A. CONSTITUTION

The constitution of the councils is changed in three respects :

1. Numbers ;
2. Proportion of official and non-official members ;
3. Methods of appointment or election.

1. *Numbers.* The Indian Councils Act, 1892, increased the size of the legislative councils constituted under the Act of 1861. The maximum of additional members was raised from 12 to 16 in the Governor-General's council, and from 8 to 20 in the Madras and Bombay councils. The limit of number of the Bengal council was raised to 20, that of the United (then North-Western) Provinces to 15. The Punjab and Burma obtained legislative councils in 1897, and Eastern Bengal and Assam [1] in 1905, the maximum strength being fixed at 15 in the first two, and 20 in the third.

These numbers are now doubled or more than doubled. The additional members of the Governor-General's council are to be not more than 60, the additional members of the councils of Bengal, Madras, and Bombay, and the members of the councils of the United Provinces, and of Bihar and Orissa, are to be not more than 50. In the Punjab and Burma the maximum is raised to 30. In computing the number of members of the Governor-General's council, 8 must be added to the 'additional' members, namely, the 6 ordinary members of the executive council, the commander-in-chief, and the lieutenant-governor or chief commissioner of the province in which the council sits. Similarly there are now on the Madras and Bombay legislative councils 4 *ex officio* members, namely, in each case, the 3 members of the executive council and the advocate-general ; and on the legislative councils for Bengal and for Bihar and Orissa there are the 3 ordinary members of each of the new executive councils.

[1] Eastern Bengal is now merged in Bengal, and the provinces of Bihar and Orissa and of Assam have separate legislative councils.

Thus the actual strength of the legislative councils under the new law is as follows : [1]

Legislative Council of—	*Number under Regulations of 1912.*	*Maximum number under Act of 1909.*
India	68	68
Madras	48	54
Bombay	48	54
Bengal	53	53
United Provinces	49	50
Bihar and Orissa	44	53
Punjab	26	30
Burma	17	30
Assam	25	30

2. *Proportion of official and non-official members.*

Under the Act of 1861 at least one-half of the additional members of the legislative councils of the Governor-General and of the governors of Madras and Bombay, and at least one-third of the members of the other legislative councils, had to be non-official. An official majority was not required by statute, but in practice was always maintained before the Act of 1909, except in Bombay, where the official members had been for some years in a minority.

Under the regulations of 1909 and 1912 there must be an official majority in the Governor-General's legislative council, and a non-official majority in all the other legislative councils. The existing proportions, as fixed by the regulations, are as follows :

Legislative Council of—	*Officials.*	*Non-Officials.*	*Majority.*
India	36	32	*Official.* 4
Madras	20	26	*Non-official.* 6
Bombay	18	28	10
Bengal	19	32	13
United Provinces	20	27	7
Bihar and Orissa	18	25	7
Punjab	10	14	4
Burma	6	9	3
Assam	9	15	6

[1] Excluding in each case the head of the Government, i.e. the Governor-General, Governor, Lieutenant-Governor, or Chief Commissioner.

These figures exclude in each case the head of the government, i.e. the Governor-General, Governor, Lieutenant-Governor, or Chief Commissioner. They also leave out of account the two 'expert' members or, in the case of Bihar and Orissa and of Assam, the one expert member, who may be appointed from time to time as occasion requires, and who may be either official or non-official.[1] Any alteration in the number of the executive council would affect the proportions.

It will be observed that these proportions are fixed by the regulations, not by statute. They were so fixed in pursuance of the policy announced by the Secretary of State, who was of opinion that while it was necessary to maintain an official majority in the Governor-General's council, this was not necessary or desirable in the case of the other councils. Refusal by the provincial councils to pass necessary legislation may be met by exercise of the power vested in the Governor-General's Council to legislate for any part of India. Undesirable legislation may be checked by the power of veto reserved to the head of the government.

3. *Methods of appointment or election.*

Under the Act of 1861 the 'additional' members of the legislative councils were nominated by the Governor-General, governor, or lieutenant-governor, the only restriction on his discretion being the requirement to maintain a due proportion of unofficial members.

By the Act of 1892 the nominations were required to be in accordance with regulations made by the Governor-General in council and approved by the Secretary of State. Under the regulations so made a certain number of these nominations had to be made on the recommendation of specified persons, bodies, and associations, the intention being to give a representative character to the persons so nominated. There was no obligation to accept the recommendation, but in practice it

[1] There is no provision for the appointment of experts, as such, on the Governor-General's legislative council, but experts could be placed on the Council, when occasion requires, under his powers of nominating members.

was never refused. In the case of other nominations regard was to be had to the due and fair representation of the different classes of the community. Under the Act of 1909 the additional members must include not only nominated members, but also members elected in accordance with regulations made under the Act, and the regulations of November, 1909, as amended in 1912, give effect to this requirement.

There is a separate set of regulations for every legislative council, and scheduled to each set are detailed rules as to the method of election.

The provisions of the regulations themselves are of a more general character, and those framed for the Governor-General's council may be treated as typical.

They begin by fixing the number of 'additional' members, classifying them as elected or nominated, describing in general terms the classes or bodies by whom the elected members are to be elected, and defining, by reference to the schedules, the constitution of the electorates and the method of election. The constitutions thus provided, both for the Governor-General's council and for the other legislative councils, will be found, in a tabular form, in an appendix to this book.[1]

The substitution of a system of election for a system of nomination obviously involves the imposition of certain disqualifications for election. These disqualifications are laid down for the Governor-General's council by Regulation IV, which provides that—

No person shall be eligible for election as a member of the council if such person

(*a*) is not a British subject; or

(*b*) is an official; or

(*c*) is a female; or

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

(*e*) is under twenty-five years of age; or

[1] Appendix I.

(*f*) is an uncertificated bankrupt or an undischarged insolvent; or

(*g*) has been dismissed from the Government service; or

(*h*) has been sentenced by a criminal court to imprisonment for an offence punishable with imprisonment for a term exceeding six months, or to transportation, or has been ordered to find security for good behaviour under the Code of Criminal Procedure, such sentence or order not having subsequently been reversed, or remitted, or the offender pardoned; or

(*i*) has been debarred from practising as a legal practitioner by order of any competent authority; or

(*k*) has been declared by the Governor-General in Council to be of such reputation and antecedents that his election would, in the opinion of the Governor-General in Council, be contrary to the public interest.

But in cases (*g*) (*h*) (*i*) and (*k*) the disqualification may be removed by an order of the Governor-General in Council in that behalf.

Identical provisions are embodied in all the other sets of regulations, except that the powers exercisable by the Governor-General in Council may be exercised by the local government.

The positive qualifications both of electors and of candidates are fixed by the scheduled rules, but by the regulations females, minors, and persons adjudged to be of unsound mind are disqualified for voting.

Every person elected or nominated must, before taking his seat, make an oath or affirmation of his allegiance to the Crown.

The ordinary term of office of an 'additional' member, whether nominated or elected, is three years. But official members and members nominated as being persons who have expert knowledge of subjects connected with proposed or pending legislation are to hold office for three years or such shorter period as the Governor-General may at the time of

nomination determine. A member elected or nominated to fill a casual vacancy sits only for the unexpired portion of his predecessor's term. The effect of these provisions, which are repeated in substance in all the sets of regulations, is that for elected members of the legislative councils there must be a general election every three years.

The regulations provide for declaring seats vacant, for choice or determination of seat in case of a candidate elected by more than one electorate, and for the case of failure to elect.

An election is declared to be invalid if any corrupt practice is committed in connexion therewith by the candidate elected, and provision is made for the determination of disputes as to the validity of elections.

The tables in Appendix I, and, still more, the elaborate rules scheduled to the regulations under the Act of 1909, show the number and diversity of the electorates to the legislative councils, and the variety of methods adopted for constituting the electorates, and for regulating their procedure in elections. The object aimed at was to obtain, so far as possible, a fair representation of the different classes and interests in the country, and the regulations and rules were framed for this purpose in accordance with local advice, and with reference to the local conditions of each province. The consequent variety of the rules makes it impossible to generalize their provisions or to summarize their contents. All of them may be regarded as experimental, some of them are avowedly temporary and provisional. For instance, it has not yet been found practicable to constitute satisfactory electorates for the representatives of Indian commerce, except in the Bombay council, or for the representatives of the Punjab landholders and Muhammadans on the Governor-General's council. Under the existing regulations each of these interests is represented by nominated members, but election is to be substituted for nomination as soon as a workable electorate can be formed.

The most difficult of the problems to be faced was the representation of Muhammadans, who claimed to be represented as a separate class or community. This problem has been attacked in various ways. One method adopted is a system of rotation. The representative of the Bombay landholders on the Governor-General's council was elected at the first, and is to be elected at the third and subsequent alternate elections, by the landholders of Sind, a great majority of whom are Muhammadans, while at other elections he is to be elected by the Sardars of Gujerat or the Sardars of the Deccan, a majority of whom are Hindus. In the Punjab the numbers of the Muhammadan and non-Muhammadan landholders are about equal, and the representative of this constituency is expected to be alternately a Muhammadan and a non-Muhammadan. When these two seats, the Bombay seat and the Punjab seat, are held by non-Muhammadans there are to be two members elected by special electorates consisting of Muhammadan landholders in the United Provinces and Muhammadans in Bengal.

In some provinces there are special interests, such as the tea and jute industries in Bengal and Assam, mining in Bihar and Orissa, and the planting communities in Madras and Bihar and Orissa, for whom special provision has been made.

The representation of smaller classes and minor interests will have to be met by nomination, in accordance with the needs of the time and the importance of different claims.

Where the electorates are scattered, as in the case of the landholders and the Muhammadans, provision is made for the preparation and publication of electoral rolls containing the names of all persons qualified to vote.

The qualifications prescribed for electors in the case of landholders and Muhammadans vary greatly from province to province. Landholders must usually possess a substantial property qualification. In some cases titles and honorary distinctions, fellowships of Universities, and pensions for public service are recognized as qualifications.

The qualifications for candidates are, as a rule, the same as those for electors, but in some cases, where such restrictions would be inappropriate, other qualifications are prescribed. Thus a person elected to the Governor-General's council by the unofficial members of a provincial council is required to have a place of residence within the province, and such practical connexion with the province as qualifies him to represent it. The election is either direct, or indirect through elected delegates. In some cases the electors or delegates vote at a single centre before a returning officer, in others they vote at different places before an attesting officer, who dispatches the voting paper to the returning officer.

In Bengal delegates have been abolished by the regulations of 1912, and all voting is direct.

The member of the Governor-General's council chosen to represent the Muhammadan community of Bombay is elected by the Muhammadan members of the Bombay council. The Government of India were assured that this method would secure better representation than election by delegates *ad hoc*.

The procedure for voting is generally similar to that prescribed by the English Ballot Act. But in some cases, such as the elections by the corporations of the presidency towns, the chambers of commerce and the trade associations, the voting is regulated by the procedure usually adopted by these bodies for the transaction of their ordinary business.

B. FUNCTIONS

The functions of the legislative councils fall into three divisions, (*a*) legislative, (*b*) deliberative, and (*c*) interrogatory.

(*a*) *Legislative*

The Act of 1909, and the regulations under it, make no alteration in the legislative functions and powers of the provincial councils. These are still mainly regulated by the Act of 1861.[1]

[1] See Digest, ss. 63–67, 76–78.

(*b*) *Deliberative*

Between 1861 and 1892 the powers of the legislative councils were confined strictly to legislation.[1] The Act of 1892 introduced non-legislative functions by empowering the head of the government in every case to make rules authorizing the discussion of the annual financial statement, provided that no member might propose a motion or divide the council. Under this power one or two days were allotted annually in every council to the discussion of a budget already settled by the executive government.

The Act of 1909 repealed the provisions of the Act of 1892 on this point and required rules to be made authorizing at any meeting of the legislative councils the discussion of the annual financial statement and of any matter of general public interest.[2]

The rules made under this direction introduce two important changes—

(i) The discussion of the budget is to extend over several days, it takes place before the budget is finally settled, and members have the right to propose resolutions and to divide the council upon them ;

(ii) At meetings of the legislative councils matters of general public importance may be discussed, and divisions may be taken on resolutions proposed by members.

In each case the resolutions are to take the form of recommendations to the Government, and the Government is not bound to act upon them.

The rules framed for the Governor-General's council are printed in the Blue Book of 1910,[3] and are of such interest and importance as to justify their reproduction in an appendix to this chapter.[4] It may be useful to summarize here some of their leading provisions.

Financial Statement or Budget. The rules distinguish between the financial statement and the budget. The first means the

[1] See Digest, ss. 64, 77.
[2] 9 Edw. VII, c 4, s. 5.
[3] 1910, Cd. 4987.
[4] Appendix III. The rules for the other councils are included in a Blue Book of 1913 (Cd. 6714), and are framed on similar lines.

preliminary financial estimates of the Governor-General in Council for the financial year next following. The second means the financial statement as finally settled by the Governor-General in Council. On a day appointed in each year by the Governor-General, the financial statement, with an explanatory memorandum, is to be presented to the council by the finance member, and a printed copy is to be supplied to each member. No discussion takes place on this day.

The first stage of discussion takes place on a subsequent day after the finance member has made any explanations he thinks necessary. On this day any member may move any resolution entered in his name in the list of business relating to any alteration in taxation, new loan or additional grant to local governments proposed or mentioned in the financial statement or explanatory memorandum, and a discussion takes place on any resolution so moved.

The second stage of discussion begins after these resolutions have been disposed of. The member of council in charge of a department explains the head or heads of the financial statement relating to his department, and resolutions may then be moved and discussed.

The range of discussion is subject to important restrictions. There is a schedule to the rules defining which heads of the financial statement are open to or are excluded from discussion. Among the excluded heads are military, political, and purely provincial affairs, under the heading 'revenue,' stamps, customs, assessed taxes, and courts, and, under the heading 'expenditure,' assignments and compensations, interest on debt, ecclesiastical expenditure, and state railways. Besides these the rules themselves exclude from discussion any of the following subjects :

(*a*) Any subject removed from the discussion of the Governor-General's legislative council by s. 22 of the Indian Councils Act, 1861.[1]

[1] i.e. matters which the Governor-General in Council has not power to repeal or affect by any law. See Digest, s. 63.

(*b*) Any matter affecting the relations of His Majesty's Government or of the Governor-General in Council with any Foreign State or any Native State in India ; or

(*c*) any matter under adjudication by a court of law having jurisdiction in any part of His Majesty's dominions.

Any resolution moved must comply with the following conditions :

(*a*) It must be in the form of a specific recommendation addressed to the Governor-General in Council ;

(*b*) it must be clearly and precisely expressed and must raise a definite issue ;

(*c*) it must not contain arguments, inferences, ironical expressions, or defamatory statements, nor refer to the conduct or character of persons except in their official or public capacity ;

(*d*) it must not challenge the accuracy of the financial statement ;

(*e*) it must be directly relevant to some entry in the financial statement.

Two clear days' notice of any resolution must be given. The president may disallow any resolution or part of a resolution without giving any reason other than that in his opinion it cannot be moved consistently with the public interests, or that it should be moved in a provincial council, and his decision cannot be challenged.

The budget as finally settled must be presented to the council on or before March 24 by the finance member, who then describes any changes made in the figures of the financial statement, and explains why any resolutions passed by the council have not been accepted. No discussion takes place on this day, but on a subsequent day there is to be a general discussion at which observations may be made, but resolutions may not be moved. Nor is the budget as a whole to be submitted to the vote of the council.

Many of the rules for regulating procedure in debate are of a kind with which members of the House of Commons are

familiar, but some of them present distinctive features. No speech may exceed fifteen minutes, except those of the mover and the member in charge, who may speak for thirty minutes. Any member may send his speech in print to the secretary not less than two clear days before the day fixed for the discussion of a resolution, with as many copies as there are members, and one copy is to be supplied to every member. Any such speech may at the discretion of the president be taken as read.

Matters of general public interest. Discussions on these matters must be raised by resolution, and must take place after all the other business of the day has been concluded. The general rules regulating the form of the resolutions, and the discussions upon them, are, in the main, the same as those for the discussion of resolutions on the financial statement, the chief difference being that the range of discussions is wider and that amendments are allowed. The only subjects specifically excluded from discussion are those belonging to the three classes mentioned above in connexion with the financial statement, namely, matters for which the councils cannot legislate, matters relating to foreign and native States, and matters under adjudication by a court of law. But the president has the same discretionary power of disallowing resolutions as he has in the case of resolutions on the financial statement.

The right to move amendments on resolutions is made subject to restrictions which are intended to provide safeguards against abuse of the right. Fifteen days' notice of a resolution is required, and priority depends on the time of receipt. When a question has been discussed, or a resolution has been disallowed or withdrawn, no resolution or amendment raising substantially the same question may be moved within one year.

(*c*) *Interrogatory*

Since 1892 members of the legislative councils have had the right to ask questions under conditions and restrictions prescribed by rules. This right is now enlarged by allowing a member to put a supplementary question 'for the purpose

of further elucidating any matter of fact regarding which a request for information has been made in his original question.' But the president may disallow a supplementary question, and the member to whom it is addressed may decline to answer it without notice. The rules which now govern the asking of questions in the Governor-General's council are printed in the Blue Book of 1910, and are to be found in Appendix II.

The quorum for the transaction of business, legislative or other, at meetings of the Governor-General's legislative council is fixed by one of the Regulations of 1912 for the constitution of that council. The Regulations for the several councils, in prescribing a quorum, omit reference to the presence of the president or vice-president (which is secured by statute) and merely state that, in order to form a quorum, a certain number of members must be present, viz., fifteen additional members in the Governor-General's council, and ten in the councils of Bengal, Madras, Bombay, and Bihar and Orissa, ten in the United Provinces, eight in the Punjab and Assam, and six in Burma.

The Indian High Courts Act, 1911 (1 & 2 Geo. V, c. 18):

(1) raised the maximum number of judges of an Indian High Court from sixteen to twenty,

(2) gave power to establish new high courts from time to time as occasion may require, and to make consequential changes in the jurisdiction of the courts, and

(3) gave power to appoint temporary additional judges of any high court for a term not exceeding two years.

The construction placed on the power to establish a new high court given by s. 16 of the Indian High Courts Act, 1861, had been, that the power was not recurrent and had been exhausted by the establishment of a high court at Allahabad.

The Government of India Act Amendment Act, 1911 (1 & 2 Geo. V, c. 25), amended the pension provisions of the

Government of India Act, 1858, by authorizing the grant of allowances to the personal representatives of deceased members of the India Office staff.

On December 12, 1911, at a Durbar held at Delhi, King George V commemorated in person his coronation in Westminster Abbey as King of the United Kingdom of Great Britain and Ireland, and of the British dominions beyond the seas, and as Emperor of India. The event was unprecedented in the annals of British India. Never before had an English king worn his imperial crown in India; indeed, never before had a British sovereign set foot on Indian soil. There had been a general expectation that an exceptional occasion would be signalized by exceptional announcements. The expectation was not disappointed. At the great Durbar, the King-Emperor, accompanied by the Queen-Empress, was surrounded by a vast assemblage, which included the governors and great officials of his Indian empire, the great feudatory princes and chiefs of India, representatives of the Indian peoples, and representatives from the military forces of his Indian dominions. Three announcements were made. The first was made by the King-Emperor himself and expressed his personal feelings and those of the Queen-Empress. The second was made by the Governor-General on behalf of the King-Emperor, and declared the grants, concessions, reliefs and benefactions which His Imperial Majesty had been pleased to bestow upon this glorious and memorable occasion. The third was made by the King-Emperor in person and ran as follows:

We are pleased to announce to Our People that on the advice of Our Ministers tendered after consultation with Our Governor-General in Council We have decided upon the transfer of the seat of the Government of India from Calcutta to the ancient Capital Delhi, and, simultaneously and as a consequence of that transfer, the creation at as early a date as possible of a Governorship for the Presidency of Bengal, of a new Lieutenant-Governorship in Council administering the areas of Bihar, Chota Nagpur, and Orissa, and of a Chief

Commissionership of Assam, with such administrative changes and redistribution of boundaries as Our Governor-General in Council with the approval of Our Secretary of State for India in Council may in due course determine. It is Our earnest desire that these changes may conduce to the better administration of India and the greater prosperity and happiness of Our beloved People.

The decisions thus announced had been for many months the subject of discussions in the English Cabinet, at the India Office, and in the Governor-General's Council, and of correspondence between the Government of India and the Secretary of State in England. But the secret had been well kept, and the result of these deliberations was not disclosed, either in England or in India, before the King-Emperor's announcement was made.

The correspondence which led up to the Durbar announcements is embodied in a dispatch from the Government of India dated August 25, 1911, and in the Secretary of State's reply of November 1, 1911. The dispatch states very fully the nature of the proposals submitted to the Secretary of State, and the reasons for them. The reply conveys a general assent. As both dispatch and reply are printed in an Appendix (III) to this book, it seems unnecessary to recapitulate their contents here.

The policy foreshadowed by the correspondence and announced at the Durbar embodied two great administrative changes; a remodelling of the partition of Bengal, and a transfer of the capital of India from Calcutta to Delhi.

In October, 1905, the huge province under the Lieutenant-Governor of Bengal had been divided into two lieutenant-governorships. Of these the western retained the old name of Bengal and the old seat of government at Calcutta, whilst the eastern was augmented by the addition of Assam, previously under a Chief Commissioner, was called Eastern Bengal and Assam, and had for its seat of government Dacca.

The rearrangement effected in pursuance of the Durbar announcements made the following changes:

1. It reunited the five Bengali-speaking divisions of the

old province of Bengal, and formed them into a presidency administered by a governor in council. The area of this presidency or province is approximately 70,000 square miles, and its population about 42,000,000. The capital is at Calcutta, but it is understood that Dacca is to be treated as a second capital, and that the governor will reside there, just as the lieutenant-governor of the United Provinces frequently resides at Lucknow.

2. It created a lieutenant-governorship in council, consisting of Bihar, Chota Nagpur, and Orissa, with a legislative council, and a capital at Patna. The area of this province is approximately 113,000 square miles, and its population about 35,000,000.

3. It detached Assam from Eastern Bengal and placed it again under a chief commissioner. Assam has an area of about 56,000 square miles, and a population of about 5,000,000.

These administrative changes were mainly effected under powers conferred by Acts relating to the government of India, but some supplementary legislation was required, both in India and in England.

The Secretary of State for India in Council made a formal declaration that the Governor-General of India should no longer be the governor of the presidency of Fort William in Bengal, but that a separate governor should be appointed for that presidency.[1]

By a royal warrant dated March 21, 1912, Lord Carmichael, previously governor of Madras, was appointed governor of the presidency of Fort William in Bengal.

By a proclamation notified on March 22, 1912, a new province was carved out of the previous lieutenant-governorship of Bengal, was called Bihar and Orissa, and was placed under a lieutenant-governor.[2]

By another proclamation of the same date the territories

[1] See notifications printed in Appendix IV.
[2] See notifications printed in Appendix IV.

that were in future to constitute the Presidency of Fort William in Bengal were delimited.[1]

And by a third proclamation of the same date the territories which had before 1905 constituted the chief commissionership of Assam were taken under the immediate authority and management of the Governor-General in Council, and again formed into a chief commissionership, called the chief commissionership of Assam.[2]

The authorities for the powers thus exercised are to be found by diligent search in the tangled mass of enactments relating to the government of India, and require some explanation.

By s. 16 of the Government of India Act, 1853 (16 & 17 Vict. c. 95), the court of directors of the East India Company, acting under the direction and control of the board of control, were empowered to declare that the Governor-General in Council should not be governor of the presidency of Fort William in Bengal, but that a separate governor was to be from time to time appointed in like manner as the governors of Madras and Bombay. In the meantime, and until a governor was appointed, there was power under the same section to appoint a lieutenant-governor of such part of the presidency of Bengal as was not under the lieutenant-governorship of the North-West (now United) Provinces.[3] The power to appoint a lieutenant-governor was exercised, and during the continuance of its exercise, the power to appoint a governor remained in abeyance. But it still existed, was inherited by the Secretary of State from the Court of Directors and the Board of Control, and was exercised in March, 1912, when a governorship was substituted for a lieutenant-governorship of Bengal.

Under s. 29 of the Government of India Act, 1858, the governors of Madras and Bombay are appointed by warrant under the Royal Sign Manual. The governor of Bengal is now appointed in like manner.[4]

[1] See Appendix IV. As to previous doubts about the extent of the Presidency, see below, p. 141, n. 2, and *Imperial Gazetteer of India*, vii. 195.

[2] See notifications printed in Appendix IV.

[3] See below, pp. 218, 219.

[4] See below, p. 215.

The power to constitute the new province of Bihar and Orissa and to appoint a lieutenant-governor of it was given by s. 46 of the Indian Councils Act, 1861.[1]

The power to delimit the territories of the presidency or province of Bengal was given by s. 47 of the Indian Councils Act, 1861, and s. 4 of the Government of India Act, 1865.[2]

The power to take Assam under the immediate authority and management of the Governor-General in Council and to place it under a chief commissioner was given by s. 3 of the Government of India Act, 1854.[3]

The territorial redistributions made by the proclamations of March 22 took effect on the following April 1. Under s. 47 of the Indian Councils Act, 1861,[4] laws in force in territories severed from a province remain in force until superseded by further legislation. But it was found in 1912, as it had previously been found after the alteration of provinces made in 1905, that a few minor adaptations were immediately needed to make the old laws fit the new conditions. These adaptations were made by an Act of the Governor-General in Council, which was framed on the lines of the Bengal and Assam Laws Act of 1905 (Act VII of 1905), and was, as a measure of urgency, passed through all its stages on March 25, 1912. The Act, among other things, constitutes a board of revenue for the province of Bihar and Orissa.

Further legislative provision, mostly of a technical character, was made by an Act of Parliament, the Government of India Act, 1912, which received the Royal Assent on June 25, 1912.[5]

The Act recites the proclamations of March 22, 1912,

[1] See below, pp. 244, 245.
[2] See below, pp. 243–5.
[3] See below, p. 220.
[4] See below, p. 244.
[5] For the debates in Parliament on the Coronation Durbar announcements and on the Government of India Act, 1912, see the Parliamentary Debates in the House of Lords on 12 December, 1911, and 21 and 22 February, 26 March, 12, 17, 18, and 20 June, and 29 July, 1912, and in the House of Commons on 12 December, 1911, and 14 February, 22 and 24 April, and 7 and 10 June, 1912.

and then goes on, by s. 1, to declare and explain the powers and position of the new governor of Bengal and his council.

When the Government of India Act, 1833, became law, the intention was to divide the overgrown presidency of Bengal into two presidencies (Fort William and Agra) and to have four presidencies, Fort William (Bengal), Fort St. George (Madras), Bombay, and Agra; and each of these four presidencies was to have a governor and council of its own. But this intention was not carried out. The presidency of Agra was never constituted, the governor-general and his council continued to be, under what had been meant to be a temporary provision, the governor and council of Fort William, and lieutenant-governors were in course of time appointed for the North-West (now United) Provinces and for Bengal.[1] But the provisions of the Act of 1833 were still applicable to the governor in council of Bengal, if and when constituted. What was needed, when that event took place in 1912, was to apply to the governor and council of Bengal those provisions, mostly in Acts subsequent to 1833, which applied exclusively to the governors and councils of Madras and Bombay. Among the provisions so applied are those which relate to legislative councils, to the right of the governor to act as governor-general in the governor-general's absence, to the salaries of the governors and their councils, and to the number and qualifications, under s. 2 of the Act of 1909, of the members of the executive councils.

The reason for proviso (*a*) to s. 1 was the possibility of its being found convenient that certain powers previously exercisable by the Governor-General with respect to the presidency of Fort William, such as the powers with respect to the appointment of temporary judges of the high court under s. 3 of the Indian High Courts Act, 1911 (1 & 2 Geo. V, c. 18), should be retained by the Governor-General. The words 'to the like extent as heretofore' show that these powers will

[1] See below, p. 218, &c.

continue to be exercised over the whole of the old presidency of Fort William.

The effect of proviso (*b*) is to make the appointment of the advocate-general to the legislative council of Bengal optional. In Madras and Bombay the appointment is obligatory,[1] but a doubt was felt whether the advocate-general would be available at Calcutta if he remained a member of the Governor-General's legislative council.

Subsection (2) of s. 1 transferred to the governor of Bengal the powers of the Governor-General in Council under s. 1 of the Indian Presidency Towns Act, 1815, to extend the limits of the town of Calcutta.[2] This power was evidently conferred on the Governor-General in his capacity of governor of Bengal.

Section 2 of the Act authorized the creation of an executive council for the new province of Bihar and Orissa. Section 3 of the Indian Councils Act, 1909, had authorized the creation of an executive council to assist the lieutenant-governor of Bengal. It also gave power to create by proclamation an executive council for any other province under a lieutenant-governor, but in any such case the power was not to be exercised until the proclamation had been laid before each house of Parliament, and either house might object. In order to facilitate the immediate establishment of an executive council for Bihar and Orissa, the Act of 1912 dispensed with further reference to Parliament. An executive council has now been established, consisting of the Maharaja of Darbhanga and two English members.

Section 3 authorized the establishment of legislative councils for provinces under chief commissioners. Under the previous law legislative councils could only be established for provinces under lieutenant-governors. The new power was required primarily to enable continuance of government with a legislative council for Assam, but was wide enough to cover other provinces, such as the Central Provinces. A legislative

[1] See below, p. 241.

[2] See below, p. 223.

council was established for Assam on November 14, 1912, and a legislative council for the Central Provinces on November 10, 1913. The reason for negativing the proviso to s. 3 of the Act of 1854 was that the alteration of laws and regulations in a chief commissionership having a legislative council will be made in ordinary cases by that council and not by the Governor-General's legislative council.

Section 4 made sundry minor amendments and repeals. The amendments set out in Part I of the schedule referred to in this section are consequential. The first amendment extended to the governor of the presidency of Fort William in Bengal the provisions of the Indian Councils Act, 1861, which provide for the senior governor of a presidency acting as viceroy during any interval when there is not a viceroy. The second amendment fixed the maximum number of members of the legislative councils of the presidency of Bengal and of the province of Bihar and Orissa.

Under s. 57 of the Act of 1793 and s. 71 of the Act of 1833 an appointment to fill a vacancy in an office reserved to civil servants had to be made from amongst the members of the civil service belonging to the presidency in which the vacancy occurred. In 1793 the presidency of Fort William in Bengal included the whole of British India outside the presidencies of Madras and Bombay. The presidential restriction had frequently given rise to practical difficulties, and now that the limits of the presidency of Fort William in Bengal are confined to those of Bengal proper, the restriction, so far as that presidency is concerned, could not be justified. The repeal will, however, operate also within the presidencies of Madras and Bombay, and enable members of the present Madras and Bombay services to be appointed to any civil appointment in India. Section 71 of the Act of 1833 referred to the presidency of Agra, which was contemplated but never created, and therefore has always been a dead letter.

The other repeals mentioned in the Schedule are purely consequential on the provisions of the Act.

The object of the saving in subsection (2) of s. 4 was to remove any possible doubt as to whether the effect of the new Act might not be to prevent any adjustment or alteration of boundaries of the presidency of Fort William in Bengal and the new province of Bihar and Orissa. The declaration in the same subsection removes a doubt which had been entertained whether under s. 4 of the Government of India Act, 1865, territory could be transferred from a presidency or lieutenant-governorship to a chief commissionership.[1] It is now made clear that under this section territory can be transferred both to and from a chief commissionership.

In the past the transfer of territories for the purpose of forming a chief commissionership had been effected under the power given by s. 3 of the Government of India Act, 1854 (17 & 18 Vict. c. 77).[2] This power was exercised in 1901 to transfer territories from the lieutenant-governorship of the Punjab to the chief commissionership of the North-West Frontier Province. In September, 1912, it was similarly exercised to transfer the city of Delhi and part of the Delhi district from the same lieutenant-governorship and take it under the immediate authority and management of the Governor-General in Council, and to form it into a chief commissionership to be known as the Province of Delhi. An Indian Act, the Delhi Laws Act, 1912 (XIII of 1912), has adapted the old laws to the new conditions. The intention is to make the site of the new capital and its surroundings an *enclave* occupying the same kind of position as Washington and the District of Columbia in the United States.

The new government buildings and the new government house will be placed, not, as was originally intended, to the north of the present city of Delhi and on the site of the Coronation Durbar, but to the south-west of the city on the slope of the low range of hills which represents the southerly extension of the historic ridge to the Aravalli Hills. The new government house, when the site has been finally fixed, will probably

[1] See below, pp. 220, 221.

[2] See below, p. 220.

be within two to three miles of the Ajmir gate of the old city, and about a mile and a half west of the tomb of Humaiyun.

The redistribution of territories made in pursuance of the Delhi Durbar proclamations involved important changes in the regulations of 1909 for the constitution of legislative councils in India, and a general revision of those regulations was made in 1912. The reasons for this revision, and the nature and effect of the changes made, were explained in a dispatch from the Government of India, dated January 23, 1913, and in an accompanying memorandum. The dispatch and memorandum are printed in Appendix V to this book, and will, with the revised regulations, be found in a recent Blue Book (1913, Cd. 6714).

The state entry into Delhi for the inauguration of the new capital on December 23, 1912, was marred by the nefarious attempt on the life of the Viceroy, Lord Hardinge of Penshurst.[1]

[1] For the correspondence on this deplorable incident see the paper presented to Parliament in 1913 (Cd. 6642).

[The authorities which I found most useful when writing this chapter were: Reports of Parliamentary Committees *passim*; Calendar of State Papers, Colonial. East Indies; Shaw, *Charters of the East India Company*, Madras, 1887; Birdwood, *Report on the Old Records of the India Office*, 2nd reprint, 1891; Morley's *Digest*, Introduction; Stephen (J. F.), *Nuncomar and Impey*, 1885; Forrest (G.), *Selections from State Papers, India*, 1772–85; and, for general history, Hunter (Sir W. W.), *History of British India* (only 2 vols. published); Lyall (Sir A. C.), *British Dominion in India*; Lecky, *History of England in the 18th century*; Hunt (W.), *Political History of England*, 1760–1801; and Mill's *History of British India*, with its continuation by Wilson. A useful bibliography is appended to Sir Thomas Holderness's *Peoples and Problems of India*, in the Home University Library.]

CHAPTER II

SUMMARY OF EXISTING LAW

THE administration of British India rests upon English Acts of Parliament, largely supplemented by Indian Acts and regulations.[1]

Home Government. Secretary of State.

At the head of the administration in England is the Secretary of State, who exercises, on behalf of the Crown, the powers formerly exercised by the Board of Control and Court of Directors, and who, as a member of the Cabinet, is responsible to, and represents the supreme authority of, Parliament.[2]

Council of India.

He is assisted by a council, the Council of India, consisting of such number of members, not less than ten and not more than fourteen, as the Secretary of State may from time to time determine. The members of the council are appointed by the Secretary of State, and hold office for a term of seven years, with a power of reappointment under special circumstances for a further term of five years. At least nine members of the council must be persons who have served or resided in British India for not less than ten years, and who have left British India not more than five years before their appointment. A member of the council cannot sit in Parliament.[3]

The duties of the Council of India are to conduct, under the direction of the Secretary of State, the business transacted in the United Kingdom in relation to the government of India and the correspondence with India. The Secretary of

[1] For authorities on the existing system of administration see the bibliography appended to the very useful little book *Peoples and Problems of India*, by Sir Thomas Holderness, in the Home University Library. The latest of the Decennial Reports on the Moral and Material Progress of India (1913) should also be consulted.

[2] Digest, s. 2. [3] Ibid. 2, 3.

State is president of the council, and has power to appoint a vice-president.[1]

Every order proposed to be made by the Secretary of State must, before it is issued, be either submitted to a meeting of the council or deposited in the council room for seven days before a meeting of the council. But this requirement does not apply to orders which, under the old system, might have been sent through the secret committee.[2]

In certain matters, including the expenditure of the revenues of India, orders of the Secretary of State are required by law to obtain the concurrence of a majority of votes at a meeting of his council, but in all other matters the Secretary of State can overrule his council. Whenever there has been a difference of opinion in council any member has a right to have his opinion, and the reasons for it, recorded.[3]

The council is thus, in the main, a consultative body, without any power of initiation, and with a limited power of veto. Even on questions of expenditure, where they arise out of previous decisions of the Cabinet, as would usually be the case in matters relating to peace or war, or foreign relations, it would be very difficult for the Council to withhold their concurrence from the Secretary of State when he acts as representative and mouthpiece of the Cabinet.

For the better transaction of business the council is divided into committees.[4]

Staff of India Office.

The establishment of the Secretary of State, that is to say the permanent staff constituting what is popularly known as the India Office, was fixed by an Order of the Queen in Council made under the Act of 1858.[5] It is divided into departments, each under a separate permanent secretary, and the committees of the council are so formed as to correspond to these departments.

Indian revenues.

All the revenues of India are required by law to be received for and in the name of the King, and to be applied and

[1] Digest, ss. 5–10. [2] Ibid. 12–14. [3] Ibid. 10.
[4] Ibid. 11. [5] Ibid. 18.

disposed of exclusively for the purposes of the Government of India.[1] The expenditure of these revenues, both in India and elsewhere, is declared to be subject to the control of the Secretary of State in Council, and no grant or appropriation of any part of the revenues is to be made without the concurrence of a majority of the votes at a meeting of the Council of India.[2] Except for preventing or repelling actual invasion of His Majesty's Indian possessions, or under other sudden and urgent necessity, the revenues of India are not, without the consent of both Houses of Parliament, to be applicable to defraying the expenses of any military operation carried on beyond the external frontiers of those possessions by His Majesty's forces charged upon those revenues.[3]

Audit.

The accounts of the Indian revenues and expenditure are laid annually before Parliament, and the accounts of the Secretary of State in Council are audited by an auditor, who is appointed by the King by warrant countersigned by the Chancellor of the Exchequer.[4]

Contracts and legal proceedings.

For the purpose of legal proceedings and contracts, but not for the purpose of holding property, the Secretary of State in Council is a juristic person or body corporate by that name, having the same capacities and liabilities as the East India Company.[5] He has also statutory powers of contracting through certain officers in India.[6]

Government in India. The governor-general.

At the head of the Government in India is the governor-general, who is also viceroy, or representative of the King. He is appointed by the King by warrant under his sign manual, and usually holds office for a term of five years.[7]

The governor-general's council.

He has a council, which at present consists of six members, besides the commander-in-chief, who may be, and in practice always is, appointed an extraordinary member.[8]

The Governor of Bengal, Madras or Bombay is also an

[1] Digest, s. 22.

[2] Ibid. 23. See, however, the practical qualifications of this requirement noted above.

[3] Ibid. 24. [4] Ibid. 29, 30. [5] Ibid. 32, 35.

[6] Ibid. 33. [7] Ibid. 36, 37. [8] Ibid. 38–40.

extraordinary member of the council whenever it sits within his province (which, in fact, never happens).[1]

The power given by an Act of 1874 to appoint a sixth ordinary member specifically for public works purposes was made general by an Act of 1904.

The ordinary members of the governor-general's council are appointed by the Crown, in practice for a term of five years. Three of them must be persons who, at the time of their appointment, have been for at least ten years in the service of the Crown in India, and one must be a barrister of England or Ireland, or a member of the Faculty of Advocates of Scotland, of not less than five years' standing.[2]

If there is a difference of opinion in the council, in ordinary circumstances the opinion of the majority prevails, but, in exceptional circumstances, the governor-general has power to overrule his council.[3]

If the governor-general visits any part of India unaccompanied by his council, he is empowered to appoint some ordinary member of his council to be president of the council in his place, and, in such case, there is further power to make an order authorizing the governor-general alone to exercise all the executive powers of the Governor-General in Council.[4]

The official acts of the central Government in India are expressed to run in the name of the Governor-General in Council, often described as the Government of India.[5] The executive work of the Government of India is distributed among departments which may be compared to the departments of the central Government in England. There are at present nine of these departments—Finance, Foreign, Home, Legislative, Revenue and Agriculture, Public Works, Commerce and Industry, Army, and Education. At the head of each of them is one of the secretaries[6] to the Government

[1] Digest, s. 40. [2] Ibid. 39. [3] Ibid. 44. [4] Ibid. 45, 47.

[5] Legislative sanction for this name is given by the Indian General Clauses Act (X of 1897, s. 3 (22)).

[6] In the case of the department of education there is, in addition to the secretary, a joint secretary who is a member of the Indian educational service.

of India, who corresponds to the permanent secretary in England, and each of them, except the Foreign Department, is assigned to the special care of one of the members of council. The Foreign Department is under the immediate superintendence of the viceroy, who may be thus called his own foreign minister, although members of the council share responsibility for such matters relating to the department as come within their cognizance.

Besides these nine departments of the Secretariat, there are special departments, outside the Secretariat departments but attached to some one of them. These special departments either transact branches of work which the Government of India keeps in its own hands, or exercise supervision over branches of work which are conducted by the Local Governments. Thus the Director-General of the Posts and Telegraphs, the Surveyor-General, and the Railway Board, are at the head of departments which are centrally administered. On the other hand, the Inspector-General of Forests, and the Director-General of the Indian Medical Service, represent departments which are administered by the Local Governments but supervised by the Government of India.

In the transaction of business, minor questions are settled departmentally. Questions involving a difference of opinion between two departments, or raising any grave issue, are brought up to be settled in council.

The council usually meets once a week, but special meetings may be summoned at any time. The meetings are private, and the procedure is of the same informal kind as at a meeting of the English Cabinet, the chief difference being that one of the secretaries to the Government usually attends during the discussion of any question affecting his department, and takes a note of the order passed.[1]

[1] For a description of the mode of transacting business in council before the work of the Government was 'departmentalized,' see *Lord Minto in India*, p. 26, and as to the effect of departmentalizing, see Strachey, p. 68.

Every dispatch from the Secretary of State is circulated among all the members of the council, and every dispatch to the Secretary of State is signed by every member of the council who is present at headquarters, as well as by the viceroy, unless he is absent.

If any member of the council dissents from any dispatch signed by his colleagues, he has the right to append to it a minute of dissent.

The headquarters of the Government of India are at Delhi during the cold weather season, and at Simla during the rest of the year.[1]

The gov men

For purposes of administration British India is now divided into fifteen provinces, each with its own local government. These provinces are the old presidencies[2] of Bengal (Fort William), Madras (Fort St. George), and Bombay; four Lieutenant-Governorships, namely, Bihar and Orissa,[3] the United Provinces of Agra and Oudh,[4] the Punjab, and Burma;[5] and eight Chief Commissionerships, namely, the Central Provinces, Assam, Delhi, Ajmere-Merwara, Coorg, British Baluchistan,[6] the North-West Frontier Province,[7] and the Andaman Islands.

The provinces of Bengal, Madras, and Bombay are each under a governor and council appointed by the Crown, in practice for a term of five years, the governor being usually an English statesman, and the council consisting at present of three members of whom two are members of the Indian Civil

[1] As to the advantages and disadvantages of Simla as a seat of Government, see Minutes by Sir H. S. Maine, No. 70.

[2] As to the ambiguity of the term 'presidency,' see Chesney, *Indian Polity* (3rd ed.), pp. 79, 88. *Imp. Gazetteer*, vii. 195.

[3] Constituted in 1912 out of territories previously forming part of the Presidency of Fort William in Bengal. See Act VII of 1912.

[4] Constituted in 1901 by the union of the Lieutenant-Governorship of the North-Western Provinces with the Chief Commissionership of Oudh.

[5] Placed under a lieutenant-governor in 1897.

[6] Made a Chief Commissionership in 1887.

[7] Carved out of the Punjab, and placed under a Chief Commissioner in 1901.

Service of twelve years' standing.[1] The governors of Bengal, Madras, and Bombay have the privilege of communicating directly with the Secretary of State, and have the same power as the governor-general of overruling their councils in cases of emergency. For reasons which are mainly historical, the control of the Government of India over the Governments of Madras and Bombay, and now over the Government of Bengal, is less complete than over other local Governments.

The lieutenant-governors have, as a rule, no executive councils,[2] and are appointed by the governor-general, with the approval of the King.[3] They are in practice appointed from the Indian Civil Service,[4] and hold office for five years.

The chief commissioners are appointed by the Governor-General in Council. In some cases this office is combined with another post. Thus the Resident at Mysore is, *ex officio*, Chief Commissioner of Coorg, and the Governor-General's Agent for Rajputana is, *ex officio*, Chief Commissioner of Ajmere-Merwara. So also the Chief Commissioners of British Baluchistan and of the North-West Frontier Province are Governor-General's Agents for dealing with the neighbouring tribes outside British India.

Under an arrangement made in 1902 the 'Assigned Districts' of Berar are leased in perpetuity to the British Government, and are administered by the Chief Commissioner of the Central Provinces.

Indian legislation.

The constitution of the Governor-General's legislative council was materially altered by the Indian Councils Act, 1909, and the regulations under it, which were further revised in 1912. Its existing constitution is described above in Chapter I, and in the Digest.

[1] Digest, ss. 50, 51. Under the Indian Councils Act, 1909, there is power to increase the number to four.

[2] The Lieutenant-Governor of Bihar and Orissa has an Executive Council, established in 1912.

[3] Digest, s. 55. Under the Indian Councils Act, 1909, there is power to constitute executive councils for lieutenant-governors.

[4] There may have been exceptions, e.g. Sir H. Durand.

The legislature thus formed bears the awkward name of 'the Governor-General in Council at meetings for the purpose of making laws and regulations.' But the council as constituted for legislative purposes is usually described as the legislative council of the Governor-General.

The Governor-General in Council at these meetings has power to make laws—

(*a*) for all persons, for all courts, and for all places and things within British India ; and

(*b*) for all British subjects of His Majesty and servants of the Government of India within other parts of India, that is to say, within the Native States ; and

(*c*) for all persons being native Indian subjects of His Majesty, or native Indian officers or soldiers in His Majesty's Indian forces when in any part of the world, whether within or without His Majesty's dominions ; and

(*d*) for all persons employed or serving in the Royal Indian Marine.[1]

But this power is subject to various restrictions. For instance, it does not extend to the alteration of any Act of Parliament passed since 1860, or of certain specified portions of earlier Acts,[2] and does not enable the legislature to make any law affecting the authority of Parliament or any part of the unwritten laws or constitution of the United Kingdom whereon may depend the allegiance of any person to the Crown or the sovereignty or dominion of the Crown in any part of British India.[3]

Measures affecting the public debt or revenues of India, the religion or religious rites or usages of any class of His Majesty's subjects in India, the discipline or maintenance

[1] Digest, s. 63. As to whether there is any power to legislate for servants of the Government outside 'India,' see the note (*c*) on that section.

[2] Namely, 3 & 4 Will. IV, c. 85, except ss. 84 and 86 ; 16 & 17 Vict. c. 95 ; 17 & 18 Vict. c. 77 ; 21 & 22 Vict. c. 106 ; 22 & 23 Vict. c. 41. See 24 & 25 Vict. c. 67, s. 22, as amended by 32 & 33 Vict. c 98, s. 2.

[3] Digest, s. 63.

of the military or naval forces, or the relations of the Government with foreign States, cannot be introduced by any member without the previous sanction of the governor-general.[1] Every Act requires the governor-general's assent, unless it is reserved by him for the signification of His Majesty's pleasure, in which case the power of assenting rests with the Crown. The assent of the Crown is in other cases not necessary to the validity of an Act, but any Act may be disallowed by the Crown.[2]

The legislative procedure at meetings of the Legislative Council is regulated by rules made by the council and assented to by the governor-general.[3]

Under the Act of 1861 the powers of the Legislative Council were strictly confined to the consideration of measures introduced into the council for the purpose of enactment or the alteration of rules for the conduct of business.[4] But by the Indian Councils Act, 1909, and the rules made under it, powers are given to discuss and move resolutions on the annual financial statement, to move resolutions on matters of general public interest, and to ask questions, including supplementary questions. For the rules on these subjects see Appendix II. Under the rules made in pursuance of this power the annual financial statement must be made publicly in the council. Every member is at liberty to make any observations he thinks fit, and the financial member of the council and the president have the right of reply. Under the same rules due notice must be given of any question, and every question must be a request for information only, and must not be put in argumentative, or hypothetical, or defamatory language. No discussion is permitted in respect of an answer given on behalf of the Government, and the president may disallow any question which, in his opinion, cannot be answered consistently with the public interest.

[1] Digest, s. 64.
[2] Ibid. 65, 66.
[3] Ibid. 67.
[4] See above, p. 100.

Besides the formal power of making laws through the Legislative Council, the governor-general has also, under an Act of 1870,[1] power to legislate in a more summary manner, by means of regulations, for the government of certain districts of India of a more backward character, which are defined by orders of the Secretary of State, and which are 'scheduled districts' within the meaning of certain Acts of the Indian Legislature. Under a section of the Act of 1861[2] the governor-general has also power, in cases of emergency, to make temporary ordinances which are to be in force for a term not exceeding six months.

The Governor-General in Council also exercises certain legislative powers with respect to Native States, but in his executive capacity, and not through his legislative council.[3]

Local legislatures

Local legislatures were established by the Indian Councils Act, 1861, for the provinces of Madras and Bombay, and have, under the powers given by that Act and by the Government of India Act 1912, since been established for Bengal, for the United Provinces of Agra and Oudh as constituting a single province, for the Punjab, for Burma, for the province of Bihar and Orissa, and for the Chief Commissionerships of Assam, and of the Central Provinces. The constitutions of the local legislatures are now regulated by the Indian Councils Act, 1909, and the regulations under it, and by section 3 of the Government of India Act, 1912 (relating to Chief Commissionerships). They are described in Chapter I and in the Digest.

Note.

The powers of the local legislatures are more limited than those of the governor-general in his legislative council. They cannot make any law affecting any Act of Parliament for the time being in force in the province, and may not,

[1] 33 Vict. c. 3, s. 1, above, p. 105. Digest, s. 68.
[2] 24 & 25 Vict. c. 67, s. 23. Digest, s. 69.
[3] See Chapter V.

without the previous sanction of the governor-general, make or take into consideration any law—

(*a*) affecting the public debt of India, or the customs duties, or any other tax or duty for the time being in force and imposed by the authority of the Governor-General in Council for the general purposes of the Government of India ; or

(*b*) regulating any of the current coin, or the issuing of any bills, notes, or other paper currency ; or

(*c*) regulating the conveyance of letters by the post office or messages by the electric telegraph within the province ; or

(*d*) altering the Indian Penal Code ; or

(*e*) affecting the religion or religious rites or usages of any class of His Majesty's subjects in India ; or

(*f*) affecting the discipline or maintenance of any part of His Majesty's naval or military forces ; or

(*g*) regulating patents or copyright ; or

(*h*) affecting the relations of the Government with foreign princes or States.[1]

Until 1892 their powers were much restricted by their inability to alter any Act of the Governor-General in Council, but under a provision of the Indian Councils Act, 1892, the local legislature of any province may, with the previous sanction of the governor-general, repeal or amend as to that province any law or regulation made by any other authority in India.[2]

Acts passed by a local legislature in India require the assent of the governor-general, and are subject to disallowance by the Crown in the same manner as Acts of the governor-general's legislative council.[2] The restrictions on the subjects of discussion at that council also apply to meetings of the local legislatures.[3]

No precise line of demarcation is drawn between the subjects which are reserved to the control of the local legis-

[1] Digest, s. 76. [2] Ibid. 78. [3] Ibid. 77.

latures respectively.[1] In practice, however, the governor-general's council confines itself to legislation which is either for provinces having no local legislatures of their own, or on matters which are beyond the competency of the local legislatures, or on branches of the law which require to be dealt with on uniform principles throughout British India. Under this last head fall the so-called Indian codes, including the Penal Code, the Codes of Civil and Criminal Procedure, the Succession Act, the Evidence Act, the Contract Act, the Specific Relief Act, the Negotiable Instruments Act, the Transfer of Property Act, the Trusts Act, and the Easements Act.

Indian Law

The law administered by the courts of British India consists, so far as it is enacted law, of—

(1) Such Acts of Parliament as extend, expressly or by implication, to British India ;[2]

(2) The regulations made by the Governments of Madras, Bengal, and Bombay before the coming into operation of the Government of India Act, 1833 (3 & 4 Will. IV, c. 85) ;[3]

(3) The Acts passed by the Governor-General in Council under the Government of India Act, 1833, and subsequent statutes ;[4]

[1] As to the relations between the governor-general's council and local legislatures, see Minutes by Sir H. S. Maine, No. 69.

[2] See the Statutes relating to India, published by the Indian Legislative Department in 1913.

[3] The Bengal Regulations passed before 1793 were in that year collected and passed by Lord Cornwallis in the shape of a revised code. 675 Regulations were passed between 1793 and 1834, both inclusive, but of these only eighty-nine are now wholly or partly in force. Such of them as are still in force are to be found in the volumes of the Bengal Code published by the Bengal Legislative Department.

Of the 251 Madras Regulations, twenty-eight are still wholly or partly in force, and are to be found in the Madras Code.

The Bombay Regulations were revised and consolidated by Mountstuart Elphinstone in 1827. Twenty Bombay Regulations are still wholly or partly in force, and are to be found in the Bombay Code.

[4] Revised editions of these Acts, omitting repealed matter, have been published by the Indian Legislative Department. Such of them as relate

(4) The Acts passed by local legislatures;[1]

(5) The Regulations made by the governor-general under the Government of India Act, 1870 (33 Vict. c. 3);[2]

(6) The Ordinances, if any, made by the governor-general under s. 23 of the Indian Councils Act, 1861 (24 & 25 Vict. c. 67), and for the time being in force.[3]

To these may be added—

(7) Orders in Council made by the King in Council and applying to India.[4]

(8) Statutory rules made under the authority of English Acts.[5]

(9) Rules, orders, regulations, by-laws, and notifications made under the authority of Indian Acts.[6]

(10) Rules, laws, and regulations made by the governor-general or the Governor-General in Council for non-regulation provinces before 1861, and confirmed by s. 25 of the Indian Councils Act, 1861.[7]

These enactments are supplemented by such portions of the Hindu, Mahomedan, and other native laws and customs as are still in force, and by such rules or principles of European, mainly English, law as have been applied to the country,

only to particular provinces are to be found in the 'Codes' for these provinces published by the Legislative Department.

[1] These Acts are to be found in the volumes of 'Codes' mentioned above.

[2] A Chronological Table of and Index to these five classes of enactments have been compiled by the Indian Legislative Departments.

[3] See Digest, s. 69.

[4] See e.g. the Order in Council confirming the Extradition (India) Act, 1895 (IX of 1895), *Statutory Rules and Orders Revised*, v. 297; the Zanzibar Order in Council of 1897, which gives an appeal from the British Court in Zanzibar to the Bombay High Court, *Statutory Rules and Orders Revised*, v. 87; and the Indian (Foreign Jurisdiction) Order in Council, 1902, printed below, p. 418.

[5] e.g. the rules made under s. 8 of the Indian Councils Act, 1861 (Digest, s. 43), and under ss. 1 & 2 of the Indian Councils Act, 1892 (Digest, ss. 60, 64).

[6] Lists and a collection of such of these as are of general application have been published by the Indian Legislative Department. Lists and collections of rules, &c., of local application have been published by most Local Governments.

[7] See above, p. 102. Probably most, if not all, of this body of laws has expired or been superseded.

either under the direction to act in accordance with justice, equity, and good conscience, or in other ways, and as have not been superseded by Indian codification.

Native law has been wholly superseded, as to criminal law and procedure and as to civil procedure, by the Indian Penal Code, the Indian Codes of Criminal and Civil Procedure, the Evidence Act, and other enactments, and has been largely superseded as to other matters by Anglo-Indian legislation but still regulates, as personal law, most matters relating to family law and to the law of succession and inheritance among Hindus, Mahomedans, and other natives of the country.[1]

The East India Company Act, 1793 (33 Geo. III, c. 52), reserved to members of the covenanted civil service[2] the principal civil offices in India under the rank of member of council. Appointments to this service were made in England by the Court of Directors. The Indian Civil Service.

The Government of India Act, 1853 (16 & 17 Vict. c. 95), threw these appointments open to competition among natural-born subjects of Her Majesty, and this system was maintained by the Act of 1858, which transferred the government of India to the Crown.[3] The first regulations for the competitive examinations were framed by Lord Macaulay's committee in 1854, and have since been modified from time to time. Under the existing rules the limits of age for candidates are from twenty-two to twenty-four. Successful candidates remain on probation for one year, and then have to pass an examination in subjects specially connected with their future duties. If they pass, they receive their appointments from the Secretary of State. Probationers are encouraged by a special allowance of £150 to pass their probationary year

[1] See below, Chapter IV.

[2] So called from the covenants into which the superior servants of the East India Company were required to enter, and by which they were bound not to trade, not to receive presents, to subscribe for pensions, and so forth. Members of the civil service of India are still required to enter into similar covenants before receiving their appointments.

[3] See Digest, s. 92.

at a University or College approved by the Secretary of State.

The Indian Civil Service Act, 1861 (24 & 25 Vict. c. 54), whilst validating certain irregular appointments which had been made in the past, expressly reserved in the future to members of the covenanted service all the more important civil posts under the rank of member of council in the regulation provinces. The schedule of reserved posts, which is still in force,[1] does not apply to non-regulation provinces, such as the Punjab, Oudh, the Central Provinces, and Burma, where the higher civil posts may be, and in practice often are, filled by military officers belonging to the Indian Army, and others.

An Act of 1870 (33 Vict. c. 3), after reciting that 'it is expedient that additional facilities should be given for the employment of natives of India, of proved merit and ability, in the civil service of Her Majesty in India,' authorized the appointment of any native of India to any office, place, or employment in the civil service in India, without reference to any statutory restriction, but subject to rules to be made by the Governor-General in Council with the sanction of the Secretary of State in Council.[2]

Little was done under this Act until rules for regulating appointments under it were made during Lord Lytton's government in 1879. The intention was that about a sixth of the posts reserved by law to the covenanted civil service should be filled by natives of India appointed under these rules; and for the purpose of giving gradual effect to this scheme, the number of appointments made in England was in 1880 reduced by one-sixth. The persons appointed under the rules were often described as 'statutory civilians,' and about sixty natives of India had been so appointed when the system was changed in 1889. The rules did not work satisfactorily, and in 1886 a commission, under the presidency of Sir Charles Aitchison, was appointed by the Government of India with instructions 'to devise a scheme which might reasonably be

[1] Digest, s. 93. [2] Ibid. 94.

hoped to possess the necessary elements of finality, and to do full justice to the claims of natives of India to higher employment in the public service.'

Under the scheme established in pursuance of the recommendations of Sir Charles Aitchison's commission a provincial civil service has been formed by the amalgamation of the higher appointments in what was previously known as the uncovenanted civil service with a certain number of appointments previously held by the covenanted civil service. The lower grade appointments of what had been the uncovenanted civil service are now styled the 'subordinate service.' There are thus three classes of the general civil service, (1) the Indian Civil Service, (2) the Provincial Service, and (3) the Subordinate Service. The Indian Civil Service is recruited by open competition in England. The other two services are recruited provincially and consist almost entirely of natives of the province. The provincial service is fed mainly by direct recruitment, but, in exceptional cases, by promotion from the subordinate service. In the executive branch the lowest grade in the provincial service is the deputy collector, the highest in the subordinate service is the tahsildar. Judicial officers of all grades belong to the provincial service.[1]

Besides this general service, there are special services such as the education department, the public works department, the forest department, and the police department. Appointments to the highest posts in these departments are as a rule made in England. The other posts are recruited provincially, and are, like posts in the general service, graded as belonging either to a provincial service, or to a subordinate service.[2]

The chartered high courts.

It is only with reference to the four chartered high courts that the judicial system of India is regulated by English statute. Under the Regulating Act of 1773 (13 Geo. III,

[1] As to the proportion of Englishmen in the Indian Civil Service, see Strachey, *India*, p. 90.

[2] See East India (Progress and Condition) Decennial Report, 1904, pp. 58–60.

c. 63), a supreme court was established by charter for Calcutta, and similar courts were established for Madras in 1800 (39 & 40 Geo. III, c. 79), and for Bombay in 1823 (4 Geo. IV, c. 71). The Act of 1781 (21 Geo. III, c. 70) recognized an appellate jurisdiction over the country courts established by the Company in the Presidency of Bengal.[1]

The Indian High Courts Act, 1861 (24 & 25 Vict. c. 104), amalgamated the supreme and sadr courts at the three presidency towns (that is to say, the courts exercising the jurisdiction of the Crown and the appellate and supervisional jurisdiction of the Company at those towns), by authorizing the establishment of chartered high courts inheriting the jurisdiction of both these courts. The charters now regulating these high courts were granted in December, 1865. The same Act authorized the establishment of a new high court, and accordingly a charter establishing the High Court at Allahabad was granted in 1866. Other chartered high courts may now be established under an Act of 1911, 1 & 2 Geo. V, c. 18.

Each of the four chartered high courts consists of a chief justice, and of as many other judges, not exceeding nineteen, as His Majesty may think fit to appoint.[2]

A judge of a chartered high court must be either—

(*a*) a barrister of England or Ireland, or a member of the Faculty of Advocates in Scotland, of not less than five years' standing; or

(*b*) a member of the Indian Civil Service of not less than ten years' standing, and having for at least three years served as, or exercised the powers of, a district judge; or

(*c*) a person having held judicial office not inferior to that of a subordinate judge, or judge of a small cause court, for not less than five years; or

(*d*) a person having been a pleader of a high court for not less than ten years.[2]

But not less than one-third of the judges, including the

[1] See above, p. 57. [2] Digest, s. 96.

chief justice, must be barristers or advocates, and not less than one-third must be members of the Indian Civil Service.[1]

Every judge of a chartered high court holds office during His Majesty's pleasure,[2] and his salary, furlough, and pension are regulated by order of the Secretary of State in Council.[3] Temporary vacancies may be filled by the Governor-General in Council in the case of the high court at Calcutta, and by the local government in other cases.[4]

The jurisdiction of the chartered high courts is regulated by their charters,[5] and includes the comprehensive jurisdiction formerly exercised by the supreme and sadr courts.[6] They are also expressly invested by statute (24 & 25 Vict. c. 104, s. 15) with administrative superintendence over the courts subject to their appellate jurisdiction, and are empowered to—

(*a*) call for returns ;

(*b*) direct the transfer of any suit or appeal from any such court to any other court of equal or superior jurisdiction ;

(*c*) make general rules for regulating the practice and proceedings of those courts ;

(*d*) prescribe forms for proceedings in those courts, and for the mode of keeping book entries or accounts by the officers of the courts ; and

(*e*) settle tables of fees to be allowed to the sheriff, and to the attorneys, clerks, and officers of the courts.[7]

But these rules, forms, and tables are to be subject to the previous approval of the Government of India or of the local government.[8]

The business of the chartered high courts is distributed among single judges and division courts in accordance with rules of court, subject to any provision which may be made by Act of the Governor-General in Council.[9]

[1] Digest, s. 96. [2] Ibid. 97. [3] Ibid. 99. [4] Ibid. 100.
[5] Printed in *Statutory Rules and Orders Revised*, vol. vi.
[6] Digest, s. 101. [7] Ibid. 102.
[8] Ibid. [9] Ibid. 103.

The Governor-General in Council may by order alter the local limits of the jurisdiction of the several chartered high courts, and authorize them to exercise jurisdiction over Christian subjects of His Majesty resident in Native States.[1]

The old enactments requiring the chartered high courts, in the exercise of their original jurisdiction with reference to certain matters of which the most important are inheritance and succession, when both parties are subject to the same law or custom, to decide according to that law or custom, and when they are subject to different laws or customs, to decide according to the law of the defendant, are still in force, subject to such modifications as have been or may be made by Indian legislation.[2]

Traces of the old conflicts between the supreme court and the governor-general's council are still to be found in enactments which exempt the governor-general, the governors of Bengal, Madras, and Bombay, and the members of their respective councils, from the original jurisdiction of the chartered high courts in respect of anything counselled, ordered, or done by any of them in their public capacity, from liability to arrest or imprisonment in any civil proceeding in a high court, and from being subject to the criminal jurisdiction of a high court in respect of any misdemeanour at common law or under any Act of Parliament.[3] Nor are the chartered high courts to exercise original jurisdiction in revenue matters.[4]

Jurisdiction of English courts over offences in India.

The highest officials in India are exempted from the jurisdiction of the Indian chartered high courts, but, under enactments which are still in force,[5] certain offences by persons holding office under the Crown in India are expressly made punishable as misdemeanours by the High Court in England. These offences are :

(1) Oppression of any of His Majesty's subjects ;

(2) Wilful breach or neglect of the orders of the Secretary of State ;

[1] Digest, s. 104. [2] Ibid. 108. [3] Ibid. 105.
[4] Ibid. 101. [5] Ibid. 117.

(3) Wilful breach of the trust and duty of office;

(4) Trading; and

(5) Receipt of presents.

Under an Act of 1797 (37 Geo. III, c. 142, s. 28) any British subject[1] who, without the previous consent in writing of the Secretary of State in Council, or of the Governor-General in Council, or of a local Government, is concerned in any loan to a native prince, is guilty of a misdemeanour.

Any of these offences may be tried and punished in England, but the prosecution must be commenced within five years after the commission of the offence or the arrival in the United Kingdom of the person charged, whichever is later.[2]

The army in India.

Supreme authority over the army in India is vested by law in the Governor-General in Council.[3] Under the arrangements made in 1905, as modified in 1909, the commander-in-chief of His Majesty's Forces in India has charge of the Army Department, which to a certain extent corresponds to the War Office in England. Subject to the administrative control of the Governor-General in Council, the same commander-in-chief is also the chief executive officer of the army. Under the system in force before the changes introduced by the Act of 1893 he held special command of the troops in the Bengal Presidency, and exercised a general control over the armies of Madras and Bombay. Each of these armies had a local commander-in-chief, who might be, and in practice always was, appointed a member of the governor's executive council, and the local Government of the presidency had certain administrative powers in military matters. This system of divided control led to much inconvenience, and by an Act of 1893 (56 & 57 Vict. c. 62) the offices of the provincial commanders-in-chief were abolished, and the powers of military

[1] This probably means any European British subject. See Digest, s. 118.

[2] This is the period fixed by 21 Geo. III, c. 70, s. 7. But the period under 33 Geo. III, c. 52, s. 141, is six years from the commission of the offence and a shorter period is fixed by the general Act, 56 & 57 Vict. c. 61. See Digest, s. 119.

[3] See ibid. 36.

control vested in the Governments of Madras and Bombay were transferred to the Government of India.

The administrative arrangements under the Act of 1893 came into force on April 1, 1895. The Army of India was then divided into four great commands, each under a lieutenant-general, the whole being under the direct command of the commander-in-chief in India and the control of the Government of India. In 1904 one of the commands was abolished, and the army was organized in three commands and two independent divisions. In June, 1907, the three commands ceased to exist, and the Army in India was divided into two portions, viz. a Northern Army and a Southern Army, each under the command of a General Officer. The Northern Army comprises the Peshawar, Rawal Pindi, Lahore, Meerut, and Lucknow Divisions with the Kohat, Bannu, and Derajat independent Frontier Brigades; while the Southern Army comprises the Quetta, Mhow, Poona, Secunderabad, and Burma Divisions, together with the Aden garrison.

The army in India consists, first, of His Majesty's British forces, which are under the (imperial) Army Act, and, secondly, of native troops, of which the British officers are under the (imperial) Army Act, whilst the remainder are under the Indian Army Act, an Act of the Indian Legislature.[1] In 1913 the total strength was nearly 263,000 men of all arms, of whom rather more than 78,000 (including the British officers of the Indian Army) were British. This is exclusive of the active reserve, in process of formation, consisting of men who have served with the colours in the Native Army from 5 to 12 years, and numbering now about 34,700 men, and of the volunteers, about 42,000 in number, enrolled under the Indian Volunteers Act (XX of 1869, as amended by X of 1896).

When the Native Army was reorganized in 1861, its British officers were formed into three 'staff corps,' one for each of the three armies of Bengal, Madras, and Bombay. The officers of the corps were, in the first instance, transferred

[1] Act VIII of 1911.

from the East India Company's army, and were subsequently drawn from British regiments. In 1891 the three staff corps were amalgamated into a single body, known as the Indian Staff Corps. In 1902 the use of the term 'Staff Corps' was abandoned, and these officers are now said to belong to the Indian Army. The number of their establishment is nearly 3,450. They are recruited partly from young officers of British regiments and batteries in India, but mainly by the appointment of candidates from the Royal Military College, Sandhurst, to an unattached list, from which they are transferred to the Indian Army after a year's duty with a British regiment in India. After passing examinations in the native language and in professional subjects, an officer of the Indian Army is eligible for staff employment or command in any part of India. The officers of the Indian Army are employed not only in the Native Army and in military appointments on the staff, but also in a large number of civil posts. They hold the majority of appointments in the Political Department, and many administrative and judicial offices in non-regulation provinces.

Ecclesiastical establishment.

The Charter Acts of 1813 and 1833 provided for the appointment of bishops at Calcutta, Madras, and Bombay, and conferred on them ecclesiastical jurisdiction and power to admit to holy orders. These provisions are still in force,[1] but the bishops who have been since appointed for other Indian dioceses, such as the diocese of Lahore, do not derive their authority from any Act of Parliament. The salaries, allowances, and leaves of absence of the Indian bishops and archdeacons are regulated by the King or by the Secretary of State in Council.[2]

Subsidiary provisions.

The provisions summarized above include all the matters relating to the administration of India which are regulated by Act of Parliament, with the exception of some minor points relating to salaries, leave of absence, temporary appointments, and the like.

[1] Digest, ss. 110–12.

[2] Ibid. 113, 114.

The salaries and allowances of the governor-general and the governors of Bengal, Madras, and Bombay, and of their respective councils, of the commander-in-chief, and of lieutenant-governors, are fixed by order of the Secretary of State in Council, subject to limits imposed by Act of Parliament.[1]

Return to Europe vacates the offices of the governor-general, of the governors of Bengal, Madras, and Bombay, and the members of their respective councils, and of the commander-in-chief,[2] except that members of council can obtain six months' leave of absence on medical certificate.[3]

There is power to make conditional appointments to the offices of governor-general, governor, and member of council.[4]

If a vacancy occurs in the office of governor-general when there is no successor or conditional successor on the spot, the Governor of Bengal, Madras, or Bombay, whichever is senior in office, fills the vacancy temporarily.[5] A temporary vacancy in the office of Governor of Bengal, Madras, or Bombay is filled by the senior member of council.[6] Provision is also made for filling temporary vacancies in the offices of ordinary or additional members of council.

Absence on sick leave or furlough of persons in the service of the Crown in India is regulated by rules made by the Secretary of State in Council.[7] The distribution of patronage between the different authorities may also be regulated in like manner.[8]

Administrative arrangements not dependent on Acts of Parliament.

The administrative arrangements which have been summarized above depend mainly, though not exclusively, on Acts of Parliament. To describe the branches of administration which depend not on Acts of Parliament, but on Indian laws or administrative regulations, would be beyond the scope of this work. For a description of them reference should be made to such authorities as Sir John Strachey's

[1] Digest, s. 80.

[2] Ibid. 82. The precise effect of the enactments reproduced by this section is far from clear.

[3] Ibid. 81. [4] Ibid. 83. [5] Ibid. 85.

[6] Ibid. 86. Ibid. 89. [8] Ibid. 90.

excellent book on India,[1] or the latest of the decennial reports on the moral and material progress of India. Only a few of them can be touched on lightly here.

Financial system.

In the first place something must be said about the Indian financial system. The principal heads of Indian revenue, as shown in the figures annually laid before Parliament, are land revenue, opium, salt, stamps, excise, provincial rates, customs, assessed taxes, forest, registration, and tributes from Native States. The principal heads of expenditure are debt services, military services, collection of revenue, commercial services, famine relief and insurance, and civil service. But during recent years the services grouped as commercial, namely, post office, telegraph, railways, and irrigation, have usually shown a surplus, and have been a source of revenue and not of expenditure. The most important head of revenue is the land revenue, a charge on the land which is permanently fixed in the greater part of Bengal and in parts of Madras, and periodically settled elsewhere.

The central government keeps in its own hands the collection of certain revenues such as those of the Salt Department in Northern India, the Telegraph Department, and the revenues of Coorg, Ajmere, and the North-West Frontier Province, besides certain receipts connected with the Army and other services. It also deals directly with the expenditure on the Army and the Indian Marine, on certain military works, on railways and telegraphs, on the administration of the three small provinces whose revenue it receives, and on the mint, and with the greater part of the post office expenditure and of the political charges.[2]

The other branches of revenue are collected and the other branches of expenditure are administered by the provincial or local governments. But the whole of the income and

[1] 4th edition by Sir T. W. Holderness, 1911.

[2] On the relations between imperial and provincial finance, see the Resolution of the Government of India, published in the *Gazette of India* of May 18, 1912.

expenditure, whether collected or borne by the central or by the local government, is brought into one account as the income and expenditure of the Indian Empire.

From 1871 to 1903 the relations between central and provincial finance were regulated by quinquennial contracts between the central and each provincial government. Under these contracts the whole, or a proportion, of certain taxes and other receipts collected by each provincial government was assigned to it for meeting a prescribed portion of the administrative charges within the province. Since 1903 these quinquennial contracts have gradually been replaced by contracts on a quasi-permanent basis.

The provincial governments have thus a direct interest in the efficient collection of revenue and an inducement to be economical in expenditure, since savings effected by them are placed to their credit. But they may not alter taxation, or the rules under which the revenue is administered, without the assent of the Supreme Government. Subject to general supervision, and to rules and conditions concerning such matters as the maintenance of great lines of communication, the creation of new appointments, the alteration of scales of salaries, and the undertaking of new general services or duties, they have a free hand in administering their share of the revenue. Any balance which a provincial government can accumulate by careful administration is placed to its credit, but on occasions of extraordinary stress, as during the Afghan War, the central government has sometimes called upon local governments to surrender a share of their balances.

Administrative staff of local governments.

As has been said above, the governors of Bengal, Madras, and Bombay are assisted by executive councils. A lieutenant-governor has, as a rule, no executive council,[1] but has the help of a Board of Revenue in the United Provinces, and of a

[1] Under the Indian Councils Act, 1909, there is power to create executive councils for lieutenant-governors and such a council has been established for Bihar and Orissa.

Financial Commissioner in the Punjab and Burma. Madras has also a Board of Revenue. Bengal has at present a Board of Revenue reduced to a single member, and a similar arrangement has been made for Bihar and Orissa. Each province has its secretariat, manned according to administrative requirements, and also special departments, presided over by heads, such as the inspector-general of police, the commissioner of excise, the director of public instruction, the inspector-general of civil hospitals, the sanitary commissioner, and the chief engineer of public works, for the control of matters which are under provincial, as distinguished from central management. There may be also special officers in charge of such matters as experimental farms, botanical gardens, horse-breeding, and the like, which require special qualifications but do not need a large staff.

Regulation and non-regulation provinces.

The old distinction between regulation and non-regulation provinces[1] has become obsolete, but traces of it remain in the nomenclature of the staff, and in the qualifications for administrative posts. The corresponding distinction in modern practice is between the regions which are under ordinary law, and the more backward regions, known as scheduled districts, which are under regulations made in exercise of the summary powers conferred by the Government of India Act, 1870 (33 Vict. c. 3).[2]

The district.

In each province the most important administrative unit is the district. There are 267 districts in British India. They vary considerably in area and population, from the Simla district in the Punjab with 101 square miles to the Upper Khyndwin in Burma with approximately 19,000 square miles, and from the hill district of North Arakan with a population of 20,680 to Maimansingh with a population of 3,915,000. In the United Provinces the district has an average area of 1,500 or 2,000 square miles, with

[1] See above, pp. 101, 102.

[2] See above, p. 105, and East India (Progress and Condition) Decennial Report (1913), p. 62.

a population of 750,000 to 1,500,000. But in several provinces, and especially in Madras, the district is much larger.

The district magistrate and his staff.

At the head of the district is the district magistrate, who in the old regulation provinces is styled the collector and elsewhere the deputy commissioner. He is the local representative of the Government and his position corresponds more nearly to that of the French *préfet* than to that of any English functionary.[1]

He has assistants and deputies varying in number, title, and rank, and his district is subdivided for administrative purposes into charges which bear different names in different parts of the country.

In most parts of India, but not in Madras, districts are grouped into divisions, under commissioners, who stand between the district magistrate and his local government.

If the district is, *par excellence*, the administrative unit of the Indian country, the village may be said to be the natural unit. It answers, very roughly, to the English civil parish or the continental *commune*, and it is employed as the unit for revenue and police purposes. Its organization differs much in different parts of India, but it tends to be a self-sufficing community of agriculturists. It has its headman, who in some provinces holds small police powers; its accountant, who keeps the record of the State dues and maintains the revenue and rent rolls of the village; and its watchman and other menials. In Bengal the village system is less developed than elsewhere.

Municipal and district councils.

Under various Acts of the central and local Indian legislatures municipal and district councils have been established in the several provinces of India with limited powers of local taxation and administration. This system of local government received a considerable extension under the viceroyalty of Lord Ripon.[2]

[1] See Strachey, 392. East India (Progress and Condition) Decennial Report (1913), p. 63.

[2] See Government of India Acts I, XIV, XV, and XX of 1883, XIII and

Judicial arrangements.

Reference has been made above to the four chartered high courts. But the term 'high court', as used in Indian legislation,[1] includes also the chief courts of those parts of British India which are outside the jurisdiction of the chartered high courts. These are the chief court of the Punjab, established in 1866, the chief court of Lower Burma, established in 1900, and the courts of the judicial commissioners for Oudh, the Central Provinces, Upper Burma, Berar and Sind. The Punjab chief court has at present eight judges, the Lower Burma chief court five. The provinces of Bihar and Orissa and of Assam are under the jurisdiction of the Calcutta high court.

These non-chartered high courts exercise with respect to the courts subordinate to them the like appellate jurisdiction, and the like powers of revision and supervision, as are exercised by the chartered courts, and their decisions are subject to the like appeal to the judicial committee of the Privy Council.

Civil jurisdiction.

The procedure of the several civil courts is regulated by the general Code of Civil Procedure, but their nomenclature, classification, and jurisdiction depend on Acts passed for the different provinces. There is usually a district judge for a district or group of districts, whose court is the chief civil tribunal for the district or group, and who usually exercises criminal jurisdiction also as a sessions judge. There are subordinate judges with lesser jurisdiction, and below them there are the courts of the munsif, or of some petty judge with a similar title. The right of appeal from these courts is regulated by the special Act, and by the provisions of s. 100 of the Code of Civil Procedure (Act V of 1908) as to second appeals. In the presidency towns, and in some other places, there are also small cause courts exercising final jurisdiction in petty cases.

XVII of 1884; Bengal Act III of 1884; Bombay Acts I and II of 1884; Madras Acts IV and V of 1884. Some of these Acts have since been repealed and re-enacted.

[1] See s. 3 (24) of the Indian General Clauses Act (X of 1897).

Criminal jurisdiction.

The constitution, jurisdiction, and procedure of criminal courts are regulated by the Code of Criminal Procedure, which was last re-enacted in 1898 (Act V of 1898). In every province, besides the high court, there is a court of sessions for each sessional division, which consists of a district or group of districts. The judge of the court of sessions also, as has been seen, usually exercises civil jurisdiction as district judge. There may be additional, joint, and assistant sessions judges. There are magistrates of three classes, first, second, and third. For each district outside the presidency towns there is a magistrate of the first class called the district magistrate, with subordinate magistrates under him. For the three presidency towns there are special presidency magistrates, and the sessions divisions arrangements do not apply to these towns.

A high court may pass any sentence authorized by law. A sessions judge may pass any sentence authorized by law, but sentences of death must be confirmed by the high court. Trials before the high court are by a jury of nine. Trials before a court of sessions are either by a jury or with assessors according to orders of the local Government.

Presidency magistrates and magistrates of the first class can pass sentences of imprisonment up to two years, and of fine up to 1,000 rupees. They can also commit for trial to the court of sessions or high court.

Magistrates of the second class can pass sentences of imprisonment up to six months and of fine up to 200 rupees.

Magistrates of the third class can pass sentences of imprisonment up to one month and of fine up to fifty rupees.

In certain parts of British India the local Government can, under s. 30 of the Code of Criminal Procedure, invest magistrates of the first class with power to try all offences not punishable with death.

In certain cases and under certain restrictions magistrates of the first class, or, if specially so empowered, magistrates of the second class, can pass sentences of whipping.

A judge or magistrate cannot try a European British subject unless he is a justice of the peace. High court judges, sessions judges, district magistrates, and presidency magistrates are justices of the peace *ex officio*. In other cases a justice of the peace must be a European British subject. If a European British subject is brought for trial before a magistrate he may claim to be tried by a mixed jury.

The Native States.

India, as defined by the Interpretation Act, 1889 (52 & 53 Vict. c. 63, s. 18), and by the Indian General Clauses Act (X of 1897, s. 3 (27)), includes not only the territories comprised in British India, that is to say, the territories under the direct sovereignty of the Crown, but also the territories of the dependent Native States. These are upwards of 600 in number. They cover an area of nearly 700,000 square miles, and contain a population of about 62,500,000. Their total revenues are estimated at nearly Rx. 20,000,000.[1] They differ from each other enormously in magnitude and importance. The Nizam of Hyderabad rules over an area of 83,000 square miles and a population of more than 11,000,000. There are petty chiefs in Kathiawar whose territory consists of a few acres.[2]

Division of sovereignty.

The territory of these States is not British territory. Their subjects are not British subjects. The sovereignty over them is divided between the British Government and the ruler of the Native State in proportions which differ greatly according to the history and importance of the several States, and which are regulated partly by treaties or less formal engagements, partly by sanads or charters, and partly by usage. The maximum of sovereignty enjoyed by any of their rulers is represented by a prince like the Nizam of Hyderabad, who coins money, taxes his subjects, and inflicts

[1] Rx = tens of rupees.

[2] For further details as to the Native States see East India (Moral and Material Progress) Decennial Report (1913), pp. 29-49; and on the general position of these States see:—Tupper, *Our Indian Protectorate*; Lee-Warner, *Protected Princes of India*; Strachey, *India*, ch. xxiv; Westlake, *Chapters on Principles of International Law*, ch. x; and below, Chapter V.

capital punishment without appeal. The minimum of sovereignty is represented by the lord of a few acres in Kathiawar, who enjoys immunity from British taxation, and exercises some shadow of judicial authority.

General control by British Government.

But in the case of every Native State the British Government, as the paramount Power,—

(1) exercises exclusive control over the foreign relations of the State;

(2) assumes a general, but limited, responsibility for the internal peace of the State;

(3) assumes a special responsibility for the safety and welfare of British subjects resident in the State; and

(4) requires subordinate co-operation in the task of resisting foreign aggression and maintaining internal order.

Control over foreign relations.

It follows from the exclusive control exercised by the British Government over the foreign relations of Native States, that a Native State has not any international existence. It does not, as a separate unit, form a member of the family of nations. It cannot make war. It cannot enter into any treaty, engagement, or arrangement with any of its neighbours. If, for instance, it wishes to settle a question of disputed frontier, it does so, not by means of an agreement, but by means of rules or orders framed by an officer of the British Government on the application of the parties to the dispute. It cannot initiate or maintain diplomatic relations with any foreign Power in Europe, Asia, or elsewhere. It cannot send a diplomatic or consular officer to any foreign State. It cannot receive a diplomatic or consular officer from any foreign State. Any attempt by the ruler of a Native State to infringe these rules would be a breach of the duty he owes to the King-Emperor. Any attempt by a foreign Power to infringe them would be a breach of international law. Hence, if a subject of a Native State is aggrieved by the act of a foreign Power, or of a subject of a foreign Power,

redress must be sought by the British Government; and, conversely, if a subject of a foreign Power is aggrieved by the act of a Native State, or of any of its subjects, the foreign Power has no direct means of redress, but must proceed through the British Government. Consequently the British Government is in some degree responsible both for the protection of the subjects of Native States when beyond the territorial limits of those States, and for the protection of the subjects of foreign Powers when within the territorial limits of Native States. And, as a corollary from this responsibility, the British Government exercises control over the protected class of persons in each case.

The British Government has recognized its responsibility for, and asserted its control over, subjects of Native Indian States resorting to foreign countries by the Orders in Council which have been made for regulating the exercise of British jurisdiction in Zanzibar, Muscat, and elsewhere. By these orders provision has been made for the exercise of jurisdiction, not only over British subjects in the proper sense, but also over British-protected subjects, that is, persons who by reason of being subjects of princes and States in India in alliance with His Majesty, or otherwise, are entitled to British protection. And the same responsibility is recognized in more general terms by a section in the Foreign Jurisdiction Act, 1890 (53 & 54 Vict. c. 37, s. 15), which declares that where any Order in Council made in pursuance of the Act extends to persons enjoying His Majesty's protection, that expression is to include all subjects of the several princes and States in India..

Power to maintain peace.

The consequences which flow from the duty and power of the British Government to maintain order and peace in the territories of Native States have been developed at length by Sir C. L. Tupper and Sir William Lee-Warner. The guarantee to a native ruler against the risk of being dethroned by insurrection necessarily involves a corresponding guarantee to his subjects against intolerable misgovernment. The