

THE INDI

ITS ACTUA

BY

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WITH A FOREWORD

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## IONS OF THE USED IN THE BOOK

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Committee on the Home Adminis-  
Indian Affairs.

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Government of India Act (unless it ap-  
otherwise from the context).

of the Joint Select Committee on the  
Government of India Bill, 1919.

*Imp. Gaz.* = *The Imperial Gazetteer.*

S. O. = Standing Order.

U. P. = The United Provinces.

C. P. = The Central Provinces.



## PREFACE

THE object of this book is to describe the present Constitution of India, with special reference to its working since its inauguration. The book is primarily intended for those students of our Universities and Colleges who have to take up the Indian Constitution as part of their course; and I have attempted, as far as possible, to treat the subject in an impartial and scientific way. I have not, however, hesitated to express my own views on undecided points of law, in the hope of eliciting expressions of opinion from others who are more competent to judge of them than myself. Nor have I refrained from pointing out what appeared to me to be inherent defects in our constitutional system, by comparing it with the political systems of England and of self-governing Dominions like Canada, Australia and South Africa. Another point which I should like my readers to keep in view, is that this book treats of the existing Constitution of India and not of its Administration. The foregoing statement will, I hope, suffice to indicate the general scope and plan of the work.

I have purposely entered into the details of elections for three reasons. First, the electoral rules and regulations in force in different parts of British India, especially in respect of elections to the same legislative body, either the Legislative Assembly or the Council of State, are of a bewildering variety. Secondly, as this book is intended for the use of students of different provinces, I have thought it desirable that it should deal, as far as space would permit, with the electoral rules and regulations obtaining in all the provinces. In the third place, the official documents containing those rules and regulations are not always easily accessible to our students. This has, much to my regret, extended the length of the book beyond what would perhaps have been desirable. I may state here, however, that Chapters IX and X are intended solely for the students of the provinces to which those chapters relate.

I take this opportunity of expressing my thanks to Dr. P. J. Hartog, C.I.E., Vice-Chancellor of Dacca University, for the assistance I have received from him both in the preparation and publication of this book. I have, while engaged on it, always enjoyed his genuine sympathy and encouragement. I am also deeply indebted to Professor P. B. Rudra of Dacca Intermediate College, who has read through practically the whole of the book in manuscript, and favoured me with a number of corrections. I must also thank Dr. R. C. Majumdar, Mr. C. L. Wrenn and Mr. P. K. Guha of the University of Dacca for the help I have received from them in connection with this work.

I have tried to bring the book, as far as possible, up to date. As it has been prepared under the constant pressure of official duties, I may perhaps have fallen into errors on some points. I shall be extremely grateful if any of my readers will kindly call my attention to any errors which they may discover.

D. N. BANE

DACCA UNIVERSITY,  
*February, 1925.*

*Postscript.*—As the work was completed about a month before the publication of the Report of the Enquiry Committee, 1924, it has not been found possible either to consider the Report or to make any use of it in the text. It is hoped, however, that every student of Indian Constitution will make a very careful study of this indispensable document.

It is at once a duty and a pleasure to express here my sense of obligation to Sir Eyan Cotton, C.I.E., late President of the Bengal Legislative Council, who has kindly written a Foreword for the book, and to Mr. H. D. Bhattacharyya of Dacca University, who has gone through all the proofs with great care and made valuable suggestions upon them.

*November, 1925.*

D. N. BANERJEE.



## FOREWORD

THE Government of India Act of 1919 is admittedly not a perfect Act. I have yet to learn of a legislative enactment which can be described as such. But it represents an honest and considered attempt to provide India with a workable Constitution\* on Western lines. It is therefore to be regretted that a considerable volume of criticism has been directed against the measure by those who (to judge by their utterances) have devoted little attention to its contents; while, as far as Bengal is concerned, it must be acknowledged that no serious effort has been made to explore and develop the opportunities which are afforded by the Act.

I welcome, therefore, the valuable and suggestive contribution which Mr. Debendra Nath Banerjee offers in the following pages towards a careful and sustained study of the present constitutional position. But with regard to the resubmission of rejected grants, I venture to disagree with him. The total rejection of a grant does not supply the most adequate method of expressing dissatisfaction with the policy of a Minister or Ministers. That end is more properly achieved by the carrying of a token reduction—which by Parliamentary convention is fixed at £100—in the amount of a grant: and I note that the point has not been overlooked in dealing with the question of Ministers' salaries. The same principle must be held to apply to grants for the administration of those departments which have been placed under Ministerial control. In such cases total rejection is likely to result in dislocation of that portion of the administrative machinery for which the money is required. No

constitution can be worked if it is to remain liable to succession of shocks which must deprive transferred subjects of the funds necessary for their administration. The wholesale rejection of grants forms no part of the English political system, and this is no doubt the reason why Mr. Banerjee has been unable to find English precedents: but he may rest assured that, if the practice became common, steps would promptly be taken to prevent its recurrence.

No discussion is, however, possible without a healthy difference of opinion; and I can recommend Mr. Banerjee's book with confidence to the rising generation of Bengal, with whom the rightful guidance of the future of their country rests.

EVAN COTTON.

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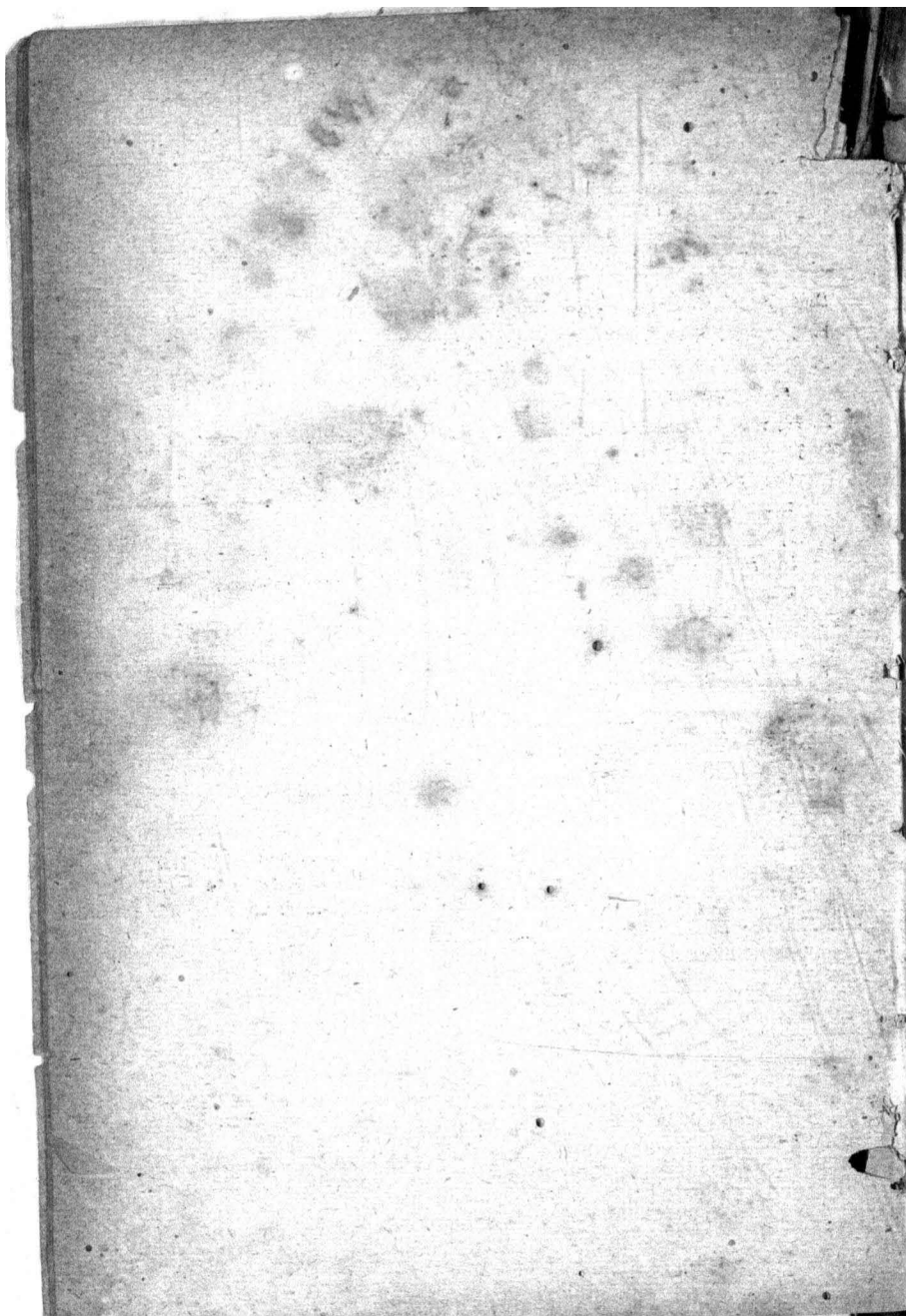
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## ERRATA

- P. 4, line 7 from top : *for* 'act' *read* 'Act.'
- P. 8, note 2, line 3 : *for* 'is' *read* 'are.'
- P. 9, line 11 from top and also line 3 from bottom : *for* 'Unitary' *read* 'unitary.'
- P. 29, line 7 from bottom : *for* 'Andamans' *read* 'Andaman.'
- P. 30, line 8 : *after* 'elected members' *add* : except in the case of the Burma Council in which the minimum percentage of elected members is fixed at sixty.
- P. 41, line 5 from bottom : *for* 'has recently been amended partially in favour of political prisoners' *read* 'has recently been amended.'
- P. 92, line 1 from bottom : *for* 'oint' *read* 'joint.'
- P. 133, note 2, line 9 from bottom : *for* '1922 and 1923' *read* '1922-23.'
- P. 153, line 15 : *for* 'must' *read* 'must be.'
- P. 252, line 14 from bottom : *for* 'that' *read* 'than.'
- P. 284, line 6 from top : *for* 'Beluchistan' *read* 'Baluchistan.'
- P. 292, note 2, line 2 : *for* '1924' *read* '1921.'
- P. 353, note 5. *Add* : The Pargana of Manpur has also been recently formed into a Chief Commissionership. The Agent to the Governor-General in Central India is its Chief Commissioner.
- P. 370, line 18 from top : *for* 'the Indian Councils Act' *read* 'the Government of India Act.'
- P. 415, line 15 : *for* 'by' *read* 'in'.
- P. 416, line 7 : *for* 'o' *read* 'to.'



# CHAPTER I

## INTRODUCTORY

### THE SALIENT FEATURES OF THE INDIAN CONSTITUTION

The Indian Constitution mainly 'written' and documentary—Its basis—Conventional elements in it—Comparison with England and the United States—Its generally 'rigid' character—Indian legislatures 'non-sovereign law-making bodies'—Power of the Indian Courts—Comparison with the Union of South Africa—The Constitution as yet unitary and not federal—Comparison with the United States and Canada—How it came to be unitary—A forecast about the future form of the Government of India—The provisional character of the present Constitution of India.

The Constitution of British India,<sup>1</sup> whereby we mean the body of rules and principles relating to her fundamental political institutions, is mainly 'written' and documentary. Its basis is an enactment of the British Parliament, namely, the Government of India Act,<sup>2</sup> and the Rules<sup>3</sup> made thereunder. There are no doubt some

**The Indian Constitution mainly 'written' and documentary. Its basis.**

<sup>1</sup> The expression British India shall mean all territories and places within Her Majesty's dominions which are for the time being governed by Her Majesty through the Governor-General of India, or through any Governor or other officer subordinate to the Governor-General of India. The expression India shall mean British India, together with any territories of any Native Prince or Chief under the suzerainty of Her Majesty, exercised through the Governor-General of India or through any Governor or other officer subordinate to the Governor-General of India'—The Interpretation Act of 1889 (52 and 53 Vict., Ch. 63, Sec. 18)—*The Imperial Gazetteer of India*, vol. iv, pp. 59-60.

<sup>2</sup> 5 and 6 Geo. 5, Ch. 61; 6 and 7 Geo. 5, Ch. 37; 9 and 10 Geo. 5, Ch. 101; and 14 and 15 Geo. 5, Ch. 28. It is the Government of India Act, 1915, as amended by the Government of India (Amendment) Act, 1916, and as further amended by the Government of India Act, 1919, and the Government of India (Leave of Absence) Act, 1924.

<sup>3</sup> e.g., the Devolution Rules; the Electoral Rules; the Legislative Rules, etc.



conventional elements<sup>1</sup> in our Constitution, but their number is, as yet, not very considerable; nor are they, with very few exceptions, of much constitutional importance. Whatever differences of opinion may exist among constitutional writers regarding the exact proportion and political significance of the conventional elements in the Constitution of

Convention-  
al elements  
in it.

Under Section 129A of the Government of India Act, where any matter is required to be prescribed or regulated by Rules under the Act and no special provision is made as to the authority by whom the Rules are to be made, the Rules are made by the Governor-General in Council with the sanction of the Secretary of State in Council, and are not subject to repeal or alteration by the Indian Legislature or by any local Legislature. All such Rules must ordinarily be laid before both Houses of Parliament as soon as may be after they are made, and if an address is presented to His Majesty by either House of Parliament within the next thirty days on which that House has sat after the Rules are laid before it, praying that the Rules or any of them may be annulled, His Majesty in Council may annul the Rules or any of them, and those Rules must thenceforth be void, but without prejudice to the validity of anything previously done thereunder.

If, however, the draft of any such Rules are laid, under the direction of the Secretary of State, before both Houses of Parliament and are approved by them without modification or with such modifications as are agreed to by both Houses, the Rules may be made in the form in which they have been approved. These rules will be valid without further reference to Parliament.

<sup>1</sup> e.g., the custom, seldom disregarded, fixing the tenure of office of certain high officials like the Governor-General, the Governor, the Lieutenant-Governor and the member of an Executive Council, at five years. This 'limitation is not imposed by statute or by the instrument of appointment' (Ilbert, *The Government of India*, p. 45). The origin of this custom may be traced to the particular provision of Lord North's Regulating Act which fixed the tenure of office of the first Governor-General and his 'Counsellors' at five years (Cf. Ilbert).

Among other constitutional maxims which have been accepted as part of our Constitution, we may mention here the following:—

(1) 'The Ministers selected by the Governor to advise him on the transferred subjects should be elected members of the Legislative Council, enjoying its confidence and capable of leading it';

(2) they must resign office when they have ceased to command the confidence of the Council; and

(3) the Finance Act (in the Central Government) should be passed annually.



British ted States of America, it will not at all be far from the truth to assert that, so far as the preponderance of the 'written' and legal elements is concerned, our Constitution resembles more closely the Constitution of the United States than that of England, which is, to quote the words of Sir Sidney Low,<sup>1</sup> 'partly law, and partly history, and partly ethics, and partly custom, and partly the result of the various influences which' are moulding and transforming the whole structure of society, from year to year and one might almost say, from hour to hour'.

The second noticeable feature of our Constitution is its *generally* 'rigid' character. 'A "rigid" Constitution',<sup>2</sup> says Sir John Marriott,<sup>3</sup> 'is one which can be altered and amended only by the employment of some special, and extraordinary, and prescribed machinery, distinct from the machinery of ordinary legislation'.

its generally  
'rigid'  
character.

<sup>1</sup> *The Governance of England*, p. 4.

The English Constitution, says Viscount Bryce, 'is a mass of precedents, carried in men's memories or recorded in writing, of dicta of lawyers or statesmen, of customs, usages, understandings and beliefs bearing upon the methods of Government, together with a certain number of statutes, some of them containing matters of petty detail, others relating to private just as much as to public law, nearly all of them pre-supposing and mixed up with precedents and customs, and all of them covered with a parasitic growth of legal decisions and political habits, apart from which the statutes would be almost unworkable, or at any rate quite different in their working from what they really are'—*Studies in History and Jurisprudence*, vol. i, pp. 156-57.

<sup>2</sup> Constitutions are classified as 'Rigid' and 'Flexible'.

'A "flexible" Constitution is one under which every law of every description can legally be changed with the same ease and in the same manner by one and the same body. . . . A "rigid" Constitution is one under which certain laws generally known as constitutional or fundamental laws cannot be changed in the same manner as ordinary laws.' Prof. Dicey, *The Law of the Constitution*, pp. 122-23 (eighth edition).

<sup>3</sup> J. A. R. Marriott, *English Political Institutions*, p. 17.

The 'rigidity' of the Indian Constitution consists in the fact that it cannot be legally changed, except in respect of a few matters,<sup>2</sup> either by the Indian Legislature or by any of the Provincial Legislatures. The Government of India Act which (together with the Rules made thereunder) is, as has been stated above, the basis of our Constitution, cannot be repealed except by an act of the Imperial Parliament; nor can it be otherwise amended save in respect of some of its provisions with regard to which it has conferred upon the Indian Legislature a concurrent power of legislation.<sup>3</sup> 'The Indian Legislature'<sup>4</sup> has not, unless expressly so authorized by Act of Parliament, power to make any law repealing or affecting any Act of Parliament passed after the year one thousand eight hundred and sixty and extending to British India (including the Army Act, the Air Force Act and any act amending the same); . . . and has not power to make any law affecting the authority of Parliament, or any part of the unwritten laws or constitution of the United Kingdom of Great Britain and Ireland whereon may depend in any degree the allegiance of any person to the Crown of the United Kingdom, or affecting the sovereignty or dominion of the Crown over any part of

<sup>1</sup> Purists will, it is hoped, forgive the use of the shorter expressions 'India' and 'Indian' for 'British India' and 'British Indian.'

<sup>2</sup> See foot-note 3 below.

<sup>3</sup> Under Section 131(3) of the Government of India Act, the Indian Legislature can alter or repeal some of the provisions of the Act, mentioned in the fifth Schedule to the Act. To this extent, it must be admitted, the 'rigid' character of our Constitution has been affected. Hence we have used the word 'generally' before the expression 'rigid character' (page 3). But it may be noted here that some of the provisions mentioned in the Schedule refer to matters which cannot be regarded as of any constitutional importance. They have been embodied in the Government of India Act, simply because it is a consolidating measure. See Appendix L.

<sup>4</sup> 'Subject to the provisions of the Government of India Act, the Indian Legislature shall consist of the Governor-General and two Chambers, viz. the Council of State and the Legislative Assembly'—The Government of India Act, Section 65.

British India.' <sup>1</sup> Again, 'the local legislature of any Province has not power to make any law affecting any Act of Parliament.' <sup>2</sup>

The Indian legislatures are, to use Prof. Dicey's words, 'non-sovereign law-making bodies'; their powers and authority have been derived from the Government of India Act which constitutes the supreme law of the land, and their laws are valid if they are not inconsistent with this supreme law. The Courts in India may be called upon to pronounce

Indian legis-  
latures,  
'non-  
sovereign'  
law-making  
bodies.

Power of  
the Indian  
Courts.

upon the legality or constitutionality of an Act passed by an Indian legislature, Central or Provincial. If any particular piece of Indian legislation is not within the legal powers of the enacting authority, it is bound to be treated as void by an Indian judge. As Prof. Dicey says, 'The Courts (in India) treat Acts passed by the Indian Council <sup>3</sup> precisely in the same way in which the King's Bench Division treats the by-laws of a railway company. . . . An Indian tribunal may be called upon to say that an Act passed by the Governor-General need not be obeyed because it is unconstitutional or void.' 'No British Court', he continues, 'can give judgment, or ever does give judgment, that an Act of Parliament need not be obeyed because it is unconstitutional. Here, in short, we have the essential difference between subordinate and sovereign legislative power.' <sup>4</sup>

<sup>1</sup> The Government of India Act, Section 65. <sup>2</sup> *Ibid.*, Section 80A(4).

<sup>3</sup> He obviously means here the Indian Legislative Council. He had written his book long before the Government of India Act, 1919, was passed.

<sup>4</sup> Dicey, *The Law of the Constitution*, pp. 96 and 98.

The following extract from the judgment of the Judicial Committee of the Privy Council (delivered by Lord Selborne) in what is known as the *Empress vs. Burah* (and another) case is of special interest in this connection:—

'The Indian Legislature has powers expressly limited by the Act of the Imperial Parliament which created it, and it can, of course,

We may note here that in respect of constitutional amendment the position of the Parliament of the Union of South Africa is fundamentally different from that of the Indian Legislature. There the Parliament can change the Constitution of the Union in the same way as it can amend one of its ordinary laws. 'The only limitation', says the Hon'ble Mr. R. H. Brand,<sup>1</sup> 'on the complete power of Parliament over the constitution is the requirement of a two-thirds majority (at a joint sitting of both Houses of Parliament) in certain particular cases.'<sup>2</sup>

The third feature that we notice in our Constitution is that it is as yet unitary, and not federal. 'Federalism means,' writes Prof. Dicey, 'the distribution of the force of the State among a number of co-ordinate bodies each originating in and controlled by the Constitution.'<sup>3</sup> This definition is not yet applicable to the constitutional system that we have now in our country. Congress in the United States has *exclusive* power of legislation with regard to certain definite

do nothing beyond the limits which circumscribe these powers. But when acting within these limits, it is not in any sense an agent or delegate of the Imperial Parliament, but has, and was intended to have, plenary powers of legislation, as large, and of the same nature, as those of Parliament itself. The established Courts of Justice, when a question arises whether the prescribed limits have been exceeded, must of necessity determine that question; and the only way in which they can properly do so, is by looking to the terms of the instrument by which, affirmatively, the legislative powers were created, and by which, negatively, they are restricted. If what has been done is legislation within the general scope of the affirmative words which give the power, and if it violates no express condition or restriction by which that power is limited (in which category would, of course, be included any Act of the Imperial Parliament at variance with it), it is not for any Court of Justice to inquire further, or to enlarge constructively those conditions and restrictions'—*The Indian Law Reports*, 1879, Calcutta Series, vol. iv, pp. 180-81.

<sup>1</sup> The Hon. R. H. Brand, *The Union of South Africa*, p. 45.

<sup>2</sup> South Africa Act, 1909 (9 Edw. 7, Ch. 9), Section 152.

<sup>3</sup> Dicey, *Law of the Constitution*, p. 153 (eighth edition).

matters<sup>1</sup> and it cannot legally exercise any legislative jurisdiction over those subjects which have been reserved to the separate States by the Constitution of the country.<sup>2</sup>

Comparison  
with the  
United  
States and  
Canada.

Nor can the Federal Executive veto any State legislation. Thus the State and the Federal legislatures are co-ordinate authorities in the United States. The same principle of exclusive legislative jurisdiction of the Central and Provincial legislatures has been accepted as the basis of the constitutional system of the Dominion of Canada, although, in respect of the distribution of powers between the Central and Provincial authorities, there is a fundamental difference between the Constitution of the Dominion and that of the United States and, although the Central Government in the Dominion can disallow any Provincial Act, which, as we have stated above, is not the case in the United States. It is distinctly laid down in Section 91 of the British North America Act, 1867, that 'it shall be lawful for the Queen, by and with the advice and consent of the Senate and House of Commons, to make laws for the peace, order and good government of Canada in relation to all matters not coming within the classes of subjects by this Act *assigned exclusively* to the Legislatures of the Provinces; and for greater certainty, but not so as to restrict the generality of the foregoing terms of this section, it is hereby declared that (notwithstanding anything in the Act) the *exclusive legislative authority* of the Parliament of Canada extends to all matters coming within the classes of subjects next hereinafter enumerated. . . .'<sup>3</sup>

<sup>1</sup> Cf. The Constitution of the United States.

<sup>2</sup> The tenth Article of the Constitution of the United States provides: 'The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.'

<sup>3</sup> Cf. Section 92 of the British North America Act, 1867.

<sup>4</sup> The Dominion parliament and the provincial legislatures are sovereign (?) bodies within their respective constitutional limits.

Now let us turn our attention to our own country. regards the control of the Central Government over Provincial legislation, we find that (if the Governor, Lieutenant-Governor, or Chief Commissioner assents to a Bill which has been duly passed by a Provincial Legislative Council, 'he shall forthwith send an authentic copy of the Act to the Governor-General, and the Act shall not have validity until the Governor-General has assented thereto and that assent has been signified by the Governor-General to, and published by, the Governor, Lieutenant-Governor or Chief Commissioner')<sup>1</sup> It may be noted here that though the Dominion Government in Canada can disallow a Provincial legislation, the assent of the Governor-General there is not required (except in the case of 'reserved' Bills) for the validity of a Provincial Act.<sup>2</sup>

As regards the scope of legislative authority, though 'the local legislature of any province has power, subject to the provisions of the Government of India Act, to make laws for the peace and good government of the territories for the time being constituting that province,'<sup>3</sup> yet it is especially laid down in Section 65 of the Act<sup>4</sup> that (the

While the Dominion parliament has entrusted to it a jurisdiction over matters of national import, and possesses besides a general power to legislate on matters not specifically reserved to the local legislatures, the latter nevertheless have had conferred upon them powers as plenary and ample within the limits prescribed by the constitutional law as are possessed by the general parliament'—Sir J. G. Bourinot, *Constitutional History of Canada*, p. 136.

<sup>1</sup> Government of India Act, Section 81.

<sup>2</sup> British North America Act, 1867, Section 90.

Whatever departures from the principle of federalism are noticed in the Constitution of Canada, is due to the fact that the Constitution is not *strictly* federal. It has a 'unitary bias'. As Mr. Egerton puts it, 'The British North America Act is further noteworthy as being a federal Constitution to a great extent drafted by men who were in favour of a legislative Union'—*Federations and Unions in the British Empire*, p. 39. See in this connection Sir John Marriott's *Second Chambers*, pp. 150-51.

<sup>3</sup> The Government of India Act, Section 80A.

<sup>4</sup> i.e. The Government of India Act.



Indian Legislature has power to make laws for all persons, for all courts, and for all places and things, within British India. . . )' Besides, the local legislature of any province may not, without the previous sanction of the Governor-General, make or take into consideration certain laws enumerated in Section 80A (3) of the Act.)

'Unitarianism' implies the concentration of the powers of Government in a central authority and this concentration exists in our system of government to a pre-eminent degree, as shown above.<sup>1</sup> This justifies our characterizing our present Constitution as Unitary.<sup>2</sup>

Perhaps it will not be out of place to mention here that the present unitary character of our political system is the inevitable result of the operation of certain forces from so far back as 1773.

How it came to be Unitary.

Before the passing of the East India Company Act of 1773 (commonly known as the Regulating Act), the Presidencies of Bengal, Bombay and Madras, which were, in each case, administered by a President or Governor and a Council composed of servants of the East India Company, 'were independent of each other, and each Government was absolute within its limits, subject to the distant and intermittent control of the Directors at Home. But the need for a common policy in the face of foreign enemies was apparent; and when the disorder of the company's finances and suspicions about the fortunes amassed by its servants in India drove Parliament to intervene, it was wisely decided to create one supreme Government in the

<sup>1</sup> That Clause 2 of Section 67 of the Government of India Act forbids the introduction into either chamber of the Indian Legislature of any measure regulating any Provincial subject (which is not subject to legislation by the Indian Legislature) or repealing or amending any Provincial Act, without the previous sanction of the Governor-General, does not in any way invalidate our proposition that the Indian Constitution is Unitary.

<sup>2</sup> As a further proof of this, we may cite here Section 84 (2) of the Government of India Act. See Chap. 14.

country.'<sup>1</sup> In order to ensure this the Act of 1773 provided for the appointment of a Governor-General and four counsellors for the Government of the Presidency of Fort William in Bengal and further declared that the said Governor-General and Council, or the major part of them, were 'to have power of superintending and controlling the government and management of the Presidencies of Madras, Bombay and Bencoolen respectively, so far and in so much as that it should not be lawful' for the Governments of the three Presidencies to make any orders for commencing hostilities, or declaring or making war, against any Indian Princes or Powers, or for negotiating or concluding any treaty of peace, or other treaty with any such Indian Princes or Powers, without the consent and approbation of the Governor-General and Council, except in such cases of imminent necessity as would render it dangerous to postpone such hostilities or treaties until the arrival of their orders, and except also in such cases where they had received special orders from the Company.<sup>2</sup> A President and Council acting against these provisions were liable to be suspended by the Governor-General and Council; and they were directed to pay due obedience to orders emanating from the latter authorities.<sup>3</sup> Thus the first step towards centralization was taken in 1773.

The next step towards establishing a centralized system of government in India was taken in 1784. The East India Company Act of that year (commonly known as Pitt's Act) authorized the Governor-General and Council of Fort William to 'superintend, control and direct the several Presidencies and Governments (then existing or thereafter to be erected or established in the East Indies by the

<sup>1</sup> *Report on Indian Constitutional Reforms*, para. 37.

<sup>2</sup> The East India Company Act, 1773 (13, Geo. 3, Ch. 63), Section 9. P. Mukherji's *Constitutional Documents*, vol. i, p. 22.

<sup>3</sup> *Ibid.*



(United Company) in all such points as relate to any transactions with the Country Powers, or to war or peace, or to the application of the revenues or forces of such Presidencies and settlements in time of war, or any such other points as would be, from time to time, specially referred by the Court of Directors of the Company to their superintendence and control.<sup>1</sup> The Charter Act of 1793 further emphasized this 'power of superintendence, direction and control' to be exercised by the Government of Bengal over the Governments of Madras and Bombay. The final stage in this process of centralization was reached with the passing of the Charter Act of 1833.<sup>2</sup>

Under this Act the Governor-General of Bengal in Council became the Governor-General of India in Council. 'The Governments of Madras and Bombay were drastically deprived of their powers of legislation, and left only with the right of proposing to the Governor-General in Council projects of the laws which they thought expedient.'<sup>3</sup> Thus the Governor-General of India<sup>4</sup> became the sole law-making authority in India. Besides, 'the superintendence,

<sup>1</sup> The East India Company Act, 1784, Section 31. P. Mukherji's *Constitutional Documents*, vol. i, p. 39.

<sup>2</sup> 3 and 4 Will. IV, Ch. 85.

<sup>3</sup> *Report on Indian Constitutional Reforms*, para 57. See the Charter Act of 1833, Sections 59 and 66. P. Mukherji's *Constitutional Documents*, vol. i.

The powers of legislation were however restored to the Governments of Madras and Bombay by the Indian Councils Act of 1861. But there were two limitations: (i) they could not make or take into consideration certain laws without the previous sanction of the Governor-General; and (ii) Acts passed by the local councils could not be valid unless they had received the assent of the Governor-General in addition to that of the Governor—The Indian Councils Act, 1861.

These limitations did not exist before 1833. *Montagu-Chelmsford Report*, para. 63.

<sup>4</sup> His Council was increased by the addition of a law member not in the service of the Company. This additional member was not entitled 'to sit or vote in the said council except at meetings thereof for making laws and regulations.' The Charter Act, 1833, Section 40. Mukherji's *Documents*.

direction and control of the whole civil and military government of the Company's territories and revenues in India' were vested in him. And it was further enacted that no Governor or Governor in Council should have the power of creating any new office, or granting any salary, gratuity or allowance, without the previous sanction of the Governor-General in Council. Thus was effected a complete concentration of all powers in one supreme authority.

Later on, measures were adopted to increase the legislative, financial and administrative powers of the Provincial Governments; but the Government of the country just before the introduction of the Montagu-Chelmsford Reforms 'was one and . . . the local Governments were literally the "agents" of the Government of India'.<sup>1</sup> A great step towards Provincial independence has no doubt been taken under the Reforms, but nothing has yet been done, in law and theory, to destroy the unitary character of our constitutional system.

What form the Government of our country will take in the future, it is extremely difficult to predict now. The problem of the territories now under the rule of the Indian Princes complicates the whole situation. At the same time, one can hardly think of India enjoying full dominion status with more than one-third of her area lying outside the jurisdiction of her Government. If these Indian States are to be given a worthy place in any scheme of reconstruction of our governmental system and if their interests and privileges are to be harmonized with those of the Provinces of British India, some form of federation is the only solution.<sup>2</sup> The Provinces of British India may not have

A forecast  
about the  
future form  
of the  
Government  
of India.

<sup>1</sup> *Report on Indian Constitutional Reforms*, para. 120.

<sup>2</sup> 'Granted the announcement of August 20, we cannot at the present time envisage its complete fulfilment in any form other than

inappropriate powers of their own to surrender in a 'foedus',<sup>1</sup> but the same cannot be said of the important Indian States. The distribution of powers in this federation will be as in a federal constitution. The Central Government with its organs reconstructed on a basis different from the present, will be in charge of those affairs of State which will be of common interest to all or which will require uniformity of action; while the Provincial and 'State' Governments will enjoy complete autonomy in respect of the affairs of local interest.

This general survey of the political system of British India will remain incomplete if we do not notice here another peculiarity of our present Constitution—its essentially provisional character. The scheme of government which was embodied in the Government of India Act, 1919, was devised by its authors to meet the requirements of the period of transition from bureaucracy to responsible government—the goal of British policy in India. For a long time the people of India had been insisting on having an effective voice in the administration of their own country and in the shaping of her destinies. The Great War and India's participation in it, the revolution in Russia and the overthrow of

that of a congeries of self-governing Indian provinces associated for certain purposes under a responsible government of India; with possibly what are now the Native States of India finally embodied in the same whole, in some relation which we will not now attempt to define. For such an organization the English language has no word, but "federal."—*Report on Indian Constitutional Reforms*, para. 120.

'A Federation of States—comprising under the name of "State" each Indian State and each Province of British India—with local autonomy, given much flexibility and allowing room for wide differences in internal Government, seems the most likely form to be evolved in the future'—*Britain and India from 1599-1919*, by Dr. Annie Besant, *Work of the Indian Legislatures*, p. 236.

<sup>1</sup> *Vide* also Government of India's (Home Department) Despatch dated Simla, August 25, 1911, para. 3.

<sup>1</sup> *Report on Indian Constitutional Reforms*, para. 120.

autocracy there, the speeches of English and American statesmen proclaiming the right of all nations to self-determination,—all these gave a new impetus to those political aspirations of the Indian people. It, therefore, became very necessary to grant them substantial political rights without further delay. But there were others again who had to be reckoned with : the representatives of vested interests as well as those who honestly believed in the danger of haste in liberalizing the Indian political institutions. The Government of India Act of 1919 was an attempt to please both these classes of people holding more or less conflicting views. Naturally it was a sort of compromise between the principle of progress and the principle of caution ; between the demands of a newly awakened nationalism and the warnings, not always prompted, however, by disinterested motives, of those who preferred experience to theory and were therefore afraid of anything new and untried. The result was a half-way-house arrangement between autocracy and popular government. This will explain some of the anomalies in our present constitutional system—especially the curious structure of government, commonly termed dyarchy, prevailing in the major provinces. This will also explain the continuance of an irremovable and irresponsible Executive in the Central Government and the creation of a Central Legislature with two Chambers, each having an elected majority, which, impotent to influence the course of administration of the country effectively, express their resentment in violent and bitter criticisms and, sometimes, in a policy of obstruction.

With these few introductory remarks we pass on to make a detailed study of our constitutional system.

## CHAPTER II

### LEGISLATURES—THE INDIAN LEGISLATURE

The Indian Legislature—The Legislative Assembly : its duration—Comparison with the Lower House in Canada, in Australia and in South Africa in respect of duration—Composition of the Legislative Assembly—Comparison with the Lower Houses of some other countries—Constituencies entitled to representation in the Legislative Assembly—Representation of special interests and communities in the Assembly—Its nominated members : their terms of office—The Governor-General and the Assembly—The President and the Deputy President of the Assembly—Their terms of office and salaries—The Parliamentary Joint Select Committee on the President of the Assembly—Nomination of a panel of not more than four Chairmen for the Assembly.

In this and the following chapters we propose to state the composition of the Indian legislatures, Central and Provincial, and to describe their functions. We first take up, in the order of importance, the Central Legislature of India, which is known as the Indian Legislature. Technically, it consists of the Governor-General and two Chambers, namely, the Council of State and the Legislative Assembly.<sup>1</sup> Ordinarily, a Bill is deemed to have been passed by the Indian Legislature, if it has been agreed to by both the Chambers.<sup>2</sup>

<sup>1</sup> The Government of India Act, Section 63.

<sup>2</sup> *Ibid.*

The normal duration of every Legislative Assembly is three years from its first meeting ; but it may be sooner dissolved by the Governor-General who can also extend its life for a further period if he thinks it necessary in special circumstances.<sup>1</sup>

We may note here, by way of comparison, the position of the Lower House in some of the self-governing colonies of the British Commonwealth. The House of

**Comparison with the Lower House in Canada, in Australia and in South Africa in respect of duration.**

Commons in Canada continues for five years from the day of the return of the Writs for choosing the House (subject to being earlier dissolved by the Governor-General), and no longer.<sup>2</sup> In the Commonwealth of Australia every House of Representatives lasts for three years only from its first meeting ; and though the

Governor-General there may dissolve it before the expiration of its normal term, he cannot prolong its life.<sup>3</sup> The normal duration of the House of Assembly in the Union of South Africa is five years, and no longer ; but its term may be earlier terminated by the Governor-General there,<sup>4</sup> as in the case of the other two colonies. Thus we find that, unlike the Governor-General in India, the Governor-General in Canada, Australia or South Africa, has no right to prolong the normal life of the Lower House in those countries.

Within six months of the dissolution of the Legislative Assembly, or within nine months with the sanction of the Secretary of State, the Governor-General is bound to appoint a date for its next session.<sup>5</sup>

The next point to be noticed in connection with our

<sup>1</sup> The Government of India Act, Section 63D.

<sup>2</sup> The British North America Act, 1867, Section 50.

<sup>3</sup> The Commonwealth of Australia Act, 1900, Section 28.

<sup>4</sup> South Africa Act, 1909, Section 45.

<sup>5</sup> The Government of India Act, Section 63D.



me. or  
Composition  
of the  
Legislative  
Assembly.

Legislative Assembly is its composition. It consists at present of one hundred and forty-four members of whom one hundred and three are elected and the rest are nominated. Among the nominated members twenty-six must be officials and one must be a person nominated as the result of an election held in Berar. The present number of members in the Assembly has been fixed by Rules<sup>1</sup> made under the Government of India Act, and is in excess of the statutory number which is one hundred and forty only.<sup>2</sup> The Act declares that the maximum number in the case of the Legislative Assembly may be varied provided that, at least, five-sevenths of its members are elected, and, at least, one-third of the other members are non-officials.<sup>3</sup>

The Lower  
Houses of  
some other  
countries.

It may be pointed out here that while the Indian Legislative Assembly is partly elected and partly nominated, membership in the House of Commons in England or Canada, in the Chamber of Deputies in France, in the House of Representatives in the United States or Australia, or in the House of Assembly in the Union of South Africa, rests entirely upon election by the people.

The elected members of the Indian Legislative Assembly have been allotted to the different Provinces as follows:—Madras, 16; Bombay, 16; Bengal, 17; the United Provinces, 16; the Punjab, 12; Bihar and Orissa, 12; the Central Provinces, 5; Assam, 4; Burma, 4; Delhi, 1.<sup>4</sup>

<sup>1</sup> Notification No. F.-213-II (Government of India, Home Department), dated July 30, 1923. *The Gazette of India* (Extra), July 30, 1923.

<sup>2</sup> The Government of India Act, Section 63B.

<sup>3</sup> *Ibid.*

<sup>4</sup> Notification No. F.-213-II (Government of India, Home Department), dated July 30, 1923.

Constituencies entitled to representation.

Constituencies entitled to represent the Legislative Assembly are as shown in the following table.<sup>1</sup>

Provinces	Non-Muham- madan	Muhammadan	European	Landholders	Indian Commerce	Sikh	Non-European	General	Total
Madras ...	10	3	1	1	1	...	...	...	16
Bombay ...	7	4	2	1	2	...	...	...	16
Bengal ...	6	6	3	1	1	...	...	...	17
United Provinces.	8	6	1	1	...	...	...	...	16
Bihar and Orissa.	8	3	...	1	...	...	...	...	12
Central Provinces.	3	1	...	1	...	...	...	...	5
Assam ...	2	1	1	...	...	...	...	...	4
Burma ...	...	...	1	...	...	...	3	...	4
Delhi ...	...	...	...	...	...	...	...	1	1
Punjab ...	3	6	...	1	...	2	...	...	12
Total ...	47	30	9	7	4	2	3	1	103

From the above table it is clear that so far as the Legislative Assembly is concerned, communal representation has been given to the Muhammadans, Europeans and Sikhs, and the interests of the land-owning class and of Indian Commerce have been safeguarded by special representation.

<sup>1</sup> Notification No. F.-213-II (Government of India, Home Department), dated July 30, 1923.



me. T  
 Nominated  
 Members:  
 their terms  
 of office.

ominated member is either an official or a non-official. He is nominated to the Assembly by the Governor-General.<sup>1</sup> A nominated non-official member holds office for the duration of the Legislative Assembly to which he is nominated.

An official member holds office for the duration of the Assembly to which he is nominated, or for such shorter period as the Governor-General determines at the time of his nomination.<sup>2</sup>

Members of the Governor-General's Executive Council are nominated as members either of the Assembly or of the Council of State.<sup>3</sup> They have, however, the right,<sup>4</sup> like the Ministers in France or in the Union of South Africa,<sup>5</sup> to be present and to speak in either Chamber, whether members of it or not. Thus they can vote only in that House of which they are members.

The Governor-General is not a member of the Legislative Assembly; but he has the right of addressing it, and may for that purpose require the attendance of its members.<sup>6</sup>

<sup>1</sup> The Legislative Assembly Electoral Rule 27, Notification No. F-213-II, dated July 30, 1923, the Government of India, Home Department.

The following extract may be noted in connection with the question of nomination:—

'In respect of the non-official members to be nominated by the Governor-General we advise that no hard-and-fast rule should be laid down. These seats should be regarded as a reserve in his hands for the purpose of adjusting inequalities and supplementing defects in representation. Nominations should not be made until the results of all the elections are known; and then they should be made after informal consultation with the heads of provinces. . . . The officials will . . . include . . . also some representation from the provinces'.—*Report on Indian Constitutional Reforms*, para. 275.

<sup>2</sup> Legislative Assembly Electoral Rule 23.

<sup>3</sup> Section 63E of the Act.

<sup>4</sup> *Ibid.*

<sup>5</sup> South Africa Act, 1909, Section 52.

<sup>6</sup> Section 63B of the Act.

The President of the Assembly.

The President of the Assembly is, for the first four years,<sup>1</sup> to be appointed by the Governor-General, and will thereafter be elected, subject to the approval of the Governor-General, by the Assembly from among its members.<sup>2</sup>

Its Deputy President.

The Assembly will also have a Deputy President who will preside at its meetings in the absence of the President and who will be elected, subject to confirmation by the Governor-General, by the Assembly from among its members.<sup>3</sup> The procedure<sup>4</sup> of election is very simple. After the members have been sworn in at the beginning of each new Legislative Assembly, the Assembly will elect one of its members to be its Deputy President. The name of a willing candidate is to be proposed by one member and seconded by another. If only one person has been proposed for election, he is declared duly elected by the President. If, however, more than one person has been proposed, the Assembly votes on the question by ballot, and the President is to declare him to be duly elected who has received the majority of votes. If there happens to be a vacancy in the office of Deputy President during the continuance of an Assembly, or if the Governor-General disapproves the election of a particular candidate, a fresh election is to be held in accordance with the procedure stated above; but it is provided that a member whose election has been disapproved by the Governor-General must not be proposed again as a candidate during the duration of that Assembly.<sup>5</sup>

<sup>1</sup> 'Provided that, if at the expiration of such period of four years the Assembly is in session, the President then in office shall continue in office until the end of the current session, and the first election of a President shall take place at the commencement of the ensuing session'. Section 63C of the Act.

<sup>2</sup> Section 63C of the Act.

<sup>3</sup> *Ibid.*

<sup>4</sup> *Legislative Assembly Manual*, 1921, Standing Order 5.

<sup>5</sup> *Ibid.*

There is nothing in the Act to prevent a nominated member of the Assembly, whether official or non-official, from being its President after the first four years, or its Deputy President, if he is duly elected by the Assembly and if his election is approved by the Governor-General.

The appointed President may resign his office if he so wishes, and he may be removed from office by the Governor-General.<sup>1</sup>

An elected President and a Deputy President will cease to hold office if they cease to be members of the Assembly. They may resign office if they like, and may be removed from office by a vote of the Assembly with the consent of the Governor-General.<sup>2</sup>

A President and a Deputy President receive such salaries as are fixed, in the case of an appointed President by the Governor-General, and in the case of an elected President and a Deputy President by Act of the Indian Legislature.<sup>3</sup> The salary of the present President has been fixed by the Governor-General at Rs. 50,000 a year.

The Joint Select Committee stated in its Report<sup>4</sup> on the Government of India Bill that the President of the Legislative Assembly should for four years be a person appointed by the Governor-General. He should be qualified by experience in the House of Commons and a knowledge of parliamentary procedure, precedents and conventions. He should be the guide and advisor of the Presidents of the Provincial Legislative Councils, and he should be chosen with a view to the influence which, it was hoped by the committee, he would have on the whole history of Parliamentary procedure in India. The first appointment has been made in accordance with this recommendation.

The Joint  
Select Com-  
mittee on  
the Presi-  
dent of the  
Assembly.

<sup>1</sup> Section 63C of the Act.

<sup>2</sup> *Ibid.*

<sup>3</sup> *Ibid.*

<sup>4</sup> Report of the (Parliamentary) Joint Select Committee on the Government of India Bill, Clause 20.

Now it may so happen that, for some reason or other, both the President and the Deputy President may not be in a position to preside at a meeting of the Legislative Assembly. In order to prevent any possible inconvenience from such unavoidable absence of both these officers, it has been provided by a Rule<sup>1</sup> made under the Act that at the beginning of every session, the President of the Assembly will nominate from among its members a panel of not more than four Chairmen, any one of whom may preside over the Assembly in the absence of the President and the Deputy President, and when so presiding, will have the powers of the President.

<sup>1</sup> The Indian Legislative Rule 3; *The Legislative Assembly Manual*, 1921.

## CHAPTER III

### LEGISLATURES—THE COUNCIL OF STATE

Constitution of the Council of State—The original scheme about its character and composition—Views of the Joint Select Committee regarding the scheme—Constituencies entitled to representation in the Council of State—Representation of special interests and communities in the Council—The nominated members of the Council—Their terms of office—Duration of the Council—The President of the Council—Nomination of a panel of not more than four Chairmen for the Council—The appointment of the President by the Governor-General, an anomaly—The President of the Senate in Australia and in the Union of South Africa.

The Council of State consists at present of sixty members, of whom thirty-three are elected and the rest are nominated.<sup>1</sup> Of the non-elected members not more than twenty may be officials, and one must be a person nominated as the result of an election held in Berar. The maximum number of members in the case of the Council of State has been fixed by statute at sixty.<sup>2</sup>

The original intention of the authors of the Report on Indian Constitutional Reforms was to create a Council of State which would be 'the supreme legislative authority for India on all crucial questions, and also the revising authority upon all Indian legislation'.<sup>3</sup> Besides, it was their desire that the Council 'should develop something of the

<sup>1</sup> The Council of State Electoral Rule 3 ; Notification No. F.-213-I, dated July 30, 1923, the Government of India.

<sup>2</sup> The Act, Section 63A.

<sup>3</sup> *The Montagu-Chelmsford Report*, para. 278.

experience and dignity of a body of Elder Statesmen.<sup>1</sup> In order that this body might effectually discharge its functions as 'the final legislative authority in matters which the Government regarded as essential,' they proposed to retain an official majority in its composition.<sup>2</sup> It was hoped by them that with the help of this official majority the Government would be able to get a Bill passed by the Council of State in cases of emergency, so certified by the Governor-General in Council, and also when the Legislative Assembly had refused leave to the introduction of a Bill or had thrown out a Bill which the Government had regarded as necessary.<sup>3</sup>

In pursuance of this recommendation it was provided in the original Government of India Bill introduced into the House of Commons by Mr. Montagu, the then Secretary of State for India, that the Council of State would consist of fifty-six members (exclusive of the Governor-General); and that the number of non-elected members thereof would be thirty-two, of whom at least four would be non-officials, and the number of elected members would be twenty-four.<sup>4</sup>

The Joint Select Committee of both Houses of Parliament appointed to consider the Bill, stated in its Report,<sup>5</sup> 'a constitutional document of first-rate importance,' that it did not accept the device,<sup>6</sup> in the Bill as drafted, of carrying

<sup>1</sup> *The Montagu-Chelmsford Report*, para. 278.

<sup>2</sup> *Ibid.*, para. 277.

<sup>3</sup> *Ibid.*, para. 278.

<sup>4</sup> The Government of India Bill, 1919, presented by Mr. Secretary Montagu.

<sup>5</sup> Report of the Joint Select Committee, Clause 18.

<sup>6</sup> The original Bill contained the following clause (Section 20 (4)) :—

'When the Governor-General in Council certifies that it is essential for the safety, tranquillity, or interests of British India or any part thereof, or for the purpose of meeting a case of emergency which has arisen, that any law shall be passed, the Council of State shall have power to pass that law without the assent of the Legisla-

mer government measures through the Council of State without reference to the Legislative Assembly, in cases where the latter body could not be got to assent to a law which the Governor-General considered essential. It held that there was no necessity to retain the Council of State as an organ for Government legislation and that it should be constituted from the commencement as a true second Chamber.<sup>1</sup> It had however no hesitation in accepting the view<sup>2</sup> that the Governor-General in Council should in all circumstances be fully empowered to secure legislation which was required for the discharge of his responsibilities, but it thought it was unworthy that such responsibility should be concealed through the action of a Council of State specially devised in its composition to secure the necessary powers. It believed that in such a case it would add strength to the Government of India to act before the world on its own responsibility. It therefore amended the relevant clause of the original Bill in the way<sup>3</sup> in which we find it in the Act.

Our second Chamber, as we have seen above, consists partly of elected members and partly of nominated members. The principle underlying its composition is a sort of compromise between the Canadian system of pure nomination and the Australian system of entire election.

**Constituencies entitled to representation.**

Constituencies entitled to representation in the Council of State are as shown in the table on the next page.<sup>4</sup>

tive Assembly, and it shall, if so passed, have the like effect as laws passed by both Chambers.'

<sup>1</sup> Report of the Joint Select Committee, Clause 18.

<sup>2</sup> *Ibid.*, Clause 26.

<sup>3</sup> The Government of India Bill (as amended by the Joint Select Committee), Section 18.

<sup>4</sup> The Council of State Electoral Rule 4, Schedule I; the Government of India Notification No. F-213-I, dated July 30, 1923



Provinces	Non-Muhammadan	Muhammadan	European Commerce	Sikh	General	Total
Madras ...	4	1	...	...	...	5
Bombay ...	3	2	1	...	...	6
Bengal ...	3	2	1	...	...	6
United Provinces ...	3	2	...	...	...	5
Punjab ...	1	2 <sup>1</sup> or 1	...	1	...	4 <sup>1</sup> or 3
Bihar and Orissa ...	2 or 3 <sup>2</sup>	1	...	...	...	3 or 4 <sup>2</sup>
Central Provinces ...	...	...	...	...	1	1
Burma ...	...	...	1	...	1	2
Assam ...	1 <sup>3</sup>	or 1 <sup>3</sup>	...	...	...	1
Total ...	...	...	...	...	...	33

**Representation of special interests and communities.**

From the above table it is evident that special representation has been given to the Muhammadans and Sikhs and to European Commerce in the Council of State.

Before the date of the first meeting of the Council of State, the Governor-General makes such

<sup>1</sup> The Punjab Muhammadans are entitled to elect two Muhammadans to the first, third, fifth and succeeding alternate Councils of State, and only one Muhammadan to the second, fourth, sixth Councils of State and so on.

<sup>2</sup> The Bihar and Orissa non-Muhammadan constituency elects two members to the first, third and succeeding alternate elections; and three members to the second, fourth and sixth Councils of State and so on.

<sup>3</sup> Assam is entitled to elect a non-Muhammadan in the first, third and succeeding alternate elections and a Muhammadan in the second, fourth and sixth elections and so on.

nominations as are necessary to complete the Council.<sup>1</sup>

**Nominated  
members:  
their terms  
of office.**

A nominated non-official member is to hold office for the duration of the Council of State to which he is nominated.<sup>2</sup> The term of office of an official member is for the duration of the Council to which he is nominated or for such shorter period as the Governor-General may determine at the time of his nomination.<sup>3</sup> A vacancy in the case of a nominated member is filled by the Governor-General by another nomination.<sup>4</sup>

**Duration of  
the Council.** While the second Chambers of England, France, the United States, Canada and Australia<sup>5</sup> have a sort of continuous existence, the normal duration

of our Council of State is limited to a period of only five years from its first meeting. The Governor-General can, however, dissolve it before the date of its expiry by effluxion of time; and he can also prolong its life for a further period if he thinks it necessary in special circumstances.<sup>6</sup> As we have seen in the case of the Legislative Assembly, the Governor-General is bound, within six months, or with the sanction of the Secretary of State within nine months, to appoint a date for its next session.<sup>7</sup>

The President of the Council of State is appointed by the Governor-General from among its members.

**The President of the  
Council.**

Besides, the Governor-General has been empowered by the Act to appoint other persons to preside in such circumstances as he may direct.<sup>8</sup>

Accordingly, at the beginning of every session the

<sup>1</sup> The Council of State Electoral Rule 27 (3).

<sup>2</sup> *Ibid.*, Rule 23 (1)

<sup>3</sup> *Ibid.*, Rule 23 (2).

<sup>4</sup> *Ibid.*, Rule 26 (2).

<sup>5</sup> 'A noticeable attribute of the Senate, but one which it shares with second Chambers in general, is that of "perpetual existence." Except in the event of a Constitutional deadlock, it (i.e. the Senate of Australia) cannot be dissolved'.—Marriott, *Second Chambers*, p. 171.

<sup>6</sup> Section 63D of the Act.

<sup>7</sup> *Ibid.*

<sup>8</sup> Section 63A of the Act

Governor-General nominates from among the members of the Council a panel of not more than four Chairmen, any one of whom may preside over the Council in the absence of the President, and, when so presiding, will have the powers of the President.<sup>1</sup>

It appears to be rather a strange anomaly that, while the Legislative Assembly and the Provincial Legislative Councils will have, after the first four years, elected Presidents, the President of such a dignified body as the Council of State will continue to be appointed by the Governor-General. The Senate in Australia<sup>2</sup> as well as in the Union of South Africa<sup>3</sup> chooses its President from among its members. He ceases to hold his office if he ceases to be a Senator, or if he is removed from office by a vote of the Senate, or if he resigns his office. In the interests of its dignity and influence the second Chamber of India should be placed, in respect of the appointment and removal of its President, on a similar footing with the second Chambers in Australia and South Africa. It is hoped that the existing anomaly will be removed at the next revision of the Act.

Curiously enough, there is no provision in the Government of India Act relating to the salary of the President of the Council of State. But it appears from a statement made in the House of Commons by Earl Winterton as the Under-Secretary of State for India that the salary of the President has been fixed at Rs. 50,000 a year.

<sup>1</sup> Order of the Governor-General under Section 63A (2) — *Council of State Manual*, 1921, chapter iii.

<sup>2</sup> The Commonwealth of Australia Constitution Act, 1900, Section 17.

<sup>3</sup> South Africa Act, 1909, Section 27.

## LEGISLATURES—THE PROVINCIAL LEGISLATIVE COUNCILS

The Provinces of British India—Governors' Provinces—Chief Commissionerships—Composition of a Governor's Legislative Council—The Governor of a Province and its Legislative Council—Constitution of the Legislative Councils of Madras, Bombay, Bengal, the United Provinces, the Punjab, Bihar and Orissa, the Central Provinces, Assam and Burma—Representation of special classes and interests in the Legislative Councils—Duration of a Legislative Council—The President of the Legislative Council—Its Deputy President—Nomination of a panel of not more than four Chairmen for each Legislative Council—Terms of office of the President and the Deputy President—Their salaries.

British India has been divided for administrative purposes into nine major and six minor provinces. The **The Provinces of British India.** nine major provinces are Madras, Bombay, Bengal, the United Provinces, the Punjab, Burma, Bihar and Orissa, Assam and the Central Provinces. They are each governed, in relation to Reserved subjects, by a Governor in Council, and in relation to Transferred subjects, except in special circumstances, by the Governor acting with Ministers, and are

**Governors' Provinces.** distinguished as Governors' Provinces.<sup>1</sup> The Province of Burma was at first excluded from the scheme of Reforms introduced by the Act of 1919; but it was constituted a Governor's Province under the Government of India Act with effect from January 2, 1923.

The six minor provinces are the North-West Frontier Province, British Baluchistan, Delhi, Ajmer-Merwara, Coorg and the Andamans and Nicobar Islands. They are each administered by a **Chief Commissionerships.** Chief Commissioner and are, except Coorg,<sup>2</sup> without any Legislative Council.

<sup>1</sup> Section 46 of the Act.

<sup>2</sup> A Legislative Council with very limited powers was set up in Coorg in January, 1924.

Each of the nine Governors' Provinces has a Legislative Council consisting of the members of the Executive Council of the Province concerned and of the members nominated and elected in accordance with Rules made under the Act.

Not more than twenty per cent. of the members of each Council can be officials, and at least seventy per cent. must be elected members. The Governor of a Province cannot be a member of the Provincial Legislative Council, but has the right of addressing the Council and may for that purpose require the attendance of its members.<sup>1</sup>

In addition to the ordinary members of his Legislative Council, a Governor may nominate, for the purposes of any Bill, not more than two persons (or only one in the case of Assam), having special knowledge or experience of the subject-matter of the Bill, who will, in relation to the Bill, have for the period for which they are nominated all the rights of members of the Council.<sup>2</sup> The object of this provision is to secure the services of experts in connection with legislation.

Let us now consider the strength and composition of the existing Legislative Councils in the major provinces.

#### THE MADRAS LEGISLATIVE COUNCIL

It<sup>3</sup> consists of the members of the Executive Council, ex-officio, ninety-eight elected members, and such number of members nominated by the Governor as, with the addition of the members of the Executive Council, amount to twenty-nine. Of the members so nominated not more than nineteen can be officials, and one is to represent the inhabitants of backward tracts and five to represent the following communities, namely, the Paraiyans, Pallans,

<sup>1</sup> Section 72A of the Act.

<sup>2</sup> Section 72A (2) (b) of the Act.

<sup>3</sup> The Madras Electoral Rule 3, Notification No. F.-213-III, the Government of India, Home Department, dated July 30, 1923.

## PROVINCIAL LEGISLATIVE COUNCILS 31

ns, Malas, Madigas, Chakkiliyans, Tottiyans, Cheru-  
and Holeyas. The Governor may at his discretion  
make regulations providing for the selection of these six  
members by the communities concerned.<sup>1</sup>

### THE BOMBAY LEGISLATIVE COUNCIL

It<sup>2</sup> consists of the members of the Executive Council, ex-officio, eighty-six elected members and such number of members nominated by the Governor as, with the addition of the members of the Executive Council, amount to twenty-five. Of the members so nominated not more than sixteen can be officials and five must be non-official persons to represent respectively the following classes or interests, namely, (i) the Anglo-Indian community; (ii) the Indian Christian community; (iii) the labouring classes; (iv) classes which, in the opinion of the Governor, are depressed classes; and (v) the Cotton Trade.

### THE BENGAL LEGISLATIVE COUNCIL

It<sup>3</sup> consists of the members of the Executive Council, ex-officio, one hundred and fourteen elected members, and such number of members nominated by the Governor as, with the addition of the members of the Executive Council, amount to twenty-six. Of the members so nominated not more than eighteen can be officials and not less than six must be non-officials, and two are to be persons nominated to represent respectively the following classes or interests, namely, (i) the Indian Christian community and (ii) classes which, in the opinion of the Governor, are depressed classes, and two must be persons nominated to represent the labouring classes.

<sup>1</sup> The Madras Electoral Rule 3.

<sup>2</sup> The Bombay Electoral Rule 3, the Government of India Notification No. F.-213-IV, dated July 30, 1923.

<sup>3</sup> The Bengal Electoral Rule 3, the Government of India Notification No. F.-213-V, dated July 30, 1923.

## THE UNITED PROVINCES LEGISLATIVE COUNCIL

It <sup>1</sup> consists of the members of the Executive Council, ex-officio, one hundred elected members and such number of members nominated by the Governor as, with the addition of the members of the Executive Council, amount to twenty-three. Of the members so nominated not more than sixteen may be officials and three must be persons nominated to represent respectively the following classes or interests, namely, (i) the Anglo-Indian community; (ii) the Indian Christian community; and (iii) classes which in the opinion of the Governor are depressed classes.

## THE PUNJAB LEGISLATIVE COUNCIL

It <sup>2</sup> consists of the members of the Executive Council, ex-officio, seventy-one elected members, and such number of members nominated by the Governor, as, with the addition of the members of the Executive Council, amount to twenty-two. Of the members so nominated not more than fourteen may be officials, and four are to be persons nominated to represent the classes mentioned below according to the following distribution, namely :—

- |  |   |
|--|---|
| (1) the European and Anglo-Indian communities ...                        | 2 |
| (2) the Indian Christian community ...                                   | 1 |
| (3) the Punjabi officers and soldiers of His Majesty's Indian Forces ... | 1 |

## THE BIHAR AND ORISSA LEGISLATIVE COUNCIL

It <sup>3</sup> consists of the members of the Executive Council, ex-officio, seventy-six elected members, and such number of members nominated by the Governor as, with the addition of the members of the Executive Council, amount to

<sup>1</sup> The United Provinces Electoral Rule 3, the Government of India Notification No. F.-213-VI, Simla, dated July 30, 1923.

<sup>2</sup> The Punjab Electoral Rule 3, the Government of India Notification No. F.-213-VII, Simla, dated July 30, 1923.

<sup>3</sup> The Bihar and Orissa Electoral Rule 3, the Government of India Notification No. F.-213-VIII, dated Simla, July 30, 1923.



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seven. Of the members so nominated not more than n may be officials and nine must be persons ted to represent the classes or interests hereinafter mentioned according to the following distribution, namely :—

- |  |     |     |     |   |
|--|-----|-----|-----|---|
| (1) aborigines   | ... | ... | ... | 2 |
| (2) classes which are, in the opinion of the Governor, depressed classes | ... | ... | ... | 2 |
| (3) industrial interests other than planting and mining                  | ... | ... | ... | 1 |
| (4) the Bengali community domiciled in the province                      | ... | ... | ... | 1 |
| (5) the Anglo-Indian community   | ... | ... | ... | 1 |
| (6) the Indian Christian community                                       | ... | ... | ... | 1 |
| (7) the labouring classes  | ... | ... | ... | 1 |

### THE CENTRAL PROVINCES LEGISLATIVE COUNCIL

It<sup>1</sup> consists of the members of the Executive Council, ex-officio, thirty-seven<sup>2</sup> elected members and such number of members nominated by the Governor as, with the addition of the members of the Executive Council, amount to thirty-three. Of the members thus nominated not more than eight may be officials, and seventeen shall be persons nominated as the result of elections held in Berar, and five must be persons nominated to represent the classes mentioned below according to the following distribution, namely :—

- |   |     |     |     |   |
|---|-----|-----|-----|---|
| (1) the inhabitants of the Mandla District, excluding Mandla Town                                 | ... | ... | ... | 1 |
| (2) the inhabitants of Zamindari and Jagirdari estates excluded from the area of any constituency | ... | ... | ... | 1 |
| (3) the European and Anglo-Indian communities   | ... | ... | ... | 1 |
| (4) classes which, in the opinion of the Governor, are depressed classes                          | ... | ... | ... | 2 |

<sup>1</sup> The Central Provinces Electoral Rule 3, Government of India Notification No. F.-213-IX, Simla, dated July 30, 1923.

<sup>2</sup> Including one member for the Nagpur University constituency.

We are to note in this connection that under proviso to Section 72A (2) of the Act members nominated to the Legislative Council of the Central Provinces by the Governor as the result of elections held in the Assigned Districts of Berar will be deemed to be elected members of the Legislative Council of the Central Provinces. This provision meets the requirements of Section 72A (2) of the Act which declares that at least seventy per cent. of the members of the Provincial Legislative Council must be elected.

#### THE ASSAM LEGISLATIVE COUNCIL

It<sup>1</sup> consists of the members of the Executive Council, ex-officio, thirty-nine elected members and such number of members nominated by the Governor as, with the addition of the members of the Executive Council, amount to fourteen. Of the members so nominated not more than seven can be officials and two must be non-official persons nominated to represent respectively the following classes, namely :—

- (1) the labouring classes ; and
- (2) the inhabitants of backward tracts.

The Governor may at his discretion make regulations providing for the selection of these two members by the communities concerned.

#### THE BURMA LEGISLATIVE COUNCIL

The Burma Legislative Council consists of one-hundred and three members, of whom two are the members of the Executive Council, seventy-nine are elected and twenty-two are nominated by the Governor. Of the twenty-two nominated members not more than fourteen can be officials ; and one is to represent Indian Commerce and another the labouring classes.

<sup>1</sup> The Assam Electoral Rule 3, Government of India Notification No. F. 213-X, dated Simla, July 30, 1923.

In the following table <sup>1</sup> is shown the distribution of the elected members in the different Legislative Councils :—

Provinces	Non-Muhammadan	Muhammadan	Sikh	Indian Christian	European	Anglo-Indian	Landholders	University	Planting	Commerce and Industry	Mining	General	Indian urban	Karen rural	Total
Madras ...	65 <sup>2</sup>	13	...	5	1	1	6	1	1	5	...	...	...	...	98
Bombay ...	46 <sup>3</sup>	27	...	...	2	...	3	1	...	7	...	...	...	...	86
Bengal ...	46	39	...	...	5	2	5	2	...	15	...	...	...	...	114
United Provinces ...	60	29	...	...	1	...	6	1	...	3	...	...	...	...	100
Punjab ...	20	32	12	...	...	...	4	1	...	2	...	...	...	...	71
Bihar and Orissa ...	48	18	...	...	1	...	5	1	1	...	2	...	...	...	76
Central Provinces ...	28	4	...	...	...	...	2	1	...	1	1	...	...	...	37
Assam ...	20	12	...	...	...	...	...	...	5	1	...	1 <sup>4</sup>	...	...	39
Burma ...	...	...	...	...	1	1	...	1	...	5	...	58	8	5	79

<sup>1</sup> *Vide* the Government of India's Notifications regarding Electoral Rules in the *Gazette of India* (Extra.), dated July 30, 1923.

<sup>2</sup> Out of sixty-five seats given to the non-Muhammadans, twenty-eight seats are reserved for the non-Brahmins; 'provided that, if the number of non-Brahmin candidates at the date of the election is less than the number of reserved seats, the number of reserved seats shall be reduced to the extent of that deficiency.'—Madras Electoral Rule 4, Schedule I.

<sup>3</sup> Seven out of forty-six seats are reserved for the Mahrattas: but no seat is to be deemed to be a reserved seat for the purposes of any election . . . if the constituency concerned is already represented by a Mahratta member or if there is no Mahratta candidate.

<sup>4</sup> This seat (Shillong) is filled by a general electorate, there being no separate Muhammadan urban constituency—*India in 1920*, p. 249.

**Representa-  
tion of  
special  
classes and  
interests.** The foregoing table shows that communal representation has been given to the Sikhs in the the Indian Christians in Madras, to the Indians in three, to the Europeans in six and to the Muhammadans in eight provinces. Besides, the planting, mining, commercial, industrial and land-owning interests have been granted special representation so that their peculiar rights and privileges may be protected.

**Duration.** The normal duration<sup>1</sup> of every Governor's Legislative Council is three years; but it can be earlier dissolved by the Governor who can also prolong its life for a further period not exceeding one year if he so think fit in special circumstances. Within six months, or within nine months with the sanction of the Secretary of State, of the dissolution of a Legislative Council, the Governor is required by the law to appoint a date for the next session of the Council. He appoints times and places for holding the sessions of his Legislative Council and he can prorogue the Council by notification or otherwise.<sup>2</sup>

**President of  
the Legisla-  
tive Council.** The President<sup>3</sup> of a Governor's Legislative Council is for the first four years to be appointed by the Governor and thereafter<sup>4</sup> to be elected, subject to the approval of the Governor, by the Council from among its members.<sup>5</sup> The Council will also have a Deputy President elected by it from among its

<sup>1</sup> Section 72B (1) of the Act.

<sup>2</sup> Section 72B (2) of the Act.

<sup>3</sup> Section 72C (1) of the Act.

<sup>4</sup> 'Provided that, if at the expiration of such period of four years the Council is in session, the President then in office shall continue in office until the end of the current session, and the first election of a President shall take place at the commencement of the next ensuing session'.—Proviso to Section 72C (1) of the Act.

<sup>5</sup> We may note here the observations of the Parliamentary Joint Select Committee on the question of the Presidency of the Legislative Council:

'The Committee have considered carefully the question who is to

members and confirmed by the Governor. He will preside at meetings of the Council in the absence of the President. The procedure<sup>1</sup> of election of the Deputy President of a Governor's Legislative Council is the same as that of the election of the Deputy President of the Legislative Assembly. After the members have taken their oath of allegiance to the Crown at the beginning of each new Legislative Council, the Council proceeds to elect one of its members to be its Deputy President. The President of the Council reads out to it the names of the candidates who have been proposed and seconded, together with those of their proposers and seconders. If only one person has been proposed for election, he is declared duly elected. If more than one person has been proposed the Council votes on the question by ballot, and the President declares him to be duly elected who receives the majority of its votes. No member can vote for more than one candidate. If a vacancy in the office of Deputy President occurs during the continuance of a Council, or if the Governor withholds his assent to the election of a particular member, a fresh election must be held in accordance with the procedure stated above; but

preside over the Legislative Councils in the provinces. They are of opinion that the Governor should not preside, and they advise that, for a period of four years, the President should be appointed by the Governor. Wherever possible it would be a great advantage if some one could be found for this purpose who had parliamentary experience. The Legislative Council should itself elect a Vice-President, and at the end of four years the nominated President would disappear, and the President and the Vice-President would be elected by the Councils. The Committee attribute the greatest importance to this question of the Presidency of the Legislative Council. It will, in their opinion, conduce very greatly to the successful working of the new Councils if they are imbued from the commencement with the spirit and conventions of parliamentary procedure as developed in the Imperial Parliament.—The Report from the Joint Select Committee, on Clause 9 of the Government of India Bill.

<sup>1</sup> The Bengal Legislative Council Standing Order 4—*The Bengal Legislative Council Manual*, 1921, p. 187.

it is provided, that a member whose election has not been ratified by the Governor must not be proposed again as a candidate during the life of that Council.<sup>1</sup>

As we have seen in the case of the Legislative Assembly, the President<sup>2</sup> of a Governor's Legislative Council also nominates, at the beginning of every session,<sup>3</sup> from among the members of the Council a panel of not more than four Chairmen, any one of whom may preside over the Council in the absence of the President and the Deputy President.<sup>2</sup>

The Deputy President and any Chairman of the Council will, when presiding over the Council, have the same powers as the President.<sup>3</sup>

The appointed President may resign his office, and may also be removed from office by the Governor. An elected President and a Deputy President must cease to hold office as soon as they cease to be members of the Council. They too may resign office if they like, and may be removed from office by the Council with the concurrence of the Governor.<sup>4</sup>

The President and the Deputy President are to receive such salaries as are determined, in the case of an appointed President, by the Governor, and in the case of an elected President or Deputy President, by an Act of the local legislature.<sup>5</sup>

<sup>1</sup> See the Madras Legislative Council Standing Order 3; see also the Bengal Legislative Council Standing Order 4.

<sup>2</sup> The Provincial Legislative Council Rule 3.

<sup>3</sup> The Provincial Legislative Council Rule 4.

<sup>4</sup> Section 72C (3) and (4).

<sup>5</sup> Section 72C (5) of the Act.

The salaries of the appointed Presidents of the different Legislative Councils vary ordinarily from Rs. 12,000 to Rs. 48,000 a year. The post of President of the Bihar and Orissa Legislative Council was held (August, 1922) by a member of the local Executive Council. The present (appointed) Presidents of Bengal, Madras and Bombay Legislative Councils receive each a salary of Rs. 36,000 a year.—*Vide* Earl Winterton's statement in the House of Commons showing the extra annual cost incurred in connection with the Reforms. The *Englishman* (Dak edition), August 2, 1922.

## CHAPTER V

### QUALIFICATIONS OF ELECTED AND NOMINATED MEMBERS

General qualifications for election or nomination to the different legislative bodies—Special qualifications required for election to those bodies in case of certain constituencies—General and special constituencies.

For membership of either Chamber of the Indian Legislature or of a Governor's Legislative Council, there are certain general qualifications common to them all and a few special qualifications peculiar to each legislative body. For instance, a candidate to be eligible for election as a member of the Council of State must not only possess the common qualifications, but must satisfy the special conditions requisite for election to the Council of State either from a 'general' constituency or from a 'special' constituency in any province, as the case may be.

#### GENERAL QUALIFICATIONS <sup>1</sup>

A person is not eligible for election or nomination to either Chamber of the Indian Legislature or to a Governor's Legislative Council, if such person is not a British subject; or is a female; or has, in the case of election or nomination to a Governor's Legislative Council, already been sworn in as a member of any legislative body

<sup>1</sup> See Rules 5 and 22 of each set of Electoral Rules relating to the different legislative bodies, namely, Legislative Assembly, Council of State and the Legislative Councils of Madras, Bombay, Bengal, the Punjab, the Central Provinces, the United Provinces, Bihar and Orissa and Assam.—*The Gazette of India* (Extra.), July 30, 1923.

These Electoral Rules have been made by the Governor-General in Council under Sections 64, 72A and 129A of the Government of India Act, with the sanction of the Secretary of State in Council.



constituted under the Government of India Act and, in the case of election or nomination to either Chamber of the Indian Legislature, is already a member of the Chamber ; or having been a legal practitioner has been dismissed or is under suspension from practising as such by order of any competent court ; or has been declared by a competent court to be of unsound mind ; or is under twenty-five years of age ; or is an undischarged insolvent ; or being a discharged insolvent has not obtained from the court a certificate that his insolvency was caused by misfortune without any misconduct on his part.

But it is provided that a Local Government may remove, subject to such conditions as it may prescribe, the disqualification arising from not being a British subject, so far as the Ruler of any State in India or a subject of any such State is concerned. And if the Ruler of any State in India or any subject of such a State is eligible for election or nomination to the Legislative Council of a province, such Ruler or subject will not, by reason only of not being a British subject, be ineligible for election or nomination to the Council of State or the Legislative Assembly, as the case may be.

Further, the disqualification arising from being a dismissed or suspended legal practitioner may be removed by an order of the Governor-General in Council or of a local Government, as the case may be.

A person against whom a conviction by a criminal court involving a sentence of transportation or imprisonment for a period of more than six months is subsisting, is, unless the offence of which he was convicted has been pardoned, ineligible for election or nomination for five years from the date of the expiration of the sentence.<sup>1</sup>

<sup>1</sup> Electoral Rules 5 (2) and 22 (2) of each set of Electoral Rules.

Compare this with the following :—

' No person shall be capable of being chosen or of sitting as a

Persons convicted of an offence<sup>1</sup> under Chapter IXA of the Indian Penal Code punishable with imprisonment for more than six months or reported by Election Commissioners as guilty of a corrupt practice<sup>1</sup> as specified in Part I, or in paragraph 1, 2 or 3 of Part II, of Schedule V to Electoral Rules, are not eligible for either election or nomination to any legislative body for five years from the date of such conviction or of the finding of the Commissioners, as the case may be; and a person reported to be guilty of any other corrupt practice is similarly disqualified for three years from such date.

If, in respect of an election to any legislative body constituted under the Government of India Act, a return of the election expenses of any person who has been nominated as a candidate at that election, is not submitted within a certain time and in a prescribed manner, or if any such return is submitted which is found either by Election

Senator or as a member of the House of Assembly who has been at any time convicted of any crime or offence for which he shall have been sentenced to imprisonment without the option of a fine for a term of *not less than twelve months*, unless he shall have received a grant of amnesty or a free pardon, or unless such imprisonment shall have expired at least five years before the date of his election'.—South Africa Act, 1909, Section 53 (a).

'Any person who is attainted of treason, or has been convicted and is under sentence, or subject to be sentenced, for any offence punishable under the law of the Commonwealth or of a State by imprisonment for *one year or longer*, shall be incapable of being chosen or of sitting as a Senator or member of the House of Representatives'.—The Commonwealth of Australia Constitution Act, 1900, Section 44 (ii).

It is clear from the above that our Electoral Rules have been conceived in a spirit of narrowness. The Franchise Committee wanted to restrict this disqualification to persons who had been sentenced by a criminal court to imprisonment in circumstances which, in the opinion of the Government, would involve moral turpitude (para. 28 of its Report).

The relevant Electoral Rule has recently been amended partially in favour of political prisoners. See Appendix P.

<sup>1</sup> These offences and corrupt practices refer to bribery, undue influence, false personation, unauthorized expenditure, etc., in connection with elections. They will be discussed later on.

Commissioners or by a Magistrate in a judicial proceeding, to be false in any material respect, neither the candidate nor his election agent is eligible for election or nomination for five years from the date of such election.<sup>1</sup>

It is provided, however, that the disqualifications noted in the last two paragraphs may be removed by an order of the Governor-General in Council or of the local Government, as the case may be.

#### SPECIAL QUALIFICATIONS

We shall now deal with the special qualifications necessary for election to the different legislative bodies.

#### COUNCIL OF STATE<sup>2</sup>

1. No person is eligible for election as a member of the Council of State to represent a general constituency—

(a) in the United Provinces or in Assam, unless his name is on the electoral roll of a general constituency in the same province ;

(b) in Madras, Bombay, Bengal, the Punjab or Bihar and Orissa, unless his name is on the electoral roll of the constituency or of another constituency in the same province and 'of the same communal description as that by which he desires to be elected' ; and

(c) in the Central Provinces or in Burma, unless his name is on the electoral roll of the constituency.

2. No person is eligible for election as a member of the Council of State to represent a special constituency unless his name is on the electoral roll of the constituency.

'Special constituency' here means a European Commerce constituency.

'General constituency' means a General constituency in the case of the Central Provinces and Burma, or a non-

<sup>1</sup> Rules 5(4) and 22(4) of each set of Electoral Rules.

<sup>2</sup> The Council of State Electoral Rule 6—*The Gazette of India* (Extra.), July 30, 1923.

Muhammadan, Muhammadan, or Sikh constituency, in the case of the other provinces.

LEGISLATIVE ASSEMBLY <sup>1</sup>

1. No person is eligible for election as a member of the Legislative Assembly to represent a general constituency other than a constituency in the province of Burma or the Delhi constituency, unless his name is on the electoral roll of the constituency or 'of a constituency situate in the same province and prescribed for elections to the provincial Council by Rules under section 72(A) of the Act', and happens to be a non-Muhammadan, Muhammadan, Sikh or European in the case of a non-Muhammadan, Muhammadan, Sikh or European constituency respectively in the province of Madras, Bombay, Bengal, the Punjab, Bihar and Orissa or the Central Provinces.

2. No person is qualified for election as a member of the Legislative Assembly to represent a special constituency or a constituency in the province of Burma or Delhi unless he is registered as an elector of the constituency.

'General constituency' here means a non-Muhammadan, Muhammadan, European, non-European, Sikh or the Delhi constituency.

'Special constituency' means a Landholders' or Indian Commerce constituency.

MADRAS LEGISLATIVE COUNCIL <sup>2</sup>

1. No person is eligible for election as a member of the Council to represent a general constituency unless his name is on the electoral roll of the constituency or of any other constituency in the province; and unless he is himself a non-Muhammadan, Muhammadan, Indian Christian.

<sup>1</sup> The Legislative Assembly Electoral Rule 6.

<sup>2</sup> The Madras Legislative Council Electoral Rule 6.

European or Anglo-Indian in the case of a non-Muhammadan, Muhammadan, Indian Christian, European or Anglo-Indian constituency respectively.

2. No person is eligible for election as a member of the Council to represent a special constituency unless he is registered as an elector of the constituency.

'General constituency' here means a non-Muhammadan, Muhammadan, Indian Christian, European or Anglo-Indian constituency.

'Special constituency' means a Landholders', University, Planters', or Commerce and Industry constituency.

#### BOMBAY LEGISLATIVE COUNCIL<sup>1</sup>

1. A person to be eligible for election as a member of the Council to represent a general constituency—

(a) must have his name registered on the electoral roll of the constituency or of any other constituency in the province ;

(b) must have, 'for the period of six months immediately preceding the last date fixed for the nomination of candidates in the constituency, resided in the constituency or in a division any part of which is included in the constituency' ; and

(c) must be himself a non-Muhammadan, Muhammadan or European in the case of a non-Muhammadan, Muhammadan or European constituency respectively :

Provided that '(i) for the purposes of clause (b) the City of Bombay shall be deemed to be a division, and that (ii) nothing in clause (b) shall be deemed to render ineligible for election any person who has held office as a Minister, within the period of six months referred to in that clause.'

2. No person is eligible for election as a member of

<sup>1</sup> The Bombay Legislative Council Electoral Rule 6.

the Council to represent a special constituency unless he is registered as an elector of the constituency.

'General constituency' here means a non-Muhammadan, Muhammadan, or European constituency.

'Special constituency' means a Landholders', University, or Commerce and Industry constituency.

#### THE BENGAL LEGISLATIVE COUNCIL<sup>1</sup>

1. A person to be eligible for election as a member of the Council to represent a general constituency must have his name registered on the electoral roll of the constituency or of any other constituency in the province and must, in the case of a non-Muhammadan, Muhammadan, European or Anglo-Indian constituency, be himself a non-Muhammadan, Muhammadan, European or Anglo-Indian, as the case may be.

2. No person is eligible for election as a member of the Council to represent a special constituency unless he is registered as an elector of the constituency.

'General constituency' here means a non-Muhammadan, Muhammadan, European, or Anglo-Indian constituency.

'Special constituency' means a Landholders', University, or Commerce and Industry constituency.

#### THE UNITED PROVINCES LEGISLATIVE COUNCIL<sup>2</sup>

1. No person is eligible for election as a member of the Council to represent a general constituency other than the European constituency, unless he is registered as an elector of the constituency or of any other constituency in the province other than the European constituency.

2. To be eligible for election as a member of the Council to represent a special constituency or the European

<sup>1</sup> The Bengal Legislative Council Electoral Rule 6.

<sup>2</sup> The United Provinces Legislative Council Electoral Rule 6.

constituency, a person must have his name registered on the electoral roll of the constituency.

‘General constituency’ here means a non-Muhammadan, Muhammadan, or European constituency.

‘Special constituency’ means Talukdars’, Agra Landholders’, University, or Commerce and Industry constituency.

#### THE PUNJAB LEGISLATIVE COUNCIL<sup>1</sup>

1. No person is eligible for election as member of the Council to represent a general constituency, unless he is registered as an elector of the constituency or of any other constituency in the province and unless he is himself a non-Muhammadan, Muhammadan or Sikh in the case of a non-Muhammadan, Muhammadan or Sikh constituency respectively.

2. No person is eligible for election as a member of the Council to represent a special constituency unless he is registered as an elector of the constituency.

‘General constituency’ means a non-Muhammadan, Muhammadan, or Sikh constituency.

‘Special constituency’ means a Landholders’, University, Commerce, or Industry constituency.

#### THE BIHAR AND ORISSA LEGISLATIVE COUNCIL<sup>2</sup>

1. No person is eligible for election as a member of the Council to represent a general constituency unless his name is registered on the electoral roll of the constituency or of any other constituency in the province and unless he is himself a non-Muhammadan, Muhammadan, or European in the case of a non-Muhammadan, Muhammadan, or European constituency respectively.

<sup>1</sup> The Punjab Legislative Council Electoral Rule 6.

<sup>2</sup> The Bihar and Orissa Legislative Council Electoral Rule 6.



2. No person is eligible for election as a member of the Council to represent a special constituency unless he is registered as an elector of the constituency.

'General constituency', here means a non-Muhammadan, Muhammadan, or European constituency.

'Special constituency' means a Landholders', University, Planting, or Mining constituency.

#### THE CENTRAL PROVINCES LEGISLATIVE COUNCIL.<sup>1</sup>

1. A person to be eligible for election as a member of the Council to represent a general constituency—

(a) must have his name registered on the electoral roll of the constituency or of any other constituency in the province;

(b) must possess a place of residence in a district, any part of which is included in the constituency or, in the case of an urban constituency, in any such district or within two miles of the boundary of the constituency; and

(c) must be a non-Muhammadan or Muhammadan in the case of a non-Muhammadan or a Muhammadan constituency respectively.

2. No person is eligible for election as a member of the Council to represent a special constituency unless he is registered as an elector of the constituency.

'Place of residence' in Sub-rule 1 (b) above means actual dwelling in a house or part of a house for an aggregate period of not less than 180 days during the calendar year preceding that in which the electoral roll is first published; or maintaining for the same period a house, or part of a house, as a dwelling.

'General constituency' means a non-Muhammadan or Muhammadan constituency.

<sup>1</sup> The Central Provinces Legislative Council Electoral Rule 6.

'Special constituency' means a Landholders', University, Mining, or Commerce and Industry constituency.

THE ASSAM LEGISLATIVE COUNCIL<sup>1</sup>

A person is not eligible for election as a member of the Council to represent—

(1) the Shillong Constituency or a non-Muhammadan or Muhammadan rural constituency unless his name is registered on the electoral roll of the constituency or of another constituency in the province ; or

(2) a Planting, or Commerce and Industry constituency unless his name is registered as an elector of the constituency.

<sup>1</sup> The Assam Legislative Council Electoral Rule 6.

## CHAPTER VI

### THE ELECTORAL ROLL <sup>1</sup>

General conditions of registration as an elector—Basis of franchise in a general constituency : In the case of the Council of State—In the case of the Legislative Assembly—In the case of the Provincial Legislative Councils—The preparation of the electoral roll—The amendment of an electoral roll—Electoral Regulations.

A person is entitled to have his name registered on the electoral roll of a constituency, if such person has the qualifications required of an elector of that constituency and is not subject to any of the following disabilities,<sup>2</sup> namely :—

- (1) is not a British subject ; or
- (2) is a female <sup>3</sup> ; or
- (3) has been declared by a competent court to be of unsound mind ; or
- (4) is under twenty-one years of age.

<sup>1</sup> Electoral Rules and Regulations, Part III—*The Gazette of India* (Extra.), July 30, 1923.

<sup>2</sup> Electoral Rule 7 (1) of each set of Electoral Rules.

<sup>3</sup> 'We are satisfied that the social conditions of India make it premature to extend the franchise to Indian women at this juncture, when so large a proportion of male electors require education in the use of a responsible vote.

Further, until the custom of seclusion of women, followed by many classes and communities, is relaxed, female suffrage would hardly be a reality ; it would be out of harmony with the conservative feeling of the country ; and it would involve great difficulties in the actual recording of votes. . . . At the next revision (as contemplated by the Joint Report) of the constitutions of the Councils the matter should be reconsidered in the light of the experience gained of the working of the electoral system and of social conditions as they then exist'.—Report by the Franchise Committee, para. 8.

This disqualification on the ground of sex has been removed in Madras and Bombay so far as the elections to the local Legislative Councils are concerned.

It is provided, <sup>1</sup> however, that, so far as the Ruler of a State in India or any subject of such a State is concerned, a Local Government may remove, subject to such conditions as it may prescribe, the disqualification arising from not being a British subject.

It is further <sup>2</sup> provided that the sex disqualification for registration as voters for a Provincial Legislative Council must be removed by the Local Government concerned, if a resolution is passed to that effect by the local Legislative Council 'after not less than one month's notice has been given of an intention to move such a resolution.' Similarly, the right to vote for election to the Council of State or to the Legislative Assembly must be conferred upon women generally or any class of women, if an affirmative resolution is passed to that effect by the Council or the Assembly, as the case may be, and if they are not disqualified for registration as electors for the Legislative Council of their province on the ground of their sex.

No person <sup>3</sup> is entitled to have his name registered on the electoral roll of more than one general constituency and, consequently, no person can vote at any general election in more than one general constituency.<sup>4</sup>

If any person <sup>5</sup> is convicted of an offence under Chapter IX(A) of the Indian Penal Code punishable with imprisonment for a period exceeding six months or is reported by Election Commissioners specially appointed for the purpose, 'as guilty of a corrupt practice' <sup>6</sup> as specified in Part I, or in paragraph 1, 2 or 3 of Part II, of Schedule V' to Electoral Rules, he is disqualified from voting for a period of five

<sup>1</sup> Electoral Rule 7 (1) of each set of Electoral Rules.

<sup>2</sup> *Ibid.*

<sup>3</sup> Proviso to Electoral Rule 7 (1).

<sup>4</sup> Electoral Rule 10 (1), proviso (a).

<sup>5</sup> Electoral Rule 7 (2).

<sup>6</sup> The offences and corrupt practices, referred to in the sentence, are bribery, undue influence, false personation, etc.

years from the date of the conviction or the report by the Commissioners, as the case may be; and if any person is adjudged guilty by such Commissioners of any other corrupt practice, he is similarly disqualified for a period of three years. But this disqualification against any person may be removed by the Governor-General in Council or by the Local Government, as the case may be.

The qualifications of an elector for a general<sup>1</sup> constituency are based,

(A) in the case of the Council of State,<sup>2</sup> on—

1. residence, or residence and community, and
2. (a) the holding of land, or  
(b) payment of income-tax, or  
(c) past or present membership of a legislative body, or  
(d) past or present tenure of office on a local authority, or  
(e) past or present University distinction, or  
(f) the tenure of office in a co-operative banking society, or  
(g) the holding of a title conferred for literary merit;

(B) in the case of the Legislative Assembly,<sup>3</sup> on—

1. community,
2. residence, and
3. (a) the ownership or occupation of a building, or  
(b) assessment to or payment of municipal or cantonment rates or taxes or local cesses, or  
(c) assessment to or payment of income-tax, or  
(d) the holding of land, or  
(e) membership of a local body; and

<sup>1</sup> The qualifications of electors for special constituencies have been stated in chapters vii-x.

<sup>2</sup> The Council of State Electoral Rule 8 (1).

<sup>3</sup> The Legislative Assembly Electoral Rule 8 (1).

(C) in the case of a Provincial Legislative Council,<sup>1</sup> generally on—

1. community,
2. residence, and
3. (a) occupation of a house, or  
(b) assessment to property-tax, tax on companies or profession tax, or  
(c) assessment to income-tax, or  
(d) military service, or  
(e) the holding of land, or,  
(f) as in the case of Bengal, Assam and Bihar and Orissa, the payment of local rates.<sup>2</sup>

An electoral roll is prepared for every constituency,<sup>3</sup> on which are entered the names of all persons entitled to be registered as electors for that constituency. It has to be published in the constituency. Any mistake or omission in the preparation of the electoral roll is to be brought to the notice of the Revising Authority for correction.<sup>4</sup> His decision with regard to any point of dispute is final<sup>5</sup> and the electoral roll amended in accordance therewith is republished. It comes into force from the date of such republication and continues in force for a period of three years at the end of which period a fresh roll is to be prepared.<sup>6</sup> This is the ordinary rule. It is provided, however, against it that the Governor-General in Council or a Local Government, as the case may be, may direct the preparation of a fresh roll at any time before the completion of the three years.<sup>7</sup>

<sup>1</sup> Provincial Legislative Councils Electoral Rule 8 (1).

<sup>2</sup> e.g., payment of cesses under the Cess Act, 1880; payment of Chaukidari tax or Union rate under the Village Chaukidari Act, 1870, or under the Bengal Village Self-Government Act, 1919; assessment to tax in a Union under Chapter III of the Bengal Municipal Act, 1876, or under Section 47 of the Bihar and Orissa Village Administrative Act, 1922.

<sup>3</sup> Electoral Rule 9 (1).

<sup>5</sup> *Ibid.*, 9 (3).

<sup>6</sup> *Ibid.*, 9 (4).

<sup>4</sup> *Ibid.*, 9 (1).

<sup>7</sup> *Ibid.*, 9 (4).

If a constituency is required to elect a member or members after an electoral roll has ceased to be effective and before a fresh roll has been prepared, the old electoral roll will remain valid for the purposes of the particular election.<sup>1</sup>

Notwithstanding anything that has been said before, any person may apply to the proper authority for the amendment of an electoral roll for the time being in force and the Governor-General in Council or a Local Government, as the case may be, may order the preparation of a list of amendments thereto, if necessary.<sup>2</sup>

Every Local Government<sup>3</sup> is required to make regulations providing for—

- (1) the authority by whom the electoral roll is to be prepared and the particulars to be contained in the roll ;
- (2) the time for the preparation of the roll ;
- (3) the publication of the roll ;
- (4) the manner in which and the time within which the claims and objections may be preferred ;
- (5) the constitution and appointment of Revising Authorities to dispose of claims and objections ;
- (6) the manner in which notices of claims or objections should be published ; and
- (7) the place, date and time at which and the manner in which claims or objections should be heard.

These regulations made by a Provincial Government for the purpose of elections to the Provincial Legislative Council will also apply, unless the Governor-General in Council otherwise directs, for the purpose of elections within that Province to the Council of State or to the Legislative Assembly.<sup>4</sup>

<sup>1</sup> Electoral Rule 9 (5).

<sup>2</sup> *Ibid.*, 9 (6).

<sup>3</sup> Electoral Rule 9 (2).

<sup>4</sup> The Council of State or the Legislative Assembly Electoral Rule 9 (2).



## CHAPTER VII

### ELECTORS FOR THE COUNCIL OF STATE <sup>1</sup>

Qualifications required of electors for the Council of State in Madras—In Bombay—In Bengal—In the United Provinces—In the Punjab—In Bihar and Orissa—In the Central Provinces—In Assam—In Burma—The Electoral Rule with regard to joint families.

In this and the three following chapters we shall state, as briefly as possible, the qualifications of electors for the different legislative bodies. We take up first the question of the franchise qualifications for the Council of State. As will be seen below, they are very high and vary considerably from province to province and from one part of a province to another according to the variation in local circumstances.

#### MADRAS <sup>2</sup>

A person is qualified as an elector for a general constituency who resided in the Presidency of Madras for not less than 120 days in the previous year <sup>3</sup> and who—

(1) has in the Presidency an estate the annual income of which is not less than Rs. 3,000 ; or

(2) is 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

(3) receives from Government a malikana allowance the annual amount of which is not less than Rs. 3,000 ; or

(4) was in the previous year assessed on his own account to income-tax on a total income of not less than Rs. 20,000 ; or

(5) is or has been a non-official member of

<sup>1</sup> The Council of State Electoral Rule 8, Schedule II. *The Gazette of India* (Extra.), July 30, 1923.      <sup>2</sup> Schedule II, Part I, Madras.

<sup>3</sup> 'Previous year' means the financial year preceding that in which the electoral roll for the time being under preparation is first published. The expression has been used in this sense several times later on.

either Chamber of the Indian Legislature or was 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

(6) is or has been a 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 the Madras Local Boards Act, 1920, or is the non-official Vice-President of the said Council or of a District Board ; or

(7) 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 the Madras District Municipalities Act, 1920 ; or

(8) 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

(9) is the non-official President or Vice-President of any Co-operative Central Bank or Co-operative Banking Union ; or

(10) is recognized by the Government as the holder of the title of Shams-ul-Ulama or of the title of Mahamahopadhyaya.

#### • BOMBAY <sup>1</sup>

**General  
constitu-  
encies.**

A person is qualified as an elector for a general constituency who has place of residence<sup>2</sup> in the constituency and who—

(1) is in Sind either a Jagirdar of the first or second

<sup>1</sup> The Council of State Electoral Rule 8, Schedule II, Part II, Bombay.

<sup>2</sup> A person is deemed to have a place of residence in a constituency if he (i) ordinarily lives in the constituency, or (ii) has a family dwelling house in it and occasionally occupies it, or (iii) maintains in the constituency a dwelling house, ready for occupation, in charge of servants and occasionally occupies it.

class or a Zamindar who, in each of the three previous<sup>1</sup> revenue years, paid not less than Rs. 2,000 as land revenue on land situated in any district in Sind ; or

(2) is a Deccan Sardar or a Guzarat Sardar ; or

(3) is a sole alienee of the right of Government to the payment of rent or land revenue of not less than Rs. 2,000 or a Talukdar or a co-sharer holding on talukdari tenure land assessed to land revenue of not less than Rs. 2,000, or a Khot paying not less than Rs. 2,000 as land revenue ; or

(4) is a holder of land assessed to land revenue of not less than Rs. 2,000 ; or

(5) was in the previous financial year assessed to income-tax on an income of not less than Rs. 30,000 ; or

(6) has any of the qualifications specified in clauses (5), (8) and (10) in the case of the Madras Presidency ; or

(7) 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 or of a District Local Board established under the Bombay Local Boards Act, 1884.

Both in Bombay and Madras no person other than a Muhammadan is qualified to be an elector for a Muhammadan constituency<sup>2</sup> and no Muhammadan is qualified to be an elector for the non-Muhammadan constituency.

### *Special Constituency*

A person is 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.

<sup>1</sup> i.e. previous to the year in which the electoral roll for the time being under preparation is first published.

<sup>2</sup> In Bombay there are two Muhammadan constituencies ; in Madras, there is only one.

BENGAL <sup>1</sup>*General Constituencies—Non-Muhammadan*

A person is qualified as an elector for a non-Muhammadan constituency who is neither a Muhammadan nor a European and who has a place of residence within the constituency, and who—

(1) (a) in the Burdwan or the Presidency Division paid during the previous <sup>2</sup> year on his own account as a proprietor land revenue amounting to not less than Rs. 7,500, or road and public works cesses amounting to not less than Rs. 1875; or

(b) in the Dacca, the Rajshahi or the Chittagong Division paid during the previous year, on his own account as a proprietor, land revenue amounting to not less than Rs. 5,000 or road and public works cesses amounting to not less than Rs. 1,250; or

(2) (a) was in the previous year assessed to income tax on an income of not less than Rs. 12,000; or

(b) is a member of a firm which in the previous year was assessed to income-tax and whose share of the firm's income on which the income-tax was so assessed was not less than Rs. 12,000; or

(3) has any of the qualifications mentioned in clauses (5) and (8) in the case of Madras; or,

(4) is or has been the non-official Chairman or is the non-official Vice-Chairman or Deputy-Chairman of the Corporation of Calcutta, or is or has been the non-official Chairman or is the non-official Vice-Chairman of a Municipality constituted under the Bengal Municipal Act, 1884, or of a District Board established under the Bengal Local Self-Government Act, 1885; or

<sup>1</sup> The Council of State Electoral Rule 8, Schedule II, Part III, Bengal.

<sup>2</sup> See the note on it in the case of Madras.

(5) is the non-official Chairman, Deputy-Chairman or Vice-Chairman of any Co-operative Central Bank or Union or Provincial Federation; or

(6) is the holder of the title of Mahamahopadhyaya.

### *Muhammadian Constituency*

A person is qualified as an elector for a Muhammadan constituency who is a Muhammadan and has a place of residence within the constituency and who—

(1) paid during the previous <sup>1</sup> year, on his own account as a proprietor, land revenue amounting to not less than Rs. 600 or road and public works cesses amounting to not less than Rs. 125; or

(2) (a) was in the previous year assessed to income-tax on an income of not less than Rs. 6,000; or

(b) is a member of a firm which in the previous year was assessed to income-tax and whose share of the firm's income on which income-tax was so assessed was not less than Rs. 6,000; or

(3) has any of the qualifications mentioned in clauses (3), (4) and (5) above in the case of the non-Muhammadian constituencies; or

(4) is the holder of the title of Shams-ul-Ulama.

### *Special Constituency*

A person is qualified as an elector for the Bengal Chamber of Commerce constituency who has a place of residence in India and is a Chamber member of that Chamber or a person entitled to exercise the rights and privileges of Chamber-membership on behalf of and in the name of any firm, company or other corporation.

<sup>1</sup> See the note on it in the case of Madras.

THE UNITED PROVINCES<sup>1</sup>*Non-Muhammadian and Muhammadan Constituencies*

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

(1) is the owner of land in the constituency in respect of which land revenue amounting to not less than Rs. 5,000 per annum is payable; or

(2) is the owner of land in the constituency free of land revenue, if the land revenue nominally assessed on such land in order to determine the amount of rates payable in respect of the same, either alone or together with any land revenue payable by him as owner in respect of other land in the constituency, amounts to not less than Rs. 5,000 per annum; or

(3) was in the previous year assessed to income-tax on an income of not less than Rs. 10,000; or

(4) has any of the qualifications mentioned in clauses (5), (8) and (10) in the case of Madras; or

(5) is or has been the non-official Chairman or is the non-official Vice-Chairman of a Municipality constituted under the United Provinces Municipalities Act, 1916, or of a District Board constituted under the United Provinces District Boards Act, 1906; or

(6) is or has been the President of a Chamber of Commerce in the United Provinces; or

(7) is the non-official President or Vice-President of a Co-operative Central Society.

A Muhammadan alone is qualified to be an elector for a Muhammadan constituency; and no Muhammadan is qualified to be an elector for a non-Muhammadan constituency.

<sup>1</sup> The Council of State Electoral Rule 8, Schedule II, Part IV.

THE PUNJAB<sup>1</sup>*Non-Muhammadan, Muhammadan and Sikh Constituencies*

A person is qualified as an elector for a general constituency who resides in the constituency and who—

(1) is the owner or Crown tenant of land assessed to land revenue of not less than Rs. 750 per annum; or

(2) is an assignee of land revenue amounting to not less than Rs. 750 per annum; or

(3) was in the previous year assessed to income-tax on an income of not less than Rs. 15,000; or

(4) has any of the qualifications mentioned in clauses (5), (8) and (10) in the case of Madras; or

(5) is a Provincial Punjab Darbari; or

(6) is the non-official President or Vice-President of any Central Co-operative Bank or Union; or

(7) is or has been the non-official President or Vice-President of any Municipal Committee established under the Punjab Municipal Act, 1911, which has a population of 20,000 or over, or which is situate at the head-quarters station of a district, or is or has been the non-official Chairman or Vice-Chairman of a District Board constituted under the Punjab District Boards Act, 1883.

No person is qualified as an elector for a Muhammadan constituency who is not a Muhammadan or for the Sikh constituency who is not a Sikh; and no Muhammadan or Sikh is qualified as an elector for the non-Muhammadan constituency.

BIHAR AND ORISSA<sup>2</sup>*Non-Muhammadan Constituency*

A person is qualified as an elector for the non-Muhammadan constituency who is not a Muhammadan and who

<sup>1</sup> Electoral Rule 8, Schedule II, Part V.

<sup>2</sup> *Ibid.*, Part VI.



## ELECTORS FOR THE COUNCIL OF STATE 61

as a place of residence in the province of Bihar and Orissa and who—

(1) holds in his own right an estate or estates for which an aggregate amount of not less than Rs. 300 as local cess or an aggregate amount of not less than Rs. 1,200 as land revenue is payable per annum ; or

(2) holds in his own right a tenure or tenures for which an aggregate amount of not less than Rs. 300 as local cess is payable per annum either directly to the Government or through a superior landlord ; or

(3) was in the previous<sup>1</sup> year assessed on his own account to income-tax on an income of not less than Rs. 12,800 ; or

(4) has any of the qualifications mentioned in clauses (5) and (8) in the case of Madras ; or

(5) is or has been the Chairman or the Vice-Chairman of a Municipality, or of a District Board, or of a District Committee, or is or has been the President or is the Vice-President of a Municipal Committee, or is or has been the Chairman of a District Council ; or

(6) is the holder of the title of Mahamahopadhyaya.

### *Muhammadan Constituency*

A person is qualified as an elector for the Muhammadan Constituency who is a Muhammadan and has a place of residence<sup>2</sup> in the province of Bihar and Orissa and who—

(1) holds in his own right an estate or estates for which an aggregate amount of not less than Rs. 750 as land revenue or an aggregate amount of not less than Rs. 187-8-0 as local cess is payable per annum ; or

(2) holds in his own right a tenure or tenures for which an aggregate amount of not less than Rs. 187-8-0 per

<sup>1</sup> See the note on it in the case of Madras.

<sup>2</sup> See the note on it in the case of Bombay.

annum is payable as local cess either directly to the Government or through a superior landlord ; or

(3) was in the previous<sup>1</sup> year assessed on his own account to income-tax on an income of not less than Rs. 6,400 ; or

(4) has any of the qualifications specified in clauses (4) and (5) above in the case of the non-Muhammadian constituency ; or

(5) is the holder of the title of Shams-ul-Ulama.

#### THE CENTRAL PROVINCES<sup>2</sup>

A person is qualified as an elector for the Central Provinces constituency who has a place of residence<sup>3</sup> in the constituency and who—

(1) holds in proprietary right land, the land revenue or kamil-jama of which is not less than Rs. 3,000 ; or

(2) was in the previous year assessed to income-tax on an income of not less than Rs. 20,000 ; or

(3) has any of the qualifications mentioned in clauses (5), (8) and (10) in the case of Madras ; or

(4) is or has been the non-official President of a Municipal Committee or the non-official Chairman of a District Council.

#### ASSAM<sup>4</sup>

##### *Non-Muhammadian and Muhammadian Constituencies*

A person is qualified as an elector for either of the general constituencies who has a place of residence<sup>3</sup> in the province of Assam and who—

(1) is liable to pay annually not less than Rs. 2,000 as land revenue or not less than Rs. 200 as local rate ; or

(2) was in the previous year assessed to income-tax on an income of not less than Rs. 12,000 ; or

<sup>1</sup> See the note on it in the case of Madras.

<sup>2</sup> Council of State Electoral Rule 8, Schedule II, Part VII.

<sup>3</sup> See the note on it in the case of Bombay.

<sup>4</sup> Council of State Electoral Rule 8, Schedule II, Part VIII.

## ELECTORS FOR THE COUNCIL OF STATE 63

(3) has any of the qualifications mentioned in clauses (5), (8) and (10) in the case of Madras ; or

(4) is the non-official Chairman of any Central Co-operative Bank or Banking Union ; or

(5) is or has been a non-official Chairman of Commissioners appointed in Assam under the Bengal Municipal Act, 1876, or of a Municipality established in Assam under the Bengal Municipal Act, 1884, or of a Local Board established under the Assam Local Self-Government Act, 1915.

No person other than a Muhammadan is qualified as an elector in the Muhammadan constituency, and no Muhammadan is qualified as an elector in the non-Muhammadan constituency.

### BURMA<sup>1</sup>

#### *The General Constituency*

A person is qualified as an elector for the Burma constituency who has a place of residence<sup>2</sup> in the province of Burma and who—

(1) paid during the previous year land revenue amounting to not less than Rs. 300 ; or

(2) was in the previous year assessed to income-tax on an income of not less than Rs. 3,000 ; or

(3) has any of the qualifications mentioned in clauses (5), (8) and (10) in the case of Madras ; or

(4) is the non-official Chairman or Vice-Chairman of a Co-operative District Central Bank ; or

(5) is or has been the President or Vice-President of the Rangoon Municipal Committee or is or has been the President or is the Vice-President of any other Municipal Committee, or of a District Council.

<sup>1</sup> The Council of State Electoral Rule 8, Schedule II, Part IX.

<sup>2</sup> See the note on it in the case of Bombay.

*The European Commerce Constituency*

Any person is qualified as an elector for the Burma Chamber of Commerce constituency who has a place of residence in Burma and is a Chamber member of that Chamber or a person entitled to exercise the rights and privileges of Chamber-membership on behalf of and in the name of any firm, company, or other corporation.

*Joint Families*

The rule with regard to joint families is as follows :—

Where property is held or payments are made jointly by the members of a joint family, the family is to be adopted as the unit for deciding whether the requisite qualification for registration as elector exists in the particular case ; and if it does exist, the person qualified will be the manager of the family or the member authorized in that behalf by the family concerned.

## CHAPTER VIII

### ELECTORS FOR THE LEGISLATIVE ASSEMBLY<sup>1</sup>

Qualifications required of electors for the Legislative Assembly in Madras—In Bombay—In Bengal—In the United Provinces—In the Punjab—In Bihar and Orissa—In the Central Provinces—In Assam—In Burma—In Delhi.

As we have noticed in the case of the Council of State, the franchise for the Legislative Assembly is not based upon any uniform principle, but varies widely from province to province and, to a less extent, from one part of a province to another.

#### MADRAS<sup>2</sup>

##### *General Constituencies*

A person is qualified as an elector for the Madras City constituency who is neither a Muhammadan nor a European and who resided in the constituency for not less than 120 days in the previous year<sup>3</sup> and who—

(1) was in the previous year assessed to an aggregate amount of not less than Rs. 20 in respect of one or more of the following taxes, namely, property tax, tax on companies, or profession tax; or

(2) was in the previous year assessed to income-tax.

<sup>1</sup> The Legislative Assembly Electoral Rule 8, Schedule II. *The Gazette of India* (Extra.), July 30, 1923.

<sup>2</sup> Electoral Rule 8, Schedule II, Part I, Clause 6; *ibid.*

<sup>3</sup> 'Previous year' means the financial year preceding that in which the electoral roll or the list of amendments thereto, as the case may be, for the time being under preparation is first published. The expression has been used in this sense in subsequent pages.

A person is qualified as an elector in any other general constituency <sup>1</sup> who resided in the constituency for not less than 120 days in the previous year and who—

**Rural  
consti-  
tuencies.**

(a) is registered as a ryotwari pattadar or as an inamdar of land of which the annual rent value is not less than Rs. 50; or

(b) holds on a registered lease under a ryotwari pattadar or inamdar land the annual rent value of which is not less than Rs. 50; or

(c) is registered jointly with the proprietor under Section 14 of the Malabar Land Registration Act, 1895, as the occupant of land of which the annual rent value is less than Rs. 50; or

(d) is a landholder holding an estate of which the annual rent value is not less than Rs. 50; or

(e) holds as 'ryot' or as tenant under a landholder, land of which the annual rent value is not less than Rs. 50; or

(f) was in the previous year assessed to income-tax; or

(g) was in the previous year assessed in a Municipality included in the constituency to an aggregate amount of not less than Rs. 20 in respect of one or more of the following taxes, namely, property tax, tax on companies, or profession tax.

No Muhammadan or European is qualified as an elector for a non-Muhammadan constituency; and a person is qualified as an elector for a Muhammadan or European constituency according as he is a Muhammadan or a European.

### *Special Constituencies*

**Land-  
holders'  
consti-  
tuency.**

A person is qualified to be an elector for the landholders' constituency <sup>2</sup> if his name is on the electoral roll of any landholders' constituency of the Madras Legislative Council.

<sup>1</sup> Electoral Rule 8, Schedule II, Part I, Clause 7.

<sup>2</sup> Part I, Clause 8.

Every Indian and one duly authorized representative of every Indian partnership are qualified as electors for the Indian Commerce constituency<sup>1</sup> if such persons resided in the Presidency for not less than 120 days in the previous year, and if he or the partnership, as the case may be, was assessed to income-tax in the previous year on an income of not less than Rs. 10,000 derived from business, within the meaning of the Indian Income-tax Act, 1922.

'Indian partnership' means any non-European joint family, or any firm, association or company of which no partner or director is a European.

The rule with regard to joint families<sup>2</sup> in respect of elections to the Legislative Assembly is practically the same as in the case of the Council of State.

A person is qualified as an elector either in his personal capacity or in the capacity of a representative of a joint family or of joint pattadars, but not in both capacities.

#### BOMBAY<sup>3</sup>

##### *General Constituencies*

A person<sup>4</sup> is qualified as an elector for a non-Muham-  
 dan or Muhammadan constituency who, on  
 the first day of January 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—

(1) in the case of the Sind constituencies, held in his own right on the first day of January aforesaid, land on which, in any one of the five revenue years previous to the

<sup>1</sup> Part I, Clause 9.

<sup>2</sup> Legislative Assembly Electoral Rule 8, Schedule II Part I, Clause 3.

<sup>3</sup> *Ibid.*, Part II.

<sup>4</sup> Part II, Clause 6.



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' had been paid; or

(2) in the case of any other constituency, held in his own right, on the first day of January aforesaid, land 'assessed at, or of the assessable value of, not less than Rs. 37-8-0 land revenue in the Panch Mahals or Ratnagiri District and not less than Rs. 75 land revenue elsewhere'; or

(3) was on the aforesaid date the alienee of the right of Government to the payment of rent or land revenue, amounting to Rs. 37-8-0 in the Panch Mahals or Ratnagiri or Upper Sind Frontier District and of Rs. 75 elsewhere, 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. 37-8-0 as land revenue in the Panch Mahals or Ratnagiri District and Rs. 75 as land revenue elsewhere; or

(4) was assessed to income-tax in the previous year.

**The Euro-  
pean consti-  
tuency.**

A person is qualified as an elector for the Bombay European constituency<sup>1</sup> whose name is on the electoral roll of either European constituency of the Bombay Legislative Council.

### *Special Constituencies*

**The Land-  
holders'  
constituen-  
cies.**

1. A person<sup>2</sup> is 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, paid not less than Rs. 1,000 as land revenue on land situated in any district in Sind.

2. A person is qualified as an elector for the Deccan and Guzarat Sardars and Inamdars constituency whose name is

<sup>1</sup> Part II, Clause 7.

<sup>2</sup> Part II, Clause 8.

entered in the list for the time being in force under the Resolutions of the Government of Bombay in the Political Department, No. 2363, dated July 23, 1867, and No. 6265, dated September 21, 1909, or who, on the first day of January 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 members<sup>1</sup> of the Indian Merchants' Chamber and Bureau and of the Bombay Millowners' Association and of the Ahmedabad Millowners' Association are qualified as electors respectively for the constituency comprising the Association of which they are members.

**The Indian  
Commerce  
constitu-  
ency.**

#### BENGAL<sup>2</sup>

##### *General Constituencies*

**Calcutta  
Non-  
Muhamma-  
dan consti-  
tuency.**

1. A person<sup>3</sup> is qualified as an elector for the Calcutta non-Muhammadan constituency who is neither a Muhammadan nor a European and who has a place of residence in Calcutta and who—

(a) during and in respect of the previous<sup>4</sup> year paid not less than Rs. 60 as consolidated rate levied under Chapter XII of the Calcutta Municipal Act, 1899, or as taxes levied under Chapter XIV of that Act; or

(b) was in the previous year assessed to income-tax on an income of not less than Rs. 5,000; or

(c) is a member of a firm which in the previous year was assessed to income-tax and whose share of the firm's income on which income-tax was so assessed was not less than Rs. 5,000.

<sup>1</sup> Part II, Clause 9.

<sup>2</sup> Legislative Assembly Electoral Rule 8, Schedule II, Part III.

<sup>3</sup> Part III, Clause 4.

<sup>4</sup> See the note on it in the case of Madras.

2. A person <sup>1</sup> is qualified as an elector for any other general constituency who has a place of residence in the constituency and who—

(a) during and in respect of the previous <sup>2</sup> year, or, as the case may be, during and in respect of the Bengali year preceding that in which the electoral roll for the time being under preparation is first published, paid not less than Rs. 60 as consolidated rate levied under Chapter XII of the Calcutta Municipal Act, 1899, or as taxes levied under Chapter XIV of that Act; or

(b) paid, during and in respect of such year, in the Municipality of Howrah or of Cossipore-Chitpur, municipal taxes or fees of not less than Rs. 10, or in any other Municipality or Cantonment municipal or cantonment taxes or fees of not less than Rs. 5; or

(c) paid, during and in respect of such year, road and public works cesses under the Cess Act, 1880, of not less than Rs. 5; or

(d) paid, during and in respect of such year, chaukidari tax under the Village Chaukidari Act, 1870, or union rate under the Bengal Village Self-Government Act, 1919, of not less than Rs. 5; or

(e) was in the previous year <sup>3</sup> assessed to income-tax on an income of not less than Rs. 5,000; or

(f) has the qualification specified in 1 (c) above in the case of the Calcutta non-Muhammadan constituency.

3. A person <sup>4</sup> is qualified as an elector for the Bengal European constituency who is a European and has a place of residence in the constituency and who—

(a) was in the previous year assessed to income-tax on an income of not less than Rs. 12,000, or

<sup>1</sup> Part III, Clause 5.

<sup>2</sup> See the note on it in the case of Madras.

<sup>3</sup> *Ibid.*

<sup>4</sup> Part III, Clause 6.

The Euro-  
pean consti-  
tuency.

(b) is a member of a firm which in the previous year was assessed to income-tax and whose share of the firm's income on which income-tax was so assessed was not less than Rs. 12,000.

*Special Constituencies<sup>1</sup>*

**The Land-holders' constituency.** A person is qualified as an elector for the Bengal Land-holders' constituency who has a place of residence in the constituency and who during the previous year—

(1) in the Burdwan Division or the Presidency Division paid on his own account as a proprietor land revenue amounting to not less than Rs. 6,000, or road and public works cesses amounting to not less than Rs. 1,500; or

(2) in the Dacca, the Rajshahi or the Chittagong Division paid on his own account land revenue amounting to not less than Rs. 4,000, or road and public works cesses amounting to not less than Rs. 1,000.

**The Indian Commerce constituency.** The members <sup>2</sup> of the Bengal National Chamber of Commerce and of the Marwari Association and of the Bengal Mahajan Sabha are qualified as electors respectively for the constituency comprising the Chamber, Association and Sabha of which they are members.

THE UNITED PROVINCES <sup>3</sup>

*General Constituencies*

**Urban constituencies.** A person <sup>4</sup> is qualified as an elector for a non-Muhammadan or Muhammadan urban constituency who is not a European and who—

(1) has a place of residence in the constituency or within two miles of the boundary thereof, and

<sup>1</sup> Part III, Clause 7.

<sup>2</sup> Part III, Clause 9.

<sup>3</sup> Legislative Assembly Electoral Rule 8, Schedule II, Part IV.

<sup>4</sup> Part IV, Clause 6.

- (a) is, in any place in the area aforesaid in which a house or building tax is in force, the owner or tenant of a house the rental value of which is not less than Rs. 180 per annum ; or
- (b) was, in any area in the constituency in which no house or building tax is in force, assessed in the previous year to municipal tax on an income of not less than Rs. 1,000 per annum ; or
- (c) is, in any area in the constituency in which neither a house or building tax nor a municipal tax based on income is in force, the owner or tenant of a house or building of which the rental value is not less than Rs. 180 per annum ; or
- (d) has within the constituency any of the qualifications based on the holding of land, as stated below, for an elector of a rural constituency ; or
- (2) has a place of residence in the constituency and was in the previous year assessed to income-tax.

A person<sup>1</sup> is qualified as an elector for a non-Muham-  
**Rural con-**                      madan or Muhammadan rural constituency who  
**stituencies.**                  is not a European and who has a place of  
    residence in the constituency and—

(1) is, in an urban area included in the constituency in which a house or building tax is in force, the owner or tenant of a house or building, the rental value of which is not less than Rs. 180 per annum ; or

(2) was, in an urban area included in the constituency in which no house or building tax is in force, assessed in the previous year to municipal tax on an income of not less than Rs. 1,000 per annum ; or

<sup>1</sup> Part V, Clause 7.

(3) is, in an urban area included in the constituency where neither a house or building tax nor a municipal tax based on income is in force, the owner or tenant of a house or building, the rental value of which is not less than Rs. 180 per annum ; or

(4) is the owner of land in the constituency in respect of which land revenue amounting to not less than Rs. 150 per annum is payable ; or

(5) is the owner of land in the constituency free of land revenue, if the land revenue nominally assessed on such land in order to determine the amount of rates payable in respect of the same, either alone or together with any land revenue payable by him as owner in respect of other lands in the constituency, amounts to not less than Rs. 150 per annum ; or

(6) being a resident in the hill pattis of Kumaun—

(a) pays land revenue or rent amounting to not less than Rs. 25 per annum ; or

(b) is the owner of a fee-simple estate ; or

(7) being in the constituency a permanent tenure holder or a fixed rate tenant as defined in the Agra Tenancy Act, 1901, or an under-proprietor or occupancy tenant as defined in the Oudh Rent Act, 1886, is liable to pay rent as such of not less than Rs. 150 per annum ; or

(8) (a) being in the constituency a tenant as defined in the Agra Tenancy Act, 1901, or the Oudh Rent Act, 1886, other than a sub-tenant, holds land as such in respect of which rent of not less than Rs. 150 per annum or its equivalent in kind is payable ; or

(b) in areas in the United Provinces in which the Agra Tenancy Act, 1901, or the Oudh Rent Act, 1886, is not in force, holds land as a tenant in respect of which rent of not less than Rs. 150 per annum or its equivalent in kind is payable ; or

(9) was assessed to income-tax in the previous year.

Both in the case of the urban and rural constituencies no person other than a Muhammadan is qualified as an elector for a Muhammadan constituency, and no Muhammadan is qualified as an elector for a non-Muhammadan constituency.

A person<sup>1</sup> is qualified as an elector for the United Provinces (European) constituency who is a European and has a place of residence in the United Provinces of Agra and Oudh and has any of the qualifications specified in (4), (5), (6), (7), (8) and (9) above in the case of a non-Muhammadan or Muhammadan rural constituency.

The  
European  
constitu-  
ency.

#### *Special Constituencies*<sup>2</sup>

A person is qualified as an elector for the United Provinces Landholders' constituency who has a place of residence in the constituency and—  
(1) is the owner of land in the constituency in respect of which land revenue amounting to not less than Rs. 5,000 per annum is payable ; or

(2) is the owner of land in the constituency free of land revenue, if the land revenue nominally assessed on such land in order to determine the amount of rates payable in respect of the same, either alone or together with any land revenue payable by him as owner in respect of other lands in the constituency, amounts to not less than Rs. 5,000 per annum.

The Land-  
holders'  
constitu-  
ency.

#### THE PUNJAB<sup>3</sup>

#### *General Constituencies*

A person<sup>4</sup> is qualified as an elector for a general constituency who resides in the constituency and who—

(1) owned for the twelve months preceding the date of publication of the electoral<sup>5</sup> roll immovable property,

<sup>1</sup> Part IV, Clause 8.

<sup>2</sup> Part IV, Clause 9.

<sup>3</sup> Legislative Assembly Electoral Rule 8, Schedule II, Part V.

<sup>4</sup> *Ibid.*, Part V, Clause 5.



not being land assessed to land revenue but including any building erected on such land, of the value of not less than Rs. 15,000 or of an annual rental value of not less than Rs. 336 : ' provided that a person must be deemed to have owned such property for any period during which it was owned by any person through whom he derives title by inheritance ' ; or

(2) owns land assessed to land revenue of not less than Rs. 100 per annum ; or

(3) is the assignee of land revenue amounting to not less than Rs. 100 per annum ; or

(4) is a tenant or lessee, under the terms of a lease for a period of not less than three years, of Crown land for which rent of not less than Rs. 100 per annum is payable : ' provided that, when the amount payable is assessed from harvest to harvest, the annual rent payable by such person must be deemed to be the annual average amount payable by him in the three years preceding the date of publication of the electoral roll ' ; or

(5) was during the financial year preceding the date of publication of the electoral roll assessed to income-tax on an income of not less than Rs. 5,000.

No person is qualified as an elector for a Muhammadan constituency who is not a Muhammadan or for a Sikh constituency who is not a Sikh, and no Muhammadan or Sikh is qualified as an elector for a non-Muhammadan constituency.

#### *Special Constituency*<sup>1</sup>

A person is qualified as an elector for the land-holders' constituency who resides in the Punjab and who is—

**The Land-holders' constituency.**

(1) the owner of land assessed to land revenue of not less than Rs. 1,000 per annum ; or

<sup>1</sup> Part V, Clause 6.

(2) an assignee of land revenue amounting to not less than Rs. 1,000 per annum.

### BIHAR AND ORISSA <sup>1</sup>

#### *General Constituencies*

A person <sup>2</sup> is qualified as an elector for a general constituency who has a place of residence in the constituency and—

**Non-Muhamma-  
dan and  
Muhamma-  
dan consti-  
tuencies.**

(1) holds an estate or estates, whether revenue-paying or revenue-free or rent-free, for which an aggregate amount of not less,—

(a) in the case of land in the Patna Division, than Rs. 30, or

(b) in the case of land in the Bhagalpur and Tirhut Divisions, than Rs. 24, or

(c) in the case of land in the Orissa and Chota Nagpur Divisions, than Rs. 12,

is payable direct to the treasury as local cess ; or

(2) holds a tenure or tenures which is or are valued for the purpose of local cess at an aggregate amount of not less,—

(a) in the case of tenures in the Patna Division, than Rs. 400 per annum, or

(b) in the case of tenures in the Chota Nagpur Division, than Rs. 300 per annum, or

(c) in the case of tenures in the Bhagalpur Division, than Rs. 200 per annum, or

(d) in the case of tenures in the Tirhut Division, than Rs. 150 per annum, or

(e) in the case of tenures in the Orissa Division, than Rs. 100 per annum ; or

(3) holds land as a raiyat and pays an annual aggregate rent or local cess amounting respectively—

(a) to Rs. 160 and Rs. 5 in the Patna Division, or

<sup>1</sup> Legislative Assembly Electoral Rule 8, Schedule II, Part VI.

<sup>2</sup> *Ibid.*, Part VI, Clause 4.

- (b) to Rs. 96 and Rs. 3 in the Tirhut Division, or
- (c) to Rs. 64 and Rs. 2 in the Orissa Division, or
- (d) to Rs. 40 and Rs. 1-4-0 in the Chota Nagpur Division, or
- (e) to Rs. 144 and Rs. 4-8-0 in the Bhagalpur and Monghyr Districts, or
- (f) to Rs. 96 and Rs. 3 in the Purnea and Santhal Parganas Districts ; or

(4) was in the previous year assessed to income-tax on an income of not less than Rs. 3,840 ; or

(5) was in the previous year assessed to an aggregate amount of not less than Rs. 15 in respect of any municipal or cantonment rates or taxes.

No person who is not a Muhammadan is qualified as an elector for a Muhammadan constituency and no Muhammadan is qualified as an elector for a non-Muhammadan constituency.

#### *Special Constituency*<sup>1</sup>

A person<sup>1</sup> is qualified as an elector for the landholders' constituency who has a place of residence in the Province of Bihar and Orissa and pays annually land revenue or local cess of an aggregate amount of not less than Rs. 10,000 and Rs. 2,500 respectively.

**The Land-  
holders'  
consti-  
tuency.**

#### THE CENTRAL PROVINCES<sup>2</sup>

##### *General Constituencies*

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

- (1) owns or occupies as a tenant within an urban area in the constituency a house, or

**Muhamma-  
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<sup>1</sup> Part VI, Clause 5.

<sup>2</sup> Legislative Assembly Electoral Rule 8, Schedule II, Part VII.

part of a house, the annual rental value of which is not less—

- (a) in the case of a house in the Nagpur Municipality or in the Jubbulpore Municipality or Cantonment, than Rs. 240, and
- (b) in the case of a house in any other urban area, than Rs. 180,

‘ provided that, where such house or building or part is held by two or more persons in shares, no person shall be qualified in respect of a share the annual rental value of which is less than Rs. 240, or Rs. 180, as the case may be ’; or

(2) is a proprietor or thekadar of an estate, or of a share of it, the land revenue or kamil-jama of which is not less than Rs. 300 ; or

(3) holds, as a proprietor or thekadar in proprietary right, land, the assessed or assessable revenue or rent of which is not less—

- (a) in the case of land in the Raipur, Bilaspur, Drug, Chanda and Betul Districts, than Rs. 90, or
- (b) in the case of land in Bhandara, Balaghat, Nimar, Chhindwara and Seoni Districts, than Rs. 120, or
- (c) in the case of land in any other district, than Rs. 150 ; or

(4) was in the previous year<sup>1</sup> assessed to income-tax.

No person other than a Muhammadan is qualified as an elector for the Muhammadan constituency, and no Muhammadan is qualified as an elector for a non-Muhammadan constituency.

<sup>1</sup> See the note on it in the case of Madras before.

*Special Constituency*<sup>1</sup>

A person is qualified as an elector for the landholders' constituency who has a place of residence in the constituency and who—

The Land-  
holders'  
constitu-  
ency.

(1) is the holder of a hereditary title recognized by Government and owns agricultural land in proprietary right ; or

(2) is the owner of an estate as defined in Section 2 (3) of the Central Provinces Land Revenue Act, 1917 ; or

(3) holds land as a proprietor, the land revenue or kamil-jama of which is not less than Rs. 5,000.

ASSAM<sup>2</sup>

A person<sup>3</sup> is qualified as an elector for any constituency who during the previous year resided within the constituency and who—

(1) was in the previous year assessed in respect of municipal or cantonment rates or taxes to an aggregate amount of not less than Rs. 20 ; or

(2) was in the previous year assessed to a tax of not less than Rs. 10 in a Union under Chapter III of the Bengal Municipal Act, 1876 ; or

(3) was in the previous year assessed to a chaukidari tax of not less than Rs. 2 under the Village Chaukidari Act, 1870, in the Sylhet, Cachar or Goalpara District ; or

(4) in any district other than those mentioned in clause (3)

(a) owns land, the land revenue on which has been assessed or is assessable at not less than Rs. 45 per annum, or

(b) pays a local rate of not less than Rs. 3 per annum ;  
or

<sup>1</sup> Part VII, Clause 7.

<sup>2</sup> Legislative Assembly Electoral Rule 8, Schedule II, Part VIII.

<sup>3</sup> Part VIII, Clause 3.

(5) was in the previous year assessed to income-tax on an income of not less than Rs. 3,600.

No person is qualified as an elector for the Muhammadan constituency who is not a Muhammadan or for the European constituency who is not a European, and no Muhammadan or European is qualified as an elector for a non-Muhammadan constituency.

#### BURMA<sup>1</sup>

A person is qualified as an elector of any constituency who has a place of residence in the province of Burma and who—

(1) paid during and in respect of the previous agricultural<sup>2</sup> year land revenue amounting to not less than—

(a) Rs. 150 in Lower Burma, or

(b) Rs. 100 in Upper Burma ; or

(2) paid during and in respect of the previous agricultural<sup>3</sup> year thathameda tax amounting to not less than Rs. 25, or

(3) was in the previous financial year<sup>3</sup> assessed to income-tax.

No person is qualified as an elector for the European constituency who is not a European, and no European is qualified as an elector for the non-European constituency.

#### DELHI<sup>4</sup>

**The Delhi constituency.**

A person<sup>5</sup> is qualified as an elector for the Delhi constituency who resides in the constituency and who—

(1) owned in the constituency for the twelve months

<sup>1</sup> Legislative Assembly Electoral Rule 8, Schedule II, Part IX.

<sup>2</sup> Part 9, Clause 3.

<sup>3</sup> "Previous agricultural year" and "previous financial year" mean respectively the agricultural and financial year preceding that in which the electoral roll or the list of amendments thereto, as the case may be, for the time being under preparation is first published.

<sup>4</sup> Legislative Assembly Electoral Rule 8, Schedule II, Part 10.

<sup>5</sup> Part X, Clause 5.

preceding the date of publication of the electoral roll immovable property, not being land assessed to land revenue but including any building erected on such land, of the value of not less than Rs. 15,000 or of an annual rental value of not less than Rs. 336, or was tenant of such immovable property for a like period :

‘ Provided that a person shall be deemed to have owned such property for any period during which it was owned by any person through whom he derives title by inheritance ’ ;  
or

(2) owns land in the constituency assessed to land revenue of not less than Rs. 100 per annum ; or

(3) is an assignee of land revenue amounting to not less than Rs. 100 per annum ; or

(4) is a tenant or lessee, under the terms of a lease for a period of not less than three years, of Crown land in the constituency for which rent of not less than Rs. 100 per annum is payable :

‘ Provided that, when the amount payable is assessed from harvest to harvest, the annual rent payable by such person shall be deemed to be the annual average amount payable by him in the three years preceding the date of publication of the electoral roll ’ ; or

(5) was during the financial year preceding the date of publication of the electoral roll assessed to income-tax on an income of not less than Rs. 5,000.



## CHAPTER IX

### QUALIFICATIONS OF ELECTORS FOR THE BENGAL AND UNITED PROVINCES LEGISLATIVE COUNCILS

Electors<sup>1</sup> for the Bengal Legislative Council—General constituencies: urban and rural constituencies other than Calcutta constituencies, Calcutta constituencies, European constituencies, the Anglo-Indian constituency—Special constituencies: Landholders' constituency, Calcutta University constituency, Dacca University constituency, Commerce and Industry constituencies.

Electors for the United Provinces Legislative Council—General constituencies: urban constituencies, rural constituencies, the European constituency—Special constituencies: The Talukdars' constituency, Agra Landholders' constituencies, Commerce and Industry constituencies, the University constituency.

#### QUALIFICATIONS OF ELECTORS FOR THE BENGAL LEGISLATIVE COUNCIL

##### *General Constituency*

A person is qualified as an elector (a) for a non-Muhammadan constituency<sup>2</sup> if he is neither a Muhammadan nor a European nor an Anglo-Indian, and (b) for a Muhammadan, European or Anglo-Indian constituency according as he is a Muhammadan, European or Anglo-Indian. This is not all that is required for qualifying a person for registration as an elector. He must possess further qualifications as stated below:—

Subject to the communal requirements stated above,

<sup>1</sup> The Bengal Legislative Council Electoral Rule 8, Schedule II; *The Gazette of India* (Extra.), July 30, 1923. We have, in stating the Electoral Rules, retained in most cases the exact language of the Electoral Rules and Regulations in order to ensure accuracy.

<sup>2</sup> Bengal Electoral Rule 8, Schedule II, Clause 2.

a person is qualified as an elector for an urban or rural constituency, other than a Calcutta constituency, if he has a place of residence in the constituency, and if he—

Urban and rural constituencies other than Calcutta constituencies.

(1) paid, during and in respect of the previous<sup>1</sup> year or, as the case may be, during and in respect of the Bengali year preceding that in which the electoral roll for the time being under preparation, is first published,—

- (a) in the Municipalities of Howrah or Cossipore municipal taxes or fees of not less than Rs. 3 or in any other municipal or cantonment area, municipal or cantonment taxes or fees of not less than Rs. 1-8-0, or
- (b) road and public works cesses under the Cess Act, 1880, of not less than Re. 1, or
- (c) chaukidari tax under the Village Chaukidari Act, 1870, or union rate under the Bengal Village Self-Government Act, 1919, of not less than Rs. 2; or

(2) was in the previous year assessed to income-tax;

OR

(3) is a retired, pensioned or discharged officer, non-commissioned officer or soldier of His Majesty's regular forces.<sup>2</sup>

Subject to the communal requirements stated before, a person is entitled to be an elector for a Calcutta constituency<sup>3</sup> if he has a place of residence therein or if he, having a place of residence in Calcutta as defined in Section 3 (7) of the Calcutta

Calcutta constituencies.

<sup>1</sup> Here, as elsewhere, the expression 'previous year' means the financial year preceding the year of the first publication of the electoral roll.

<sup>2</sup> Bengal Electoral Rule 8, Schedule II, Clause 3.

<sup>3</sup> *Ibid.*, Clause 4.

Municipal Act, 1899, has a place of business within the constituency, and if he—

(1) during the previous year—

(a) was entered in the municipal assessment book as—

(i) the owner and occupier of some land or building in Calcutta separately numbered and valued for assessment purposes at not less than Rs. 150 per annum ; or

(ii) the owner or occupier of some land or building in Calcutta separately numbered and valued for assessment purposes at not less than Rs. 300 per annum :

Provided that no person is to be qualified in virtue of any of the above qualifications unless the owner and occupier's share, or the owner's or occupier's share, as the case may be, of the consolidated rate on such land or building for the aforesaid year was paid during that year ; or

(b) paid in respect of that year on his sole account and in his own name not less than Rs. 24 either in respect of the consolidated rate levied under Chapter XII, or in respect of the taxes levied under Chapter XIII, or in respect of the taxes levied under Chapter XIV, of the Calcutta Municipal Act, 1899 :

Provided that, if any payment was made in respect of the consolidated rate, a person will be qualified only if his name is entered in the Municipal Assessment Book in respect of the holding for which the payment was made ; or

(2) (a) was assessed to income-tax in the previous year, or

(b) is a member of a firm which in the previous year was assessed to income-tax and if his

share of the firm's income on which income-tax was so assessed was not less than the minimum on which the tax is leviable ; or

(3) is a retired, pensioned or discharged officer, non-commissioned officer or soldier of His Majesty's regular forces.

Subject to the communal requirements stated before, a person is qualified as an elector for a **European constituency**<sup>1</sup> if he has a place of residence in the constituency and has any of the qualifications prescribed for an elector of any urban or rural constituency included in the area of such **European constituency**.

Subject to the communal requirements stated before, a person is qualified as an elector for the **Anglo-Indian constituency**<sup>2</sup> who has a place of residence in Bengal and has any of the qualifications prescribed for an elector of any urban or rural constituency.

In the case of a joint family,<sup>3</sup> the family is to be adopted as the unit for deciding whether the requisite qualification exists ; and if it does exist, the person qualified will be the manager of the family.

A person is not qualified as an elector for a general constituency by virtue of any property held or payment made as a trustee, administrator, receiver or guardian or in any other fiduciary capacity.

#### SPECIAL CONSTITUENCIES

A person is qualified as an elector for a **landholders' constituency**<sup>4</sup> who has a place of residence in the constituency and who during the previous year—

(1) in the case of the **Burdwan Landholders' and the Presidency Landholders' constituencies**, paid, on

<sup>1</sup> Bengal Electoral Rule 8, Schedule II, Clause 5.

<sup>2</sup> *Ibid.*, Clause 6.

<sup>3</sup> *Ibid.*, Clause 7.

<sup>4</sup> *Ibid.*, Clause 9.

his own account as a proprietor, land revenue amounting to not less than Rs. 4,500 or road and public works cesses amounting to not less than Rs. 1,125, or

(2) in the case of the Dacca, the Rajshahi and the Chittagong Landholders' constituencies, paid, on his own account as a proprietor or a permanent tenure-holder, land revenue amounting to not less than Rs. 3,000 or road and public works cesses amounting to not less than Rs. 750.

A person is qualified as an elector for the Calcutta University constituency<sup>1</sup> who has a place of residence in Bengal and is a member of the Senate or an Honorary Fellow of the University, or a graduate of the University of not less than seven years' standing.

A person is qualified as an elector for the Dacca University constituency<sup>2</sup> who—

(1) has a place of residence in Bengal and is a member of the Court or a registered graduate of the University, or

(2) has a place of residence in the Dacca Division or in the Chittagong Division, and would have been qualified to be registered as a graduate of the University, if he had not before the first of April, 1920, been registered as a graduate of any other Indian University.

The Chamber members of the Bengal Chamber of Commerce<sup>3</sup> and the permanent members of the Indian Jute Mills' Association, of the Indian Tea Association, and of the Indian Mining Association are qualified respectively as electors for the constituency comprising the Chamber or Association of which they are such members:

<sup>1</sup> Bengal Electoral Rule 8, Schedule II, Clause 11.

<sup>2</sup> *Ibid.*, Clause 12. No person can vote at any general election both in the Calcutta University and in the Dacca University constituency. See the Bengal Electoral Rule 10.

<sup>3</sup> *Ibid.*, Clause 13 (1).

Provided that no person can be so qualified unless he has a place of residence in India.

“Chamber member” and “permanent member” include any person entitled to exercise the rights and privileges of Chamber membership or permanent membership, as the case may be, on behalf of any firm, company or other corporation registered as such member.’

The members of the Calcutta Trades Association, the life and ordinary members of the Bengal National Chamber of Commerce, the life and ordinary members of the Bengal Mahajan Sabha, and the life, ordinary and mofussil members of the Marwari Association, Calcutta, are qualified, respectively, as electors for the constituency comprising the Association, Chamber or Sabha of which they are such members :<sup>1</sup>

<sup>1</sup> Bengal Electoral Rule 8, Schedule II, Clause 13 (2).

“Member”, “life-member”, “ordinary member” and “mofussil member” include—

(a) in the case of a firm, any one partner in the firm, or if no such partner is present in Calcutta at the date fixed for the election, any one person empowered to sign for such firm, and

(b) in the case of a company or other corporation any one manager, director or secretary of the company or corporation.’

We may note here the following interesting case :—

The Commissioners appointed under Rule 36 (2) (a) of the Bengal Electoral Rules to enquire into the petition presented by Mr. Amulyadhan Addy against the election of Mr. Byomkes Chakravarty to the Bengal Legislative Council to represent the Bengal National Chamber of Commerce constituency, held that Mr. Chakravarty's name not being in the electoral roll of the Bengal National Chamber of Commerce constituency, he was not properly nominated. They therefore declared that the election of Mr. Chakravarty was null and void and that it should be set aside. They further stated in the course of their judgment that it was the individual who could vote and who could stand for election. ‘We cannot but come to the conclusion,’ said they, ‘that the Legislature intended that it was a natural person who should have the right to be on roll and to be entitled to vote or nominate or be a candidate. . . . Firms being artificial persons can only act through a natural person.’

In this case, the petitioner, Mr. Amulyadhan Addy, contended that Mr. Chakravarty was not entitled to be a candidate by reason of the fact that his name did not appear on the electoral roll, though the Bengal National Bank, Limited, of which he was a director, was on the roll. Mr. Chakravarty replied that the Bengal National Bank,