world which is more stringent, more elastic, more well-balanced and more perfect than the English constitution, the model upon which many a European, Asiatic, African and American constitution is founded. Under well-considered restrictions and with the consent of the President a member has power to move " the adjournment of the business of the Council for the purpose of discussing a definite

Force of resolutions.

Motion for adjournment.

matter of urgent public importance,'' a procedure which is modelled upon that which obtains in the House of Commons, and is commonly known there as '' moving the adjournment of the House,'' with only this difference that, in the Mother of Parliaments, the leave to move the adjournment has got to be signified by at least forty members present, while in India, the support of thirty members entitles the applicant of the leave to move the adjournment. To allow or not to allow a resolution on the ground that it cannot be moved without detriment to the public interest, or that, it relates to a matter which is not primarily the concern of the local Government rests solely with the Governor. It is a significant fact however, to note that a number of bad precedents have been created by heads of provincial governments who, with more adequate regard for constitutional practices and conventions and a more prefect knowledge of the rules of Parliamentary procedure, and of how to interpret statutory rules might have spared some of those which are hopelessly untenable. The latest is the one which comes from Bengal. In this a member of the Council tabled a motion under Rule 79 of the Legislative Council Rules for adjournment of the house '' on a situation created by the continuance in office of two Ministers '' after resignation of their colleague, the third. The President allowed the motion to be moved and debated. It was promptly checked, not on the ground of irrelevancy or unconstitutionality for, the reason why one Minister thought it proper to resign, namely a personal difference with his colleagues, had nothing to do with the joint or collective responsibility of Ministers, even if such a convention prevailed, but on the ground, as it was held by the superior authority of the head of the province, that the motion in question related to a matter which '' was not primarily

Inadequate knowledge of civilians of Parliamentary rules of procedure and interpretation.

the concern of the Local Government." If a situation created by the appointment, retention or removal of Ministers is not " primarily the concern of the Local Government," it is difficult, indeed beyond comprehension to know what is. Such instances are not rare.

(*h*) *Freedom of Speech.*

Freedom of Speech.

Like the House of Commons, legislative bodies in India, the Council of State, the Legislative Assembly and the Legislative Councils, enjoy complete freedom of speech so that, no person may be held liable to any proceedings in any Court by reason of his speech, so long as it is couched in temperate language or strictly confined to the subject-matter of vote in the Council. Failure on the part of the Council to introduce or to pass in a form recommended by the Governor, any Bill relating to a reserved subject may be encountered by a ' certificate ' from the Governor saying, that the passage of the Bill is essential for the discharge of his responsibility in relation to the subject, whereupon, it takes its place upon the statute book of the province until and unless it is rejected by His Majesty in Council, for the signification of whose assent the same shall, in such circumstances be submitted through the Governor-General. The statute authorises the Governor-General also to give his seal of approval to any such Act in cases of emergency, without reserving it for the signification of the assent of His Majesty in Council. These Acts as well as those submitted to His Majesty in Council for assent, are required to be laid before each House of Parliament, for not less than eight days during which that House is sitting.

Emergency matters.

APPENDIX A.

Dates of Remarkable Events in the History of the Development of the Indian Constitution.

A.D. 1601. The London "East India Company" formed.
,, 1613. Surat granted to the Company by Emperor Jehangir.
,, 1615. Sir Thomas Roe's embassy to Delhi.
,, 1624. Judicial Authority given to the Company.
,, 1634. Factory established in Bengal.
,, 1639. Factory established in Madras.
,, 1659. The "Merchant Adventurers" founded.
,, 1661. Incorporation of the two Companies.
,, 1662. Bombay ceded to the Crown of England.
,, 1668. Bombay given by the Crown to the Company.
,, 1682. Bengal made a Presidency.
,, 1688. Charnock founds Calcutta.
,, 1698. Emperor Aurangzebe sells the Company three villages.
,, ,, The English "East India Company" founded.
,, 1702. The "United Company" formed.
,, 1715. The Merchants send a mission to Farrokhsiyar.
,, ,, Hamilton cures the Emperor's illness.
,, ,, Emperor gives the Company thirty-eight towns.
,, ,, Rise of the Zemindars.
,, 1726. Mayor's Courts established in the Presidencies.
,, ,, English Law extended to India.
,, 1730. Company's Charter renewed.
,, 1756. The alleged "Black Hole" of Calcutta.
,, 1757. The Battle of Plassey.
,, 1759. Clive's "Jagir."
,, 1761. Battle of Panipat.
,, ,, Vansittart becomes Governor of Bengal.

A.D. 1761. Vansittart deposes Mir Jaffar in favour of Mir Cassim and acknowledges Shah Alum as Emperor.
,, 1765. Clive attempts to check hopeless corruption in the service of the Company.
,, ,, Grant to him of the "Diwani" of Bengal, Behar and Orissa.
,, ,, The "Adalut System" started.
,, 1772. Warren Hastings made President at Calcutta.
,, ,, The East India Company Act.
,, ,, Warren Hastings' Revenue and Judicial Reforms.
,, 1773. The Reconstruction or the Regulating Act.
,, ,, Constitution of the "Supreme Court."
,, ,, Warren Hastings becomes the first Governor-General under the Act.
,, ,, Arrival of the Judges of the Supreme Court under the Act.
,, 1776. Fierce tussle between Hastings and Francis.
,, 1780. Settlement Act.
,, 1783. Warren Hastings' new Revenue System.
,, ,, Fox's "India Bill."
,, ,, The Coalition Ministry.
,, 1784. Pitt's "India Bill."
,, ,, The East India Company Act.
,, 1785. Hastings resigns and retires to England.
,, ,, Cornwallis arrives as Governor-General.
,, 1787. Proceedings against Hastings in Parliament.
,, 1788. Hastings' Impeachment.
,, ,, Burke's Speech.
,, ,, The Trial of Hastings.
,, ,, Sheridan's Speech.
,, 1793. Cornwallis' Revenue Reforms: Status of the Zemindars.
,, ,, His Reforms of the Civil Courts.
,, ,, His Reforms of the Criminal Courts.
,, ,, His Code and System.

A.D. 1805. Wellesley's Administrative Reforms.
,, ,, Wellesley's College at Calcutta and the Director's College at Haileybury.
,, 1811. Introduction of the Ryotwari System in Madras.
,, 1832. Lord William Bentinck's Revenue Reforms.
,, ,, Abolition of the *Satee*.
,, ,, His Reforms of the Courts of Justice.
,, 1833. The Charter Act and the Judicial Committee (of the Privy Council) Act.
,, 1834. The famous despatch of the Court of Directors.
,, 1835. Liberty of the Press conferred by Metcalfe.
,, 1843. Sindh becomes an English Province under Lord Ellenborough. Ellenborough recalled the same year.
,, 1846. Occupation of the Punjab.
,, 1848. Annexation of Satara.
,, 1849. Annexation of the Punjab by Dalhousie.
,, 1853. The Charter Act.
,, ,, (*a*) Annexation of Pegu; (*b*) of Berar; (*c*) of the Carnatic.
,, 1854. Annexation of Jhansi.
,, ,, Government of India Act (Sir Charles Wood's).
,, 1856. Annexation of Oudh.
,, ,, Penal Code introduced by Canning.
,, 1857. Commencement of the Mutiny.
,, 1858. Company's Rule discredited in England.
,, ,, Palmerston's "India Bill."
,, ,, Disraeli's "India Bill."
,, ,, Lord Stanley's India Bill which became the Government of India Act of 1858.
,, ,, Abolition of the East India Company and the transfer of the Government of India from the Company to the Crown.
,, ,, Her Majesty's letter to the Prime Minister (Earl of Derby) *re* the Proclamation.

A.D. 1858. The Queen's Proclamation (November, 1).
,, 1859. James Wilson appointed the first Finance Minister of India—Income tax imposed and Paper Currency created.
,, 1860. Legislative Council established in Bombay.
,, 1861. Indian Councils Act.
,, ,, Admission of the Law Member into the Governor-General's Executive Council as a full member thereof.
,, ,, Indian High Courts Act.
,, 1862. Penal Code came into operation (January, 1).
,, ,, High Court of Bengal inaugurated (July, 12).
,, 1865. Government of India Act.
,, ,, Indian High Courts Act.
,, 1869. Government of India Act.
,, ,, Indian Councils Act.
,, 1870. First Provincial Settlement or Contract (Dec., 14).
,, ,, Indian Councils Act.
,, 1871. Indian Councils Act.
,, 1872. Lord Mayo assassinated and Sir John Strachey, the senior member of the Council, acts as Governor-General until the arrival on February 23 of the Senior Presidency Governor, Lord Napier, from Madras.
,, ,, Mr. Arbuthnot, senior member of the Madras Council, acts for Lord Napier.
,, 1874. The Indian Councils Act.
,, 1875. Deposition of the Gaikwar (Mulhar Rao) and installation of Sayaji Rao (the present Ruler of Baroda) on the *Gadi*.
,, 1876. The Royal Titles Act.
,, ,, Queen Victoria proclaimed "*Indiae Imperatrix*" or Empress of India.
,, ,, Council of India Act.

A.D. 1877. Sir Richard Temple appointed Governor of Bombay; the only instance of a Civilian becoming Governor of a Presidency.
,, 1878. Vernacular Press muzzled by Lord Lytton.
,, 1880. Lord Lytton recalled.
,, 1881. Resolution of the extension of Provincial Finance.
,, 1882. Lord Ripon's resolution on Local Self-Government.
,, 1883. Criminal Amendment Bill moved by Ilbert, excites great opposition among Europeans.
,, ,, Surendranath Banerjea sent to prison for having compared Justice Norris of the Calcutta High Court with Judge Jeffreys of the "Bloody Assizes" fame and Chief Justice Scroggs in his paper "The Bengalee."
,, 1884. Amended Ilbert Bill passed.
,, ,, Bengal Tenancy Bill encroaching upon the permanent settlement passed.
,, 1886. Burma included by decree in British India.
,, 1892. Indian Councils Act (Lord Cross').
,, 1904. Indian Councils Act.
,, 1906. Lord Minto's Minute on Reforms.
,, 1907. Council of India Act.
,, ,, Government of India Circular on Reforms.
,, 1908. Government of India Reforms despatch.
,, ,, Lord Morley's reply thereto.
,, ,, Edward VII's Proclamation.
,, 1909. Indian Councils Act.
,, ,, Resolution on the Reforms.
,, 1910. King George V's letter.
,, 1911. Indian High Courts Act.
,, ,, Royal announcement at the Coronation Durbar.
,, ,, Announcement by the Viceroy.
,, ,, Coronation Durbar Despatch.
,, ,, Lord Crewe's Durbar Despatch.
,, 1912. Government of India Act.

A.D. 1912. Resolution on Provincial Finance.
,, 1915. Resolution on Local Self-Government.
,, 1917. The Montagu Announcement (August, 20).
,, 1918. Montagu-Chelmsford Report and Recommendations.
,, ,, Report of the Subjects Committee.
,, ,, Report of the Franchise Committee.
,, 1920. Meston Settlement.
,, 1924. Report of the Muddiman Committee.
,, 1929. Parliamentary inquisition due under the Government of India Act, 1919.
,, 1930. Report and recommendations of the Statutory Commission.
,, ,, Round Table Conference (proposed) to meet in London to settle India's political destiny.

APPENDIX B.

	Secretaries of State for India.	Viceroys of India.	
1858	Lord Stanley	Viscount Canning	1858
1859	Sir Charles Wood		
1866	Earl de Grey and Ripon (later Marquis of Ripon)	8th Earl of Elgin	1862
		Lord Lawrence	1864
1866	Viscount Cranborne (later Marquis of Salisbury)		
1867	Sir Stafford Northcote		
1868	Duke of Argyll		
		Earl of Mayo	1869
1874	Marquis of Salisbury (2nd time)	Lord Northbrook	1872
1878	Viscount Cranbrook	Earl of Lytton	1876
1880	Marquis of Hartington	Marquis of Ripon	1880
1882	Earl of Kimberley	Earl of Dufferin	1884
1885	Lord Randolph Churchill		
1886	Earl of Kimberley (2nd time)		
1886	Viscount Cross		
1892	Earl of Kimberley (3rd time)	Marquis of Lansdowne	1888
1894	Sir Henry Fowler	9th Earl of Elgin	1894
1895	Lord George Hamilton	Lord Curzon*	1899

* Lord Curzon vacated the office of Viceroy by returning to England in April, 1904, and was re-appointed in December. In the interval Lord Ampthill, Senior Presidency Governor (Madras), held the vacant office. When Lord Reading went on leave in 1925, Lord Lytton, as Senior Presidency Governor (Bengal), acted as Governor-General. Similarly when Lord Irwin went in 1929, Lord Goschen, as Senior Presidency Governor (Madras), acted for him.

	Secretaries of State for India.	Viceroys of India.	
1903	Right Hon'ble St. John Brodrick.		
1905	Right Hon'ble John Morley (became in 1908 Viscount Morley of Blackburn).	Earl of Minto	1905
1910	Earl (later Marquis) of Crewe.	Lord Hardinge of Penshurst.	1910
1915	Right Hon'ble Austen Chamberlain.		
1917	Right Hon'ble Edwin Samuel Montagu.	Lord Chelmsford	1916
1922	Viscount Peel	Earl of Reading	1921
1924	Lord Olivier		
1924	Earl of Birkenhead	Lord Irwin	1926
1928	Viscount Peel (2nd time)		
1929	Right Hon'ble Wedgewood Benn.		

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