

tion ; and the only way in which they can do so is by looking to the terms of the instrument, by which, affirmatively, the legislative powers were created, and by which, negatively, they were restricted. "

1 The Origin and Development of the Indian Legislature.

The legislatures in India are derived from and dependent upon the executive. In theory they were merely an extension of the executive councils of the Governor-General and of the Presidency Governors. In the case of the Lieutenant-Governors and Chief Commissioners without executive councils, the Legislative Councils are, it would seem, in point of law, a body convened by the executive authority to pass laws. The supreme Legislature consists of the executive chief *plus* a varying number of elected and nominated members. They are distributed in two chambers, in the case of the Central Indian Legislature. That the legislatures are dependent upon the executive is evident from the fact that the executive guides and controls them at every stage, whether it is in making laws, in discussing the finances, or in criticising the administration of the country. They are also derived from the executive. The fact, however, that the Indian legislatures are derived from the executive, does, by itself, in no way constitute a peculiarity of the Indian system. The legislative authority in every modern civilised state all the world over is derived from the executive. It may seem strange but is yet true that in the political development of every modern nation the executive had the precedence of the legislative. In fact the whole legislative authority was once centered in the executive. But while in the democratic countries the trend of political development has been towards a gradual separation, resulting either in a complete independence of the legislative and

executive authorities, as in the case of the United States, or at least the control of the executive by the legislative authority as in England and France. In India, on the other hand, the legislative is merely an extension of the executive, the creature, and therefore a dependent, that at every stage is conscious of its dependence. We find that even in England, the Cabinet *i. e.* the executive collectively, proposes, frames, initiates and carries through all legislative measures; and the legislative assembly *i. e.* Parliament, has merely the power, under the present circumstances, of criticising, amending, and, in the last instance, rejecting the measures proposed by the executive. In the last instance, of course, the legislative body, bringing about the rejection of the measures of the executive, does so, not so much perhaps because it objects to the measures, as because it objects to the executive which had charge of those measures; and in that way, by destroying their off-spring, they help to destroy the parent also. In India, on the other hand, the supreme executive hold their position entirely independent of the legislative. They are appointed to their posts for a term of years which cannot be determined by the desires of the Legislative Councils. Their membership of the Legislature arises from their office; *i. e.* they are members of the legislature *because* they are officers, and not that they are officers *because* they are members and leaders of the legislature.

The legislative council, as distinct from the Executive, may be said to have commenced in India with the Charter Act of 1833, which added a special member to the Governor-General's Executive Council to assist the latter in making laws and regulations. That special councillor, though paid as other members of the Executive Council, had no executive functions till 1853, when he was made a full member of the Executive Council, subsequently known as the Law Member of the Government of India. The distinct legislature begun in 1833, was amplified in 1853, and reformed in 1861, by the Indian Councils Act of that year, when Indians were for the first time admitted by official nomination to that body. The first reform of the new

legislative councils in the central and provincial governments was made in 1892, when the principle of indirect election of the non-official members was accepted, and the right of a general discussion of the annual Budget conceded. Direct election of members, with the right to discuss the Budget and move non-binding resolutions, came in 1909, which, however, maintained the principle of an official majority in the central Legislative Council.

Said Lord Morley on that Occasion :—

“While I desire to liberalise as far as possible the Provincial Councils, I recognise that it is an essential condition of this policy that the Imperial supremacy shall be in no degree compromised. I must, therefore, regard as essential that Your Excellency's Council, in its legislative as well as its executive character, should continue to be so constituted as to ensure its constant and uninterrupted power to fulfil the constitutional obligations that it owes, and must always owe, to His Majesty's Government and to the Imperial Parliament. I see formidable drawbacks, that have certainly not escaped Your Excellency, to the expedient which you propose, and I cannot regard with favour the power of calling into play an official majority while seeming to dispense with it. I am unable to persuade myself that to import a number of gentlemen, to vote down something upon which they may or may not have heard the arguments, will prove satisfactory. To secure the required relations, I am convinced that a permanent official majority in the Imperial Legislative Council is absolutely necessary.”

The considerations which led Lord Morley to accept the discontinuance of an official majority in the Provincial Councils were various and all powerful. (1) The field for legislation

left to the Provincial Council was very limited. (2) The composition of the provincial Councils, representing a variety of interests, seldom likely to be unanimous, and to offer a concerted opposition to the Government, was in itself a sufficient guarantee against hasty, ill-considered or dangerous legislation. (3) The presence in the councils of nominated members would be another safeguard against provincial legislation of a radical description. (4) In addition to all this was the power of the Local Government in the first instance, and of the Viceroy afterwards, to veto bills passed by the councils, if they do not approve of those measures. (5) Finally, in the words of Lord Morley, "If, however, the combination of all these non-official members against the Government were to occur, that might be a very good reason for thinking that the proposed measure was really open to objection, and should not be proceeded with."

These very reasons could also be adduced for a similar course in the Imperial Legislative Council. The field for legislation, though wide, was not all-embracing. The presence of the nominated element was even more prominent in the Imperial than in the Provincial Councils, and its composition not less diverse. The Viceroy, and, above him, the Secretary of State, had the power of refusing assent, while the almost inconceivable combination of the divergent elements in the non-official membership of the Viceregal Council would be a more emphatic condemnation of a measure in the Imperial Council, than any such combination could offer in the Provincial Councils. In the ten years during which the councils had been working, the Government of India hardly ever had an occasion to make good their proposals by the use of their official majority. And yet Lord Morley thought fit absolutely to insist upon it. His only reason was the necessity he alleged that the supreme council, both Legislative and Executive, should be so composed as to allow of a smooth fulfilment of the obligations of the Government of India towards the Home Government and the Imperial Parliament. The maintenance of a permanent official

majority is not always so great a palladium as is implied by Lord Morley's statements. Even in the old state of things—before the reforms of 1909—when the Government of India was an unadulterated bureaucracy, the spectacle of the Government of India differing from their constitutional superior in Whitehall was not entirely unknown. And if an exclusive bureaucracy could occasionally prove restive, the presumption of a purely democratic assembly proving altogether unamenable to the autocracy of Charles Street cannot be said to be altogether unreasonable. But just as the old unmitigated bureaucracy used to be brought to reason, where it showed a refractory tendency, by the salutary power reserved to the Viceroy to overrule his Council, so there is no reason to believe, that the same expedient would not succeed with a democratic legislature in India.

The latest reforming legislation has, however, abandoned this obsolete principle of an official majority, and substituted new devices for attaining the old end. The Indian legislatures are not even now sovereign law making bodies. They are not sovereign because (1) they cannot make laws, like a sovereign legislative authority, on any topic whatsoever, and touching any person or place within their jurisdiction. Thus they cannot pass laws affecting (a) Acts of British Parliament passed after 1860 and extending to British India, including therein the Army Act and Air Force Act. They cannot touch (b) Acts of Parliament enabling the Secretary of State to raise money in England on behalf of the Government of India, (c) and in general, affecting any part of the written or unwritten constitutions of the United Kingdom or affecting the authority of Parliament; (d) nor can they pass any laws on which may depend the allegiance of the subjects of the Crown of Great Britain or the sovereignty or dominion of the King-Emperor over any part of British India.* Of course they cannot alter or amend in any way this main Act, the Government of India

*See 65 (2). The Indian legislatures cannot pass any law empowering any Court in India, other than a High Court, to inflict the death penalty on the European British subjects of His Majesty without the previous sanction of the Secretary of State in Council.

Act of 1919, on which now their own existence and authority depend.

II. The Chief characteristics of the Indian Legislatures.

Besides these kinds of laws, which they can in no way touch, there are other subjects on which, though competent to pass laws, they cannot undertake legislation without the previous sanction of the Governor-General. Such subjects are : (a) the public debt and public revenues of India, or imposing any charges on the same, (b) the religion and religious rites and usages of the British subjects in India, (c) the relations of the Government with foreign princes or states, (d) and the discipline and maintenance of any part of His Majesty's Military and Naval forces, (e) and any measure regulating any provincial subject which has not been reserved by rules under the present Act for exclusive legislation by the central legislature; or repealing or amending any act of a provincial legislature, or an ordinance by the Governor-General. (2) Besides being precluded from passing any laws of the classes enumerated above, there is a further limitation upon their authority which make them non-sovereign. All laws passed by them may be declared *ultra vires* by the court of law, should any such law be involved in a case coming before them in the ordinary course of their work.

Further, even as far as British India is concerned, the whole legislative authority is not centred in them. Apart from the omnipotent British Parliament, power is vested in the Governor-General to pass ordinances independent of his council, which ordinances have all the force of laws duly passed by the council at least for six months,*

*See s. 72.

Before proceeding to discuss the composition and functions of the Indian legislatures under the Act of 1919, we may summarise their salient characteristics as under:—

- (a) They are non-sovereign law-making bodies,
- (b) derived from and dependent upon the Executive,
- (c) with concurrent legislative authority, often overriding their own powers,
- (d) and having their scope definitely restricted in all departments of their activity.

Previous to 1919, they had the remarkable distinction of being single-chamber legislatures, which still endures in the provincial councils, but is discarded in the Imperial Indian Legislature. Their composition and the basis of their electorates still continue to be peculiar, but the old feature of a standing official majority has now been dropped. The old connection of the executive head of the government as an *ex-officio* president of the legislature is likewise abandoned, though the Viceroy and the provincial satraps still possess powers of calling, proroguing, dissolving or addressing their legislatures.

III. The Composition of the Indian Legislatures.

The central Indian Legislature is, under the Act of 1919, a bicameral institution. The two chambers are known, respectively, as the Council of State and the Legislative Assembly. The former continues for 5 years, and the latter for three, unless sooner dissolved by the Governor-General, who is an integral part of the Legislature by s. 63.

The Council of State consists of 60 members of whom 33 are elected, and the remaining 27 nominated by the Governor-

General, so, however, that not more than 20 members should be officials, and one should be a person nominated as the result of an election in Berar. Of the elected members :—

Non-Muhammadian constituencies give 16 members.

Muhammadian	„	„	8	„
European Commerce	„	„	3	„
General	„	„	2	„
Sikhs	„	„	1	„

Of these Non-Muhammadian from :— and Muhammadian from

Madras	... are	4	Madras	are	1
Bombay	„	3	Bombay	„	2
Bengal	„	3	Bengal	„	2
United Provinces	„	3	United Provinces	„	2
Punjab	„	1	Punjab	„	*
Bihar and Orissa	„	2	Bihar and Orissa	„	1

European Commerce has one each in Bombay, Bengal and Burma, while the general constituencies are formed, one each, in Assam and Burma. Punjab has a special constituency for the Sikhs.

These make 30 out of the 33 elected members of the Council of State. But the remaining three are to be found in the following constituencies entitled to representation in rotation viz :—2 for East and West Punjab (Muhammadian) and Bihar and Orissa (non-Muhammadian) all the three being bracketed together ; and 1 from Assam (Non-Muhammadian) and Assam (Muhammadian) both being bracketed together. The rule about representation in rotation by bracketed constituencies allows alternate elections, to the first two (if there are 2 members between 3 constituencies), or the first one at the first general election and all bye-elections for the rest of the life of the Council of State, and all subsequent odd general elections and bye-elections following ; while the second two, (or the second one, as the case may be) are allowed the right at the second and all even general elections following, as well as their respective bye-elections following. Bihar and Orissa (non-

Muhammadan) is entitled to elect a *third* member to the second, fourth, and succeeding alternate Councils of State.

IV. Qualifications and Disqualifications of the Candidates.

(a) Non-British subjects, (b) females, (c) members of another legislature constituted under this Act, (d) legal practitioners dismissed or suspended from practice by a competent court, (e) or those similarly adjudged to be of unsound mind, (f) undischarged insolvents, (g) or, though discharged, yet without certificate from a proper court that the insolvency was caused by misfortune and not misconduct, or (h) persons under 25 years of age—are all disqualified from being elected members of the Council of State. But there are modifications of these disqualifications. (1) Thus, if a ruler of an Indian state or any subject of such a state is not ineligible to a local council, such a person cannot be ineligible to the Council of State merely for want of being a British subject. (2) The bar against dismissed or suspended legal practitioners may be removed by an order of the Governor-General in Council for the purpose. (3) Similarly, persons convicted by a criminal court, with a sentence of transportation or imprisonment for more than six months subsisting, cannot be eligible to the Council of State for five years after the sentence has expired, unless the offence is pardoned. (4) And persons guilty of corrupt practices at elections, or convicted under ch. IX A of the Indian Penal Code, and sentenced for a term of imprisonment longer than six months, are similarly debarred for five years. (5) The sex disqualification is removable, presumably, by a resolution passed by the Council of State after one month's notice.

Of the positive qualifications required of the would-be members of the Council of State, only one need be mentioned; viz. that he must be entered as a voter in the electoral roll of the constituency, special or general, from which he seeks elec-

tion. The disqualifications against voters are less numerous, being comprised in :— (a) want of British citizenship, subject to the qualification above-named ; (b) sex disability, liable to modification as aforesaid ; (c) being under 21 years of age ; (d) unsoundness of mind, and (e) conviction for offence under the Indian Penal Code chapter IX A, or corrupt practices at elections.

The positive qualifications for electors for the Council of State are prescribed on residence, or residence together with community as in the case of Muhammadan electorates, and the holding of land of a certain value, or the possession of a given income, or of some University distinction, or the holding of a title conferred for literary merit, or the past or present tenure of a legislative or local body. The subjoined summary of such qualifications for Bombay and Madras will serve to give a bird's-eye-view of the qualifications required of electors :—

MADRAS

Non-Muhammadan and Muhammadan Constituencies.

A person shall be qualified as an elector for a general constituency, who has resided in the presidency of Madras for not less than 120 days in the previous year, and who—

- (a) holds in the presidency an estate of which the annual income is not less than Rs. 3,000; or
- (b) is registered as a *pattadar* or *inamdar* of land in the presidency on which the assessment, including the water rate, is not less than Rs. 1,500; or
- (c) receives from Government a *malikona* allowance the annual amount of which is not less than Rs. 3,000; or
- (d) was in the previous year assessed on his own account to income-tax on a total income as com-

puted under section 13 of the Indian Income-tax Act, 1918, of not less than Rs. 20,000; or

(e) is or has been a non-official member of either chamber of the Indian Legislature, or has been a non-official member of the Indian Legislative Council as constituted under the Government of India Act, 1915, or any Act repealed thereby, or is or has been at any time a non-official member of the Madras Legislative Council; or

(f) is or has been the non-official president of the Madras Municipal Council or of a district board or taluk board constituted under the Madras Local Boards Act, 1884, or is the non-official vice-president of the said Council or of a district board; or

(g) is or has been the non-official chairman or is the non-official vice-chairman of a municipal council constituted under the Madras District Municipalities Act, 1884; or

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

(i) is the non-official president or vice-president of any central bank or banking union which is a registered society within the meaning of section 2 of the Co-operative Societies Act, 1912; or

(j) is recognised by the Government as the holder of the title of *Shams-ul-Ulama* or of the title of *Mahamahopadhyaya* :

Provided that—

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

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

BOMBAY.

General Constituencies.

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

- (a) is in Sind either a *Jagirdar* of the first or second class or a *Zamindar* who, in each of the three revenue years preceeding that in which the electoral roll for the time being under preparation is first published under these rules, has paid not less than Rs. 2,000 land revenue on land situated in any district in Sind ; or
- (b) is a Deccan *Sardar* or a Gujarat *Sardar*, that is to say, a person whose name is entered in the list for the time being in force ; or
- (c) is a sole alienee of the right of Government to the payment of rent or land revenue in respect of an entire village assessed to land revenue of not less than Rs. 2,000, or a *Talukdar* holding on talukdari tenure land assessed at not less than Rs. 2,000 land revenue, or a co-sharer holding on talukdari tenure a share in any land, which share, if held separately, would be assessed at not less than Rs. 2,000 land revenue, or a *Khot* responsible for the payment of land revenue in respect of an entire village assessed at not less than Rs. 2,000 land revenue; or
- (d) is a holder of land assessed or assessable to land revenue of not less than Rs. 2,000; or

- (e) was, in the financial year preceeding that in which the electoral roll for the time being under preparation is first published under these rules, assessed to income-tax on an income of not less than Rs. 30,000; or
- (f) is or has been a non-official member of either chamber of the Indian Legislature, or has been a non-official member of the Indian Legislative Council as constituted under the Government of India Act, 1915, or any Act repealed thereby, or is or has been at any time a non-official member of the Bombay Legislative Council; or
- (g) is or has been the president of the Municipal Corporation of the City of Bombay, or is or has been the non-official president or is the non-official vice-president of a city municipality 1884; or
- (h) is or has been a member of the Senate or a Fellow or Honorary Fellow of any University constituted by law in British India; or
- (i) is recognised by the Government as the holder of the title of *Shams-ul-Ulama* or of the title of *Mahamahopadhyaya* :

Provided that—

- (i) no person other than a Muhammadan shall be qualified as an elector for a Muhammadan constituency, and
- (ii) no Muhammadan shall be qualified as an elector for the non-Muhammadan constituency.

Special Constituency.

Bombay Chamber of Commerce Constituency.

3. A person shall be qualified as an elector for the Bombay Chamber of Commerce constituency who is a member of that Chamber and has a place of residence in India.

Place of Residence.

4. For the purposes of this part a person shall be deemed to have a place of residence in a constituency if he—

- (a) ordinarily lives in the constituency, or
- (b) has his family dwelling-house in the constituency and occasionally occupies it, or
- (c) maintains in the constituency a dwelling-house ready for occupation in charge of servants and occasionally occupies it.

There is, besides, a most intricate and complicated machinery for the registration of voters, preparation of the electoral roll, conduct of elections, scale of election expenses, and the nature of corrupt practices into the details of which we need not go. Suffice it to add that the principle of voting by ballot has been admitted throughout in the new Indian electorates, while the device of proportional representation by the single transferable vote has been admitted in the case of non-Muhammadan Madras constituency. If a member is elected by more than one constituency, he must declare for which of the multiform constituencies he would elect to sit; and the others would then be called upon to elect fresh representatives. Before taking his seat in the Council, each councillor must take an oath of allegiance to the crown in a prescribed form at a meeting of the council, or make an

affirmation to the same effect if his religious beliefs preclude him from taking an oath.

The same disqualifications, with the same modifications, apply to the nominated members, except that holding or acceptance of office is not, at least for the officials among them, a disqualification in their case as it is with the elected members. The nominated members hold office, unless subsequently disqualified, for the full period of the council's normal duration, or for a stated term as in the case of the nominated official members. Of the officials some may be members of the Governor-General's Executive Council, who must all be appointed to one or the other chamber of the central Indian Legislature. They are full members—i. e. qualified to sit and speak and vote—in only one of the chambers to which they are appointed, but they are entitled to appear in and speak before the other chamber as well, though not to vote there. The Governor-General has no official connection beyond the right of addressing the council whenever he likes, and of convening, proroguing and dissolving the body, on suitable occasions. The President of the Council of State is an official nominated by the Governor-General and paid such salary as the Governor-General may prescribe.

The Legislative Assembly.

The Legislative Assembly consists of nominated and elected members. The total is prescribed by S. 63 B of the present Act to be 140, of whom 100 shall be elected and 40 nominated, the latter including 26 officials. The same section, however, permits the number to be increased, provided that at least $\frac{5}{7}$ of the members shall be elected, and at least $\frac{1}{3}$ of the others shall be non-officials. By the rules made under this section, the total membership of the Legislative Assembly is fixed at 144, of whom 103 are elected and 41 nominated. Prac-

tically the same disqualifications, with the same modifications apply to the electors and candidates as in the case of the Council of State; while the positive qualifications are based on :—

- (i) community, (ii) residence, and
- (iii) (a) ownership or occupation of a building, or
- (b) assessment or payment of municipal or local taxes, or
- (c) the assessment or payment of Income-tax, or
- (d) the holding of land, or
- (e) membership of a local body.

The following summary of detailed qualifications for the electors in the Bombay Presidency fairly indicates qualifications for all kinds of representation.

BOMBAY.

General Constituencies.

Non-Muhammadan and Muhammadan Constituencies.

A person shall be qualified as an elector for a non-Muhammadan or Muhammadan constituency who, on the 1st day of January next preceding the date of publication of the electoral roll, had a place of residence within the constituency or within a contiguous constituency of the same communal description and who—

- (a) in the case of the Sind constituencies, on the 1st day of January aforesaid, held in his own right or occupied as a permanent tenant or as a lessee from Government alienated or unalienated land in such constituency on which, in any one of the five revenue years preceding the publication of the electoral roll, an assessment of not less than

Rs. 37-8-0 land revenue in the Upper Sind Frontier district and of not less than Rs. 75 land revenue in any other district has been paid or would have been paid if the land had not been alienated ; or

- (b) in the case of any other constituency, on the 1st day of January, aforesaid held in his own right or occupied as a tenant in such constituency alienated or unalienated land assessed at, or of the assessable value of, not less than Rs. 37-8-0 land revenue in the Panch Mahals or Ratnagiri districts and not less than Rs. 75 land revenue elsewhere ; or
- (c) on the 1st day of January aforesaid was the alienee of the right of Government to the payment of rent or land revenue, amounting to Rs. 37-8 in the Panch Mahals or Ratnagiri or Upper Sind Frontier Districts and of Rs. 75 elsewhere, leviable in respect of land so alienated and situate within the constituency, or was a *khot* or a sharer in a *khoti* village in the constituency. or a sharer in a *bhagdari* or *narvadari* village in the constituency, responsible for the payment of Rs. 57-8 land revenue in the Panch Mahals or Ratnagiri Districts and Rs. 75 land revenue elsewhere ; or
- (d) was assessed to income-tax in the financial year preceeding that in which the publication of the electoral roll takes place :

Provided that—

- (i) no person other than a Muhammadan shall be qualified as an elector for a Muhammadan constituency, and
- (ii) no Muhammadan or European shall be qualified as an elector for a non-Muhammadan constituency.

The European constituency.

A person shall be qualified as an elector for the Bombay (European) constituency whose name is registered on the electoral roll of either European constituency of the Legislative Council of the Governor of Bombay.

(1) A person shall be qualified as an elector for the Sind *Jagirdars* and *Zamindars* constituency who is a *Jagirdar* of the first or second class in Sind, or a *Zamindar* who in each of the three revenue years preceding the publication of the electoral roll has paid not less than Rs. 1,000 land revenue on land situated in any district in Sind.

(2) A person shall be qualified as an elector for the Deccan and Gujrat *Sardars* and *Inamdars* constituency whose name is entered in the list for the time being in force under the Resolutions of the Government of Bombay or who on the 1st day of January next preceding the publication of the electoral roll was the sole alienee of the right of Government to the payment of rent or land revenue in respect of an entire village in the presidency of Bombay excluding Sind and Aden, or was the sole holder on *talukdari* tenure of such a village.

The Indian Commerce Constituencies.

Members of the Indian Merchants' Chamber and Bureau and of the Bombay Millowners' Association and of the Ahmedabad Millowners' Association shall be qualified as electors respectively for the constituency comprising the Association of which they are members.

The elected members of the Legislative Assembly are from:—

Province	Total	Constituency					Land
		Non-Muhammadian	Muhammadian	European	Commerce		
Madras	16	10	3	1	1		1
Bombay	12	7	2	2	2nd Commerce		
Bengal	16	6	6	3	1		1
United Provinces	16	8	6	1			1
Punjab	12	3 + (Sikhs)	6				1
Bihar & Orissa	13	8	3				2
Central Provinces	4	2	1				1
Assam	4	2	1	1			
Burma	4	3 [non-Eu-		1			
Delhi	1	General					
Total	98 + 5	49 + 2 Sikhs + 1 General	28 + 2	9	2 + 2		7 + 1

In addition there are 5 members elected at alternate elections, 4 from Bombay, being 2 Muhammadan (rural) 1 landholders, and 1 commerce; and 1 from Bengal representing Indian commerce. Eight constituencies are bracketed for these four Bombay seats, and 3 Bengal constituencies are bracketed for the 1 commerce seat. In all, then, there are 103 elected seats as follows:—

Non-Muhammadans	...	...	49
Muhammadans	...	...	30
Landholders	...	...	8
Europeans	...	...	9
Commerce	...	...	4
Sikhs	...	...	2
General	...	...	1
Total			103

In the non-Muhammadan and Muhammadan constituencies above outlined there is a further distinction between rural and urban constituencies, the former being by far the most

predominant. There are in all 9 urban seats in the Legislative Assembly; and if to that we add the representation of Europeans and the commercial element, as being largely urban interests, we find the aggregate urban representation to be 22, against a rural representation of 81, including the landholders, Sikhs and general constituencies. The qualifications for the two sets vary slightly, as already shown above.

The nominated members have 26 officials and 15 others. This element in the two chambers combined will have a total strength of 68 out of a total joint membership of 204, or just exactly $\frac{1}{3}$, with about 46 of them being officials. Of the officials, some members of the Governor-General's Executive Council have seats in the Assembly. The President of the Assembly is in the first instance nominated by the Governor-General for a period of 4 years, on a salary of Rs. 5,000 per month; but shall be elected by the members of the Assembly from among themselves after the expiry of the term of office of the first President, and on such a salary as may be prescribed by a vote of the Assembly. His election, like that of the Speaker of the House of Commons as also of the Deputy President, must be approved by the Governor-General. The Governor-General has the same connection and rights with the Assembly as with the Council of State. The Assembly is elected only for three years; and will ordinarily be in session for that period, unless sooner dissolved. The period, however, may be extended by the Governor-General, if, under special circumstances, he thinks fit to do so; while not more than six months—or not more than nine months with the special sanction of the Secretary of State—must elapse between the dissolution of one Assembly and the coming together of its successor.

V. The Business of the Central Indian Legislature.

The business ordinarily coming before the Indian Legislature may be classified in four main groups, viz. :—

(A) Law-making, including amendment and repeal of existing laws.

(B) Financial control of the Administration.

(C) General scrutiny of the everyday administration, usually by means of questions addressed to the Executive.

(D) Initiation of new policy, or criticism or condemnation of the policy actually pursued usually by means of definite resolution.

(A) Law making.

As regards the first, the Central Indian Legislature is authorised, by S. 65 of the consolidating act, to make laws :

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

(b) for all subjects and servants of the Crown within other parts of India ; and

(c) for all native Indian subjects of the King-Emperor without and beyond as well as within British India.

(d) for the government officers, soldiers, airmen and army-followers, wherever they are serving, in so far as they may not be under the Army Act.

(e) for all persons employed or serving in the Royal Indian Marine.

(f) for repealing or altering any law for the time being in force in British India.

We have already noted the limitations to the authority of the Indian Legislature elsewhere, when discussing the non-sovereign characteristic of that body.

The Course of a Legislative Measure through the Indian Legislature.

Legislative measures usually take the form of Bills which may be introduced in the first instance in either chamber of the Legislature, subject to the proviso that the annual Budget is in the first instance presented to the Legislative Assembly, and the Finance Bills, originating therefrom, must similarly be first brought before the lower House. We shall discuss the procedure and peculiarities governing the passage of the Indian Budget through the Legislature in the next section. As a rule the first stage of a Bill in the Legislature is by a motion for leave to introduce that bill, followed by publication in the official gazette of the text of the Bill and a full statement of its objects and reasons. For such a preliminary motion notice of a month must be given in advance, or not more than two months if the Governor-General has directed an extension of the time ; while the previous sanction of the Governor-General, should the nature of the Bill demand it, must also be obtained. This corresponds to the First Reading stage of a Bill in the British Parliament. At the next stage, the motion of which at least three clear days' notice must be given, takes the form that the Bill be taken into consideration. If allowed, the discussion at this stage can only effect the principle of the Bill and its general provisions, as in the Second Reading stage of a Bill in Parliament. After such a discussion, or in place of it, the Bill may, at the next stage of its career, be referred to a Select Committee of the originating chamber, or to a Joint Committee of both the chambers. It is in the Select Committee that the details of the Bill are finally shaped into provisions of a law of the land. When finally settled by the select committee, or Joint Committee of both chambers, or by the whole chamber itself, as the case may be, the Bill may still further be considered and discussed in the chamber of origin ; and any amendments or alteration may be moved according to the Standing Orders in that behalf. This will complete all the stages of a Bill in

the chamber it originated in. When passed by the originating chamber, the Bill is sent to the other chamber, where it may be either (a) agreed to without amendment, in which case an intimation to that effect from the other chamber to the originating chamber will complete the passage of the Bill through the Legislature. When the assent of the Governor-General has been signified to it, such a Bill becomes law, unless disallowed by the Crown on the advice of the Secretary of State. Or (b) the Bill might be considered and amended by the other chamber. The Bill is then returned to the original chamber. If such amendments are agreed to by the originating body, a message to that effect to the other chamber will complete the passage. (c) If no agreement between the two chambers is arrived at as regards the amendments, original or subsequent, on the Bill, and the Bill is not allowed to lapse, a *joint session* of the two chambers must be convened by the Governor General, under the chairmanship of the President of the Council of State. A majority of the total votes at the joint session will be regarded as enough to carry the Bill. But apart from the Joint Session, there is provided a means for settling such differences of opinion between the two chambers by means of *conferences* on such differences of an equal number of members from either House. If future differences are sought to be avoided from the beginning, there is the further mechanism of a Joint Committee of both Houses to consider and settle the details of the Bill. A Bill finally passed and agreed to by both Houses of the Indian Legislature does not become law all at once. It must receive the assent of the Governor-General, and must not be disallowed by the crown within a period of two years. In Britain, the right of the crown to veto bills passed by Parliament is so utterly obsolete that no one pays any regard to the nominal existence of this power in the theory of the constitution. In India the Viceregal veto is a most potent, and living force. The Governor-General has powers of intervention at every stage in the passage of a Bill. (a) If, for example, at the very start of a Bill, he certifies that the Bill, or any clause or

amendment of it affects the safety or tranquillity of British India or any part of it, and directs that no proceedings shall be taken on such a measure, the whole measure must be abandoned. (b) Even when a Bill is duly passed by both Houses, if the Viceroy disagrees with any part of it, he can return the Bill for recommendation by the chambers or either of them. (c) In the event of the two chambers disagreeing on a Bill, it is the Governor-General who puts into motion the device of a joint session for bringing about an agreement. (d) When the Governor-General is unable to assent all at once to a Bill passed by both the Houses, and does not yet want to withhold his assent, he may reserve the Bill for the signification of His Majesty's pleasure thereon, (e) which is quite different from the final Royal veto on an Indian Bill in the shape of disallowance thereof. Of the Bills that *must* be reserved, an analogy is provided in the case of Bills passed by a Governor's Legislative Council, which include such matters as :—

- (a) Religion or religious rites of any class of British Indians.
- (b) Regulating the constitution or function of any University;
- (c) Attempting to include matters of Reserved Subjects into Transferred Subjects.
- (d) Providing for construction or management of a light railway, other than a municipal tramway.
- (e) Affecting the Land Revenue of a Province, either so as to (i) prescribe a period within which any temporarily settled estate may not be reassessed, or (ii) limit the extent to which land revenue assessment on such estates may be made or enhanced, or (iii) modify materially the general principles of land revenue, if such a change appears to the Governor as likely seriously to affect the public revenues of his province.

Bills affecting any matters with which the governor is specially charged in his Instructions, or any central subject, or the interests of another province *may* be reserved, if not previously sanctioned by the Governor-General.

(f) Bills of the central Legislature, which the Governor-General, desires to see passed into law, may be passed over the head of chamber which refuses to introduce or pass the Bill in a form acceptable to the Governor-General, if the Governor-General certifies that the Bill is essential for the safety, tranquillity or interests of British India or any part thereof. Such a Bill if passed by one chamber and thrown out by the other, may become law as soon as the Governor-General signs it in the form agreed to by one chamber, or in the form recommended by the Governor-General. If the Bill is passed by even one chamber, the Governor-General can still pass it into law by simply signing the Bill over the head of both the chambers. Bills passed in such an extraordinary manner, however, must be laid before Parliament, and must receive His Majesty's assent. And if the Governor-General considers such a law to be immediately necessary, he can put it into force even before the Royal Assent has been received; and the law will be a full, proper law unless disallowed by His Majesty in Council.

(g) All these powers of the Governor-General are in addition to his right to pass Ordinances in times of emergency which have the force of law for a period of six months.

To sum up: The Viceroy can :

- (1) Pass Ordinances for six months having the force of laws;
- (2) Pass Bills over the head of one or both dissenting chambers;
- (3) Prevent the introduction or consideration of Bills he disapproves of;
- (4) Return Bills passed by both Houses for reconsideration and passage in the form recommended;

- (5) Delay any Bill by reserving it for Royal consideration;
- (6) Simply veto Bills passed by both Houses—all this;
- (7) In addition to the Royal Powers of Disallowance.

VI. Critique of the Constitution of the Indian Legislature.

Apart from the inevitable limitation on its powers as a non-sovereign law-making body, the Indian Legislature is thus very effectually restricted, even in the primary functions of law-making. The peculiarity of a double-chamber constitution provides an internal, inherent check upon the possible, though unlikely, excesses of a democratic institution, the real significance of which is apt to be lost sight of by a consideration merely of the letter of the law. The device of Joint Committees, and members' conferences and Joint Sessions are all intended to minimize or avoid those dangers of extreme Indian nationalism, which have not yet matured. In the life-time of the first Indian Legislative Assembly, the extraordinary powers of the Viceroy had to be used twice only:—in certifying the so-called Princes' Protection Bill, and the clause in the Finance Bill of 1923 restoring the increase in Salt Duty which the Assembly had rejected. In both cases the cogency of the popular opposition to the Government action was never denied; and both these measures may be taken to be somewhat of an abnormal character. But making due allowance for all factors, it cannot be said that the Viceregal or Executive control over the present-day Indian Legislature is theoretical or shadowy only; or that the extension of the powers of that body under the Act 1919 errs, if at all, on the side of over-confidence in the people.

Another similar internal check upon possible excesses by these beginnings in the way of democratic legislature is to be found in the composition of the Legislative Assembly and the Council of State. These two chambers do not represent each a

distinct and different set of interests, as the House of Lords and the House of Commons do; nor is the elected element in either returned on such a materially different basis as that of the *Senat* and the *chambre des deutes* in France. Both the chambers of the Indian Legislature represent substantially the same interests: property, community or status; and are elected on nearly the same basis. And yet they tend to be rather tiresome hindrances to one another than salutary checks. The bicameral legislature was unknown in India until 1919, while this creation of that Act cannot but appear as a wholly unnecessary and retrograde measure to radical thinkers, all the more objectionable because the constitution of the two chambers displays no real difference in representation. The presence, similarly, of the official element, though much reduced, is deplored as evidencing a want of confidence in the elected popular element that the latter has done nothing to deserve. Official element must, indeed, find a place in the Legislature as much to provide expert information on technical questions of administration, as to bring the executive into sympathy with the Legislature. But such official element should get into the Legislature, not *virtute officii* as is the case in India to-day, but by simple election in the ordinary way. For the complete realisation of modern responsible government in democratic states demands that the chief ministers of the state shall be appointed to their office because they possess the confidence of their countrymen as evidenced by their election. They are officials because they have been elected legislators; not legislators because they have risen to be important officers of state. In India, however, the doctrine of complete responsibility to the popular assembly is not yet accepted. The central government is frankly non-responsible in India, and responsible, if at all, only to the British Parliament. The Provincial governments are only partially responsible; and even there with considerable reservation. Complete responsibility of the Indian government to the Indian people may be an ideal to be ultimately aimed at; but it is not yet a fact of our political situation. Under the circumstances, the

Government retaining in the legislature a non-responsible official element *virtute officii*, cannot be reproached for having betrayed an ideal that they have not yet accepted.

Besides the frankly official, there is a still further though yet smaller element in the central Indian Legislature, which gives considerable indirect influence to the Executive over the Legislature. The nominated non-officials in the Council and the Assembly make a very small number ; they are, besides, nominated not at the absolute discretion of the Executive, but rather in accordance with some well-known conventions about representing important minorities, which are intentionally left out from the rigid provisions of the statute or the statutory rules. But even so, the presence of a power of nomination, however restricted in scope or numbers, is inconsistent with the creation of a fully democratic legislature. The only justification we might plead on broad grounds of national policy in favour of the continuation of this archaic and inconsistent mechanism is that the Indian people must take time to be habituated to these somewhat novel forms of government ; that the Indian electorates are yet in the process of education ; that they have yet to perceive their powers and possibilities ; that until they realise their responsibilities, those sections of the population which under existing conditions may not succeed in getting a representation by direct election, and which are yet too important to be ignored altogether, would best find representation through this power of nomination vested in the supreme governing authority. On this justification the offence appears shorn of much of its sting, though, of course, its inherent inconsistency cannot be altogether obscured.

Even in the elected section of the Legislature, the representation of the people is obtained on no uniform principle. The authors of the Joint Report on the Indian Constitutional Reforms had pronounced against the retention of the communal electorates, as being opposed to history, and perpetuating class divisions which it would not be in the interests of nation-

building to encourage.* "We regard any system of communal electorates, therefore, as a very serious hindrance to the development of the self-governing principle," said Mr. Montagu and Lord Chelmsford. And yet a special electorate for the Muhammadans is retained in all provinces for the local as well as the central legislatures. But the case of the Muhammadans in India may be allowed to stand apart, and be judged rather by political expediency than by strict logic. What, however, distinguishes the Muslim case does not apply to the other communal electorates, like those of the Sikhs in the Punjab. And if representation should not be allowed to communities which would perpetuate racial or religious distinctions, it is still less politic, from the stand-point of nation-building, to institute separate electorates for economic classes. And yet the constitution of the Indian Legislatures provides for all these. It has Muhammadan, non-Muhammadan, and general electorates; further divided into urban and rural constituencies,—or a cross division on economic lines superimposed upon the main division on communal lines. It has special electorates for Europeans, for commerce and for land-holders, again a medley of interests and communities, which are presumed to have an inherent opposition inter se, and therefore given special representation; but which might quite safely have been left to the general territorial electorates for adequate representation. Altogether, then, this careful combination of communal, and racial, and economic and official elements in one and the same representative body precludes the easy combination of them all so as to form a strong, compact, working majority for or against the Government. For political parties of the Western type have yet to be developed in India; and even when they do develop, it is doubtful if they would be quite on the lines of the English party system. The existence of these complex and cross divisions must tend to stereotype a conflict of interests, which would in all probability have been obviated, if from the beginning the new principles of constitutional evolution had dropped any connection with the principles of representation other

* See paras 229-31 of the Report.

than territorial. To secure adequate representation we might try, even in the simple scheme of geographical representation, such improvements as proportional representation or the transferred vote. But these are in a class apart from the breaking up of the representation by cross sections in the electorate. In any event, the existence of such cross sections may quite fairly be taken to be an inherent check upon any ungovernable excesses of democratic zeal.

(B) Control of Finances.

If the central Indian Legislature is restricted directly or indirectly—in the exercise of its law-making powers, it is no less effectually restricted in the financial control of the administration. By law at present, a statement of the revenue and expenditure of the Government, called the Budget, must be annually submitted to both chambers of the Indian Legislature containing also an estimate of the Ways and Means for the next financial year. The Budget, or such items therein as are made voteable by the Assembly, is passable only by that chamber of the Legislature,—the Legislative Assembly,—the other having simply to agree. But as regards the right of the assembly to vote the Budget, the following vital restrictions must be borne in mind in estimating the importance of that right :—

- (1) No proposal for the appropriation of any revenue or moneys for any purpose shall be made except on the recommendation of the Governor-General. This follows the English convention that grants of moneys voted by Parliament cannot be made except on the demand of a minister of the crown. This convention in England and the corresponding statutory provision in India are designed to safeguard against the possible extravagance of a

democratic assembly wanting to placate its constituents, without regard to the general national economy. The provision, as such, is unexceptionable; but it provides quite an effective check on the powers—or, let us say, the extravagance of the Legislature.

(2) Appropriation of moneys for the following heads of expenditure are beyond the competence of either chamber to vote, or even to discuss, unless the Governor-General otherwise directs :—viz.

- (a) Interest and sinking fund charges on loans ;
- (b) Expenditure the amount whereof is fixed by law ;
- (c) Salary and pensions of persons appointed by or with the approval of His Majesty, or by the Secretary of State in Council
- (d) Salaries of chief commissioners and judicial commissioners ;
- (e) Expenditure classified by order of the Governor-General as (i) ecclesiastical, (ii) political or (iii) defence.

Together these heads of expenditure, not open to the vote of Legislative Assembly, make up a large portion of the total expenditure of India. In the Budget Estimates for 1923-24, out of a total budgeted expenditure for Rs. 134,09,57,000, only 16.67 crores was voteable by the Assembly. In all questions of dispute as to whether or not a particular grant is covered by any one of the above five heads, the decision of the Governor-General is made final. The Assembly may, as regards grants voteable by it, assent to, reduce, or refuse a grant; but when the voted demands are again finally submitted to the Governor-General in Council, the latter may, if he thinks any demand refused or reduced by the Assembly is essential to the discharge of his responsibilities, ignore the Assembly; and act as if the demand had been assented to. And this is quite apart from his extraordinary powers in an emergency

to authorise any expenditure he thinks necessary for the safety or tranquillity of British India. The financial control of the Legislature is thus confined to only about 12 per cent. of the total expenditure, and even in the sphere of control allotted to it there are very considerable restrictions.

We may note here the procedure in the central Legislature in connection with the actual passage of the Budget. As a rule the Budget is presented on the 1st of March in each year, that is to say a month before the financial year of the Indian Government expires. The statements of accounts and estimates annexed contain the final Accounts of the financial year expired on the 31st of March last, the Revised Estimates of the year about to expire on the 31st of March next, and the Budget Estimates of the year commencing on the 1st of April next. A separate demand is usually made for each grant, divided into total grant and the detailed account for the total. The discussion of the Budget in the Assembly is in two stages, the first confined to a consideration of the Budget as a whole, and the second to the detailed grants. In the first stage of the Budget discussion no motion is in order, for the Budget as a whole is not voteable by the Assembly. In the second stage, to which no more than 15 days are allotted by the Governor-General, the Assembly may entertain motions for the reduction or refusal of grants, but not for their increase, or alteration of their destination. There is a rigid time limit on this discussion and if on 5 o'clock of the last day discussion has not terminated, the President of the Assembly automatically applies the closure to the debate, and puts all outstanding questions to the vote. If the Finance Minister's original estimate of expenditure for a demand is exceeded in the course of the year, excess grants may be made on a fresh demand; while supplementary or additional estimates for a current year may also be similarly presented if necessary. For a proper security of the public accounts, a special committee on Public Accounts is constituted by the Assembly every year, consisting of 12 members, of whom not less than $\frac{2}{3}$ must be elected by the non-official members on the principle of proportionate re-

presentation. The remaining members are nominated by the Governor-General, the Finance Minister being the *ex-officio* chairman of that committee. The main duty of this committee is to satisfy itself that the money voted by the Assembly is spent within the scope of the grant, and in doing so it must bring to the notice of the Assembly every re-appropriation from one grant to another, or within one and the same grant itself.

(C) General Scrutiny of Administration.

The same spirit of restriction, tempered with a regard for the changed conditions, animates the further extensions of the Legislature's authority in respect of a general scrutiny of everyday administration. The most powerful means of such a scrutiny is to be found in the right of asking questions to the Executive officers. Any question may be disallowed by the President if in his judgment the subject matter of the question is no concern of the Governor-General in Council. Every question must be asked solely for purposes of eliciting information on a matter of public concern within the special cognisance of the member to whom it is addressed; and no questions are permitted on:

- (1) Any matter affecting the relations of His Majesty's Government, or of the Governor-General in Council, with any foreign state;
- (2) Any matter affecting the relations of any of the foregoing authorities with any prince or chief under the suzerainty of His Majesty, or relating to the affairs of any such prince or chief, or to the administration of his territories; and
- (3) Any matter which is under adjudication by a proper court of law.

- (4) In matters, again, which are or have been the subject of controversy between the Governor-General in council and the Secretary of State, or a local Government, no question is permitted except as to matters of fact only.

If an answer to a question is ambiguous or insufficient, a supplementary question may be asked. Every question intended to be asked at a meeting of the Legislative Assembly, for example, must have at least 10 clear days' notice, unless this requirement is waived by the President with the consent of the member for the Government affected. A question must contain no unnecessary names, nor arguments, inferences, or ironical or defamatory expressions. It cannot ask for an expression of opinion, nor the solution of a hypothetical proposition. It may not ask anything about the character or conduct of any person except in his official capacity, and it must not be of inordinate length. Finally, if the question contains any statement by the member himself, he must make himself responsible for the accuracy of his statements.

Motions for Adjournment.

Every business day the first hour is set apart for the answering of questions. But with the foregoing conditions, it is rarely that by means of questions in the Legislature, grave and sudden abuses of power or any other problem of administration can be tackled in the Legislature. It is accordingly provided that as soon as the questions are over, and before the ordinary business of the day is entered upon, any member may ask for leave for a motion for an adjournment of the business of the House to discuss a *definite matter of urgent public importance*. To do so, the member intending to ask for such a permission must leave with the Secretary, before the day's sitting has commenced, a

written statement of the matter proposed to be discussed. The President, if he considers the proposed matter to be in order, reads the member's statement to the House, and asks if the member has leave to move for adjournment. If no objection is made the leave is granted as a matter of course. If objection is made, and there are yet 25 members of the Assembly who rise in their places to support the proposal on the President's invitation, leave will be granted, and the motion is made at 4 p. m. that day. If less than 25 members rise to support, the leave is refused. If the leave is granted, and the motion is made that the House do now adjourn, two hours at most are allowed for debating the subject raised; and the result at the end of the sitting is suffered to affect the Executive as it might. As all such motions must relate to "specific matters of recent occurrence," no subjects which could or would be otherwise discussed can be included in such a treatment. As the discussion ends in no definite resolution, the vote at the end of it is of no great effect upon the government, who are not by law responsible to the Legislature.

(D) Resolutions.

The only way, then, that the Legislature can initiate or influence general policy is by means of resolutions, which are in the form of recommendations to the Governor-General in Council, and, as such, are not binding upon that authority; but which nevertheless serve to indicate the mind of the country on important problems of policy. Questions like a change in the Fiscal Policy, or in the ownership and management of the country's Railways, or the Indianisation of public service, all take their origin in such a resolution. Every resolution intended to be moved must be notified 15 clear days in advance, unless the President, with the concurrence of the Government, has waived the requirement of notice. During the period of the notice the Governor-General may disallow

any resolution, or any part of it, simply on the ground that it cannot be moved without detriment to the public interest, or that it relates to a matter not primarily the concern of the Governor-General in Council. Resolutions in the Legislature must avoid all topics on which questions are not permitted; and they must be so worded as to be clearly and precisely expressed, raising a definite issue, without any arguments, inferences, ironies or defamatory statements. They must not refer to individuals except in their official capacity. Any amendment on a resolution must be notified 2 clear days in advance, unless the notice is waived by the President. The discussion and voting on the Resolutions are very carefully regulated by rules and standing orders, a summary of which has been given above.

This general, brief review of the constitution, composition, functions and procedure in the Indian Legislature leads us to the following conclusions :—viz.

- (1) That the bicameral constitution imports a novel, needless complication in the legislative machinery, without even the compensation of the two chambers representing distinct interests ;
- (2) That the composition of the Legislature, with the presence of official and nominated members, and others elected on a medley of seemingly or really conflicting caste, sect, or economic interests makes it exceedingly difficult, if not unlikely, for such a body to act in harmony on a uniform national impulse ;
- (3) That the powers assigned to the Legislature, though considerably extended, are nevertheless substantially restricted at every step directly and indirectly, thereby taking away seriously from the utility of these institutions ; and lastly,
- (4) That though the procedure is apparently modelled on that of the British Parliament, and is conceived

to combine dignity and decorum with freedom of discussion, nevertheless seems to lack the spontaneity characteristic of British Parliamentary procedure.

We may round up this part of our discussion by mentioning a few points of miscellaneous interest. The Indian Legislature, in both its chambers, as well as the Provincial legislatures, are free to prescribe their own rules of procedure, though the first Rules and Standing Orders were made for them by the executive. The quorum of members required for the valid transaction of business seems to be rather large, being 15 for the Council of State out of a total membership of 60, and 25 for the Legislative Assembly out of a total of 144. The Indian legislatures have no other privileges beyond being authorised to elect their own Presidents and make their own rules of procedure after a term. For individual members, the only important privilege is freedom of speech consistent with the rules of the legislature ; but even here, as at least one celebrated case in the Bombay Legislative council shows, the Executive is inclined to look with stern displeasure upon any excessive use of that privilege. And the displeasure of the Executive is a real asset in India, which not even the richest and the most popular non-official persons can afford quite to ignore.

The Provincial Legislatures.

The provincial legislatures are, on a less grandiose scale, the repetition of the central legislature. In one important respect only do they differ from the latter, being all single-chambered institutions. By S. 72 A of the Act, the Provincial Councils are to consist of " the members of the executive council, and the members nominated or elected as provided by this

Act." The Act prescribes the maximum strength of the different provincial councils as under viz :—

Province	Total	} subject to the general provision that the numbers so fixed might be exceeded by rules under this Act. Taking advantage of this permission, the total membership of the several council has been actually raised, till at present they consist of :—
Madras	118	
Bombay	111	
Bengal	125	
United Provinces ...	118	
Punjab	83	
Bihar & Orissa ...	98	
Central Provinces ...	70	
Assam	53	

				Elected	* Nominated		Total.
					Offg.	Non-offg.	
1.	Madras	...	...	98	23	6	127
2.	Bombay	...	...	86	20	5	111
3.	Bengal	...	...	113	20	6	139
4.	U. P.	...	...	100	18	5	123
5.	Punjab	...	...	71	16	6	93
6.	Bihar and Orissa	...	...	76	18	9	103
7.	C. P.	...	...	53	10	5	68
8.	Assam	...	...	39	9	5	53

The official representation as shown above is the maximum, but the Governor may nominate less than the maximum number, in which case he would be able to nominate more non-officials.

As between the official and the non-official element, the elected and the nominated elements, the Act provides that: "Not more than 20 per cent. shall be official members, and at least 70 per cent. shall be elected members." This proportion is fairly maintained in the several councils as shown above.

The governor of a province is given the right to nominate, in addition to the members already nominated, one member in Assam, and not more than two in other provinces, as experts to help in the discussion and passage of any Bill requiring some kind of technical knowledge.

Every such council is constituted for three years, subject to the Governor's right to dissolve it sooner, and to extend the term by notification in the gazette for not more than a year under special circumstances. Similar provisions are made as regards Presidents and deputy-Presidents of the Provincial councils as in the case of the Assembly, the Presidents being nominated for a definite period in the first instance and elected by the council subsequently, and the deputy-President being always so elected. Their salaries are also similarly determined, being fixed by the Governor for the President in the first instance, and being determined by the council for the President subsequently, and for the Deputy President always.

The same attempt at securing adequate or proportionate representation for all interests, communities or classes, as is noticeable in the composition of the central legislature, is visible in the Provincial councils as well. The following illustration is taken from the composition of the Bengal Legislative Council.

The following table shows the composition of the Bengal Legislative Council.

CLASS OF ELECTORATE	No. of Electorates of this class	No. of Members
Non-Muhammedan	42	46
Muhammedan	34	39
European	3	5
Anglo-Indians	1	2
Landholders	5	5
University	1	1
Commerce and Industry	8	15
Total... 94		113

Of the 94 constituencies all but 9 (*i.e.* University and Commerce) are arranged on a territorial basis, each constituency consisting of a group of electors having the prescribed

qualification, which gives them the vote, and living in that area. The normal constituency is a district or part of a district, or a group of adjacent municipalities in the case of urban constituencies. Some large towns make each a constituency by itself, the city of Calcutta being divided into 8 constituencies, 6 non-Muhammadan and 2 Muhammadan.

The qualification for candidates and voters varies from province to province in detail. Broadly speaking both in rural as well as urban constituencies the franchise is based on property qualification measured by the payment of a prescribed minimum of Land Revenue, or its equivalent, or of Income Tax or Municipal taxes.

In all provinces retired, pensioned or discharged officers and men of the regular army are entitled to vote irrespective of their property or income—a handsome recognition of the services of such men in the cause of the Empire. The total electorate consists of :—

Madras	1,258,156	} This is a very small electorate in proportion to the population of the country ; but as literacy is not now insisted upon as a qualification it could have done no harm had the electorate been increased further. The property qualification seems much too high in proportion to the wealth of the people, which does not exceed Rs. 50 per head under the most liberal estimates.
Bombay	548,419	
Bengal	1,021,418	
United Provinces	1,347,278	
Punjab	505,361	
Bihar & Orissa	327,564	
Central Provinces	144,737	
Assam	203,291	}
Burma	2,500,000	

The disqualifications of voters and candidates run on the same general lines in the Provincial councils as in the Central legislature. Bombay and Madras and Burma have enfranchised the women ; and the sex bar is thus very much weakened. For the rest some of the disqualifications, and the attendant power of the Executive to annul those disqualifications evince the transitional character of the Indian constitution.

The rules of procedure in these councils are modelled on the similar provisions of the Central Legislature ; and the governor's powers in respect of certifying bills, restoring grants refused by the Council, reserving Bills, returning them for reconsideration, and having them disallowed are parallel to those of the Governor-General or His Majesty in respect of the Central Legislature.

Sec. 10 of the Act of 1919 [S. 80 A of the consolidating Act] lays down :—

“ The local legislature of any province has power, subject to the provisions of this Act, to make laws for the peace and good government of the territories for the time being constituting that province. ”

This wide margin of powers is subject only to one general exception, laid down in clause 4 of the same section, *viz* ;—

“ The local legislature of any province has not power to make any law affecting any Act of Parliament. ”

Subject to this exception, the provincial legislature can make, repeal or alter any law, made by itself or any other authority in British India, in so far as that law touches the province it governs. In some specified cases, the provincial Council must obtain the previous sanction of the Government of India before it can take into consideration measures of the specified class *e. g* :—

Measures authorising the imposition of a new tax, not exempted from this provision by rules made under this Act.

Measures affecting the public debt of India, or the Customs Duty, or any other duty for the time being in force, and imposed by the authority of the Governor-General in Council, for the general purposes of India.

Measures affecting the discipline or maintenance of the naval, military, or the Air forces of His Majesty.

Measures affecting the relations of the government with foreign powers, or states.

Measures regulating any central subject.

Measures regulating any provincial subject declared by rules under this Act to be subject in part or wholly to central legislation.

Measures affecting any power expressly reserved to the Governor-General-in-Council.

Measures altering or repealing any Act of the Indian legislature passed after the commencement of this Act, and declared by rules under this act to be unalterable by provincial legislation.

The effective limitations on the legislative powers of the new provincial councils do not, however, appear in these statutory restrictions. They are contained or concealed in those provisions which empower (Sec. 12) (51 A) the Governor to return a Bill passed by the local legislature for reconsideration with amendments desired by the Governor. This is most extraordinary, and amounts to making the governor completely master of the Council. Similarly, the emergency power granted by Sec. 13 (72 E) empowering a governor to certify that the passage of a bill refused by the provincial legislature is essential for the discharge of his duties, moves in the same direction, since the certification will practically amount to passing the Bill over the heads of the recalcitrant Council if necessary.

In the minor provinces, the Legislative council, if and when established, does not possess any of the powers of the Legislative council of a Governor's province. The latest example of such a council is that for Coorg, which is only a Chief Commissionership, and where the council, first created in 1924, will be convoked and consulted only in connection with the local legislative measures.

CHAPTER VI.

INDIAN FINANCE.

Two important departments of State, Finance and Army, which in every other constitution receive the closest attention of the authors of the constitution, have not been specifically dealt with by this Act. Provisions of a financial character have no doubt been inserted in the chapters dealing with the Secretary of State and the Council of India; and reference to the Legislative procedure has been made in the provisions relating to the Indian Legislatures. It is necessary, however, for a proper study of the system of Indian Government, to have a more connected account of the theory and practice of Indian finance, and some slight acquaintance with the important heads of revenue and expenditure; and this is, possibly, the most fitting place for inserting this account.

I. Financial Administration in India.

The general administration of finance in India, including the imposition of taxes, collection of revenue, and sanctioning of expenditure, was, before the changes of 1919, under the control of the Secretary of State in Council, and in the hands of the Government of India. The Executive Council of the Government of India has a member whose special duty it is to consider every question before the Government of India which has a financial aspect. Under him is the Accounts department, in the immediate charge of the Comptroller and Auditor-General, managing the civil accounts of the Supreme and, until 1919, of the Provincial Governments, as well. In this office all the accounts of the country used to be brought together and compiled, Subordinate to the Comptroller and Auditor-General are the Provincial Accountants-General, entrusted with

the task of keeping the accounts of Imperial receipts and expenditure within their province, as well as the accounts of local Governments. The accounts officers must see that no payment is made except upon proper authority, while another independent check is exercised by the Comptroller and Auditor-General through his own staff by means of test audits.

New expenditure may be authorised and made by the governing authorities in India within the limits laid down in the case both of the Imperial Government and of the Provincial Governments by standing rules approved by the Secretary of State in Council. Any expenditure, outside these rules, requires the specific sanction of the higher authority. Under the existing rules the sanction of the Secretary of State in Council is required for creating any new permanent appointment, which would ordinarily be held by a gazetted civil officer recruited in England, and for raising the pay of such an appointment; for creating any other new appointment with a salary of over Rs. 1,200 a month; for revising a permanent establishment involving an additional expenditure of over Rs. 50,000 a year.

II. The Budget System.

Indian finance has been regulated by the Budget system since 1860. This system consists in preparing estimates for the revenue and expenditure one year in advance, and suggesting means for meeting the discrepancy, if any, between the revenues and expenditure of the country. In India the financial year ends on the 31st March. Under the new rules, a Financial Statement is laid before the Imperial Legislative Assembly on or near the 1st of March to be discussed by that Assembly. The Budget proper, consisting of the estimates in their final form, as revised in the light of the latest information

available, and of the discussions on the preliminary estimates, must be presented to the legislature by the Finance Member on or before a given date.

The Indian Financial Statement and Budget include, besides the estimates for the coming year, the Revised Estimates of the year about to close, and the "actuals" or closed accounts of the previous year. There is almost always a considerable difference in the total estimates, as well as in the estimates for specific heads in the Budget, in the revised estimates, and in the actuals. This is due to the fact that the principal heads of revenue in India, depending as they do upon weather conditions, are proverbially uncertain; and the spending departments, too, are seldom able to keep rigidly to the exact limit set to their operations by the Finance Department. The ideal of a Financial Minister is to try and make his budget estimates correspond as nearly as possible to the accounts; but for the reason given above this ideal is difficult to realise in India. Hence we have the constant phenomena of wide differences between the estimates and actuals, unexpected and heavy surpluses and deficits, and the consequent desire of the Finance Minister to make very cautious estimates. This is, of course, at variance with the sound maxim that no more revenue should be raised than is exactly necessary for expenditure; but it cannot be avoided by the Government of India, who have a fairly heavy debt in proportion to their revenues, and who must therefore maintain their credit, if necessary, by budgetting deliberately for a surplus.

III The Power of the Purse in India.

The sole right of the Legislature to vote supplies for the various departments of the Government is known as the Power of the Purse. This power is the key-stone of the whole arch of British liberty. Any cabinet which proposes to carry on the government of the country in defiance of the wishes of Parliament would be soon brought to heel by Parliament refusing supplies. People would not pay a penny in taxation, unless

their Parliament has sanctioned such exaction every year. Hence in every department of administration the executive must conform to the wishes of the Legislative.

The Indian Councils have no such power of the purse. It is true that since the reforms of 1909 they were allowed to discuss the financial proposals of the Government, and even to make some recommendations. But the Government were not bound to accept the recommendations made by their Councils. The Council as such had no right to vote or veto a budget. The entire power of the purse, from the preparation of the Budget to its final carrying out, rested with the Executive. And, consequently, the control of the Council on the departments of Executive Government was imaginary.

The Act of 1919 has made very considerable changes in this position. In the case of the Government of India, under Sec. 25 of the Act, the estimated annual expenditure and revenue of the supreme Government must be prepared and submitted each year to both the chambers of the Indian Legislature. Disbursement of the revenue thus estimated cannot be made except on the recommendation of the Governor-General. The Legislative Assembly is debarred from voting or discussing grants on the following subjects :—

Interest and Sinking Fund charges on Loans.

Expenditure prescribed by any Law.

Salaries or pensions of persons appointed by or with the approval of His Majesty or by the Secretary of State.

Salaries of Chief Commissioners and Judicial Commissioners.

Expenditure classified by the orders of the Governor-General as Ecclesiastical, Political or Defence.

In these two matters the Act of 1919 tries to reproduce an unwritten convention of the British constitution, whereunder no expenditure can be proposed except on the initiative of a

Minister of the Crown, and where a few heads of recurring expenditure, like the salaries of the Judiciary, are placed outside the annual vote of the Parliament under what are known as the Consolidated Fund Services. The first convention is salutary, if we assume that the freedom of proposing grants by members of the legislature will degenerate into a loot of public resources for the benefit of individual fads or constituencies. There is nothing, however, to be said against reserving the power of initiation in the government, provided it is a responsible government. The second convention of non-votable services reserves the most important portion of the Indian public expenditure to the discretion of the executive, and thus takes away from the constitutional advance made by the Act of 1919. The expenditure for Defence and Interest on loans constitute three-fourths of the total Indian Budget, not to mention that grave questions of national economy would be excluded from the Legislature's discussion by the removal of these items from the cognisance of the Legislature. The exclusion of the salaries and emoluments of the Civil Service is probably dictated by a desire to placate the most important body of public servants whose alienation might, it was feared, jeopardise the success of the Reforms. But the concession of such extraordinary position was unnecessary, in view of the facilities provided for retirement to those officers of the Government of India, who are unwilling to work under the reformed constitution.

The Legislative Assembly is, in the theory of the Act, free to vote or refuse the grants under those items which are not specifically excluded from its cognisance. But if it refuses any grant which the Governor-General certifies is essential for the discharge of his duties or responsibilities, the Governor-General is by law entitled, without further ceremony, to treat that refused grant as having been sanctioned, and carry on the expenditure as he likes. And this is in addition to the special power reserved to him in extraordinary emergencies to authorise expenditure as, may in his opinion be necessary for the safety or tranquillity of British India or any part thereof.

The powers of the Provincial Legislatures proceed on the same basis. Ostensibly they are given the right to vote the provincial Budget, and, therefore, by implication, to withhold supplies. But in reality, in the case of the Reserved Subjects, if the local Council refuses a grant, and the Governor of the province certifies that the grant is essential for the discharge of his responsibilities, he is entitled to treat the grant as having been passed despite the refusal, and to incur the expenditure over the head of his Council. And this is in addition to the emergency power in special cases provided by Sec. 11 of the reforming Act.

**A.—Statement of the Revenue of the Central Government,
in India and in England.**

HEADS OF REVENUE.	Budget 1923-24.	Increase (+) Decrease (—) as compared with Budget, 1922-23.	Increase (+) Decrease (—) as compared with Revised 1922-23.
Principal Heads of Revenue—	Rs.	Rs.	Rs.
I.—Customs ...	45,09,41,000	—32,43,000	2,79,38,000
II.—Taxes on Income ...	19,04,64,000	—3,06,75,000	35,33,000
III.—Salt ...	11,75,00,000	+4,88,97,000	4,57,16,000
IV.—Opium ...	3,93,12,000	+83,82,000	—5,56,000
V.—Land Revenue ...	43,94,000	+1,000	13,000
VI.—Excise ...	52,58,000	—3,64,000	91,000
VII.—Stamps—			
A.—Non-judicial ...	9,66,000	—42,000	51,000
B.—Judicial ...	16,15,000	+1,94,000	48,000
VIII.—Forest ...	34,57,000	+12,89,000	8,41,000
IX.—Registration ...	1,62,000	—6,000	11,000
X.—Tributes from Indian States	86,45,000	—1,60,000	—2,95,000
TOTAL...	82,27,14,000	+2,42,73,000	7,73,91,000
Railways—			
XI.—State Railways—			
Gross Receipts ...	95,57,24,000	—4,00,02,000	3,49,98,000
Deduct—Working Expenses	66,51,50,000	+1,54,24,000	—17,65,000
Surplus Profits paid to companies	98,77,000	—38,77,000	—39,70,000
Net Receipts	28,06,97,000	—2,84,55,000	3,01,63,000
XII.—Subsidised Companies ...	19,61,000	+19,000	—6,36,000
TOTAL...	28,26,58,000	—2,84,36,000	2,95,27,000
Irrigation, etc.—			
XIII.—Works for which no Capital accounts are kept ...	10,59,000	+3,41,000	39,000
XIV.—Works for which no Capital accounts are kept ...	4,000	...	—2,000
TOTAL...	10,63,000	+3,41,000	37,000
Posts & Telegraphs—			
XV.—Gross Receipts ...	10,71,83,000	—43,71,000	47,98,000
Deduct—Working Expenses ...	8,68,39,000	+71,87,000	64,88,000
Net Receipts...	2,03,44,000	+28,16,000	1,12,86,000
Interest Receipts—			
XVI.—Interest ...	2,50,96,000	+1,66,65,000	1,46,85,000
Carried over...	1,15,18,75,000	+1,56,59,000	13,29,26,000

**A.—Statement of the Revenue of the Central Government,
in India and in England—Continued.**

HEADS OF REVENUE.	Budget 1923-24.	Increase (+) Decrease (—) as compared with Budget 1922-23.	Increase (+) Decrease (—) as compared with Revised. 1922-23.
Brought forward...	1,15,18,75,000	+1,56,59,000	+13,29,26,000
Civil Administration—			
	3,84,000	+35,000	+25,000
XVII.—Administration of Justice	9,09,000	—2,02,000	+85,000
XVIII.—Jails & convict Settlements	1,64,000	—11,99,000	+1,000
XIX.—Police	24,51,000	+30,000	—2,73,000
XX.—Ports and Pilotage	1,33,000	+16,000	+6,000
XXI.—Education	1,07,000	+57,000	+55,000
XXII.—Medical	1,22,000	—1,85,000	—3,000
XXIII.—Public Health	5,01,000	—1,79,000	+22,000
XXIV.—Agriculture	...	—2,00,000	—2,000
XXV.—Industries	14,37,000	—6,14,000	+1,26,000
XXVI.—Miscellaneous Departments			
TOTAL...	62,08,000	—24,41,000	+5,88,000
Currency, Mint and Ex- change—			
XXVII.—Currency	2,64,35,000	—38,78,000	—71,78,000
XXVIII.—Mint	4,91,000	—14,27,000	—12,16,000
TOTAL...	2,69,26,000	—53,05,000	—83,84,000
Civil Works—			
XXX.—Civil works	10,69,000	—23,000	—56,000
Miscellaneous—			
XXXIII.—Receipts in aid of Su- perannuation	25,22,000	+2,21,000	+8,000
XXXIV.—Stationery and Printing	11,77,000	—5,64,000	—3,57,000
XXXV.—Miscellaneous	11,35,000	—14,34,000	—15,79,000
TOTAL...	48,34,000	—17,77,000	—19,28,000
Military Receipts—			
XXXVI.—Army—			
Effective	2,15,74,000	—2,78,42,000	—1,78,84,000
Non-effective	27,91,000	+3,46,000	—4,27,000
	2,43,65,000	—2,74,96,000	—1,83,11,000
XXXVII.—Marine	21,29,000	+1,06,000	—14,56,000
XXXVIII.—Military Works	16,29,000	+99,000	—22,11,000
TOTAL...	2,81,23,000	—2,72,91,000	—2,19,78,000

**B.—Statement of the Expenditure charged to the Revenue
of the Central Government in India and in England.**

HEADS OF EXPENDITURE.	Budget. 1923-24.	DISTRIBUTION OF TOTAL BETWEEN.	
		Voted.	Non-voted.
Direct Demands on the Revenues—	Rs.	Rs.	Rs.
1.—Customs ...	77,19,000	67,22,000	9,97,000
2.—Taxes on income ...	63,79,000	60,07,000	3,72,000
3.—Salt ...	1,55,34,000	1,14,97,000	40,37,000
4.—Opium ...	1,89,31,000	1,87,76,000	1,55,000
5.—Land Revenue ...	11,93,000	10,86,000	1,07,000
6.—Excise ...	2,74,000	1,52,000	1,22,000
7.—Stamps—			
A.—Non-judicial	2,67,000	2,89,000	21,000
B.—Judicial	43,000		
8.—Forests ...	47,06,000	40,72,000	6,34,000
9.—Registration ...	42,000	38,000	4,000
TOTAL...	5,50,88,000	4,86,39,000	64,49,000
Railway Revenue Account—			
10.—State Railways:			
Interest on Debt ...	18,77,90,000	...	18,77,90,000
Interest on Capital contributed by Companies ...	3,22,30,000	...	3,22,30,000
Annuities in purchase of Railways ...	5,03,62,000	...	5,03,62,000
Sinking Funds ...	49,10,000	...	49,10,000
11.—Subsidised Companies ...	25,90,000	25,90,000	...
12.—Miscellaneous Railway Expenditure ...	12,50,000	5,69,000	6,81,000
TOTAL...	27,91,32,000	31,59,000	27,59,73,000
Irrigation, etc., Revenue Account—			
14.—Works for which Capital accounts are kept—			
Interest on Debt ...	10,88,000	...	10,88,000
15.—Other Revenue Expenditure ...	1,16,000	1,16,000	...
TOTAL...	12,04,000	1,16,000	10,88,000
Irrigation, etc., Capital Account (charged to Revenue)—			
16.—Construction of Irrigation, etc., Works—Financed from Ordinary Revenues ...	2,16,000	2,16,000	...
Posts and Telegraphs Revenue Account—			
17.—Posts and Telegraphs—			
Interest on Debt ...	68,28,000	...	68,28,000
Miscellaneous Expenditure ...	—8,55,000	—8,55,000	...
TOTAL...	59,73,000	—8,55,000	68,28,000

**B.—Statement of the Expenditure charged to the Revenue
of the Central Government in India and in England.**

HEADS OF EXPENDITURE.	Budget. 1923-24.	DISTRIBUTION OF TOTAL BETWEEN.	
		Voted.	Non-voted.
Posts and Telegraphs Capital Account (charg- ed to Revenue)—	Rs.	Rs.	Rs.
18.—Capital outlay on Posts and Telegraphs— Indo-European Telegraph Department	—3,19,000	—3,19,000	...
Debt Services—			
19.—Interest on Ordinary Debt ...	35,36,73,000	...	...
Deduct—Amount chargeable to—			
Railways ...	18,77,90,000	...	...
Irrigation ...	10,88,000	...	...
Posts and Telegraphs ...	68,28,000	...	...
Provincial Governments ...	4,00,15,000	...	...
Remainder chargeable to ordinary Debt—	11,79,52,000	22,000	11,79,30,000
20.—Interest on other Obligations	3,21,61,000	3,21,07,000	54,000
21.—Sinking Funds ...	2,20,44,000	...	2,20,44,000
TOTAL ...	17,21,57,000	3,21,29,000	14,00,28,000
Civil Administration—			
22.—General Administration—			
A—Heads of Provinces (in- cluding Governor General and Executive Councils)...	24,35,000	1,10,16,000	64,46,000
B—Legislative Bodies	9,18,000		
C—Secretariat and head quar- ters establishment	79,12,000		
D—Commissioners	14,000		
E—Direct Administration	16,69,000		
F—Home Administration- etc.	45,14,000		
23.—Audit	79,40,000	70,72,000	8,68,000
24.—Administration of Justice	12,04,000	7,75,000	4,29,000
25.—Jails and Convict Settlements	41,89,000	38,73,000	2,16,000
26.—Police	89,48,000	79,56,000	9,92,000
27.—Ports and Pilotage	25,67,000	11,29,000	14,38,000
28.—Ecclesiastical	33,27,000	...	33,27,000
29.—Political	3,31,36,000	...	3,31,36,000
30.—Scientific Departments	1,02,60,000	81,61,000	20,99,000
31.—Education	34,86,000	28,04,000	6,82,000
32.—Medical	30,62,000	20,24,000	10,38,000
33.—Public Health	21,95,000	10,94,000	11,01,000
34.—Agriculture	21,66,000	16,79,000	4,87,000
35.—Industries	76,000	55,000	21,000
36.—Aviation	44,000	29,000	15,000
37.—Miscellaneous Department	46,78,000	43,35,000	3,38,000
TOTAL ...	10,46,35,000	5,20,02,000	5,26,33,000

**B.—Statement of the Expenditure charged to the Revenue
of the Central Government in India and in England.**

HEADS OF EXPENDITURE.	Budget. 1923-24.	DISTRIBUTION OF TOTAL BETWEEN.	
		Voted.	Non-voted.
Currency, Mint and Exchange—	Rs.	Rs.	Rs.
38.—Currency	94,89,000	92,89,000	2,00,000*
39.—Mint	18,56,000	14,64,000	1,92,000
40.—Exchange	...	...	...
TOTAL...	1,13,45,000	*1,09,53,000	3,92,000
Civil Works—			
41.—Civil Works	1,87,63,000	1,27,07,000	60,56,000
Miscellaneous—			
43.—Famine Relief and Insurance—			
A.—Famine Relief	5,000	5,000	...
44.—Territorial and Political Pensions	29,86,000	...	29,86,000
45.—Superannuation Allowances and Pensions	3,47,62,000	50,37,000	2,97,25,000
46.—Stationery and Printing	72,57,000	72,06,000	51,000
47.—Miscellaneous	71,03,000	42,22,000	28,81,000
TOTAL...	5,21,13,000	1,64,70,000	3,56,43,000
Lump allowance for further retrenchment in Civil expenditure (including Railways)	—4,00,00,000	—4,00,00,000	...
Military Services—			
48.—Army			
Effective	50,56,75,000	...	50,56,75,000
Non-effective	9,04,57,000	...	9,04,57,000
	59,61,32,000	...	59,61,32,000
49.—Marine	96,36,000	...	96,36,000
50.—Military Works	4,23,55,000	...	4,23,55,000
TOTAL...	64,81,23,000	...	64,81,23,000
Contributions & Assignments to the Central Government by Provincial Governments—			
52.—Miscellaneous adjustments between the Central and Provincial Governments	3,62,000	3,62,000	...
TOTAL EXPENDITURE CHARGED TO REVENUE	1,30,87,92,000	13,55,79,000	1,17,32,13 000

IV A Brief Review of the Heads of Indian Revenue and Expenditure.

Of these the Land Revenue, accounting for nearly $\frac{1}{4}$ of the total revenue, and being the largest single item, next after the Customs Revenue, is fixed by settlements, which are, generally speaking, fixed permanently or subject to periodical revisions. The receipts under this head ought not, therefore, to fluctuate very much from year to year; but the uncertainty of yield, which depends very much on the character of the weather, and the consequent desire of the Government not to be very rigid in collecting this revenue, account for all variations. In a year of drought Government might have remitted, partially or totally, their revenue demand from the afflicted district, in which case the figures for that year would show a considerable decline. Or they might have only postponed their demand, in which case the figures for the following year would show a great improvement owing to the payment of arrears. On the whole the receipts under this head show a steady upward tendency owing to the value of the "assets" having increased with the extension in cultivation, growth in population, rise in prices and development in trade. This head is now wholly Provincial.

The receipts shown under the head of Opium are those arising from the sale of opium for export; the revenue derived from opium consumed in India being credited under excise. Opium revenue is derived from a government monopoly. In normal times, before 1908, the revenue was subject to great fluctuations owing to variations in prices and charges in weather. Since 1908, following the Anglo-Chinese treaty in this respect, the Government of India have undertaken progressively to reduce their exports to China, and this revenue therefore is expected to fall very low in the near future. This head is wholly Imperial.

The Salt revenue was, it is said, inherited by the British Government from native rule along with other transit dues.

These transit dues were abolished, but the salt duty was consolidated and raised. Broadly speaking, one-half of the salt produced in India is manufactured by Government agency, while the rest is prepared under Government license. The North India Salt Department, a branch of the Finance Department, controls the public manufactories in the Panjab and Rajputana, while in Madras and Bombay they are under the supervision of the local Governments. For the salt raised in Native States there are special treaties, permitting, for a commuted payment to the states concerned, free movement of salt. The duty on indigenous salt was Rs. 2-8 between 1888-1903 per maund. It was reduced to Rs. 2 in 1903, to 1-8 in 1905, and to Re. 1 in 1907. Owing to the exigencies of the present war the duty was raised to Rs. 1-4 in 1916. The receipts under this head include the revenue derived from imported salt, and are taken wholly by the central Government. The duty was doubled in 1923.

The Excise revenue in British India is derived from the manufacture and sale of intoxicating liquors, hemp, drugs, toddy, and opium, and cotton duties. The revenue is collected under provincial laws which have accepted the general principle of disposing of the right to manufacture spirit for supplying a district by tender. The rate of still-head duty and the supply price to be charged are fixed in the contract, while the right to sell is separately disposed of. Foreign liquor is subject to an import duty at the tariff rates, and the revenue therefrom is included under the customs revenue. This head is wholly Provincial, except as regards the Cotton Excise Duty.

The Stamp revenue is derived from two kinds of stamps:—Judicial or Court Fee Stamps, and non-judicial or Revenue stamps. The judicial stamp revenue constitutes more than $\frac{3}{4}$ of the total revenue; it is considered a kind of *quid pro quo*, rather than a tax properly so called. The revenue stamps are chiefly those charged on commercial documents. This revenue is split up between the Central and Provincial Governments.

The revenue under Customs is derived from duties charged on imported and exported articles. Owing to financial stringency the customs schedule was completely recast in 1916-17, and frequently altered thereafter. The customs department is administered by an Imperial Customs Service, responsible to the Imperial Government through the department of Commerce and Industry, and the receipts belong entirely to the central government. They now amount to Rs. 45 crores.

Among the other heads of taxes may be mentioned the Income Tax which is the chief of the assessed taxes. Like the Customs, this head also was considerably altered in 1916. The present Income Tax is levied on non-agricultural incomes of over Rs. 2,000 a year. The receipts under this head are for the Imperial Government, subject to a slight return to the provincial governments.

Among the remaining heads of revenue, receipts under Interest are derived from loans made to local Governments or Native States or to local Boards and Municipalities. The Posts and Telegraphs are another instance of a public monopoly in India, reserved, with the railways, for the central Government.

The revenue derived from Public Works is given in the table under three heads : Railways (central); Irrigation, and other public works, which are now provincialised. The Railways form an Imperial department under a Railway Commission, represented in the Imperial Council by the member in charge of the Commerce and Industries Department.

The revenue from Railways is derived from : (a) the share of surplus profits falling to the State under the agreements with the railway companies, and (b) the direct profits of the State from lines owned or acquired and conducted by the State.

The revenue derived from Irrigation works is collected, generally speaking, along with the land revenue, and in the shape of an enhanced land revenue demand. It is also collected in some parts in the shape of specific rates levied on the

owners or occupiers of the land benefitting by irrigation works. Unlike the railways, the major productive Irrigation works have all been constructed and worked directly by the State, and they have invariably proved profitable. A few Irrigation works, however, have been constructed with a view to protection rather than to profit. But on the whole the public Irrigation works have never caused a loss to the State.

In all these heads of revenue, changes can be made by the Indian Legislature, though the Government are not bound to submit their proposals for financial changes to the Legislative Assembly and abide by the vote of the Assembly thereon. In practice, however, even before the changes of 1909, the Government carried out each proposed change by means of a special legislative enactment.

V A Brief Review of the principal Heads of Public Expenditure.

Among the various heads of expenditure the most noticeable is the head of Interest on Debt, which amounted to Rs. 40,78,78,000 in 1923-24. The debt of India has arisen from two causes: (a) There was a huge legacy of debt left to the Crown by the East India Company in 1858, to which was added the value of the India Stock in that year; so that the total debt amounted to Rs. 63'555 crores in 1859-60. This was almost wholly non-productive debt. In the years that followed, the rupee debt was gradually increased owing to wars, such as the 2nd Afghan war or the 3rd Burmese war, or the present European war, and to famines, such as those of 1878-79 and 1899-1900. (b) There was the need of fresh borrowing every year for the construction of productive public works. Under this head there is hardly any limit to the public borrowing in India, except the one set by the available supply of capital in the London and the Indian money-markets. Out of the total interest charge of Rs. 40,78,78,000

in 1923-24, Railways alone absorbed Rs. 18,77,90,000, while Irrigation and other provincial debt accounted for Rs. 4,19,03,000, while the Interest on ordinary, unproductive debt, together with the Sinking Fund charges, amounted, to Rs. 17,21,57,000.

The direct demands on Revenue include all costs of collection and production. This item has been steadily on the increase. The cost of collection of the land revenue constitutes over 60 p. c. of the total ; the charges under that head include the cost of district administration, of the departments of land records, and of survey and settlement operations.

The expenses of the civil departments have been continuously growing. They include charges for General Administration, Courts of Law, Jails, Police, Ports and pilotage, Education, Ecclesiastical, Medical, Political, Scientific and other departments. The increase is most conspicuous under Education, Police, Medical and Scientific departments. The charges for general administration represent the cost of the whole civil administration down to the grade of commissioners of divisions. They include also the charges on account of the India Office, the Viceroy, the Governors, Lieutenant Governors and Councils in India. Such charges as those for the Coronation Durbar also come under this head. The Scientific and minor departments include the Survey of India, the Botanical and Geological Surveys, the Agriculture and Veterinary departments, Observatories, Inspectorate of Mines and Factories and miscellaneous departments.

The Miscellaneous Civil Charges include territorial and political pensions, civil furlough and absentee allowances, superannuation allowances and pensions, stationery and printing, and miscellaneous. Of these the first head is on the decline, and the superannuation allowances are on the increase.

The charges for Posts and Telegraphs, Railways and Irrigation, Roads and Buildings, Mint &c. are incurred in connection with the working of these great commercial undertakings.

The Famine Relief and Insurance item dates from 1878. Prior to that date each famine was met as it occurred, and beyond that no regular machinery was provided. The experience of 1878 convinced the Government that the cost of famine relief should be treated as an ordinary charge on the revenue ; and for that purpose a sum of $1\frac{1}{2}$ crores of Rupees was to be set aside every year. This sum is applied first to the direct relief of famine ; secondly to the construction and maintenance of " protective " railways and irrigation works ; thirdly to the construction of " productive " public works which would otherwise necessitate additional borrowing. The amount used under the last-mentioned purpose is shown under the head of Reduction or Avoidance of debt. Combating famine is primarily within the sphere of local Governments ; but since 1907 the fixed assignments to Bombay, the Central Provinces, United Provinces, Bengal and Madras were increased by £ 250,000. This total is debited to the provincial revenues each year under the head of Reduction or Avoidance of debt, and the share of each province is entered to its credit with the Imperial Government. The provinces, thus accumulate a reserve of credit which may be drawn upon in the event of famine. The charges then incurred are entered as Imperial expenditure. Since 1920, Famine Relief is made a wholly provincial charge, subject to rules which are summarised later on.

VI. Home Charges.

Another peculiarity of Indian Finance is that not the whole of the expenditure is incurred in India. A considerable portion, amounting to nearly £ 40 million, is spent in England, and is collectively described as the Home Charges. They include:—interest and management of the ordinary debt, interest and annuities on irrigation and railways account, payments in connection with civil departments in India, India

Office charges, Army and Marine charges, stores, furlough allowances, and pensions and gratuities. Of these, interest accounts for over £ 10 million; India Office and Civil department charges for £ 500,000; Army and Marine charges over Rs. 15 crores; and stores a varying item; furlough allowances over a million, and pensions and gratuities for nearly £ 5 millions. Indian public opinion regards this as a drain from India for the benefit of England. The defenders of the Government of India point out that (a) a good proportion of the Home Charges is used for paying the interest on debt, the greater portion of the money borrowed being used for productive purposes. Moreover the terms and conditions obtained by the Government of India in the London market are much easier than would be possible if India were an independent state. And such borrowing would be indispensable if India is to have all those means of modern material development, which many other countries, like Japan or the United States, have to bring about by borrowed money. To all these arguments Indian publicists retort that not the whole of the Indian public debt has been incurred for productive purposes, nor were the objects, assumed to be productive, equally or immediately productive. Besides, even if India had to borrow for all these material improvements, there is no ground for assuming that she borrows under better conditions under British dominion than she would otherwise, as the much more unsettled state of South American republics does not preclude them from borrowing in the same London market at pretty nearly the same terms as India. (b) It is further argued by those who see no drain in the Home Charges that the item of stores should not be included, since in this instance there is a tangible return in goods for India's money. Again (c) the item of pensions, gratuities and other charges of the kind is incurred for services rendered in the past, or being rendered now, to the Indian peoples by the recipients of these allowances, and so here also it is unfair to describe the charge as a drain. To this the Indian publicists reply that the services of public servants are remunerated in India, admittedly the

poorest country in the world, at a much higher rate than in any other country ; that in those services the sons and daughters of India obtain a very slender proportion ; and that the whole amount saved by the European officials in India is taken away from India on their retirement, and may, therefore, quite reasonably be regarded as a drain. This subject, however, is too complicated, and involves too many considerations to allow us to do anything more than to summarise the arguments on either side in this work.

VII. The Decentralisation of Finance.

The third peculiarity of Indian finance is the division of financial authority between the Imperial and the Provincial Governments.

Originally, under the Charter Act of 1833, a system of Financial administration was established, by which the revenues of the whole of India, although received in the treasuries and sub-treasuries of the various provinces, were all credited to the single account of the Government of India, which distributed all the funds needed for the public services throughout India. "The Supreme Government" it has been said "controlled the smallest details of every branch of the expenditure: its authority was required for the employment of every person who was paid with public money, however small his salary, and its sanction was necessary for the grant of funds even for purely local works of improvement, for every local road, for every building however insignificant. The provincial Governments had no liberty and no incentive to economy. The distribution of the public income degenerated into a scramble in which the most violent—not the most reasonable—had the advantage".

This system was modified by Lord Mayo. The main principle introduced by that Viceroy was, to make over to the

provincial Governments a certain income by which they must regulate their expenditure, and to leave to them, under certain general conditions, the responsibility of managing their own local affairs. According to this principle the following heads of revenue and expenditure were made over to the local Governments: Jails, Registration, Police, Education, Medical service, Printing, Roads, Civil Buildings, and Miscellaneous public improvements. These were to be supplemented by a fixed annual Imperial grant varying according to the needs of each province. In case of a deficit the local Governments were to reduce their expenses or meet it by imposing taxation.

The system thus modified was improved under Lord Lytton, slightly altered under Lord Ripon, revised under Lord Lansdowne, and made semi-permanent under Lord Curzon. The main principles of this scheme of gradual decentralisation of finance had been confirmed in the course of a generation, and were summarised as follows by the Financial Secretary to the Government of India for the Royal Commission on Decentralisation:—

- (a) The Imperial Government retained certain administrative services which were thought inexpedient to be handed over to the provincial Governments. They also reserved the revenues from such services, together with such a share of the other public revenues, as would meet the expenditure falling on them.
- (b) The remaining administrative services were made over to the provincial Governments. Each local Government was assured an income making it independent of the needs of the Government of India, and at the same time able to meet its normal needs.
- (c) This income was given in the shape of a defined share of the revenues collected by the Local Government in order to allow the resources of the local governments to expand with their needs.

The Royal Commission on Decentralisation summarised the existing system in 1909 as follows :—

(1) The settlements had been declared to be quasi-permanent. The Government of India reserved the right of revision ; but they had promised to exercise that power only when the variations from the initial relative standards of revenue and expenditure were, over a substantial term of years, so great, as to result in unfairness either to the province itself or to the Government of India ; or in the event of the Government of India being confronted with the alternatives of either imposing general taxation or seeking assistance from the provinces.

(2) The distribution of revenue between the provincial and central governments was made, except on occasions of grave emergency, with direct reference not to the needs of the central government, but to the outlay which each province might reasonably claim to incur upon services which it administered..

(3) The third feature of the system was the method by which the revenue accruing from the various sources was distributed. The residue which was available for Imperial purposes was taken in the shape of a fixed fractional share in a few of the main heads of revenue which were known as the "divided heads." As, however, the distribution of these heads could never be so adjusted as to yield to a province, when added to the revenue from the purely provincial heads, the exact sum necessary to meet provincial charges, equilibrium was effected by means of fixed cash assignments—a deficiency being remedied by an assignment to provincial revenues from the Imperial share of the land revenue, and an excess by the reverse process.

In 1912 the settlements were made permanent, and Provincial Finance in India came to be governed by rules framed in that year. The settlements with all the provinces were revised, and subject to the contingency of providing

against famine, local Governments were informed that certain growing heads of revenue were placed once for all at their disposal from which to meet the future needs of their province. The following rules were among the most important.

(1) The settlements being permanent were not subject to revision. In the case of a serious famine the Government of India might render special assistance to the afflicted province. On the other hand provinces might be called upon to aid the Government of India in the case of a serious embarrassment.

(2) Whenever the fixed assignment to a province became unduly high, it would, as a rule, be converted wholly or partially into a share of growing revenue.

(3) Whenever the Government of India had a surplus which was not required for remission of taxation or reduction of debt, they made special allotments to the provinces and declared the purpose for which such special grant was to be used. But such grants could not be made the occasion of a greater interference by the Supreme Government in the local concerns than before, nor should the grants be made without any regard to the wishes of the local Government, or be made applicable in all the provinces to the same purpose.

(4) The local Governments were not allowed to budget for deficits, unless the excess expenditure was due to exceptional and non-recurring causes. And if the deficit resulted in the reduction of Provincial balances below the prescribed minimum, arrangements should be forthwith made to replenish the deficit. If a local Government exhausted its own balance, and was permitted to overdraw upon the general balances, the overdraft was regarded as a short loan, bearing interest and repayable in such modes as the central Government might direct.

(5) The corrections by the Government of India thereafter were limited to the proposed totals of revenue and expenditure, and divided heads of revenue.

The same resolution which laid down these rules also considered the two further questions of the advisability of the provincial Governments imposing and altering taxes, and that of borrowing on their own credit. As regards the first, the local Governments argued that the conditions of economic development in all provinces are not identical; and therefore, the uniform taxation levied by the central Government results in unfairness. The Imperial Government admitted that, in a vast country of varying conditions, imperial taxation must of necessity be limited in its range, since very few taxes are suitable for the whole Empire; that the incidence of an imperial impost might vary from province to province; that the right given to the provinces to tax their own citizens might balance such inequalities, and allow of tax experiments on a small scale which would be impolitic on a large scale. But all these were theoretical considerations only. In the absence of any practical scheme, the Government of India did not see fit to concede the right beyond admitting that the financial autonomy of provincial Governments must carry with it—whenever it came—the right to impose taxation. As regards the raising of loans by Local Governments, they are not permitted to raise them in open market, for they would compete with the Imperial loans. Besides it is considered undesirable to increase the unproductive debt of India. They may, however, have short term loans from Imperial revenues to meet the cost of non-productive works of obvious utility which they cannot finance from their own revenues.

Having already considered the question of provincial autonomy, it is unnecessary to discuss in detail the financial policy of the Government of India in relation to the provinces. Suffice it to say that under the present circumstances it would be undesirable to make the provinces financially independent of the Government of India; that Government cannot concede the right of taxation or of borrowing without impairing its own supremacy, and no financial independence for the provinces be complete without the right to tax and to borrow.

VIII Financial Divisions under the Changes of 1919.

The basic idea of the reforms of 1919 being to secure the autonomy of the provinces, and finance being the keystone of that autonomy, the entire financial arrangement was revised and recast. The idea of a centralised financial system, with a common purse held by the Government of India, and administered under a system of *ad hoc* division by the provincial authorities, has been replaced by *complete separation of financial powers and resources*, though all public monies are still paid into a common account. Generally speaking all the old divided heads are abolished, and the provinces assigned the revenue from Land, Excise, Judicial Stamps, and Forests in some cases, with a rebate of 3 pies on every rupee assessed for income tax in each province.

The following subjects of taxation are open to Provincial Councils, without previous sanction of the Governor-General, for new taxation.

- (1) A Tax on land put to uses other than agricultural.
- (2) " " " " succession or survivorship in a joint family.
- (3) " " " " betting or gambling permitted by law.
- (4) " " " " Advertisements.
- (5) " " " " Entertainments.
- (6) " " " " any specified luxury.
- (7) " " " " a Registration fee.
- (8) Stamp Duties other than those fixed by the Government of India.

Of these the Amusements tax has been tried in all important provinces. The income sought to be derived from advertisements on telegraph forms for the central government is in no way an infringement of the rights of the local governments, which, presumably, are at liberty to tax even the advertisement income of the central government.

The provincial government enjoys full control over these allocated heads, subject to the first charge of the contribution payable by the provincial governments to the Imperial Indian Government under the scheme of division. The following table shows the amount payable by each province, Bihar and Orissa being the only exception on account of the comparative exigency and inelasticity of its revenues.

Provincial Contributions in Lakhs of Rupees.

Madras	348
Bombay	58
Bengal	63
U. P.	240
Punjab	175
Burma	64
C. P.	22
Assam	15

These contributions are obviously unequal; and as such give rise to much heartburning and opposition in the provinces. Madras thinks itself ill-treated because it has to pay more than five times the contribution of Bengal, and Bombay because the most important source of revenue raised in the Presidency has been reserved for their own purposes by the Government of India. The contributions have to be made, however, because the original scheme of division assumed a standard irreducible scale of expenditure by the Central as well as the Provincial governments, and then proceeded to assign sources of revenues to the authorities concerned, resulting in a deficit of 983 lakhs of rupees to the Central Government. Besides, a special emergency power is reserved to the Government of India to demand from any province a payment in addition to its contribution to meet a special emergency, provided the demand is approved of and sanctioned by the Secretary of State. The provinces are made to bear, besides their old items of expenditure, the charges for Famine Relief and protective Irrigation works, though the Indian Government is not wholly exempt from liability for famine.

The Provincial Councils are further given power to originate additional taxation to meet some new departures in pro-

vincial development, as well as powers of borrowing on the security of the provincial revenues.

The borrowing powers of the Provincial Governments are limited by rules the most important of which says:—

A local Government may raise loans on the security of the revenues allocated to it for any of the following purposes, namely:—

- (a) to meet capital expenditure on the construction or acquisition (including the acquisition of land, maintenance during construction and equipment) of any work or permanent asset of a material character, in connection with a project of lasting public utility, provided that
 - (i) the proposed expenditure is so large that it cannot reasonably be met from current revenues; and
 - (ii) if the project appears to the Governor-General in Council unlikely to yield a return of not less than such percentage as he may from time to time by order prescribe, arrangements are made for the amortisation of the debt;
- (b) to meet any classes of expenditure on irrigation which have under rules in force before the passing of the Act been met from loan funds;
- (c) for the giving of relief and the establishment and maintenance of relief works in times of famine or scarcity;
- (d) for the financing of the Provincial Loan Account; and
- (e) for the repayment or consolidation of loans raised in accordance with these rules or the repayment of advances made by the Governor-General in Council.

"The Committee have recast Rules 2 and 3 of these rules in order

- (1) to provide a more elastic specification of the purposes for which loans may be raised,
- (2) to differentiate loans raised in India from those raised in the United Kingdom for the purpose of prescribing the sanctioning authority, and
- (3) to enable the Government of India or the Secretary of State, as the case may be, to retain control over the effective rate of interest to be charged and the amount and form of the issue.

The reason which influenced the Committee in deciding upon these last two provisions is that in the case of loans to be raised in India, the retention of control over provincial borrowing is, in their view, essential in the interests not only of the Central Government, but also of the provinces themselves (*e.g.* to prevent unrestricted provincial competition). Similar considerations are applicable to the sterling borrowing operations of the provinces; and, apart from this, the Committee consider that the experience of the Secretary of State in Council in the London market is such that the chances of success of provincial loans in London will be for the present much greater if they are launched with his authority and on his advice."—Jt. S. C. R. 2.

3. (1) No loan shall be raised by a local Government without the sanction (in the case of loans to be raised in India) of the Governor-General in Council, or (in the case of loans to be raised outside India) of the Secretary of State in Council, and in sanctioning the raising of a loan, the Governor-General in Council or the Secretary of State in Council, as the case may be, may specify the amount of the issue and any or all of the conditions under which the loan shall be raised.

(2) Every application for the sanction of the Secretary of State required by this rule shall be transmitted through the Governor-General in Council.