

Provided that no person can be so qualified who has not a place of residence in India.

QUALIFICATIONS OF ELECTORS FOR THE UNITED PROVINCES LEGISLATIVE COUNCIL ¹

A person is qualified as an elector—

Qualifications based on community.

- (1) for a non-Muhammadian constituency who is neither a European nor a Muhammadian,
- (2) for a Muhammadian constituency who is Muhammadian, and

(3) for the European constituency who is a European :
Provided that such person possesses the further qualifications stated below for an elector of the particular constituency.

General Constituencies

Urban constituencies.

A person is qualified as an elector for an urban constituency ² who has the necessary communal qualification and who—

- (1) has a place of residence in the constituency or within two miles of its boundary, and
- (a) is, in any place in the aforesaid area 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. 36 per annum ; or
- (b) was, in an area in the constituency in which no house or building tax is in force, assessed in

Limited, was an ordinary member of the constituency known as the Bengal National Chamber of Commerce constituency and was therefore rightly registered as an elector and that he as a director of the aforesaid bank was duly qualified to be nominated and elected and returned as a member of the Bengal Legislative Council.—Bengal Election Case No. 8 of 1924. *The Calcutta Gazette*, March 26, 1924. We think that the Bengal Electoral Rule 8, Schedule II, Clause 13 (2) ought to be made more clear and definite.

¹ The United Provinces Legislative Council Electoral Rule 8, Schedule II ; *The Gazette of India* (Extra.), July 30, 1923.

² Schedule II, Clause 7.

the previous year to municipal tax on an income of not less than Rs. 200 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. 36 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
 - (a) was in the previous year assessed to income-tax ; or
 - (b) is a retired, pensioned or discharged officer, non-commissioned officer or soldier of His Majesty's regular forces.

Rural constituencies.

A person is entitled to be registered as an elector for a rural constituency ¹ who has a place of residence in the constituency, and has the necessary communal qualification, 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. 36 per annum ; or

(2) 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 of which the rental value is not less than Rs. 36 per annum ; or

(3) 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. 200 per annum ; or

¹ United Provinces Electoral Rule 8, Schedule II, Clause 8.

(4) owns land in the constituency in respect of which land revenue amounting to not less than Rs. 25 per annum is payable ; or

(5) owns 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. 25 per annum ; or

(6) being a resident in the hill pattis of Kumaon, owns a fee-simple estate or is assessed to the payment of land revenue or cesses of any amount or is a Khaikar ; 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, pays rent as such of not less than Rs. 25 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. 50 per annum or its equivalent in kind is payable, or

(b) in areas in the United Provinces in which the Agra Tenancy Act, 1907, 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. 50 per annum or its equivalent in kind is payable ; or

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

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

The European constituency. A person is qualified as an elector for the European constituency¹ who is a European, has a place of residence in the United Provinces of Agra and Oudh and has any of the qualifications required of an elector of any urban or rural constituency.

*Special Constituencies*²

The Talukdars' constituency. A person is qualified as an elector for the Talukdars' constituency who is an ordinary member of the British Indian Association of Oudh.

Agra Landholders' constituencies. A person is qualified to be an elector for an Agra Landholders' constituency who has a place of residence in the constituency and—

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

(2) owns 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.

Commerce and Industry constituencies. A person is qualified as an elector—

(1) for the Upper India Chamber of Commerce constituency who—

(a) is a member, other than an honorary or affiliated member, of the Upper India Chamber of Commerce and has a place of business within the United Provinces of Agra and Oudh; or

¹ United Provinces Electoral Rule 8, Schedule II, Clause 9.

² *Ibid.*, Clauses 10, 11, 12 and 13.

(b) is entitled to exercise the rights and privileges of membership of the said Chamber on behalf of and in the name of any firm, company or other corporation which has a place of business within the United Provinces of Agra and Oudh; and

(2) for the United Provinces Chamber of Commerce constituency who—

(a) is a member, other than an honorary member, of the United Provinces Chamber of Commerce and has a place of business or residence in the United Provinces; or

(b) is entitled to exercise the rights and privileges of membership of the said Chamber on behalf and in the name of any firm, company or other corporation which has a place of business in the United Provinces.

A person is qualified as an elector for the Allahabad University constituency who—

The University constituency.

(1) resides in India and is a member of the Senate or an Honorary Fellow of the University of Allahabad; or

(2) resides in the United Provinces of Agra and Oudh; and is—

(a) a Doctor or Master, or

(b) a graduate of not less than seven years' standing in any Faculty of the University of Allahabad:

Provided that no elector is to have more than one vote in the constituency though he may have more than one of the above-mentioned qualifications.

In the case of a joint family or joint tenancy, the family or tenancy is to be regarded as the unit for deciding whether the requisite qualification exists; and if it does exist, the person qualified will be, in the case of a Hindu joint family, the manager thereof or the member nominated

in that behalf by a majority of the family and in other cases the member nominated in that behalf by the family or tenancy concerned.¹

A person may be qualified either in his personal capacity or in the capacity of a representative of a joint family or joint tenancy but not in both the capacities. Nor can a person be qualified as an elector as a representative of more than one joint tenancy.

¹ United Provinces Electoral Rule 8, Schedule II, Clause 2.

CHAPTER X

QUALIFICATIONS OF ELECTORS FOR THE MADRAS AND BOMBAY LEGISLATIVE COUNCILS

Electors ¹ for the Madras Legislative Council—General constituencies: non-Muhammadan constituencies (urban and rural), Muhammadan constituencies (urban and rural), Indian Christian constituencies, European and Anglo-Indian constituencies—Special constituencies: Landholders' constituencies, the University constituency, the Planters' constituency, the Madras Chamber of Commerce and Industry constituency, other Commerce constituencies.

Electors for the Bombay Legislative Council—General constituencies: non-Muhammadan and Muhammadan urban constituencies, non-Muhammadan and Muhammadan rural constituencies, European constituencies—Special constituencies: Landholders' constituencies, the University constituency, Commerce and Industry constituencies.

QUALIFICATIONS OF ELECTORS FOR THE MADRAS LEGISLATIVE COUNCIL

General Constituencies

Every person not being a European, an Anglo-Indian, an Indian Christian or a Muhammadan, is qualified to be an elector for a non-Muhammadan constituency if he resided in the constituency for not less than 120 days in the previous year, and has the further qualifications, as stated below, for an elector of the particular constituency.

**Non-Muham-
madan
constituen-
cies (urban
and rural).**

**Urban con-
stituencies.**

A person is qualified as an elector—

- (1) for a Madras City constituency ² who—
(a) was assessed in the previous year to property-tax or tax on companies or profession-tax; or

¹ The Madras Legislative Council Electoral Rule 8, Schedule II—vide *The Gazette of India* (Extra.), July 30, 1923.

² Electoral Rule 8, Schedule II, Clause 4.

- (b) occupied for not less than six months in the previous year a house in the city, not being a house in any military or police lines, of an annual value of not less than Rs. 60 ; or
 - (c) was assessed in the previous year to income-tax ; or
 - (d) is a retired, pensioned or discharged officer, non-commissioned officer or soldier of His Majesty's regular forces ; and
- (2) for an urban constituency other than a Madras City constituency ¹ who
- (a) was assessed in the previous year to an aggregate amount of not less than Rs. 3 in respect of one or more of the following taxes, namely, property-tax, tax on companies or profession-tax ; or
 - (b) has any of the qualifications in respect of the holding of land, as stated below, for an elector of a rural constituency ; or
 - (c) has any of the qualifications specified in clauses (1) (c) and (1) (d) above.

A person is qualified as an elector for a rural constituency ² who—

Rural constituencies.

- (1) is a ryotwari pattadar or an inamdar of land the annual rent value of which is not less than Rs. 10 ; or
- (2) holds on a registered lease under a ryotwari pattadar or an inamdar land the annual rent value of which is not less than Rs. 10 ; or
- (3) is registered jointly with the proprietor under Section 14 of the Malabar Land Registration Act, 1895, as the occupant of land the annual rent value of which is not less than Rs. 10 ; or

¹ Schedule II, Clause 5.

² *Ibid.*, Clause 6.

(4) is a landholder holding an estate the annual rent value of which is not less than Rs. 10; or

(5) holds as ryot or as tenant under a landholder, land the annual rent value of which is not less than Rs. 10; or

(6) was in the previous year assessed in a municipality included in the constituency to an aggregate amount of not less than Rs. 3 in respect of one or more of the following taxes, namely, property-tax, tax on companies, or profession-tax; or

(7) has any of the qualifications specified in clauses (1) (c) and (1) (d) in the case of the urban constituencies above.

A person is entitled to be an elector—

**Muhamma-
dan consti-
tuencies.** (1) for a Muhammadan constituency,¹ urban or rural, who is a Muhammadan and resided in the constituency for not less than 120 days in the previous year and has any of the qualifications stated above for an elector of a Madras City, other urban, or rural constituency, as the case may be;

**Indian
Christian
consti-
tuencies.** (2) for an Indian Christian constituency² who is an Indian Christian and resided in the constituency for not less than 120 days in the previous year and has any of the qualifications stated above for an elector of any urban or rural constituency included in the area of such Indian Christian constituency; and

**European
and Anglo-
Indian con-
stituencies.** (3) for the European constituency³ who is a European, and for the Anglo-Indian constituency⁴ who is an Anglo-Indian, if such European or Anglo-Indian resided in the Madras Presidency for not less than 120 days in the previous year and has any of the qualifications stated above for an elector of any urban or rural constituency.

¹ Schedule II, Clause 7.

³ *Ibid.*, Clause 9.

² *Ibid.*, Clause 8.

⁴ *Ibid.*

The rule with regard to the joint families is practically the same as stated before in the case of the United Provinces Legislative Council.

SPECIAL CONSTITUENCIES

A person is entitled to be an elector for a landholders' constituency¹ who is a Zamindar, Janmi or Malikanadar and resided in the constituency for not less than 120 days in the previous year and who—

(1) possesses an annual income of not less than Rs. 3,000 derived from an estate within the Presidency of Madras; or

(2) is registered as the Janmi of land situated within the Presidency of Madras on which the assessment 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.

If several persons are registered as joint holders² of land, a majority of the adult male persons so registered are to nominate in writing any one of themselves who is not disqualified to be their representative for voting purposes and the name of such representative alone will be entered in the electoral roll; but, if no such nomination is made, no entry will be made in the roll in respect of such land.

When the property of a joint family is registered in the name of a woman³ and would, but for the disqualification of sex, qualify the registered holder as an elector, the senior male member of the family who is not disqualified, or any member not disqualified who is nominated in writing by a majority of the adult male members, will be qualified as the representative of the family.

¹ Schedule II, Clause 14.

³ *Ibid.*, Clause 20.

² *Ibid.*, Clause 19.

OTHER SPECIAL CONSTITUENCIES

The University constituency. A person is qualified as an elector for the Madras University constituency¹ if he has a place of residence in India and is a member of the Senate, or an Honorary Fellow or a graduate of over seven years' standing of the University of Madras.

The Planters' constituency. A person is qualified as an elector for the Madras Planters' constituency² if he is a member of one of the associations affiliated to the United Planters' Association of Southern India.

The Madras Chamber of Commerce and Industry constituency. A person is qualified to be an elector for the Madras Chamber of Commerce³ constituency if he is a member of the Madras Chamber of Commerce or of a Chamber affiliated to it.

Other Commerce constituencies. The members of the Madras Trades Association, the Southern India Chamber of Commerce and the Nattukkottai Nagarathars' Association are qualified respectively as electors for the constituency comprising the Chamber or Association of which they are members.⁴

QUALIFICATIONS OF ELECTORS FOR THE BOMBAY LEGISLATIVE COUNCIL⁵

General Constituencies

Subject to the communal requirements stated hereinafter, a person is qualified as an elector for a non-Muhammadan or Muhammadan urban constituency who is not a European and who on the first day of April preceding the date of

¹ Schedule II, Clause 23.

² *Ibid.*, Clause 24.

³ *Ibid.*, Clause 25.

⁴ *Ibid.*, Clause 26.

⁵ The Bombay Legislative Council Electoral Rule 8, Schedule II; vide *The Gazette of India* (Extra.), July 30, 1923.

publication of the electoral roll, had a place of residence within the constituency or, in the case of a Bombay City constituency, within the limits of the said city or within the limits of the North Salsette Mahal or the South Salsette Taluka, or, in the case of any other urban constituency, within two miles of the boundary thereof, and who—

Non-Muhamma-
dan and Muhamma-
dan urban
constituen-
cies.

(1) on the first day of April aforesaid occupied, as owner or tenant, in such constituency a house, or part of a house separately occupied, as a dwelling or for the purpose of any trade, business or profession,

(a) of which the annual rental value was not less than Rs. 120 in the case of a Bombay City constituency, and not less than Rs. 60 in the case of a Karachi City constituency ; or

(b) in any other urban constituency, where any tax is based on the annual rental value of houses or buildings, of which the annual rental value was not less than Rs. 36 ; or if no tax so based is levied, of which the capital value was not less than Rs. 1,500 ; or

(2) was assessed to income-tax in the financial year preceding that in which the electoral rule is first published ; or

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

(4) on the first day of January previous to the date of publication of the electoral roll, had a qualification in respect of land within the constituency, which, if held within the nearest rural constituency, would qualify him as an elector for such constituency.¹

¹ Electoral Rule 8, Schedule II, Clause 2 (d).

Subject to the communal requirements stated hereinafter, a person is entitled to be an elector for a non-Muhammadan or Muhammadan rural constituency¹ who is not a European and 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—

Non-Muham-
madan
and Muham-
madan
rural con-
stituencies.

- (1) (a) in the case of any constituency in Sind, on the first day of January aforesaid held. . . land in such constituency, on which, in any one of the five revenue years preceding the publication of the electoral roll, an assessment of not less than Rs. 16 as land revenue in the Upper Sind Frontier District and of not less than Rs. 32 as land revenue elsewhere had been paid^o or (would have been paid, if the land had not been alienated); or
- (b) in the case of any other constituency, held, on the same date, alienated or unalienated land assessed at or of the assessable value of not less than Rs. 16 as land revenue in the Panch Mahals or Ratnagiri District and not less than Rs. 32 as land revenue elsewhere; or

(2) on the aforesaid date 'was the alienee of the right of Government to the payment of rent or land revenue, amounting to not less than Rs. 16 in the Panch Mahals or Ratnagiri or Upper Sind Frontier District and to not less than Rs. 32 elsewhere, leviable in respect of land so alienated and situate within the constituency, or was a Khot or a sharer in a Khoti village in the constituency or a sharer in a bhagdari or narvadari village in the constituency', paying not less than Rs. 16 as land revenue in the Panch

¹ Electoral Rule 8, Schedule II, Clause 3.

Mahals or Ratnagiri or Upper Sind Frontier District and not less than Rs. 32 as land revenue elsewhere ; or

(3) has any of the qualifications hereinbefore specified in clauses (2) and (3) in the case of the urban constituencies ; or

(4) in any municipal district, cantonment or notified area in the constituency, on the first day of April preceding the date of publication of the electoral roll, occupied, as owner or tenant, a house or building, or part of a house or building separately occupied, as a dwelling or for the purpose of any trade, business or profession,

(a) of which the annual rental value was not less than Rs. 36 in a constituency in Sind ; or

(b) in any other constituency, if in such municipal district, cantonment or notified area, a tax is based on the annual rental value of houses or buildings, of which the annual rental value was not less than Rs. 24 in the Panch Mahals or Ratnagiri District and not less than Rs. 36 elsewhere ; or if no tax so based is levied, of which the capital value was not less than Rs. 1,000 in the Panch Mahals and Ratnagiri Districts and not less than Rs. 1,500 elsewhere.

Both in the case of rural and urban constituencies 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.

A person is qualified as an elector—

European
constituen-
cies.

(1) for the Bombay City (European) constituency¹ who is a European and save in that respect has the qualification stated before for an elector of a Bombay City constituency ; and

¹ Electoral Rule 8, Schedule II, Clause 4 (i).

(2) for the Presidency (European) constituency¹ who is a European and who save in that respect has the qualification stated before for an elector of an urban, other than a Bombay City, constituency or of a rural constituency according as he has a place of residence within an urban or rural constituency.

*Special Constituencies*²

A person is qualified as an elector—

Landholders' constituencies. (1) for the constituency of the Deccan Sardars and Inamdars whose name is in the list for the time being in force under the Resolution of the Government of Bombay in the Political Department, No. 2363, dated July 23, 1867, or who, on the first day of January preceding the date of 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 situated within the constituency;

(2) for the constituency of the Guzarat Sardars and Inamdars whose name is in the list for the time being in force under the Resolution of the Government of Bombay in the Political Department, No. 6265, dated September 21, 1909, or who, on the first day of January preceding the date of 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 situated within the constituency, or was the sole holder on talukdari tenure of such a village;

(3) for the constituency of the Jagirdars and Zamindars (Sindi) who is a Jagirdar of the first or second class in Sind or who in each of the three revenue years previous

¹ Electoral Rule 8, Schedule II, Clause 4 (ii).

² *Ibid.*, Clause 5.

to the publication of the electoral roll paid not less than Rs. 1,000 as land revenue on land situate in any district in Sind ;

(4) for the Bombay University constituency¹ who, on the first day of April preceding the date of publication of the electoral roll, had a place of residence in the Bombay Presidency (excluding Aden) and was a member of the Senate or an Honorary Fellow of the University or a graduate of the University of seven years' standing ; and

(5) for a Commerce and Industry constituency² whose name is in the list of members, for the time being in force, of the association forming such constituency or who is entitled to exercise the rights and privileges of membership on behalf of and in the name of any firm or company or corporation entered in such list of members.³

¹ Bombay Electoral Rule 8, Schedule III, Clause 6.

² *Ibid.*, Clause 7.

³ For the qualifications of the electors for the Bihar and Orissa, Assam, Punjab and the Central Provinces Legislative Councils, the reader is referred to the relevant Electoral Rules in *The Gazette of India* (Extra.), July 30, 1923. We have not been able to deal with them in this volume for want of space.

CHAPTER XI

✓ THE NATURE OF THE ELECTORAL SYSTEM

The total number of electors in British India in relation to her total population—The restricted nature of the present franchise, one of the great defects of the Reforms—Undue importance given to the principle of plural voting,

The four preceding chapters will enable the reader to form an idea of the present electoral system in our country. It need not perhaps be pointed out that its chief defect is the extreme narrowness of the franchise. Out of a total population of about 247 millions inhabiting British India, only about 7·8 million persons¹ (including the electorate of Burma) have been enfranchised under the Reforms. They can vote for elections to Provincial Legislative Councils. The number of persons qualified to vote for the Legislative Assembly at the first election under the Reforms was only 9,09,874 and that for the Council of State was only 17,364.² Generally speaking, the franchise is based on a property qualification which is rather high for a poor country like India and this is one of the reasons why the number of persons who have been granted the right to vote is so small in relation to the total population of British India. Another reason is the existing disqualification on the ground of sex in many provinces. The Rules

¹ About 5·3 millions excluding Burma.

² vide *India in 1920* by Dr. Rushbrook Williams, p. 248.

In Bengal the total number of voters at the first elections under the Reforms was as follows :—

10,19,906 for the Provincial Council ;

1,84,266 for the Legislative Assembly ; and

2,226 for the Council of State.—*India in 1920*, p. 248.

made under the Government of India Act are responsible for this state of affairs. Under the existing Electoral Rules, a graduate of a University is not qualified to vote for the University constituency simply as a graduate. To be so qualified he must be a graduate of not less than seven years' standing. As a result, many graduates holding responsible positions are deprived of the right to vote. One fails to find any justification for such restrictive Rules. We must bear in mind that 'the habit of considering political issues as issues to be decided by a man's own judgment, of realizing the value of the proper use of a vote, of judging candidates with regard to their fitness to represent the elector's views . . . and of holding representatives effectively to account'¹ can be acquired by any people by constant and increasing exercise. As Mr. Curtis² said, while discussing the defects of the electoral system prevailing in our country before the introduction of the Reforms, 'wisdom can only be learned in the school of responsibility. It can only be taught by leaving men to suffer by the results of the things which they themselves do ; still more, by the results of the things which they leave undone'. How true are these words ! The character of political institutions reacts, in the opinion³ of the authors of the Joint Report themselves, upon the character of the people and the exercise of responsibility calls forth the capacity for it. As a proof of this we may say that if one witnessed, or took part in, any of the elections held during the last three years for the central, provincial or local representative bodies, one would be in a position to bear testimony to the keen interest and political wisdom displayed by our so-called illiterate and unenlightened

¹ *The Montagu-Chelmsford Report*, paras. 263-64.

² L. Curtis, *Letters to the People of India on Responsible Government*, p. 17.

³ *The Montagu-Chelmsford Report*, para. 130.

masses. The restricted nature of the present franchise is one of the great defects of the Montagu-Chelmsford Reforms.

Another noticeable defect in the present electoral system is that a rather undue importance has been given in it to the principle of plural voting. Under the existing Electoral Rules, though a person cannot vote at any general election in more than one *general* constituency, he can vote in a number of *special* constituencies if he possesses the requisite qualifications in respect of them.

CHAPTER XII

ELECTORAL PROCEDURE AND MEMBERSHIP¹

Notification for elections—Nomination of candidates—Deposit on nomination—Death of a candidate before poll—Procedure at election—Regulations regarding the conduct of elections—The Returning Officer and the Presiding Officer—Multiple elections—The taking of oath—Vacation of seat—Election Agents—Return of election expenses—Maximum scale of election expenses—Accounts of Agents.

Election offences—Bribery—Treating—Undue influence—Personation—Publication of false statements—Unauthorized expenditure—Other minor corrupt practices—Hiring and using of public conveyances—Hiring of liquor shops, etc.—The election petition and election court—Contents of petition—Deposit of security—Withdrawal of petition—Grounds for declaring election void—Report of Election Commissioners and procedure thereon—Other consequences of more serious election offences—Corrupt practices at the last two elections.

✓ All elections, whether general elections on the expiration of the duration of a legislative body or on its dissolution, or by-elections for filling casual vacancies, are held in pursuance of notifications by the Government in the Gazette.² In these notifications the Governor-General, in the case of elections to either Chamber of the Indian Legislature, or the Governor, in the case of elections to a Legislative Council, calls upon the constituencies concerned to elect members in accordance with the Electoral Rules. It is provided, however, that if the Governor-General or the Governor, as the case may be, thinks fit, such notifications may be issued

¹ Electoral Rules, Parts IV, VI and VII; vide *The Gazette of India* (Extra.), July 30, 1923. These rules are common to all legislative bodies in India and are identically numbered.

² Electoral Rule 27.

at any time not being more than three months before the date on which the duration of a legislative body will expire in the ordinary course of events.

Any person may be nominated as a candidate for election in any constituency for which he is eligible for election.¹

**Nomination
of candi-
dates.**

The local Government of each province appoints for each constituency (a) a date, within fourteen days of the notification calling upon the constituency to elect a member, for the nomination of candidates; (b) another date, within seven days of the first-mentioned date, for the 'scrutiny of nominations'; and (c) a further date or dates for the taking of a poll, if necessary.²

On or before the date appointed for the nomination of candidates, each candidate must,³ either personally or by his proposer and seconder together, deliver to the Returning Officer or to some other authorized person a duly filled-in nomination paper⁴ subscribed by the candidate himself as signifying his assent to the nomination and by the proposer and seconder who must be registered electors of the constituency. All nomination papers must be delivered between 11 a.m. and 3 p.m. and any such paper which is not delivered before 3 p.m. on the day appointed for the nomination of candidates will be rejected.⁵ Every nomination paper to be delivered must be accompanied by a written declaration by the candidate to the effect that he has already appointed or does thereby appoint as his election agent for the election either himself or some one other person who is eligible for such appointment and who must be named in the declaration; unless this is done, the

¹ Electoral Rule 11 (1).

² *Ibid.*, 11 (2).

³ *Ibid.*, 11 (3).

⁴ A copy of the form of nomination paper is given on pp. 128 and 129 of this book.

⁵ Electoral Rule 11 (3) and (6).

nomination of a candidate is not complete.¹ The Returning Officer or any other authorized person, must, on receiving a nomination paper, inform the person or persons delivering the same of the date, hour and place appointed for the scrutiny of nominations.² He must, besides, put up in some conspicuous place in his office a notice of the nomination, containing descriptions both of the candidate and of the persons who have signed the nomination paper as proposer and seconder.

A candidate may withdraw his candidature by giving notice by 3 p.m. on the day following that appointed for the scrutiny of nominations. He will not be allowed, if he has once withdrawn his candidature, to cancel the withdrawal or to be renominated as a candidate for the same election.³

On or before the date appointed for the nomination, each candidate must deposit or cause to be deposited with the Returning Officer the sum of five hundred rupees or two hundred and fifty rupees, 'in cash or in Government promissory notes of equal value at the market rate of the day', according as he is a candidate for either Chamber of the Indian Legislature or for a Governor's Legislative Council. No nomination will be valid unless such deposit has been made.⁴

The deposit money will be returned, if a candidate withdraws his candidature within the prescribed time, or if his nomination is refused, or if he dies before the commencement of the poll.⁵ It will be forfeited to the Government if he is not elected and if the number of votes obtained by him does not exceed, in the case of a constituency returning one or two members, one-eighth of the total number of votes polled or, in the case of a constituency

¹ Electoral Rule 11 (5).

Ibid., 11 (8).

² *Ibid.*, 11 (7).

⁴ *Ibid.*, 12 (1).

⁵ *Ibid.*, 12 (2).

returning more than two members, one-eighth of the number of votes polled, divided by the number of members to be elected.¹ The number of votes polled is determined, in the case of an election by the ordinary method, by counting the number of ballot-papers minus the 'spoilt' ones and, in the case of an election according to the system of proportional representation by means of the single transferable vote, by counting the first preferences in favour of a candidate.²

Again, if the seat of an elected candidate is declared vacant on account of his failure to take the necessary oath of allegiance to the Crown, his deposit money will be forfeited to the Government.³ The deposit will be returned, if a candidate is not elected but has secured more than one-eighth of the total votes polled or, as the case may be, one-eighth of the total votes polled, divided by the number of members to be elected. It will also be refunded to the candidate who has been elected and who has taken the necessary oath of allegiance.⁴

If, however, a candidate has been duly nominated at a general election in more than one constituency, only one of the deposits made by him or on his behalf will be returned, and the remainder will be forfeited to the Government.⁵

If a duly nominated candidate dies before the poll, the Returning Officer, or any other authorized person, will have, on being satisfied of the fact of the death, to countermand the poll and all proceedings connected with the particular election will have to be commenced anew; but no fresh nomination is necessary in the case of a candidate whose nomination remained valid at the time of the countermanding of the poll.⁶

¹ Electoral Rule 12 (3).

³ *Ibid.*, 12(5)

⁵ Proviso to Electoral Rule 12 (6).

² *Ibid.*, 12 (4).

⁴ *Ibid.*, 12 (6).

⁶ Electoral Rule 13.

Procedure at election. If the number of candidates who have been duly nominated and who have not withdrawn their candidature, is greater than the number of vacancies, a poll will be taken. If, however, the number of such candidates is equal to the number of vacancies, all the candidates will be declared to be elected. If, on the other hand, the number of such candidates is less than the number of vacancies, all the candidates will be declared to be elected, and the Governor-General or the Governor, as the case may be, will call upon the constituency concerned to elect a person (or persons) for filling the remaining vacancy (or vacancies) within a certain time appointed by him.¹ But, if in the last case the constituency fails to elect a person (or persons) for filling the vacancy (or vacancies) within the prescribed time, the Governor-General or the Governor, as the case may be, is not bound to call upon it again to elect any person (or persons) until such time, if any, as he thinks fit.²

Votes are given by ballot, and in general constituencies in person; but the Governor-General in Council³ or the local Government of a province, as the case may be, may direct in certain special cases that votes may be given otherwise than in person.⁴ Voting by proxy is allowed in no circumstances.⁵

In 'plural-member' constituencies each elector has as many votes as there are members to be elected, but he cannot give more than one vote to any one

¹ Electoral Rule 14 (3).

² Proviso to Electoral Rule 14 (3).

³ This applies only in the case of elections to the Legislative Assembly. The relevant Rule in the case of elections to the Council of State is as follows:—'Votes shall be given by ballot, and no votes shall be received by proxy'. The Council of State Electoral Rule 14 (4).

⁴ Electoral Rule 14 (4).

⁵ *Ibid.*

candidate.¹ Votes are counted by, or under the supervision of, the Returning Officer, and each candidate, his election agent and his authorized representative have a right to be present at the time of counting.²

As soon as the counting of votes is completed, the Returning Officer declares the candidate or the candidates, as the case may be, to whom the largest number of votes has been given, to be elected.³ The Rule in the case of a tie is rather interesting. If an equality of votes exists between candidates and the addition of one vote entitles any of the candidates to be elected, the determination of the person or persons to whom such an additional vote is deemed to have been given is made by lot in the presence of the Returning Officer and in such manner as he directs.⁴ The Returning Officer reports without delay the result of the election to the Secretary to the Provincial Legislative Council or to the Secretary to the Government of India in the

¹ Electoral Rule 14 (5).

This is the ordinary Rule, but there are exceptions as follow :—

(1) In the case of elections to the Bombay Legislative Council, an elector is entitled to cumulate all his votes upon one candidate or to distribute them among the candidates as he pleases.

(2) In the case of elections to the Legislative Assembly, an elector in the Presidency of Bombay, and, in the case of an election to the Council of State, an elector of the Bombay non-Muhammadan constituency may cumulate all his votes upon one candidate or distribute them among the candidates as he pleases.

(3) Elections must be conducted according to the principle of proportional representation by means of the single transferable vote in the case of—

(a) the Madras non-Muhammadan constituency for the Council of State;

(b) the Bengal European constituency for the Legislative Assembly;

(c) the Presidency and Burdwan (European) constituency for the Bengal Legislative Council.

In the last case (3) votes are given in accordance with regulations made in that behalf by the Governor-General in Council or the Bengal Government, as the case may be.

² Electoral Rule 14 (6).

³ *Ibid.*, 14 (7).

⁴ *Ibid.*, 14 (8).

Legislative Department, as the case may be. The name or names of the successful candidate or candidates are then published in the Gazette.¹

The local Government of each province has been empowered to make regulations² providing—

**Regulations
regarding
the conduct
of elections.**

(1) for the scrutiny of nominations, for the manner in which such scrutiny is to be conducted and the circumstances in which any person may be present or may enter objections ;

(2) for the appointment in each constituency of a Returning Officer and for his powers and duties, and for the performance by other persons of any power or duty of the Returning Officer ;

(3) in the case of general constituencies, for the division of the constituencies into polling areas for the convenience of electors, and for the creation of polling stations for these areas ;

(4) for the appointment of officers to preside at polling stations, and for the duties of such officers ;

(5) for the checking of voters by reference to the electoral roll ;

(6) for the manner in which votes are to be given and, in particular, for the case of illiterate voter or voters under physical or other disability ;

(7) for the procedure to be followed when persons represent themselves to be electors after other persons have voted as such electors ;

(8) for the scrutiny of votes ;

(9) for the safe custody of ballot papers and other

¹ Electoral Rule 14 (9).

² Electoral Rule 15. Unlike the Electoral Rules, these provincial regulations vary from province to province except in respect of essential matters.

For the Bengal Regulations see *Bengal Electoral Rules and Regulations, 1923*, pp. 1-36 or *The Bengal Legislative Council Manual, 1924*.

election papers and for the inspection and production of such papers ; and

(10) for such other purposes connected with the conduct of elections as it thinks necessary.

These regulations must not be in any way inconsistent with any Electoral Rule. They apply not only to the local Legislative Council, but, so far as the particular province is concerned, to either Chamber of the Indian Legislature as well, unless the Governor-General in Council gives different directions regarding their application to the latter case. Similar regulations in force in the Punjab will, as far as they are applicable, be in force in the province of Delhi.

In the preceding pages we have stated in a way the functions of the Returning Officer in the conduct and management of an election. He is, to quote a writer, 'the pivot on which the election revolves from the date of the nomination to the declaration of the result.'¹ He receives nomination papers, examines them and decides all objections which may be made to any nomination paper. He may accept a nomination or refuse it, as the Electoral Rules may seem to him to warrant in the circumstances of the case. This is one of his most important functions in connection with an election. An error of judgment on his part at this stage can only be rectified by an election petition later, entailing unnecessary trouble and expenditure. He must endorse on each nomination paper his decision accepting or rejecting the same. Votes are counted by him or under his supervision. He declares the result of an election and reports it to the proper authorities. In some provinces it is he who selects for each constituency as many polling stations as he thinks necessary and appoints a Presiding

The Returning Officer and the Presiding Officer.

¹ *Indian Election Guide*, by I. C. S. ; p. 25 ; published by the 'Statesman' Press.

Officer for each polling station and Polling Officers to assist the latter.¹

The Presiding Officer must maintain order at the polling station, see that the election is fairly conducted, regulate the number of electors to be admitted at one time and exclude all other persons except the Polling Officers to assist him, the candidates, one agent of each candidate, the police or other public servants on duty, and such persons as may be admitted for the purpose of identifying the electors.

When a person presents himself to vote, the Presiding Officer has the right to, and must, if so required by a candidate or his agent, put questions to him regarding his identity or his right to vote.

As soon as possible after the close of the poll, the Presiding Officer of each polling station must, in the presence of the candidates or their polling agents, seal with his own seal and the seal of such candidates or agents as may desire to affix their seal, each ballot box used at the station and the packets of unused, 'spoilt' or 'tendered ballot papers' and send them all, generally,² to the Returning Officer, with a statement showing the number of ballot papers entrusted to him and accounting for them under the heads of 'ballot papers in the ballot box,' 'unused,' 'spoilt' and 'tendered ballot papers,'³ etc.

If any person is elected by a constituency of a Governor's Legislative Council as well as by a constituency of either Chamber of the Indian Legislature, the election of such person to the Governor's Legislative Council will be void and the Governor will call upon the constituency concerned to elect another person.⁴

Multiple elections.

¹ e.g., in Bengal and Bihar and Orissa.

² In some provinces they are sent to such person or place as the District Collector directs.

³ See the note on p. 129.

⁴ Electoral Rule 16.

If a person is elected by more than one constituency either in the same province or in different provinces, he will have to choose within seven days of the publication of the result of the later or the latest of such elections, according as he has been elected by two or more than two constituencies, for which of these constituencies he will serve and then inform the relevant authorities of his choice which is final.¹ When any such choice has been made, the Governor-General or the Governor, as the case may be, will call upon the constituency or the constituencies for which he has not chosen to serve to elect another person or persons in his place. If, however, he fails to make the required choice within the seven days, his election will be void and the Governor-General or the Governor, as the case may be, will call upon the constituency or the constituencies concerned to elect another person or persons.²

Every person who is elected or nominated to be a member of a legislative body must, before taking his seat, make, at a meeting of the legislative body, an oath or affirmation of his allegiance to the Crown as follows³ :—

The taking of oath. 'I, A.B., having been $\frac{\text{elected}}{\text{nominated}}$ a member of this body (i.e. Council or Assembly) do solemnly swear (or affirm) that I will be faithful and bear true allegiance to His Majesty the King-Emperor of India, his heirs and successors, and that I will faithfully discharge the duty upon which I am about to enter.'

If any person having been elected or nominated subsequently becomes subject to any of the disabilities under the Electoral Rules, which disqualify a person for membership of any legislative body, or fails to 'make the oath or affirmation,' described in the

Vacation of seat.

¹ Electoral Rule 16.

² *Ibid*

³ *Ibid.*, 24

previous paragraph, within such time as the Governor-General or the Governor considers reasonable, the Governor-General or the Governor, as the case may be, must, unless the disqualification has been removed in his favour, declare his seat to be vacant.¹

An official is not qualified for election as a member of either Chamber of the Indian Legislature or of a local Legislative Council; and if any non-official member of either Chamber of the Indian Legislature or of a local Legislative Council, whether elected or nominated, accepts any office in the service of the Crown of India, his seat on the Chamber or on the Council, as the case may be, becomes vacant. But a Minister is not to be deemed an official and a person will not be deemed to accept office on appointment as a Minister.²

A nominated or elected member³ of either Chamber of the Indian Legislature or of a local Legislative Council may resign his office to the Governor-General or to the Governor,⁴ as the case may be, and on the acceptance of the resignation the office will become vacant. And if for a period of two consecutive months any such member is absent from India or unable to attend to the duties of his office, the Governor-General or the Governor,⁵ as the case may be, may declare, by notification published in the Gazette, that the seat in council of that member has become vacant.⁶

If an elected member of one Chamber of the Indian Legislature becomes a member of the other Chamber, he will cease to be a member of the first-mentioned Chamber.⁷

¹ Electoral Rule 25.

² Sections 63E (1) and 80B of the Act.

³ Section 93 (1) of the Act.

⁴ Or to the Lieutenant-Governor or Chief Commissioner in the case of a Lieutenant-Governorship or Chief Commissionership.

⁵ Or the Lieutenant-Governor or Chief Commissioner.

⁶ Section 93 (2) of the Act.

⁷ Section 63E (2) of the Act.

If, however, any person is elected a member of both Chambers of the Indian Legislature, he will, before taking his seat in either Chamber, have to signify in writing the Chamber of which he wishes to be a member, and thereupon his seat in the other Chamber will become vacant.¹

We have stated before that every candidate must appoint either himself or some one else as his election agent, who is not disqualified for such appointment under the Electoral Rules.² The necessity for selecting the right person for this office cannot be too strongly emphasized. 'The class of persons selected for this duty', says President Lowell, 'is not only a matter of great importance to the candidate, but upon it depends also in large measure the purity of elections.'³ The candidate may cancel the appointment of his election agent; but, if he does so, he must inform the officer receiving nominations of this fact. In the event of such a cancellation or of the death of his agent, the candidate must immediately appoint another election agent and declare his name in writing to the said officer.⁴

In order to prevent extravagance and to minimize the possibility of corrupt practices at elections, stringent rules have been framed regarding expenses to be incurred in connection with an election. These rules prescribe, on the one hand, the objects of expenditure, and, on the other, its maximum limit in any election. Within thirty-five days of the publication of the result of an election, there must be submitted to the Returning Officer in respect of each

¹ Section 63E (3) of the Act.

² *Vide* Sub-rules (3) and (4) of Electoral Rule 5 and also Electoral Rule 17. The disqualification referred to, may arise from the commission of a corrupt practice or from the failure to lodge a prescribed return of election expenses, or for having lodged a return which is found to be false in any material particular.

³ *The Government of England*, vol. i, p. 229.

⁴ Electoral Rule 18.

candidate for election a return, in a prescribed form, of his election expenses.¹ Every such return, which must be signed both by the candidate and his election agent, must contain a statement of all payments made by the candidate or his election agent or by any person acting on his behalf, for expenses incurred on account of the conduct and management of the election, and a further statement of all unpaid claims in respect of such expenses of which he or his election agent has knowledge.²

Schedule IV to the Electoral Rules enumerates the objects for which expenses may be legally incurred. Briefly speaking, they are as follow :—

(1) the personal expenditure of the candidate incurred or paid by him or his election agent in connection with his candidature ;

(2) the pay of each person employed as an agent, clerk or messenger ; *

(3) the travelling expenses and any other expenses on account of agents, clerks, messengers and other persons, whether in receipt of salary or not ;

(4) the cost whether paid or incurred of—

(a) printing, (b) advertising, (c) stationery,
(d) postage, (e) telegrams and (f) rooms
hired either for public meetings or as
Committee rooms ; and

(5) any other miscellaneous expenses.

The return must be accompanied by declarations³ both by the candidate and his election agent, in which they must solemnly affirm before a Magistrate that, to the best of their knowledge and belief, the statement of election expenses contained in the return is true, and that no other expenses whatsoever have, to their knowledge or belief, been incurred in connection with the candidature.⁴ If a candidate

¹ Electoral Rule 19 (1).

³ *Ibid.*, 19 (3).

² *Ibid.*, 19 (2).

⁴ *Ibid.*, 19 (3), Schedule IV.

is, on account of his absence from India, unable to sign the return of election expenses and to make the required declaration within the prescribed time, it must be signed and submitted by his election agent only, who will have to make a declaration as stated above; but within fourteen days of his return to India, the candidate must himself make, in a special form, a declaration on oath before a Magistrate regarding his election expenses.¹

As soon as possible after a return has been submitted and the necessary declarations in respect thereof have been made, the Returning Officer must put up in some conspicuous place in his office and publish in the Gazette a notice of the date on which the return along with the declarations has been submitted and of the time and place at which they can be inspected. Any person is, on payment of a fee of one rupee, entitled to inspect any such return or declarations and, on payment of such fee as the local Government may prescribe, to obtain a copy or copies thereof or of any part thereof.²

<p>Maximum scale of election expenses.</p>	<p>The Governor-General in Council may fix maximum scales of election expenses and prescribe the number and descriptions of persons who may be lawfully employed for payment in connection with any election held under the Electoral Rules.³</p>
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<p>Accounts of Agents.</p>	<p>Every election agent must, for each election for which he is appointed an agent, keep separate and regular books of account in which the particulars of all expenditures in connection with the election must be entered.⁴</p>
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Rules have been framed under the Government of India Act for the final decision of doubts and disputes as to the validity of an election.⁵ They have been supplemented

¹ Electoral Rule 19 (4).

² *Ibid.*, 19 (5).

³ *Ibid.*, 20 (1) and (2).

⁴ *Ibid.*, 21.

⁵ Electoral Rules, Part VII.

by a special legislation ¹ providing for the criminal punishment of certain acts which directly or indirectly interfere with the purity of elections, thus bringing election offences within the purview of the general law of the land. These acts are known as malpractices in connection with elections. They are bribery, treating, undue influence or personation at an election, false statements or illegal payments in connection with an election, and the failure to keep election accounts. A candidate found guilty of a malpractice in connection with an election may not only lose his seat in the legislature and be deprived of his electoral rights for five years, but may also be criminally punished.

Election offences. Bribery at elections consists in ² 'a gift, offer or promise by a candidate or his agent, or by any other person with the connivance of a candidate or his agent, of any gratifications (including all forms of entertainment and all forms of employment for reward) to any person whomsoever with the object of inducing directly or indirectly—

(1) a person to stand or not to stand as, or to withdraw from being, a candidate, or

(2) an elector to vote or refrain from voting at an election,

or as a reward to

(1) a person for having so stood or not stood or for having withdrawn his candidature, or

(2) an elector for having voted or refrained from voting.'

The acceptance by a person of any gratification either for himself or for any other person as a reward for exercising any electoral right or for inducing or attempting to

¹ *Vide* Indian Elections Offences and Inquiries Act : Act No. 39 of 1920.

² Schedule V to Electoral Rules, Part I, Clause 1.

induce any other person to exercise any such right also constitutes the offence of bribery.¹

Treating is a form of bribery. It means 'the incurring in whole or in part by any person of the **Treating.** expense of giving or providing any food, drink, entertainment or provision to any person with the object of directly or indirectly inducing him or any other person to vote or refrain from voting or as a reward for having voted or refrained from voting.'² In the words of President Lowell, the person who treats relies upon the voter's general sense of gratitude.

It may be noted here that a declaration of public policy or a promise of public action by a candidate does not constitute an offence.³

Undue influence is defined as any direct or indirect interference or attempt at interference on the **Undue influence.** part of a candidate or his agent or of any other person with the connivance of the candidate or his agent with the free exercise of one's electoral right.

It includes (1) threatening a candidate or a voter or any other person in whom the candidate or the voter is interested with injury of any kind; and (2) inducing or attempting to induce a candidate or a voter to believe that he or any person in whom he is interested will become or will be rendered an object of divine displeasure or spiritual censure.⁴ If an employer threatens his employees with dismissal in the event of their not exercising their electoral rights according to his direction, or if a minister of religion or a priest holds out threats of excommunication or other religious disabilities in order to influence the

¹ Section 171B (ii) of the Indian Penal Code, Chapter IX-A.

² Electoral Rule 44 (2), explanation.

³ Electoral Rules, Schedule V, Part I, Clause 2 (2).

⁴ *Ibid.*, Clause 2 (1).

exercise of electoral rights by any person, the offence of undue influence is committed thereby.

If any person at an election applies for a voting paper, or votes, in the name of any other person, whether living or dead, or in a fictitious name, or if he having voted once at such election applies at the same election for a voting paper in his own name, or if he abets, procures or attempts to procure the voting by any person in any such way, he commits the offence of personation at an election.¹

The publication of false statements in relation to the personal character or conduct of any candidate, or in relation to his candidature or withdrawal thereof, calculated to prejudice the prospects of his election, is a criminal offence.²

An unauthorized expenditure by any person in any way whatsoever for the purpose of promoting or procuring the election of a candidate, or the failure to keep accounts of expenses incurred in connection with an election, comes also within the scope of election offences.³

All these corrupt practices are criminal offences punishable with fine or imprisonment or with both, and also with the loss of electoral rights for a period varying from three to five years.

Other corrupt practices⁴ punishable simply with the loss of electoral rights⁵ are—

(1) the expenditure on the employment of any person in connection with an election in excess of the number prescribed therefor by the Governor-General in Council ;

¹ Section 171D of the Indian Penal Code.

² Electoral Rules, Schedule V, Part I, Clause 4.

³ Sections 171H and 171-I of the Indian Penal Code.

⁴ *Vide* Electoral Rules, Schedule V, Parts I and II.

⁵ For a period varying from three to five years.

(2) the payment on account of the conveyance of any elector to or from any place for the purpose of recording his vote ;

Hiring and
using of
public
conveyance.

(3) the hiring, borrowing or using for certain purposes in connection with an election of any boat, vehicle or animal usually kept for letting on hire or for the conveyance of passengers by hire ;

Hiring of
liquor
shops.

(4) the hiring of liquor shops for the purpose of meetings to which electors are admitted, or as committee rooms ;

Issue of
circulars
without
printer's
and
publisher's
name
thereon.

(5) the issuing of a circular, placard, or poster having reference to an election, which does not contain the name and address of its printer and publisher.

The election
petition and
election
court.

The validity of an election, when disputed, is decided by a specially appointed election tribunal. The procedure is as follows : When an election petition, by which alone an election can be called in question,¹ is duly presented by a candidate or an elector, or by a specially empowered officer of the Government, the Governor-General or the Governor, as the case may be, must appoint² as

¹ Electoral Rule 31.

² *Ibid.*, 36 (2) (a).

By the Parliamentary Elections Act, 1868, the Parliamentary Elections and Corrupt Practices Act, 1879, and the Supreme Court of Judicature Act, 1881, the trial of election petition in England is now committed to a tribunal of two judges of the King's Bench Division of the High Court of Justice, selected by the other judges of that division. (See Lowell, *The Government of England*, vol. i, p. 230, or E. May's *Parliamentary Practice*, p. 581). The Electoral Rule 36 (2) (a) under the Government of India Act, relating to the constitution of election courts should be so amended as to provide for the trial of controverted elections only by (2 or 3) judges of an Indian High Court selected by the other judges of the Court. Many of the election courts, set up under the existing Rule since the first elections under the Reforms, have not been able to inspire public confidence in their impartiality on account of their composition.

Commissioners for the trial of the petition three persons who are or have been, or are eligible to be appointed, Judges of a High Court, and must appoint one of them to be the President, and thereafter the usual course of judicial proceedings will follow.

Contents of the petition. The petition must contain a brief statement of the material facts on which the petitioner relies and be accompanied by a list, duly signed and verified, setting forth full particulars of any corrupt practice which he alleges.¹ He may, if he likes, besides calling in question the election of the returned candidate, claim a declaration that he himself or any other candidate has been elected.² At the time of the presentation of the petition, the petitioner, unless he happens to be the specially empowered Government Officer, must deposit with it the sum of Rs. -1,000 in cash or in Government Promissory Notes of equal value as security for the costs of the same.³

Deposit of security. An election petition may be withdrawn only with the permission of the Commissioners or, if an application for withdrawal is submitted before any Commissioner has been appointed, of the Governor-General or the Governor, as the case may be.⁴ But no application for withdrawal will be granted if, in the opinion of the Governor-General or the Governor or of the Commissioners, as the case may be, such application has been induced by any illegal bargain or consideration.⁵

If in the opinion of the Commissioners—

Withdrawal of petition. (1) the election of a returned candidate has been procured or induced or the result of the election has been materially influenced by a corrupt practice, or

Grounds for declaring election void.

¹ Electoral Rule 33 (1) and (2).

³ *Ibid.*, 35.

⁵ *Ibid.*, 39 (4).

² *Ibid.*, 34.

⁴ *Ibid.*, 39(.

(2) any of the offences like bribery, undue influence, personation, publication of false statements and authorization of certain illegal expenditures has been committed, or

(3) the result of the election has been materially affected by the improper acceptance or refusal of any nomination or of a vote, or by any non-compliance with the provisions of the Government of India Act or the Rules and Regulations made thereunder, or by any other irregularity, or

(4) the election has not been a free election on account of the large number of cases in which undue influence or bribery has been exercised or committed, the election of the returned candidate must be void.¹

But, if the Commissioners are of opinion that in spite of all efforts on the part of the returned candidate and his election agent, some corrupt practices of trivial and unimportant character have been committed, for which the candidate or his election agent was in no way responsible, they may not declare his election void.²

When the trial is over, the Commissioners have to report whether the returned candidate or any other party to the petition who has claimed the seat has been duly elected.³ They will also have to state the total amount of costs payable and name the persons by and to whom such costs should be paid.⁴ The report will have to be forwarded to the Governor-General or the Governor, as the case may be, who, on receiving the same, will issue, in accordance with it, orders which will be final.⁵ In case of a difference of opinion among the Commissioners, the opinion of the majority will prevail.⁶

**Report of
the Election
Commis-
sioners and
procedure
thereon.**

¹ Electoral Rule 44 (1).

³ *Ibid.*, 45 (1).

⁵ *Ibid.*, 45 (3).

² *Ibid.*, 44 (2).

⁴ *Ibid.*, 45 (2).

⁶ *Ibid.*, 46.

Where any definite charge is made in an election petition of a corrupt practice, the Commissioners must state in their report if any such practice has been proved to have been committed, and if so, who is, or are, responsible for it and what its nature is.¹

We may note here also that besides the loss of electoral rights and the infliction of criminal punishments, there are other penalties attached to more serious election offences like bribery, undue influence and personation. A person who has been proved guilty of any such malpractices in connection with an election is disqualified, unless he has been exempted from such disqualification, for five years from—

(1) 'being appointed to, or acting in, any judicial office; or

(2) being elected to any office of any local authority, or holding or exercising any such office to which no salary is attached; or

(3) being elected, or sitting or voting as a member of any local authority; or

(4) being appointed or acting as a trustee of a public trust.'²

In spite of all these stringent laws to restrain improper conduct at elections, the last two elections under the Reforms have not been altogether free from corruptions. There have been cases of bribery and undue influence. Many members of the land-owning class, contesting seats in general constituencies in rural areas, allowed their paid servants to conduct electoral campaigns in their behalf in such a manner as very often interfered with the free exercise of electoral rights by their tenantry. The remedy, of course, lies in public

Corrupt practices at the last two elections.

¹ Electoral Rule 47

² Indian Election Offences and Inquiries Act, Part II, Section 13.

watchfulness and exposure, but it is often extremely difficult to prove a case of corruption against a powerful candidate, especially when he happens to be a landlord. The system of voting by ballot does undoubtedly act as a great safeguard against many otherwise possible corruptions. It is hoped, however, that these corruptions will gradually disappear with the continued exercise by the people of their political rights and a further development of their civic consciousness.

FORM OF NOMINATION PAPER

SCHEDULE III, ELECTORAL RULE 11.

Name of the constituency for which the candidate is nominated.....

Name of candidate.....

Father's name.....

Age.....

Address.....

* Denomination (i.e. community).....

Constituency on the electoral roll of which the candidate is registered as an elector.....

Name of proposer.....

Number of the proposer in the electoral roll of the constituency.....

Signature of the proposer.....

Name of the seconder.....

Number of the seconder in the electoral roll of the constituency.....

Signature of the seconder.....

Declaration by the Candidate

I hereby declare that I agree to this nomination.

Date.....Signature of the candidate.....

* Not to be entered in case of a special constituency.

ELECTORAL PROCEDURE AND MEMBERSHIP 129

(To be filled in by the Returning Officer or other authorized person.)

Certificate of Delivery

This nomination paper was delivered to me at my office
at (date and hour.....) Serial No.....

.....
Returning Officer or other authorized person.

Certificate of Scrutiny

I have scrutinized the eligibility of the candidate, the proposer and seconder, and find that they are respectively qualified to stand for election, to propose and to second the nomination.

.....
Returning Officer or other authorized person.

NOTE

'If a person representing himself to be a particular elector named on the electoral roll applies for a ballot paper after another person has voted as such elector, the applicant shall, after duly answering such questions as the presiding officer may ask, be entitled to mark a ballot paper in the same manner as any other voter. Such ballot paper (. . . referred to as a "TENDERED BALLOT PAPER") shall be of a colour different from the other ballot papers, and, instead of being put into the ballot box, shall be given to the presiding officer and endorsed by him with the name of the voter and his number on the electoral roll and the name of the electoral area to which the roll relates and shall be set aside in a separate packet and shall not be counted by the returning officer.' See the Bengal, Bihar and Orissa, Madras and Bombay Electoral Regulations.

CHAPTER XIII

THE INDIAN LEGISLATURE—ITS PRIVILEGES AND POWERS

✓Freedom of speech in the Indian Legislature—Limitations on debate—Provincial Legislatures and freedom of speech—Powers of the Indian Legislature—Assent of the Governor-General to Bills—Power of the Crown to disallow Acts—Extraordinary method of legislation—Joint Select Committee on the extraordinary method of legislation—Exercise of the extraordinary power of legislation—Indian Budget—Non-votable heads of expenditure—Indian non-votable expenditures compared with the English Consolidated Fund charges—Mr. Ginwala's resolution about non-votable expenditures—Restoration of a reduced or refused demand—Joint Select Committee on the 'restoration power'—Financial powers of the Parliaments of Canada, Australia and the Union of South Africa—Montagu-Chelmsford Reforms and the Central Government.

We have in the preceding pages discussed the nature and composition of the Indian legislatures; we shall now describe in this and in the following chapter their privileges¹ and powers.

A member of the Indian Legislature enjoys² freedom of speech and is not liable to any proceedings in any court for his speech or vote in either Chamber, or for anything published in any official report of the proceedings of either Chamber. He may, therefore, say, subject, of course, to the Rules and Standing Orders of the Chamber of which he is a member, whatever he thinks fit in debate, and no action can be taken

¹ No salary attaches to the office of member of either Chamber of the Indian Legislature; but he is entitled to receive 'travelling and halting' allowances for attendance at its meetings. This is also the arrangement in the case of a Governor's Legislative Council.

² Section 67 (7) of the Act.

against him for libel in any judicial court. This freedom of speech, says Sir Erskine May,¹ is a privilege essential to every free Council or Legislature. 'The fullest and most complete ventilation of every plan, object and purpose is,' says another distinguished writer, 'necessary to wise and beneficial legislation. This could never be secured if the members should be under the restraints imposed by the law of slander and libel upon private character. There is no doubt that this privilege may be grossly abused, since every word used in debate, and frequently something more, is now reported to the public; but the danger to the general welfare from its curtailment is far greater than that to individuals from its exercise.'²

But it may be pointed out here that this freedom of speech does not mean immunity from any action whatsoever within the Legislature itself. A member may be promptly called to order for using unparliamentary expressions. He may even be censured by the House to which he belongs and may have to offer an explanation or apology to its satisfaction. The matter of every speech must be strictly relevant to the subject before the House. Besides, he is, under a Standing Order,³ forbidden, while speaking, (i) to refer to any matter of fact on which a judicial decision is pending; (ii) to make a personal charge against a member; (iii) to make use of offensive expressions regarding the conduct of the Indian or any local legislature; (iv) to reflect upon the conduct of His Majesty the King or the Governor-General or any Governor (as distinct from the Governments of which they are respectively the heads) or any court of law

¹ *Parliamentary Practice* by Sir Erskine May (twelfth edition), p. 96.

² *Political Science and Constitutional Law*, by Mr. J. W. Burgess, vol. ii, p. 122.

³ Legislative Assembly Standing Order, 29 (2); Council of State Standing Order 28 (2).

in the exercise of its judicial functions; or (v) to utter treasonable, seditious or defamatory words. These safeguards are quite sufficient to keep a member on the right path.

If a member persists in irrelevance or in tedious repetition either of his own arguments or of the arguments used by other members in debate, he may be directed by the President to discontinue his speech.¹ Nor can he use his right of speech for wilfully and persistently obstructing the business of the House of which he is a member.

Another point to be noted in this connection is that there is nothing in the Act to protect a member from being legally dealt with in a court of law if he himself publishes his speech which is actionable. In England, 'if a member publishes his speech', says Sir Erskine May,² 'his printed statement becomes a separate publication, unconnected with any proceedings in Parliament.' In the absence of anything to the contrary, it may be presumed that the publication of a libellous speech, delivered in either Chamber of the Indian Legislature, otherwise than officially, is punishable.

We may state here that the members of the provincial legislatures³ enjoy similar freedom of speech, subject to similar restrictions, as is enjoyed by the members of the Indian Legislature.

✓ We have previously⁴ dwelt on the non-sovereign and subordinate character of the Indian legislative bodies and shown how their authority has been limited by the Government of India Act. We shall now describe their specific powers and functions. We
 ✕ propose to deal with the Indian Legislature in this chapter)

**Powers of
the Indian
Legislature.**

¹ Indian Legislative Rule 16.

² May's *Parliamentary Practice* (twelfth edition), p. 100.

³ These include the Legislative Councils of Lieutenant-Governors (if any) and Chief Commissioners.

⁴ pp. 5-6 ante.

The Indian Legislature is empowered to make laws¹—

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

(2) for all subjects of His Majesty and servants of the Crown within other parts of India ;

(3) for all native Indian subjects of His Majesty, without and beyond as well as within British India ;

(4) for the Government officers, soldiers, airmen, and followers in His Majesty's Indian forces, wherever they are serving, in so far as they are not subject to the Army Act or the Air Force Act ;

(5) for all persons employed or serving in or belonging to the Royal Indian Marine ² Service ; and

(6) for repealing or altering any laws which for the time being are in force in any part of British India or apply to persons for whom the Indian Legislature has power to make laws.

But it is not, unless so authorized³ by Act of Parliament, empowered to make any law repealing or affecting⁴—

(1) any Act of Parliament passed after the year 1860

¹ Section 65 (1) of the Act.

² The functions of the Royal Indian Marine have hitherto been—

(1) the transport of troops in 'Indian waters', i.e. the high seas between the Cape of Good Hope on the West and the Straits of Magellan on the East, and any territorial waters between those limits ;

(2) the maintenance of station ships (at the Andamans and Aden), the visiting of Light Houses in the Red Sea, the Persian Gulf, Burma, and the Marine Survey of India ; and

(3) the maintenance of the Bombay Dock-yard and of all military launches.

It is maintained out of the revenues of India. The total expenditure for 1922 and 1923 was estimated to amount to Rs. 1,36,99,000.

For further details about the Royal Indian Marine, see Ilbert's *Government of India* (third edition), pp. 233-34 ; also see the Report of the Indian Retrenchment Committee, 1922-23, pp. 66-77.

³ For instance, the Indian Legislature has, under Section 131 (3) of the Government of India Act, power to repeal or alter some of the provisions of the Act mentioned in the fifth Schedule to the Act. See Appendix L.

⁴ Section 65 (2) of the Act.

and extending to British India (including the Army Act, the Air Force Act and any Act amending the same) ; or

(2) any Act of Parliament enabling the Secretary of State in Council to raise money in the United Kingdom for the government of India. ✓

Nor has it any power ¹ to make any law affecting the authority of Parliament, or any part of the unwritten laws or constitution of the United Kingdom of Great Britain and Ireland whereon may depend in any degree the allegiance of any person to the Crown of the United Kingdom, or affecting the sovereignty or dominion of the Crown over any part of British India. Besides, it cannot without the previous sanction of the Secretary of State in Council, make any law empowering any court, other than a High Court, to sentence to the punishment of death any of His Majesty's subjects born in Europe, or the children of such subjects, or abolishing any High Court.²

A law made under the Government of India Act for the Royal Indian Marine Service will not apply to any offence,³ unless the vessel to which the offender belongs is at the time of the commission of the offence within the limits of 'Indian waters,' i.e. the high seas between the Cape of Good Hope on the West and the Straits of Magellan on the East, and any territorial waters between those limits. The punishments imposed by any such law for offences must be similar to, and not in excess of, the punishments which may, at the time of making the law, be imposed for similar offences under the Acts relating to His Majesty's Navy, except that, in the case of persons other than Europeans or Americans, imprisonment for any term not exceeding fourteen years, transportation for life or any less term, may be substituted for penal servitude.

¹ Section 65(2) of the Act.

² Section 65 (3) of the Act

³ Section 66 of the Act.

(A member cannot, without the previous sanction of the Governor-General, introduce in either Chamber of the Indian Legislature any measure affecting¹— *See Saps*

- (1) the public debt or public revenues of India or imposing any charge on the revenues of India ; or
- (2) the religion or religious rites and usages of any class of British subjects in India ; or
- (3) the discipline or maintenance of any part of His Majesty's military, naval or air forces ; or
- (4) the relations of the Government with foreign princes or states :

or any measure

- (a) regulating any provincial subject, or any part of a provincial subject, which has not been declared by rules under the Government of India Act to be subject to legislation by the Indian Legislature ; or
- (b) repealing or amending any Act of a Local Legislature ; or
- (c) repealing or amending any Act or Ordinance made by the Governor-General.

If in either Chamber of the Indian Legislature a Bill is introduced, or is proposed to be introduced, or any amendment to a Bill is moved, or proposed to be moved, and if the Governor-General certifies that the Bill, or any clause of it, or the amendment, affects the safety or tranquillity of British India, or any part thereof, and directs that no consideration, or no further consideration, is to be given to the said Bill, clause or amendment, then effect must be given to such direction.²

When a Bill is passed by both Chambers of the Indian Legislature, the Governor-General may assent to it or may

¹ Section 67 (2) of the Act.

² Section 67 (2a) of the Act.

withhold his assent from it, or may reserve it ~~on~~ the signification of His Majesty's pleasure thereon.¹

Assent of
the
Governor-
General to
Bills.

He may, instead of doing any of these things, return the Bill for reconsideration by either Chamber.² But the Bill cannot become an Act until it has received the assent of the Governor-

General, or, if it was reserved for the signification of His Majesty's pleasure, until His Majesty in Council has signified his assent thereto, and that assent has been

Power of
the Crown
to disallow
Acts.

notified by the Governor-General.³ Finally, an Act of the Indian Legislature, duly assented to by the Governor-General, may be disallowed by

His Majesty in Council and it becomes void as soon as such disallowance is notified by the Governor-General.⁴

✓ This executive veto on legislation is not peculiar to the Indian Constitution only. It exists in England as well as in the self-governing Dominions like Canada and Australia.⁵ The danger lies not in its existence so much as in the frequency of its exercise. The royal veto on Parliamentary legislation in England is practically obsolete;⁶ and so far as the Dominion legislation is concerned, it is, according to Prof. Dicey,⁷ 'now most sparingly exercised, and will

¹ Section 68 (1) of the Act.

² Section 67 (4) of the Act.

³ Section 68 (2) of the Act.

⁴ Section 69 of the Act.

⁵ The Commonwealth of Australia Constitution Act, 1900, Sections 58-60. The British North America Act, 1867, Sections 55-57. The Colonial Governor, says Prof. Keith, 'has an absolute discretion to refuse to assent to any and every Bill.'—*Responsible Government in the Dominions* (1909), p. 176.

⁶ The last royal veto was given in 1707; see p. 280 of Lowell's *Government of England*, vol. i.

⁷ The necessity of refusing the royal assent is removed by the strict observance of the constitutional principle, that the Crown has no will but that of its ministers, who only continue to serve in that capacity so long as they retain the confidence of Parliament. This power was last exercised in 1707, when Queen Anne refused her assent to a Bill for settling the militia in Scotland.'—May, *Parliamentary Practice*, p. 395.

⁷ Dr. Dicey's *Law of the Constitution*, Introduction, p. xxx; see also pp. 110-16, *ibid.* (eighth edition).

hardly be used unless a Bill directly interferes with Imperial interests or is as regards the colonial legislature *ultra vires*.¹ There is, however, one point of difference in form in respect of the executive veto between India and, say, Canada. In India the Governor-General gives or withholds his own assent; in Canada the Governor-General thereof assents to a Bill in the King's name or withholds the king's assent therefrom.

It may be pointed out here that, in the present circumstances, the occasions for the exercise of the executive veto on Bills passed by the two Chambers of the Indian Legislature will be very rare, since, under the Act,¹ the Governor-General may, by mere certification, forbid the very consideration of a measure which he considers dangerous to the safety or tranquillity of British India or of any part thereof. Besides, as we have seen before, since the introduction of certain measures requires the previous sanction of the Governor-General, he may refuse such sanction in the case of any objectionable Bill.²

We have described above the ordinary method of legislation; we shall now consider what may be regarded as the extraordinary method of legislation under Section 67B of the Act, which runs as follows:—

If either Chamber of the Indian Legislature refuses leave to introduce, or fails to pass in a form recommended by the Governor-General, any Bill, the latter may certify that its passage is essential for the safety, tranquillity or interests of British India or any part thereof. Thereupon, if the Bill has already been passed by the other Chamber, it will, on signature by the Governor-General, forthwith become an Act of the Indian Legislature in the form as originally

¹ Section 67 (2a) of the Act. See p. 135 ante.

² Section 67 (2) of the Act. *Ibid.*

introduced or proposed to be introduced in the Indian Legislature, or, as the case may be, in the form recommended by the Governor-General, in spite of the fact that it has not been agreed to by both Chambers ; but, if the Bill has not already been so passed, it must be laid before the other Chamber, and, if consented to by that Chamber in the form recommended by the Governor-General, will become an Act on the signification of his assent, or, if not so consented to, will, on his signature, become an Act.¹ Every such Act must, as soon as practicable after being made, be laid before both Houses of Parliament. But it cannot have the force and effect of law until copies of it have been laid before each House of Parliament for not less than eight days on which that House has sat, and, thereafter, until His Majesty in Council has signified his assent thereto, and that assent has been notified by the Governor-General. But if, in the opinion of the Governor-General, a state of emergency exists, he may direct that any such Act will come into operation immediately, and thereupon it will have the force and effect of law, subject, however, to disallowance by His Majesty in Council.²

Joint Select
Committee
on the
extraordi-
nary method
of legisla-
tion.

The above provision has been inserted in the Act in order, in the words of the Joint Select Committee,³ (to empower the Governor-General in Council to secure in all circumstances legislation which is required for the discharge of his responsibilities.) The Committee, however, advised⁴ that all Acts passed in this (extraordinary) manner should be laid before Parliament that it might be fully apprised of the position and of the circumstances which led to the exceptional procedure. But it is

¹ Section 67B (1) of the Act.

² Section 67B (2) of the Act.

³ Report from the Joint Select Committee on the Government of India Bill, Clause 26.

⁴ *Ibid.*

very unlikely that Parliament will ever disapprove of an action taken by the Governor-General under the above Section, even if the latter may have acted most arbitrarily ; since, such disapproval may force his resignation—a situation which Parliament will not ordinarily like to face.

The first exercise of this extraordinary power by the Governor-General took place in September, 1922, in connection with the passing of the 'Indian States Protection against Disaffection Bill,' popularly known as the Princes Protection Bill.¹ We need not enter here into the merits of the measure. The Legislative Assembly refused leave for the introduction of the Bill. Thereupon the Governor-General certified that the passage of the Bill was essential for the interests of British India. It was then introduced into the Council of State with a recommendation from the Governor-General to pass it in the form in which it was presented. And it was so passed by the Council of State. The Bill then, on signature by the Governor-General, became an Act without the assent of the Assembly. The next occasion for the use of this power arose in connection with the passing of the Finance Bill of the year 1923.² The Bill as first introduced into the Legislative Assembly contained a clause providing for an increase in the salt duty from Re. 1-4-0 to Rs. 2-8-0 per maund. The Assembly, however, accepted an amendment in favour of the maintenance of the then rate of Re. 1-4-0 per maund. The Finance Bill thus amended in respect of

Exercise of
the extra-
ordinary
power of
legislation.

¹ *India in 1922-23* by Dr. Rushbrook Williams, p. 284.

For details see the proceedings of the Indian Legislature ; see also the pamphlet entitled *The First Legislative Assembly* prepared by the Director of Public Information, p. 10.

² *India in 1922-23* by Dr. R. Williams, pp. 115-16 and 295 ; see also *India's Parliament at Delhi*—Delhi Session, 1923, by the Director, Central Bureau of Information, pp. 37-40. For full details see proceedings of the Indian Legislature.

the salt tax was carried by the Assembly. It then came up in the form recommended by the Governor-General before the Council of State, with the salt duty doubled. It was passed by the Council by a majority of twenty-eight votes against ten. The Council thus reversed the decision of the Assembly regarding salt tax. The Bill was reintroduced into the Assembly in the form in which it had been passed by the Council, with a recommendation by the Governor-General to pass it. But it was rejected by the Assembly by fifty-eight votes against forty-seven. It was then certified by the Governor-General and became an Act. The Finance Bill of the year 1924 was also passed into Act by 'certification' by the Governor-General.¹ The Bill, as recommended by the Governor-General, was rejected by the Assembly, but consented to by the Council this time also.

It may be noted here that the insertion of this empowering clause in the Act and its use in connection with the passing of the 'Princes Protection Bill' and the Finance Bill of the year 1923, have done much, in the opinion of many responsible persons, to make the Reforms unpopular.

✓ The estimates of the annual expenditure and revenue of the Governor-General in Council are placed before each Chamber of the Indian Legislature in the form of a statement.² These estimates as embodied in the statement are referred to as the Indian Budget. They are presented to each House on such day or days as the Governor-General appoints.³ No member can make any proposal for the expenditure of public

¹ See the Government of India's Notification No. 996-F., dated Delhi, March 28, 1924. *The Gazette of India* (Extra.), March 31, 1924.

² Section 67A (1) of the Act.

³ The Indian Legislative Rule 43. *The Gazette of India* (Extra.), September 27, 1920.

revenue, except on the recommendation of the Governor^{ds} and General.¹ (This apparent curtailment of the rights of the non-official members is not peculiar to our Constitution only. The House of Commons² in England 'will not receive any petition, or proceed upon any motion, for a grant or charge upon the public revenue unless recommended from the Crown.' Such a restrictive clause is to be found in the Constitutions of self-governing Dominions³ like Canada, Australia and South Africa. Experience has proved that such a restriction is absolutely necessary to prevent expenditure of public money on projects of local and, very often, of questionable importance, on the initiative of private members who, in most cases, to ensure their return at the next election, do everything they can, regardless of consequences of their action to the public treasury, to please their respective constituencies. Speaking about the English system, President Lowell says that it has proved not only an invaluable protection to the Treasury, but a bulwark for the authority of the Ministry.⁴ Commenting on the relevant clause in the British North America Act, 1867, Prof. Egerton⁵ remarks that before 1840 the proposals by private members to make grants of public money had become a scandal and nuisance. The remedy was to secure the previous recommendation of the Crown.

As a further extension of the principle just discussed, we find that when any motion is made demanding a grant for a definite object, no amendment is in order either to increase the grant or to alter its destination.⁶ But, as

¹ Section 67A (2) of the Act.

² Lowell, *Government of England*, vol. i, p. 279.

³ The British North America Act, 1867, Section 54. The Commonwealth of Australia Constitution Act, 1900, Section 56; South Africa Act, 1909, Section 62.

⁴ *The Government of England*, vol. i, pp. 279-80.

⁵ *Federations and Unions in the British Empire*, p. 136, note 2.

⁶ The Indian Legislative Rule 48 (2). *The Gazette of India* (Extra.), September 27, 1920.

the be seen later, motions may be moved at this stage to omit or reduce the grant.¹

We shall now consider the non-votable² heads of expenditure. Section 67A(3) of the Act lays down that the proposals of the Governor-General in Council for the appropriation of public revenue relating to the following heads of expenditure shall not be submitted to the vote of the Legislative Assembly, and that they shall not be open to discussion by either Chamber at the time when the annual statement is under consideration, unless the Governor-General otherwise directs :—

- (1) interest and sinking fund charges on loans ;
- (2) expenditure of which the amount is prescribed by or under any law ;
- (3) salaries and pensions of persons appointed by or with the approval of His Majesty or by the Secretary of State in Council ;
- (4) salaries of Chief Commissioners and Judicial Commissioners ; and
- (5) expenditure classified by the order of the Governor-General in Council as
 - (a) Ecclesiastical ;
 - (b) Political ; and
 - (c) Defence.

The Governor-General is to decide whether any proposed

¹ The Indian Legislative Rule 48 (2). *The Gazette of India* (Extra.), September 27, 1920.

² In the financial year 1921-22, out of the total expenditure of about Rs. 142·86 crores charged to revenue, only the sum of about Rs. 18·02 crores was voted and the rest was non-voted expenditure. If, however, the working expenses of the commercial departments of the Government of India and the capital expenditure thereon during the year are included, it is found that out of the total expenditure of about Rs. 244 crores, about Rs. 118·7 crores were voted and the rest non-voted.—*Vide* 'Finance and Revenue Accounts of the Government of India for the year 1921-22.'

expenditure does or does not relate to the above heads and his decision is final.¹

The proposals of the Government for the appropriation of revenue relating to the heads of expenditure other than those specified above are submitted to the vote of the Assembly in the form of demands for grants.² From this it is evident that the Council of State has no power to authorize expenditure. At first, under the Council of State original Standing Order 70, the Council had not even the power to discuss the Budget after it had been presented to it. The Standing Order has since been altered and the Budget is now open to discussion by the Council. After the proposals have been so submitted to it, the Assembly either assents or refuses its assent to any demand or reduces the amount referred to in any demand by a reduction of the whole grant.³)

Regarding the non-votable heads of expenditure specified above, the Joint Select Committee held that it considered it necessary (as suggested to it by the Consolidated Fund charges⁴ in the Imperial Parliament) to exempt certain charges of a special or recurring nature, which had been set out in the (Government of India) Bill, e.g., the cost of defence, the debt charges, and certain fixed salaries, from the process of being voted.⁵ But the

Indian non-votable expenditures

v/s.
English Consolidated Fund charges.

¹ Section 67A(4) of the Act.

² Section 67A(5) of the Act.

³ Section 67A(6) of the Act.

⁴ These charges are 'interest on the national debt, the Civil List or personal provision for the King, annuities for the royal family, certain pensions, and the salaries of the judges, of the Comptroller and Auditor-General, of the Speaker, and of a few officers of lesser importance.'—Lowell, *Government of England*, vol. i, p. 120.

⁵ Joint Select Committee's Report, Clause 25. Note also the following:—

'There is a further safeguard against irresponsible action by the Legislature in the matter of supply—that certain heads of expenditure are not to require an annual vote—in much the same way as the

suggested similarity is more apparent than real: there is one fundamental difference between the Consolidated Fund charges in England and the non-votable heads of expenditure of the Indian Budget. The former 'are payable by statute out of the Consolidated Fund, and hence do not require an annual vote of Parliament, or come before the Committee of Supply.'¹ We should note the expression 'by statute.' Now this statute is made by no other authority than the British Parliament itself and can be amended or repealed to-morrow by the same body if it so desires. The authority to pay Consolidated Fund charges is given to the Government of England by permanent Acts² of Parliament, e.g., the Civil List Act, the National Debt and Local Loans Act, 1887, etc. By 'permanent Acts' it is not to be understood that they are unalterable by Parliament. The expression simply means that these Acts are not annually made. Parliament's authority over the distribution of public money is as unlimited as it is unquestionable. 'Not a penny of revenue,' says Prof. Dicey,³ 'can be legally expended except under the authority of some Act of Parliament.' The position in India is entirely different. Certain heads of expenditure have been made non-votable not by any Act of the Indian Legislature, but by an Act of the Imperial Parliament; and until the Government of India Act is itself amended in respect of the relevant Section, they will continue to remain non-votable by the Legislative Assembly. Hence the analogy suggested by the Joint Select Committee appears to us to be rather misleading.

Consolidated Fund in this country.'—Lord Sinha's speech in the House of Lords; *The Indian Constitution* by P. Mukherjee, p. 581.

¹ Lowell, *The Government of England*, vol. i, p. 284.

² See *Law of the Constitution*, by Dr. A. V. Dicey (eighth edition), p. 313.

³ *Ibid.*

We should refer here to a very interesting incident. On January 26, 1922: Mr. P. P. Ginwala (Burma: non-European) moved a resolution in the Legislative Assembly, requesting the Government of India to abolish the distinction between 'votable' and 'non-votable' items in the Indian Budget, and to submit the whole of the Budget to the vote of this Assembly.¹ He held that under the Act the Governor-General had the discretion not only to submit all the proposals of the Government for the appropriation of revenue for discussion by the Assembly, but to submit them also to the vote of the Assembly. A most interesting debate² then followed. The resolution was slightly amended on a motion by Mr. F. McCarthy (Burma: European) who, by way of experiment, wanted to make it effective only in respect of the coming Budget, i.e. the Budget for the year 1922-23. Sir Malcolm Hailey (the then Finance Member) practically admitted in his reply that the wording of Section 67A (3) was somewhat ambiguous and stated that the ambiguity could not be removed without a reference to the Law Officers of the Crown. Though Sub-section (5)³ of Section 67A of the Act, he pointed out, was clear on the question of the votability of the excepted items, yet there was a real difficulty of interpretation, and the Government was consequently placing the matter before the Law Officers of the Crown. The Resolution as amended by Mr. McCarthy was then adopted by the Assembly. On February 28, 1922, Sir Malcolm Hailey stated, in reply to a question, that the opinion of the Law Officers of the

¹ See *Legislative Assembly Debates*, January 26, 1922, vol. ii, No. 23; Official Report, pp. 1948-84.

² *Legislative Assembly Debates*, vol. ii, No. 23 of January 26, 1922.

³ 'The proposals of the Governor-General in Council for the appropriation of revenue or moneys relating to heads of expenditure not specified in the above heads (i.e. items (1) to (5) on page 142) shall be submitted to the vote of the Legislative Assembly in the form of demands for grants.'

Crown had been received. In their view it was not competent for the Governor-General to place on the vote subjects which were by the statute reserved from that vote.¹

Later on, on March 6, 1922, the President of the Assembly announced² that he had received a message from the Governor-General to the effect that the heads of expenditure³ specified in Sub-section (3) of Section 67A of the Act would be open to discussion by the Legislative Assembly when the annual Financial statement would be under consideration. The Council of State too has since been allowed to discuss those items during the consideration of the Financial statement.

(Under Sub-section (7) of Section 67A of the Act, the demands as voted by the Legislative Assembly are to be submitted to the Governor-General in Council, who will, if he declares that he is satisfied that any demand which has been refused by the Assembly is essential to the discharge of his responsibilities, act as if it had been assented to, notwithstanding the withholding of such assent or the reduction of the amount therein referred to, by the Legislative Assembly. In the current year (1924) when the demands for grants for the Customs, Income-tax, Salt and Opium Departments were rejected by the Assembly, they were restored by the Governor-General in Council under this Sub-section.⁴

Commenting on this Sub-section the Joint Select Committee stated⁵ in its Report that it was not within the

¹ *Legislative Assembly Debates*, vol. ii, No. 37; Official Report, February 28, 1922, pp. 2625-29.

² *Ibid.*, vol. ii, No. 40; Official Report, March 6, 1922, p. 2754.

³ See p. 142 ante.

⁴ Government of India Notification No. 996-F, Delhi, dated March 28, 1924. *The Gazette of India* (Extra.), March 31, 1924.

⁵ Joint Select Committee's Report, Clause 25.

scheme of the Government of India Bill to introduce at that stage any measure of responsible Government into the central administration, and that a power must be reserved to the Governor-General in Council of treating as sanctioned any expenditure which the Assembly might have refused to vote if he considered the expenditure to be necessary for the fulfilment of his responsibilities for the good government of the country. It should be understood from the beginning, it continued, that this power of the Governor-General in Council was real, and that it was meant to be used if and when necessary.

Under Sub-section (8) of 67A of the Act, the Governor-General can, notwithstanding anything stated above, authorize, in cases of emergency, such expenditure as may, in his opinion, be necessary for the safety or tranquillity of British India or any of its parts.

It may be mentioned here that there are no such provisions for the 'restoration' and 'authorization' of grants in the Constitutions¹ of Canada, Australia and the Union of South Africa as are provided by Sub-sections² (7) and (8) of Section 67A of the Government of India Act. Let us take, for instance, the Constitution of Canada. Under it the Parliament of Canada can appropriate its Consolidated Revenue Fund as it thinks fit, the only limitation on its power in this respect being that the Fund is permanently charged with its cost of collection, with the interest of the provincial debts, and with the salary of the Governor-General, fixed at £10,000 subject to alteration by the Parliament.³ The last three payments

Joint Select Committee on 'restoration' power.

Financial powers of the Parliaments of Canada, Australia and the Union of South Africa.

¹ The British North America Act, 1867; The Commonwealth of Australia Act, 1900; the Union of South Africa Act, 1909.

² See p. 146 and also the preceding paragraph.

³ The British North America Act, 1867, Sections 103-6.

will consecutively form the first, second and the third charge on the Fund.

(It will not be at all an exaggeration to state that in respect of the granting of supplies as in respect of other affairs under the administration of the Government of India, the advance made by the Montagu-Chelmsford Reforms upon the Minto-Morley Reforms¹ is, in essence, really insignificant² except in certain matters of form and procedure. Both in respect of finance and administration, the Central Legislature of India to-day plays practically the same rôle of critic and adviser as the Indian Legislative Council used to do under the Minto-Morley Reforms. This, as we shall see, can also be stated of the Governors' Legislative Councils, so far as the administration of the 'Reserved' subjects is concerned.) *W.*

¹ See the Indian Councils Act, 1909, and the Rules made thereunder.

² As that acute observer, Sir Valentine Chirol, says, 'The Act of 1919, it is true, transfers to the Indian Legislature no direct or complete statutory control over revenue and expenditure, and powers are still vested in the Government of India to override the Assembly in cases of emergency and to enact supplies which it refuses if the Governor-General in Council certifies them to be essential to the peace, tranquillity, and interests of India'—*India Old and New*, p. 233.

CHAPTER XIV

POWERS OF THE PROVINCIAL LEGISLATIVE COUNCILS

The Budget of a Governor's province—Financial powers of a Governor's Legislative Council—Lord Lytton's interpretation of the 'emergency clause' in Section 72D of the Act—Provision for case of failure to pass legislation in a Governor's Legislative Council—The Joint Select Committee on extraordinary power of legislation—Powers of any local Legislative Council—Assent to Provincial Bills—Removal of doubts as to the validity of certain Indian laws.

We shall first discuss the special powers of a Governor's Legislative Council before we deal with the general powers which every Provincial Legislative Council¹ can exercise under the Government of India Act.

The Budget of a Governor's province. A statement of the estimated annual expenditure and revenue of a Governor's province is presented to the local Legislative Council in each year on such day as the Governor appoints.² This is referred to as the provincial Budget. No motion for the appropriation of any provincial revenue can be made, except on the recommendation of the Governor communicated to the Council.³ The proposals of the local Government for the appropriation of provincial revenues except under the following heads of expenditure are submitted to the vote of the Council in the form of demands for grants⁴ :—

(1) contributions payable by the local Government to the Governor-General in Council ;

¹ For instance, the Legislative Council of a Lieutenant-Governor (if there be any) or of a Chief Commissioner.

² Section 72D (2) of the Act and the Provincial Legislative Rule 25. *The Gazette of India* (Extra.), September 27, 1920.

³ Section 72D (2) (c) of the Act.

⁴ Section 72D (2) and (3) of the Act.

(2) interest and sinking fund charges on loans ;
 (3) expenditure of which the amount is prescribed by or under any law ;

(4) salaries and pensions of persons appointed by or with the approval of His Majesty or by the Secretary of State in Council ; and

(5) salaries of Judges of the High Court of the province and of the Advocate-General.

The Council may at this stage assent, or refuse its assent, to a demand, or may reduce the amount referred to therein either by a reduction of the whole grant or by the omission or reduction of any of the items of expenditure of which the grant is composed ; but no motion will be in order either to increase or to alter the destination of a grant.¹

If any question arises whether any proposed expenditure is votable or not, the decision of the Governor thereon will be final.²

If any demand relating to a Reserved subject is refused either in its entirety or partially, and if the Governor certifies that the expenditure provided for by the demand is essential to the discharge of his responsibility for the subject, the local Government has power to act as if the demand had been granted.³ Under this provision of the Act, the Governor has, in respect of Reserved subjects, power to restore, in the words of His Excellency Lord Lytton,⁴ the Governor of Bengal, every single grant in the Budget, which has been rejected. With regard to Transferred subjects, however, he has no power, whatever

¹ Section 72D (2) and the Provincial Legislative Rule 30 (2).

The salary of the Minister has been treated as a separate question, see Chapter XXI.

² Section 72D (4) of the Act.

³ Section 72D (2) (a) of the Act.

⁴ Lord Lytton's speech in the Bengal Legislative Council on March 18, 1924. Vide *The Statesman* (Dak edition), March 20, 1924.

his wishes may be, to restore a single grant.¹ Even if he may be temporarily in charge of the Transferred departments, they do not thereby become, to quote His Excellency again, Reserved departments, and his power of certification does not apply to them.² This power of restoration by certification has been rather frequently used since the inauguration of the Reforms. This year (1924) the Governors of Bengal³ and the Central Provinces⁴ exercised this power in order to restore practically all the Budget demands for Reserved subjects, which were rejected by their Legislative Councils. Commenting on this certification clause in the Government of India Bill, the Joint Select Committee⁵ held that, where the Council

¹ Lord Lytton's speech in the Bengal Legislative Council on March 18, 1924. *Vide* also His Excellency's speech in reply to the address of the representatives of the Indian Inspecting Officers, delivered on June 12, 1924. In the course of his speech His Excellency said :—

'If it were in my power to restore the amount by certificate I should not hesitate to do so. . . . If the Legislative Council refuses any demand for a Transferred subject made by Government in its Budget, the Governor has no power to restore the amount. Education is a Transferred subject and so when the Council reduced the grant for the inspecting staff from Rs. 7,46,900 to Rs. 1,11,500 Government had no option but to reduce the staff to correspond with the reduction.'

² *Ibid.*

³ A communique of the Finance Department of the Government of Bengal—*The Amrita Bazar Patrika*, dated April 16, 1924.

⁴ Notification by the Financial Secretary, the Central Provinces, dated March 24, 1924—*The Statesman*, March 26, 1924.

⁵ The Joint Select Committee's Report on Clause 11 of the Government of India Bill—We may also note here the Committee's views regarding Transferred subjects :—

'In cases where the Council alter the provision for a Transferred subject, the Committee consider that the Governor would be justified, if so advised by his Ministers, in resubmitting the provision to the Council for a review of their former decision ; but they do not apprehend that any statutory prescription to that effect is required.'

The Committee made this recommendation probably because of the want of experience of the Provincial Legislative Councils of the parliamentary form of Government. But it appears to us that this recommendation goes against the principle of ministerial responsibility and is, if actually followed in practice, very likely to retard the

had reduced a provision for a Reserved subject, which the Governor considered essential to the proper administration of the subject concerned, he would have a power of restoration. It wished it to be perfectly clear that this power was real and that its exercise should not be regarded as unusual or arbitrary; unless the Governor had the right to secure supply for those services for which he would remain responsible to Parliament, that responsibility could not justly be fastened upon him. Herein then lies the justification of the 'restoration' clause. Full 'Provincial Autonomy' has not been granted by the Government of India Act. Under it the Governor acting with his Executive Councillors is still responsible for the administration of subjects known as 'Reserved', to the Government of India and ultimately to the British Parliament, and not to the local Legislative Council. And if he is to be held responsible for the efficient administration of those subjects, he should be invested with power to act, if necessary, in opposition to the wishes of the Legislative Council with respect to the granting of supplies for them. Complaints against the exercise of this power by any Governor are useless, since 'in the sphere of the reserved powers the elected councils are advisory only.'¹ The remedy lies in an amendment of the Act itself.

growth of a due sense of responsibility in many members of those Councils. If the members of a Council, when voting against a grant, have this in their minds, that their action, so far as the particular grant is concerned, is final and will probably decide the fate of a particular Minister, they will seriously consider the question in all its aspects before they actually vote. But if they know that their first vote in respect of a particular demand is not decisive for the financial year and will not necessarily cause the fall of a Minister as he may advise the Governor to resubmit to the Council that very demand, they may, when the demand is made for the first time, vote against it in a spirit of lightheartedness. Such is human nature. Nor do we find any necessity for the resubmission of a demand relating to a Transferred subject, which has been *simply altered*, in view of the provision for supplementary grants.

¹ L. Curtis, *Dyarchy*, Introduction, p. xiv, para. 46.

Lord
Lytton's
interpreta-
tion of the
'emergency
clause' in
Sec. 72D of
the Act.

Besides possessing the power of restoration as stated above, the Governor can in cases of emergency authorize, under Proviso (b) to Section 72D (2) of the Act, such expenditure as may be, in his opinion, necessary for the safety or tranquillity of his province or for the carrying on of any department. The word 'any' is very significant here. It implies any department of Government, whether Reserved or Transferred. The construction which His Excellency the Governor of Bengal put upon the proviso is as follows¹:—'This proviso is not limited to Reserved subjects, and the power of authorizing expenditure may, therefore, be exercised in respect of any department of Government; but it is limited by the two considerations specified, namely, that the expenditure must be necessary for the safety and tranquillity of the province, or for carrying on a department. Here again, I have certain powers within my discretion; but whereas in the case of Reserved subjects I have power to restore everything, in the case of Transferred subjects I can "restore" nothing, though I can "authorize" expenditure within very strict limits.' 'I can', His Excellency continued, 'if I so desire, authorize expenditure, for the carrying on of any department—that is to say, I can provide funds for all the Services, for all the departments and institutions of Government, such as. . . . These institutions could be provided, if I so desire, with the salaries of their staff and the bare necessities of their existence, but nothing more. I could provide nothing for their expansion or improvement. It will not be in my power, whether I wish it or not, to do more than this. Government contributions to all aided institutions would at once lapse. No loans, no

¹ His Excellency's speech in the Bengal Legislative Council already referred to. *The Statesman* (Dak edition), March 20, 1924.

grants-in-aid, could be "authorized" by me. . . . Government aid to all local institutions would cease.' While the Governor of Bengal could not under the Proviso authorize any grant-in-aid and the Government aids to all local institutions would accordingly cease if the Budget proposals of the Government were rejected *in toto*, the Governor of the Central Provinces authorized certain items¹ which were classed as new expenditures, but which were really commitments of the Government in accordance with practice, such, for instance, as grants to local bodies for general purposes. It seems from the above that the Governor of the Central Provinces put a more liberal interpretation upon the Proviso. This difference in the construction put upon the Proviso in question by the two Governors may presumably be due to the fact that the interpretation of such vague expressions in the Proviso as 'in cases of emergency', 'the safety or tranquillity of the province', and 'for carrying on of any department', has been left by the Act entirely to the discretion of the Governor.² It may be stated, however, as a general principle that the less this emergency power is exercised in respect of the demands for the Transferred subjects, the more will the object of the Reforms be fulfilled.

¹ The Notification by the Financial Secretary, Central Provinces, already referred to above; *The Statesman* (Dak edition), March 26, 1924.

² The Governor of Bengal is reported to have said in the course of his reply to the members of the deputation from the Inspecting Officers of the Education Department:—

'Proviso (b) was not intended by Parliament to enable a Governor to over-ride the decision of a Legislative Council in respect of a Transferred subject. The power therein conferred was intended to be used only in a genuine emergency where owing to special or unforeseen circumstances no money is otherwise available for the safety of the province or for carrying on a department. If the Legislative Council deliberately and after due consideration decide that a school-inspecting staff under the Government is not necessary, however much I may disagree with them or deplore their decision, I cannot call that an emergency which would justify me in over-riding it.'

The Governor of a province can forbid ¹ the consideration of any Bill or any amendment to a Bill by his Legislative Council, by certifying that the Bill or a clause of it or the amendment will affect the safety or tranquillity of his province or of a part of it or of another province. Of course, the determination of what constitutes a danger to the safety or tranquillity of a province is left to the discretion of the Governor himself.

Let us now consider the extraordinary power of legislation vested in the Governor by Section 72E of the Act. If a Governor's Legislative Council refuses leave to introduce, or fails to pass in the form recommended by the Governor, any Bill relating to a Reserved subject, the latter may certify ² that the passage of the Bill is essential for the discharge of his responsibility for the subject. Thereupon the Bill will, notwithstanding that it has not been agreed to by the Council, become, on signature by the Governor, an Act of the local Legislature in the form as originally introduced or proposed to be introduced in the Council or, as the case may be, in the form recommended by the Governor.³

The Governor must send an authentic copy of every Act made in this way to the Governor-General who will have to reserve the Act for the signification of His Majesty's pleasure. The Act cannot have the force and effect of law until it has received the assent of His Majesty in Council and that assent has been notified by the Governor-General.⁴

But for the avoidance of delay in case of an emergency, the Governor-General may, instead of reserving such Act,

¹ Section 72D (4) of the Act.

² e.g., the Bengal Criminal Law Amendment Bill, 1925, leave to introduce which had been refused by the local Legislative Council, was certified by the Governor under Section 72E of the Act.

³ Section 72E (1) of the Act.

⁴ Section 72E (2) of the Act.

Provision
for case of
failure to
pass legis-
lation in a
Governor's
Legislative
Council.

signify his assent thereto, and thereupon the Act will have the force of law, subject, however, to disallowance by His Majesty in Council.¹

An Act made under this Section must, as soon as possible, be laid before each House of Parliament, and an Act which is required to be presented for His Majesty's assent, cannot be so presented until copies of it have been laid before each House of Parliament for not less than eight days on which that House has sat.²

In justification of the necessity of vesting in the Governor such extraordinary power of legislation, the Joint Select Committee stated³ that, as the responsibility for legislation on Reserved subjects would be with the Governor in Council, the Governor should be empowered to pass an Act in respect of any Reserved subject, if he considered that the Act was necessary for the proper fulfilment of his responsibility to Parliament. The Committee advised however that he should not do so until he had given every opportunity for the matter to be thoroughly discussed in the Legislative Council, and as a sensible man he should, of course, endeavour to carry the Council with him in the matter by the strength of his case. But, it continued, if he found that that could not be so, then he should have the power to proceed on his own responsibility. Acts passed on his sole responsibility should be reserved by the Governor-General for His Majesty's pleasure, and be laid before Parliament. His Majesty would necessarily be advised by the Secretary of State for India, and the responsibility for the advice to be given to His Majesty could only rest with the Secretary of State.

The Joint Select Committee on extraordinary power of legislation.

¹ Proviso to Section 72E (2) of the Act.

² Section 72E (3) of the Act.

³ Report from the Joint Select Committee on Clause 13 of the Government of India Bill.

POWERS OF LOCAL LEGISLATURES¹

Section 80A of the Act lays down :—

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

**Powers of
any local
Legislative
Council.**

It may further, subject to what follows, repeal or alter, as to that province, any law made either before or after the commencement of the Act by any authority in British India other than itself. It may not, however, without the previous sanction of the Governor-General, make or take into consideration any law—

(1) imposing or authorizing the imposition of any new tax, unless the tax is one exempted from this proviso by Rules made under the Act ; ² or

(2) affecting the public debt of India, or the customs duties, or any other tax or duty for the time being in force and imposed by the authority of the Governor-General in Council for the general purposes of the Government of India, provided that the imposition or alteration of a tax under (1) above will not be deemed to affect any such tax or duty ; or

(3) affecting the discipline or maintenance of any part of His Majesty's naval, military, or air forces ; or

(4) affecting the relations of the Government with foreign princes or states ; or

(5) regulating any Central ³ subject ; or

(6) regulating any provincial ⁴ subject which has been declared by Rules under the Act to be, either wholly or partly, subject to legislation by the Indian Legislature, in

¹ Including the Legislative Council of a Lieutenant-Governor (if any) or of a Chief Commissioner (e.g., Coorg).

² See the Scheduled Taxes Rules, Appendix E.

³ Devolution Rule 3, Schedule I, Part I. Appendix B.

⁴ *Ibid.*, part II. Appendix B.

respect of any matter to which such declaration applies ;
or

(7) affecting any power expressly reserved to the Governor-General in Council by any law for the time being in force ; or

(8) altering or repealing the provisions of any law . . . which is declared by Rules made under the Act to be a law which cannot be repealed or altered by it without such previous sanction ; ¹ or

(9) altering or repealing any provision of an Act of the Indian Legislature which, by its own provisions, may not be repealed or altered by the local legislature without such previous sanction.

But an Act or a provision of an Act made by a local legislature, and subsequently assented to by the Governor-General in pursuance of the Government of India Act, will not be deemed invalid by reason only of its requiring the previous sanction of the Governor-General under the Act.²

Finally, the local legislature of any province has not power to make any law affecting any Act of Parliament.³ As a further limitation upon the powers of the members of a local Legislative Council, it is laid down that it will not be lawful for any member of the Council to introduce, without the previous sanction of the Governor, Lieutenant-Governor or Chief Commissioner, as the case may be, any measure affecting the public revenues of a province, or imposing any charge on those revenues.⁴ This provision has been inserted, probably with a view to prevent the creation of a public charge on the initiative of private members and to maintain the authority of the Executive over the distribution of provincial revenues unimpaired. But it cannot altogether

¹ See the Local Legislature (Previous Sanction) Rules, Appendix F.

² i.e. the Government of India Act.

³ Section 80A (4) of the Act.

⁴ Section 80C of the Act.

prevent the Council from forcing the hands of the Government by passing a resolution in favour of a certain kind of expenditure.

A Bill passed by a local Legislative Council cannot become law until it has received the assent of the head¹ of the local Government as well as of the Governor-General.² If either of them withholds his assent from the Bill, it lapses.² Where the Governor-General withholds his assent from a Bill duly assented to by the head of a local Government, he must inform the latter of his reason for such action.² The head of a local Government may, instead of assenting to or withholding his assent from a Bill passed by his Legislative Council, return it for reconsideration by the Council, either in whole or in part, together with any amendments which he may recommend,³ or, in cases prescribed by Rules under the Act, may, and if the Rules so require, must reserve⁴ it for the consideration of the Governor-General. A 'reserved' Bill, if assented to by the Governor-General within a period of six months from the date of the reservation, becomes law on the publication of such assent. But if it fails to receive the assent of the Governor-General within the period of six months, it lapses, unless before the expiration of that period either—

(1) it has been returned (with the consent of the Governor-General) by the head of the local Government for further consideration by the Council; or

(2) in the case of the Council not being in session, a notification has been published of an intention so to return the Bill at the beginning of the next session.⁵

¹ i.e. the Governor, Lieutenant-Governor or Chief Commissioner, as the case may be.

² Section 81 of the Act.

³ Section 81A (1) of the Act.

⁴ For the Reservation of Bills Rules, see Appendix G.

⁵ Section 81A (2) (c) of the Act.

A 'reserved' Bill returned to the Council for further consideration, may, if reaffirmed with or without amendment, be again presented to the head of the local Government.¹

Finally, His Majesty in Council has power to disallow any Provincial Act even after it has been assented to by the Governor-General; and if His Majesty in Council actually disallows any such Act it will cease to have any effect from the date of the notification of such disallowance by the head of the local Government.²

VALIDITY OF INDIAN LAWS

Section 84 of the Act provides for the removal of doubts as to the validity of certain laws. It lays down—

Removal of doubts as to the validity of certain Indian laws. that (I) a law made by any authority in British India shall not be deemed invalid solely on account of any one or more of the following reasons :—

(1) in the case of an Act of the Indian Legislature or a local legislature, because it affects the prerogative of the Crown; or

(2) in the case of any law, because the requisite proportion of non-official members was not complete at the date of its introduction into a legislative body or its enactment; or

(3) in the case of an Act of a local legislature, because it confers on magistrates, who are also Justices of the Peace, the same jurisdiction over European British subjects as that legislature, by Acts duly made, could lawfully

¹ It is not clear from the Act whether the head of the local Government should 'reserve' a Bill for the second time. The Committee on Division of Functions recommended in its report (para. 36) that he should not be bound to reserve a second time those Bills in respect of which the reservation procedure was compulsory, but might so reserve them if he thought fit.

² Section 82 of the Act

confer on magistrates in the exercise of authority over other British subjects in like cases ;

that (II) a law made by any authority in British India and repugnant to any provision of the Government of India Act or any other Act of Parliament must, to the extent of that repugnancy but not otherwise, be void ; and

that (III) nothing in the Government of India Act, 1919, or the Government of India Act, or in any Rules made thereunder, shall be construed as diminishing in any respect the powers of the India Legislature as laid down in Section ¹ 65 of the Act, and the validity of any Act of the Indian Legislature or any local Legislature must not be open to question in any legal proceedings on the ground that the Act affects a provincial subject, or a central subject, as the case may be, and the validity of any Act made by the Governor of a province must not be so open to question on the ground that it does not relate to a Reserved subject. ²

¹ See pages 133-34 ante.

² We may note the following in this connection :—

'It is our intention to reserve to the Government of India a general over-riding power of legislation for the discharge of all functions which it will have to perform. It should be enabled under this power to intervene in any province for the protection and enforcement of the interests for which it is responsible ; to legislate on any provincial matter in respect of which uniformity of legislation is desirable either for the whole of India or for any two or more provinces. . . . We think that the Government of India must be the sole judge of the propriety of any legislation which it may undertake under any one of these categories, and that its competence so to legislate should not be open to challenge in the courts. . . . There are advantages in a statutory demarcation of powers such as is found in some federal constitutions, but we feel that if this is to leave the validity of Acts to be challenged in the courts on the ground of their being in excess of the powers of the particular legislature by which they are passed, we should be subjecting every Government in the country to an almost intolerable harrassment. Moreover, in India where the central Government must retain large responsibilities, as for defence and law and order, a statutory limitation upon its legislative functions may be inexpedient. . . . We think therefore that it may be better, instead of attempting to bar the legislative power of the Government of India in certain spheres of provincial business, to leave it to be settled as a matter of constitutional

The Government of India Act provides for the classification of subjects, in relation to the functions of Government, as central and provincial, and also for the transfer, from among the provincial subjects, of subjects (to be referred to as 'Transferred subjects') to the administration of the Governor acting with Ministers. Nevertheless, as we have established before,¹ our Constitution is not yet federal. In a completely developed federal constitution like that of the United States of America, the Courts act as the 'interpreters of the Constitution'² and as the guardians of the rights and privileges of the national Government as well as of the component States of the Union. Our Constitution being still 'unitarian' in character, Section 84 of the Act above provides against the interference by a court of law in the settlement of any dispute as to whether a particular matter does or does not relate to a provincial subject. The Section also provides against similar interference in the decision of a question as to whether a certain matter relates to a Reserved or to a Transferred subject. The decision of such controversial matters has been left by the Act to the Executive, lest the course of administration should be held up in any way. Under the Devolution Rules if any doubt arises as to—

(1) whether a particular matter does or does not relate to a provincial subject, the decision of the Governor-General in Council thereon will be final;³ or

(2) whether any matter relates to a Reserved subject or to a Transferred subject, the decision of the Governor thereon will be final.⁴

practice that the central Government will not interfere in provincial matters unless the interests for which it is itself responsible are directly affected.'—*The Montagu-Chelmsford Report*, para. 212; see also para. 239 of the Report.

¹ pages 6-9 ante.

² Dicey, *Law of the Constitution* (eighth edition), p. 140.

³ Devolution Rule 4.

⁴ *Ibid.*, Rule 7.

CHAPTER XV

PROCEDURE IN THE INDIAN LEGISLATURE

Rules and Standing Orders for regulating business in Indian legislatures—Summoning of the Legislative Assembly and the Council of State—Prorogation—Adjournment—Time of meetings—Quorum—Language in the Indian Legislature—Motions—Voting—Repetition of motions—Rules as to amendments—Decision of points of order—Power to order withdrawal—Admission of strangers—Closure—Arrangement of business—List of business—Questions—Subject-matter of questions—Form and contents of questions—Motions for adjournment for purposes of debate—Resolutions—Form and contents of resolutions—Their effect.

There must be in every deliberative assembly some rules for the conduct of its business, for the preservation of order within it and for the prevention of waste of its time. If every member of such an assembly were free to do whatever he liked, the assembly would soon cease to be a peaceful law-making body and would lapse into a state of disorder and confusion. As Dr. Leacock¹ says, 'any large gathering which acts at haphazard and without formal rules is liable to become a mere babel of tongues.' Generally speaking, every such assembly adopts its own rules of procedure. Not to speak of the legislatures of independent countries, the Parliaments of the self-governing dominions like Australia and the Union of South Africa have power 'to make rules and orders with respect to the order and conduct of their business and proceedings.'² The position

¹ *Elements of Political Science*, p. 148.

² The Commonwealth of Australia Constitution Act, 1900, Section 50; South Africa Act, 1909, Section 58.

in India is somewhat different. The Government of India Act has authorized Rules and Standing Orders to be made for regulating the course of business and for the preservation of order in the two Chambers of the Indian Legislature and in Governors' Legislative Councils.¹ Accordingly, Rules have been made by the Governor-General in Council with the sanction of the Secretary of State in Council in the form approved by both Houses of Parliament.² This is the procedure provided by the Act for making such Rules. These Rules cannot be repealed or altered by the Indian Legislature or by any local legislature.³ The first Standing Orders have been made, as provided by the Act,⁴ by the Governor-General in Council in the case of the Indian Legislature and by the Governor in Council in the case of a local legislature; they may, unlike the Rules, be altered by the legislative body to which they relate with the consent of the Governor-General or the Governor, as the case may be. If any Standing Order is repugnant to the provisions of any Rules made under the Act, it must, to the extent of that repugnancy, be void.⁵

Let us first discuss the procedure of business in the two Chambers of the Indian Legislature before we pass on to Governors' Legislative Councils.

PROCEDURE IN THE INDIAN LEGISLATURE

The Governor-General appoints by notification the date and place for a session of each Chamber of the Indian

¹ Sections 67 (1) and 72D (5) of the Act.

² Government of India Notifications Nos. 121-29, Legislative Department; *The Gazette of India* (Extra.), September 27, 1920.

³ Section 129A(1) of the Act.

⁴ Sections 67 (6) and 72D (7) of the Act.

⁵ *Ibid.*

Legislature.¹ The Secretary² of each Chamber issues a summons to every member thereof for the date

and place thus appointed.³ After the commencement of a session, each House sits on such days as its President, having regard to the state of its business, directs from time to

time.⁴ A session of either House is brought to a close by

prorogation which is effected by the Governor-General by notification or otherwise.⁵ On the

termination of a session by prorogation all

pending notices lapse, and fresh notices must be given for

the next session.⁶ But Bills which have already been

introduced are carried over to the pending list of business of

the next session and begin their progress again at the point

they have already reached.⁷ Thus the Indian practice avoids

that unfortunate necessity of the 'slaughter of the innocents,'⁸ which is generally the effect of a prorogation of a

session of Parliament in England.] But if the member in

charge of a Bill makes no motion with regard to it during

two complete sessions, it will lapse unless the House, in

which the Bill has been introduced, makes, on a motion by

that member in the next session, a special order for its

continuance.⁹ A meeting of each House is

adjourned by its President.¹⁰ An adjournment

only suspends the transaction of current business.

Adjourn-
ment.

¹ Section 63D (2) of the Act and the Legislative Assembly and the Council of State Standing Order 3 (1).

² The Secretary and his assistants are appointed by the Governor-General and hold office during his pleasure.

³ The Legislative Assembly and the Council of State Standing Order 3 (2).

⁴ *Ibid.*, 3 (3).

⁵ Section 63D (2) of the Act.

⁶ L. A. and C. S. S. O. 4 (1).

⁷ *Ibid.*, 4 (2).

⁸ Lowell, *Government of England*, vol. i, p 247.

⁹ L. A. and C. S. S. O. 4 (Proviso).

¹⁰ Section 63D (3) of the Act.

Time of meetings.

Ordinarily, each Chamber meets at 11 a.m. and sits till 4 p.m., unless the Governor-General otherwise directs.¹

Quorum.

The presence of at least twenty-five members is necessary to constitute a quorum in the case of the Legislative Assembly, and of at least fifteen members, in the case of the Council of State.² Neither House can transact any business unless there is a quorum in it. If the President of either House ascertains, on a count at any time during a meeting, that a quorum is not present, he must adjourn the House until the next day of sitting.³

Seating of members.

The members of each House must sit in such order as its President may direct.⁴

Members to rise when speaking.

A member desiring to make any observation on any matter before the House must speak from his place, rise when he speaks, and address the President. Whenever the President rises, any member speaking must resume his seat.⁵

Explanation.

If, for the purposes of explanation during a discussion or for any other sufficient reason, any member has occasion to ask a question of another member on any matter then under the consideration of the House, he must ask the question through the President.⁶

Language in the Indian Legislature.

The business of each Chamber of the Indian Legislature is to be transacted in English; but the President thereof may permit any of its members unacquainted with English to address the Chamber in a vernacular language.⁷

¹ The Legislative Assembly Standing Order 6 and the Council of State Standing Order 5.

² Indian Legislative Rule 13.

³ L. A. S. O. 25 and C. S. S. O. 24.

⁴ *Ibid.*, 26 and *ibid.*, 25.

⁵ *Ibid.*, 27 and *ibid.*, 26.

⁶ *Ibid.*, 28 and *ibid.*, 27.

⁷ Indian Legislative Rule 14.

If any matter requires the decision of either House, it must be brought forward by means of a question put by the President on a motion proposed by a member.¹ All questions are determined by a majority of votes of the members present other than the person presiding, who, however, has and must exercise a casting vote in the case of an equality of votes.²

Motions.
Voting. Votes are taken by voices or division.³ The procedure adopted is as follows: When the President states the question to be voted upon, those members who are in favour of it say 'aye' and those against, say 'no'. According to the apparent preponderance of voices he declares whether the 'ayes' or 'noes' 'have it'. If, however, his opinion is challenged and a division is wanted by any member, he orders a division. The result of the division is then announced by the President and

Repetition of motions. is not open to further challenge.⁴ A motion in either House must not raise a question substantially identical with one on which the House has given a decision in the same session.⁵ An amendment

Rules as to amendments. must be relevant to, and within the scope of, the motion to which it is moved.⁶ It is not in order if it has merely the effect of a negative vote.⁷ Besides, an amendment on a question must not be

¹ Legislative Assembly Standing Order 30 (1) and Council of State Standing Order 29 (1).—e.g.

'Mr. President: The question is:

'That the clause, as amended, do stand part of the Bill.'

The motion then is either adopted or negatived.

² Section 63D (4) of the Act.

³ Legislative Assembly Standing Order 30 (2) and Council of State Standing Order 29 (2). Votes must be taken by division if any member so desires. This is the case also in Bengal.

⁴ L. A. S. O. 30 (3) and C. S. S. O. 29 (3). Vide *The Bengal Legislative Council Manual*, 1921, p. 219, for the method of taking votes by division in Bengal.

⁵ L. A. S. O. 31 and C. S. S. O. 30.

⁶ *Ibid.*, 33 and *ibid.*, 32.

⁷ *Ibid.*

inconsistent with a previous decision on the same question at the same stage of any Bill or other matter.¹ The President can refuse to put an amendment which he considers frivolous.²

After the member who makes a motion has finished his speech, other members may speak to it in such order as the President may call upon them.³ Except in the exercise of a right of reply or as otherwise provided by the Rules or Standing Orders, no member can speak more than once to any motion.⁴ But, with the permission of the President, he may offer a personal explanation which will not raise any debatable issue.⁵ If a motion is moved by a non-official member, the Member of the Government to whose department the motion relates has the right of speaking (whether he has previously spoken in the debate or not), after the mover has replied.⁶ The President of either House may address the House before submitting a question to its vote.⁷

All points of order are decided by the President and his decision is final.⁸ A member may at any time submit a point of order for his decision, but in doing so he must confine himself to stating the point only.⁹

It is the duty of the President of either House to preserve order.¹⁰ He has all the powers necessary for the purpose of enforcing his decisions on all points of order.¹¹

¹ Legislative Assembly Standing Order 33 and Council of State Standing Order 32.

² *Ibid.*

³ L. A. S. O. 32 and C. S. S. O. 31.

⁴ *Ibid.*

⁵ *Ibid.*

⁶ *Ibid.*

⁷ *Ibid.*

⁸ Indian Legislative Rule 15.

⁹ *Ibid.*

¹⁰ Indian Legislative Rule 17 (1).

¹¹ *Ibid.*

Decision of
points of
order.

He may direct any member whose conduct is in his opinion grossly disorderly to withdraw immediately from the House to which he belongs, and any member so directed to withdraw must do so forthwith and must absent himself during the remainder of the day's meeting.¹ If a member is ordered to withdraw a second time in the same session, he may be directed by the President to absent himself from the meetings of the House for any period not longer than the remainder of the session, and such direction must be obeyed.² The President of either House may, in the case of grave disorder, suspend its sitting for a time fixed by him.³

The admission of visitors, representatives of the Press and officials to each Chamber during its sittings is regulated in accordance with orders made by the President thereof with the approval of the Governor-General.⁴ The President may, whenever he thinks fit, order the visitors' or Press gallery in it to be cleared.⁵

President Lowell says that almost all great legislative bodies at the present day have been forced to adopt some method of cutting off debate, and bringing matters under discussion to a decisive vote.⁶ They have been driven, he continues, to do so partly as a defence against wilful obstruction by minorities, and partly as a means of getting through their work.⁷ The mode of procedure adopted to achieve this end is known as closure. Recourse to this process is had in the Indian Legislature (as well as in our local legislatures). When a motion is

¹ Indian Legislative Rule 17 (2).

² *Ibid.*

³ Indian Legislative Rule 17 (3).

⁴ Legislative Assembly Standing Order 35 and Council of State Standing Order 34.

⁵ *Ibid.*, 36 and *ibid.*, 35.

⁶ Lowell, *Government of England*, vol. i, p. 292.

⁷ *Ibid.*

under discussion in either House, any member may move 'that the question be now put', and, unless it appears to the President that the request is an abuse of the Rules or Standing Orders of the House, or an infringement of the rights of reasonable debate, the motion 'that the question be now put' must be put forthwith without amendment or debate.¹ If such a motion is carried, the original motion, the debate on which has thus been terminated, is to be put without further amendment or debate. But in the case of a motion relating to an official² Bill, the Member in charge of the Bill may request the President to put the question, and unless it appears to the President that the request is an abuse of the Rules or Standing Orders of the House, or an infringement of the rights of reasonable debate, the question must be put.³ A closure may be moved at the conclusion of a speech, or while a member is addressing the House.

It need not, perhaps, be pointed out that the discretion left to the Chair as to when a motion for the closure should be allowed is a great safeguard against the infringement of the rights of minorities. To no small extent does the proper consideration of a question depend upon an impartial exercise of this discretion; since, the House itself will seldom reject a closure motion if it gets a chance to vote upon it.

The Governor-General, after considering the state of business of each House, allots, at the beginning of each session, as many days as are in his opinion compatible with the public interests for the business of non-official members in the House. He may, from time to time during the session,

Arrange-
ment of
business.

¹ Legislative Assembly Standing Order 34 and Council of State Standing Order 33.

² And also in the case of a motion relating to a Bill relating to a Reserved subject in a provincial legislature.

³ L. A. S. O. 34 and C. S. S. O. 33.

alter such allotment. Non-official business has precedence on those days. At all other times Government business has precedence.¹

At times when the Government business has precedence, the Secretary of each House arranges that business in such order as the Governor-General in Council may direct.² The order in which non-official Bills and resolutions should be taken up for consideration by either House is determined by ballot held in the presence of the Secretary of the House.³ Any member may attend at the time of the ballot if he wishes to do so.⁴ Bills introduced by non-official members, which have reached certain stages in their progress, are arranged in such order as to give priority to the Bills which are most advanced.⁵ The relative precedence of the other non-official Bills which have been introduced, but which have not yet reached those stages, is determined by ballot.⁶ If, however, any such Bills stand over from the last session, they will have priority in the order of their date of introduction.⁷

A list of business for each day is prepared by the Secretary of each House, and a copy of it is
List of business. given to every member.⁸ Except as otherwise provided in the Rules or Standing Orders, no business other than that included in the list is to be transacted at any meeting without the permission of the President.⁹ Any business not disposed of on the day is to stand over till the next day of the session available for the business of the class to which it belongs, or till such other day in

¹ Indian Legislative Rule 6.

² Legislative Assembly Standing Order 7 and Council of State Standing Order 6.

³ *Ibid.*

⁴ *Ibid.*, Schedule I.

⁵ L. A. S. O. 7 and C. S. S. O. 6.

⁶ *Ibid.*

⁷ *Ibid.*

⁸ L. A. S. O. 8 and C. S. S. O. 7.

⁹ *Ibid.*

the session so available as the member in charge may desire.¹ Every notice required by the Rules or Standing Orders of either House must be given in writing addressed to the Secretary.² It is the duty of the Secretary to circulate to each member of the House a copy of every notice or other paper which is required to be made available for the use of members.³

We have hitherto confined ourselves to the statement of the general rules of procedure in the two Chambers of the Indian Legislature. We shall now attempt to show how the Legislature criticizes and controls the actions of the Central Government by means of questions and discussions, how it makes laws, and, lastly, how it grants supplies to that Government to enable it to meet some of its expenditures.

The first hour of every meeting of either Chamber is available for the asking and answering of Questions. questions.⁴ Any member may address a question to any Member of the Government for the purpose of obtaining information on a matter of public concern within the special cognizance of the latter.⁵ The question must relate to the public affairs with which the latter is officially connected, or to a matter of administration for which he is responsible.⁶ A question addressed to a non-official member must relate to some Bill, resolution or other matter connected with the business of the Chamber, for which he is responsible.⁷ The right of asking questions was first conceded by the Indian Councils Act, 1892. This right was enlarged by the Indian Councils Act, 1909, by allowing the member who put the original question to ask

¹ Legislative Assembly Standing Order 9 and Council of State Standing Order 8.

² L. A. S. O. 11 and C. S. S. O. 10.

³ *Ibid.*, 12 and *ibid.*, 11.

⁴ *Ibid.*, 10 and *ibid.*, 9.

⁵ Indian Legislative Rule 8.

⁶ L. A. S. O. 14 and C. S. S. O. 13.

⁷ *Ibid.*

a supplementary one. Under the existing Rules, unless the President, with the consent of the Government Member whose department is concerned, otherwise directs, not less than ten clear days' notice of a question must be given.¹ This enables the Member to prepare his answer. In the British House of Commons one day's notice is sufficient except in special cases.² The President may, within the period of notice, disallow any question or any part of it on the ground that it relates to a matter which is not primarily the concern of the Governor-General in Council.³

No question can be asked with regard to any of the following subjects,⁴ namely:—

Subject-matter of questions.

(1) any matter affecting the relations of His Majesty's Government, or of the Governor-General in Council, with any foreign State;

(2) any matter affecting the relations of any of the foregoing authorities with any Prince or Chief under the suzerainty of His Majesty, or relating to the affairs of any such Prince or Chief or to the administration of the territory of any such Prince or Chief; and

(3) any matter which is under adjudication by a Court of Law having jurisdiction in any part of His Majesty's Dominions.

If any doubt arises whether any question does or does not come within these restrictions, the decision of the Governor-General thereon is final.

In matters which are or have been the subject of controversy between the Governor-General in Council and the Secretary of State or a local Government, no question can be asked except as to matters of fact, and the answer must be

Form and contents of questions.

¹ Legislative Assembly Standing Orders 13 and Council of State Standing Orders 12.

² Ilbert, *Parliament*, p. 112.

³ Indian Legislative Rule 7.

⁴ *Ibid.*, 8.

confined to a statement of facts.¹ A question cannot bring in any name or statement not strictly necessary to make it intelligible;² nor should it contain arguments, inferences, ironical expressions or defamatory statements, or ask for an expression of opinion or the solution of a hypothetical proposition.³ Nor can any question be asked regarding the character or conduct of any person except in his official or public capacity.⁴ If a question contains a statement by the member himself, he must make himself responsible for the accuracy of the statement.⁵ Finally, it must not be of excessive length.⁶ The President of either House is to decide whether any question is admissible or not under the Rules or Standing Orders of the House.⁷ He may disallow any question if, in his opinion, it is an abuse of the right of questioning or calculated to obstruct or prejudicially affect the procedure of the House.⁸

If a question, the notice of which has been given, is not put or the member in whose name it stands is absent, the President, at the request of the member to whom it has been addressed, may direct that the answer to it be given on the ground of public interest.⁹ On the same ground an answer to a question may be declined. Questions must be put and answers given in such manner as the President may determine.¹⁰

¹ Indian Legislative Rule 9; see also in this connection a statement by the President of the Assembly in *India's Parliament*, vol. ii, Part I, pp. 5-8.

² Legislative Assembly Standing Order 15 and Council of State Standing Order 14.

³ *Ibid.*

⁴ *Ibid.*

⁵ *Ibid.*

⁶ L. A. S. O. 15 and C. S. S. O. 14.

⁷ *Ibid.*, 16 and *ibid.*, 15.

⁸ *Ibid.*

⁹ *Ibid.*, 19 and *ibid.*, 18.

¹⁰ *Ibid.*, 18 and *ibid.*, 17.

The procedure in the Assembly is as follows:—

Any member who desires an oral answer must place a star against his question when he gives notice of it. If any question is not so marked with a star, it is not answered orally, but is printed, with its answer, in the official report of the business of the day.

¹ Supplementary questions, therefore, cannot arise out of the

Any member may put a supplementary question for the purpose of further elucidating any matter of fact regarding which an answer has been given;¹ but the President may disallow any supplementary question if, in his opinion, it infringes the Rules relating to the subject-matter of questions.² In the case of a supplementary question, the member to whom it is addressed may demand previous notice 'that a proper answer may be given.' No discussion is permitted in respect of any question or of any answer given to a question,³ and in this respect the Indian practice differs from the French custom of 'interpellations'.

As Mr. Lowell⁴ points out in another connection, questions may be asked from various motives: sometimes they are asked by a member simply to obtain information; sometimes to draw public attention to a grievance; sometimes to embarrass the Government; and sometimes with a view to show 'to his constituents the attention which he devotes to public affairs and to their special interests.' Though the right to ask questions is liable to abuse and its exercise may sometimes cause unnecessary waste of time, the usefulness of this right, however, cannot be questioned. What Sir Courtenay Ilbert⁵ says in connection with the English custom of questioning is no less applicable to the Indian practice. According to him, 'there is no

answers to unstarred questions'.—Statement by the President of the Assembly on 'procedure in regard to question and answer'; vide *India's Parliament*, vol. ii, Part I, p. 7.

(In the Bengal Legislative Council, questions marked with asterisks are answered orally. Answers to unstarred questions are printed and laid on the table, and copies thereof are furnished to the questioners.)

¹ Indian Legislative Rule 10; see also foot-note 10, p. 174 ante.

² *Ibid.* See pages 173-74 ante.

³ Legislative Assembly Standing Order 20 and Council of State Standing Order 19.

⁴ Lowell, *Government of England*, vol. i, p. 332.

⁵ Ilbert, *Parliament*, p. 113.

more valuable safeguard against maladministration, no more effective method of bringing the search-light of criticism to bear on the action or inaction of the executive government and its subordinates. A minister has to be constantly asking himself, not merely whether his proceedings and the proceedings of those for whom he is responsible are legally or technically defensible, but what kind of answer he can give if questioned about them in the house (of commons or lords), and how that answer will be received'.

While asking questions in itself affords no opportunity for passing judgment upon the actions of the Government, a 'motion for adjournment,' on the other hand, furnishes a means by which any act or omission by any department of the Government may be criticized and even censured.

A member of either House may move, with the consent of the President, a motion for the adjournment of the House for the purpose of discussing a definite matter of urgent public importance.¹ Leave to make such a motion can be asked for after questions have been disposed of and before the list of business for the day is taken up for consideration.² The member asking for such leave must, before the commencement of the sitting of the day, leave with the Secretary of the House a written statement of the matter he proposes to discuss.³

This right to move an adjournment of either House is subject, however, to the following restrictions,⁴ namely :—

(1) not more than one such motion can be made at the same sitting of the House ;

¹ Indian Legislative Rule 11.

² Legislative Assembly Standing Order 21 and Council of State Standing Order 20.

³ L. A. S. O. 22 and C. S. S. O. 21.

⁴ Indian Legislative Rule 12.

(2) not more than one matter can be discussed on the same motion, and the motion itself must be restricted to a specific matter of recent occurrence ;

(3) the motion must not revive discussion on a subject which has been considered in the same session ;

(4) the motion must not anticipate a matter already appointed for consideration, or in reference to which a notice of motion has been previously given ; and

(5) the motion must not deal with a subject on which a resolution could not be moved.

In the British House of Commons the Speaker may decline to submit a motion for adjournment to the House if, in his opinion, the subject to be brought forward is not definite, urgent, or of public importance.¹ Such power is also vested in the President of either Chamber of the Indian Legislature. He too must first be satisfied about the definiteness,² urgency³ and public importance of the subject to be discussed on a motion for an adjournment before he will agree to submit the motion to the Chamber. If, however, he is of opinion that the matter proposed to be discussed is in order, he reads the statement previously supplied to the Secretary to the Chamber and asks if the member desiring the adjournment has the leave of the Chamber to move the adjournment. If the leave is given unanimously, or if, when the President, in the case of an objection, requests those members who are in favour of leave being granted to rise in their places, not less than twenty-five members in the case of the Assembly and not less than fifteen in the case of the Council of State rise accordingly, the President declares that leave is granted

¹ May, *Parliamentary Practice*, p. 227.

² See the President's Ruling in the Assembly, January 10, 1922 ; *Legislative Assembly Debates*, vol. ii, No. 13, p. 1453.

³ *Legislative Assembly Debates*, March 14, 1922 ; pp. 3016 and 3017.

and that the motion will be taken up at 4 p.m. or earlier,¹ should the business of the Chamber terminate at an earlier hour. If, however, less than the minimum number in each case rise, the President informs the member that leave has not been granted.² On a motion to adjourn for the purpose of discussing a definite matter of urgent public importance the only question that may be put is 'That the Assembly, or the Council, do now adjourn.'³ If this motion is carried, it amounts, according to constitutional practice, to a vote of censure⁴ upon the Government. If, however, the debate is not concluded by 6 p.m. it must automatically terminate and no question can be put.⁵ No member can speak during the debate for more than fifteen minutes.

The Governor-General may disallow any such motion for adjournment as has just been described, on the ground that it cannot be moved without detriment to the public interest or on the ground that it relates to a matter which is not primarily his concern.⁶

As the procedure to be followed in the case of a motion for adjournment is rather difficult of clear comprehension, we propose to describe below, by way of illustration, a typical case taken from the proceedings⁷ of the Legislative Assembly, dated March 28, 1922:—

Mr. K. B. L. Agnihotri (Central Provinces Hindi Division: non-Muhammadan): Sir, I rise to ask for your leave

¹ *Legislative Assembly Proceedings*, pp. 3791-92. See also *The Gazette of India*, October 7, 1922, part 1, p. 1210.

² Legislative Assembly Standing Order 23 and Council of State Standing Order 22.

³ *Ibid.*, 24 and *ibid.*, 23. Note.—In the case of the Council of State, the words 'by 6 p.m.' has been replaced by 'within 2 hours.'

⁴ Of course, it depends upon the object of a motion for an adjournment and on the speeches made in connection therewith.

⁵ L. A. S. O. 24 and C. S. S. O. 23.

⁶ Indian Legislative Rule 22 (2).

⁷ *Legislative Assembly Debates* (on March 28, 1922), pp. 3790 and 3791 and 3834-39.

for moving an adjournment of the business of the Assembly to-day for the purpose of discussing a definite matter of urgent public importance, namely, the conduct of the Deputy Commissioner of Delhi in prohibiting a public open air meeting which was to have been held on the 23rd of March, 1922, to consider the Khilafat question, etc. . . .

The Honorable Sir William Vincent (Home Member): I make a formal objection merely to ascertain whether the House or a sufficient number of the members wish to discuss it. . . .

*Mr. President: Objection having been taken, I am to request those members who are in favour of leave being given, to rise in their places. . . . Not less than twenty-five members having risen, the debate will be set down for four o'clock this afternoon or for any earlier hour at which our proceedings terminate.

The motion was ultimately set down by the President for four o'clock unless the Home Member found himself in a position to take it earlier, if the business of the Assembly had terminated at an earlier hour. This incident took place just after the question had been disposed of and the list of business for the 28th of March, 1922, was entered upon. Later:

Mr. K. B. L. Agnihotri (at 4 p.m.): I want to move for an adjournment of the business of the Assembly for the purpose of considering a definite matter of urgent public importance, namely, the conduct of the Deputy Commissioner of Delhi in prohibiting a public open air meeting etc. . . .

Mr. Agnihotri then made a long speech condemning 'the action and conduct of the Deputy Commissioner of Delhi.' In his peroration he exhorted the Assembly to support him and pass a vote of censure on the Deputy Commissioner. He was followed by other speakers who either supported or condemned the action taken by the Deputy Commissioner.

Several members wanted then the question to be put and it was thus put:—

Mr. President: The question is:

‘That this House do now adjourn.’

The Assembly then divided as follows:

Ayes—29 and Noes—34.

The motion was therefore negatived. Had it been adopted, it would have amounted to a vote of censure upon the conduct of the Deputy Commissioner and also upon the Government which supported him.

Besides motions for adjournment, resolutions¹ afford another opportunity for criticizing the acts or omissions of the Government. Sometimes a

Resolutions.

resolution is moved by a member in order to bring forward ‘a favourite project of his own,’ which may not have any connection with politics. It may be moved, for instance, in the form of a request to the Government to do or forbear from doing a certain act. The right to move resolutions on the budget and on all other matters of general public importance was for the first time conceded by the Indian Councils Act, 1909. Under the existing

Rules and Standing Orders any member of either Chamber of the Indian Legislature may move a resolution relating to a matter of general public interest.² It must be clearly and precisely expressed and must raise a definite issue.³ Besides, it must not contain arguments, inferences, ironical expressions or

Form and contents of resolutions.

¹ There were as many as 122 resolutions moved in the first Council of State, of which 101 were private and 21 official; and the total number of resolutions moved in the first Legislative Assembly was 137, of which 114 were private and 23 official.—*Work of the Indian Legislatures*, compiled under the order of the National Conference, pp. 12 and 24.

These resolutions related to various subjects.

² Legislative Assembly Standing Order 59 and Council of State Standing Order 58.

³ *Ibid.*

defamatory statements,¹ nor should it refer to the conduct or character of persons except in their official or public capacity.² There are the same restrictions imposed regarding the subject-matter of a resolution as we have seen in the case of a question.³ The Governor-General is to decide as to whether a particular resolution does or does not come within the scope of those restrictions, and his decision thereon is final.⁴ Every resolution must be in the form of a specific recommendation to the Governor-General in Council.⁵ The President of either House is to decide on the admissibility of a resolution.⁶

A member desiring to move a resolution must, unless the President with the consent of the Member of the Government to whose department the resolution relates shortens the period, give fifteen clear days' notice of his intention to do so, and submit, along with the notice, a copy of the resolution he wishes to move.⁷ The Governor-General, however, may, within the period of notice, disallow any resolution or any part of it, on the ground that it cannot be moved without detriment to the public interest, or on the ground that it relates to a matter which is not primarily his concern.⁸ A member in whose name a resolution stands on the list of business may, when called on, either withdraw it or move it; in the latter case, he must begin his speech by a formal motion.⁹ Except with the permission of the President, no member can speak on a resolution for more than fifteen minutes. But there

¹ Legislative Assembly Standing Order 59 and Council of State Standing Order 58.

² *Ibid.*

³ See p. 173 ante.

⁴ Indian Legislative Rule 23.

⁵ *Ibid.*

⁶ L. A. S. O. 60 and C. S. S. O. 59.

⁷ *Ibid.*, 58 and *ibid.*, 57.

⁸ Indian Legislative Rule 22 (1).

⁹ L. A. S. O. 61 and C. S. S. O. 60.

is one exception to this rule : The mover of a resolution, when moving it, and the Member of the Government to whose department the resolution relates, when speaking for the first time, may speak for thirty minutes. If the mover, when called on, is found absent, the resolution standing in his name will be deemed to have been withdrawn.¹ If, however, a resolution, or an amendment to a resolution, has been moved in either Chamber, it cannot be withdrawn except with the leave of the Chamber.² No discussion is allowed on a motion for leave to withdraw a resolution except with the permission of the President of the Chamber.³ After a resolution has been moved any member may, subject to the Rules and Standing Orders relating to resolutions, move an amendment to the same.⁴ The discussion of a resolution must be strictly confined to its subject-matter. If a resolution which has been admitted is not discussed during a session, it will be supposed to have been withdrawn.⁵ If a resolution has been moved, no resolution or amendment raising substantially the same question can be moved within one year.⁶ Similarly, if a resolution is disallowed or withdrawn, no other resolution raising substantially the same issue can be moved during the same session.⁷ A copy of every resolution passed by either House is forwarded to the Governor-General in Council ; but any such resolution will be regarded as a mere recommendation to him.⁸ He will deal with it 'as carefully, or as carelessly as he thinks fit'. A resolution, unlike a law, is not binding upon the executive Government.

Effect of
resolutions.

¹ Legislative Assembly Standing Order 61 and Council of State Standing Order 60.

² *Ibid.*, 66 and *ibid.*, 65.

⁴ L. A. S. O. 64 and C. S. S. O. 63.

⁶ *Ibid.*, 70 and *ibid.*, 69.

⁸ Indian Legislative Rule 24.

³ *Ibid.*

⁵ *Ibid.*, 69 and *ibid.*, 68.

⁷ *Ibid.*, 70 and *ibid.*, 69.

CHAPTER XVI

PROCEDURE IN THE INDIAN LEGISLATURE—(*Continued*)

Committees of the Indian Legislature—Select Committees—Composition of Select Committees—Joint Committee of both Houses—Committee on Public Accounts—Procedure for legislation—Introduction of a Bill—Motions after introduction—Reference to a Select Committee—Procedure after presentation of report—Proposal of amendments—Passing of a Bill—Withdrawal of a Bill—Reconsideration of a Bill—Procedure regarding legislation in both Houses—Conference for discussing a difference of opinion between two Houses—How supplies are granted—Excess grants—Supplementary grants—Duty of the Committee on Public Accounts—Communications between the Governor-General and either Chamber of the Indian Legislature.

A modern representative assembly has to do so much work that it is not possible for it to do everything in full meeting. It has, as has been remarked by President Lowell in another connection,¹ neither the time, nor the patience nor the requisite knowledge for the various functions it has got to discharge. The instruments that it employs to help it in its work of deliberation and legislation are committees of some kind appointed by itself. Our Indian Legislature is not an exception to this general practice. There are the Select Committee, Joint Committee and the Public Accounts Committee to help it in its work.²

A Select Committee may be appointed by either House of the Indian Legislature to consider some special matter

¹ *Government of England*, p. 264.

² For the Standing Committees of the Indian Legislature, see Appendix J.

that may be referred to it—either a Bill or a proposal to amend a Standing Order or some other subject about which the House wishes to institute an inquiry. When a particular Bill is referred to a Select Committee it may hear expert evidence and representatives of special interests affected by its provisions.

Select Committees.

The composition of Select Committees is not based upon any uniform principle ; they are differently constituted to serve different purposes. In the case of a Select Committee¹ appointed by either House to consider a Bill, the Member of the Government to whose department the Bill relates, the member who has introduced it and the Law Member of the Governor-General's Executive Council, if he is a member of the House, must be members thereof. The other members of the Committee are appointed by the House. But if the Law Member is not a member of the House, then the Deputy President or one of the Chairmen in the case of the Assembly and one of the Chairmen in the case of the Council must be appointed a member of the Committee.

Composition of Select Committees.

In the case of a Select Committee appointed by the Assembly to consider a Bill, the Law Member or, if the Law Member is not a member of the House, the Deputy President if he is a member of the Committee, and if the Deputy President is not a member of the Committee, then a Chairman of the Assembly must be the Chairman of the Committee ; and if two or more Chairmen of the Assembly happen to be members of the Committee, then the person whose name stands first in

The Chairman of a Select Committee appointed by either House to consider a Bill.

¹ Legislative Assembly Standing Order 40 and Council of State Standing Order 39.

the panel of such Chairmen is to be its Chairman. Similarly, in the case of a Select Committee of the Council, the Law Member or, if he is not a member of the Council, a Chairman of the Council must be its Chairman ; and if two or more Chairmen of the Council are members of the Committee, then the person whose name appears first in the panel of such Chairmen is to be its Chairman. In the case of an equality of votes, the Chairman has a second or casting vote.

If the Law Member or the Member of the Governor-General's Executive Council in charge of the department to which the Bill relates, is not a member of the House which has appointed the Select Committee to consider the Bill, he has the right of attending at, and taking part in the deliberations of the Committee, though he cannot vote as a member thereof.

The Select Committee of each House must submit to it a report on the Bill that has been referred to it. If any of its members desires to record a minute of dissent on any point, he must sign the report stating that he does so subject to his minute of dissent which has to be submitted at the same time.

A Select Committee¹ may be appointed by either House to consider and report upon the draft amendments of its Standing Orders. The President of the House must be its Chairman, and the Deputy President in the case of a Committee of the Assembly, and one of the Chairmen, to be nominated by the President, in the case of a Committee of the Council, must be a member. The remaining members who must be seven in number are selected by the House.

A Bill may be committed to a Joint Committee² of both

¹ Legislative Assembly Standing Order 56 and Council of State Standing Order 55.

² Indian Legislative Rule 42.

Houses. Such a Committee is composed of an equal number of members of each House. The Chairman of the Committee is elected by the Committee. He has only a single vote, and, if the votes are equally divided on a matter, the question is decided in the negative.

Joint Committee of both Houses.

The time and place of the meeting of the Committee are fixed by the President of the Council of State.

A Joint Committee is formed as follows :—If a resolution is passed in the originating House to the effect that a Bill should be committed to a Joint Committee of both Houses, a message is sent to the other House informing it of the resolution and desiring its concurrence in the same. If the other House agrees, a motion is made in each House nominating the members thereof who are to serve on the Committee.

The Committee¹ on Public Accounts is a committee of the Assembly only. As soon as possible after the commencement of each financial year, such a Committee is constituted to deal with the audit and appropriation accounts of the Governor-General in Council and such other matters as the Finance Department of the Government of India may refer to it. It is composed of not more than twelve members including the Chairman, of whom not less than two-thirds are elected by the non-official members of the Assembly. The remaining members are nominated by the Governor-General. The Finance Member is the Chairman of such a Committee, and has, in the case of an equality of votes on any matter, a second or casting vote. We shall discuss the functions of the Committee on Public Accounts elsewhere.

Committee on Public Accounts.

We shall now see how laws are made by the Indian

¹ Indian Legislative Rule 51.

Legislature. The stages through which a Bill, i.e. a project of law, must pass from the beginning of its career to its conclusion are many and the procedure adopted at each stage is rather complex. The practices of the Assembly and the Council are similar both in regard to those stages and the rules of procedure relating to them.

Procedure
for legisla-
tion.

A Bill may originate in either House. Any member thereof, other than a Member of the Govern-
Introduction of a Bill. ment, desiring to move for leave to bring in a Bill, must give, unless the Governor-General otherwise directs, one month's notice of his intention to do so, and must, along with the notice, submit a copy of the Bill and a full statement of its objects and reasons.¹ If, under the Act, the Bill requires for its introduction the previous sanction of the Governor-General, a copy of such sanction must be annexed to the notice.² If a motion for leave to introduce a Bill is opposed, the President after allowing, if he thinks fit, the mover and the opposer of the motion to make each a brief explanatory statement in support of his contention, may, without further debate, put the question.³ After a Bill has been introduced, it must, as soon as possible, be published in the Gazette, if it has not already been so published.⁴

The Governor-General, however, may direct the publication of any Bill, together with a statement of its objects and reasons, in the Gazette, even if no motion has been previously made for leave to introduce it.⁵ In such a case it is not necessary to move for leave to bring in the Bill; nor, if the Bill is afterwards introduced, is it required to

¹ Indian Legislative Rule 19.

² *Ibid.*

³ Legislative Assembly Standing Order 37 and Council of State Standing Order 36.

⁴ Indian Legislative Rule 20.

⁵ *Ibid.*, 18.

publish it again.¹ But if he certifies that a Bill or any of its clauses or any amendment to it affects the safety or tranquillity of British India or any part thereof, and directs that no proceedings or no further proceedings shall be taken thereon, all notices of motions in relation to the Bill, clause, or amendment, must lapse, and if any such motion has not already been included in the list of business, it cannot be so included after the direction.²

When a Bill is introduced in either House or on some subsequent occasion, the member in charge may move (i) for the consideration of the Bill by the House either at once or on some future day to be then appointed, or (ii) for its reference to a Select Committee composed of such members of the House as he may name in his motion, or (iii) for its circulation for the purpose of eliciting public opinion thereon.³ It may be stated here, by the way, that a motion for committing a Bill to a Joint Committee of both Houses may be made at any stage at which a motion for its reference to a Select Committee is in order.⁴ At this stage the principle of the Bill and its general provisions may be discussed, but no discussion of its details further than is necessary to explain its principle is allowed.⁵ Nor can any amendment to the Bill be moved at this stage.⁶ But if the member in charge moves for the consideration of his Bill, any member may move an amendment for its reference to a Select Committee or for its circulation for the purpose of eliciting public opinion on it.⁷ And if he moves for the reference of his Bill to a Select Committee, any

¹ Indian Legislative Rule 18.

² Section 67 (2a) and *ibid.*, 21.

³ Legislative Assembly Standing Order 38 and Council of State Standing Order 37.

⁴ *Ibid.*

⁵ L. A. S. O. 39 and C. S. S. O. 38.

⁶ *Ibid.*

⁷ *Ibid.*

member may move an amendment for its circulation for the purpose of eliciting public opinion on it.¹

Where a motion for 'circulating' a Bill is carried and the Bill is accordingly circulated and opinions are received thereon, the member in charge, if he wants to proceed with his Bill thereafter, must move for its reference to a Select Committee, unless the President of the House to which the member belongs, allows, by exercising² his special power, a motion that the Bill be taken into consideration.

When a Bill is referred to a Select Committee, the Committee goes through the Bill clause by clause and may amend it if it thinks fit. The Committee may, as has been seen before, hear expert evidence and representatives of special interests affected by the measure before it. It then submits a report on the Bill. The report, which may be either preliminary or final, must be made not sooner than three months from the date of the first publication of the Bill in the Gazette, unless the House orders it to be submitted earlier.³ This time limit does not apply to a Bill imposing any tax. The Select Committee has to state in its report whether the Bill has been so altered as to require republication.⁴ Any member of the Committee is at liberty to record a minute of dissent on any point.

The report is presented to the House by the member in charge of the Bill. No debate is allowed at this stage, but the member in charge may, in presenting the report, make any remarks, provided that he confines himself to a brief statement of fact.⁵ The report with the amended

¹ Legislative Assembly Standing Order 39 and Council of State Standing Order 38.

² *Ibid.* The President may thus suspend in this connection the relevant Standing Order.

³ L. A. S. O. 41 and C. S. S. O. 40.

⁴ *Ibid.*, 41 and *ibid.*, 40.

⁵ *Ibid.*, 42 and *ibid.*, 41.

Bill must be published in the Gazette. If any member is unacquainted with English, the Secretary of the House must, if requested, get the report translated for his use into such vernacular language as the President may direct.¹ After the Bill has been finally reported to the House by the Select Committee, the member in charge may move (i) for the consideration by the House of the Bill as reported by the Committee, or (ii) for its recirculation for the purpose of obtaining further opinion thereon, or (iii) for its recommitment either without limitation, or with respect to particular clauses or amendments only, or with instructions to the Committee to make some particular or additional provision in the Bill.² If the member in charge moves for the consideration of the Bill, any other member may move an amendment for its recommitment or for its 'recirculation'. If carried, such an amendment 'adds a step to the journey of the Bill.'³

When a motion that a Bill be taken into consideration has been adopted, any member may propose an amendment of the Bill.⁴ If a number of amendments have been proposed, they are considered in the order of the clauses to which they respectively relate.⁵ The President of each House, however, may submit a Bill or any part of a Bill, clause by clause. If this procedure is adopted, he calls each clause separately, and, when the amendments relating to it have been dealt with, puts the question 'that this clause (or, as the case may be, that this clause as amended) stand part of the Bill.'⁶

**Proposal of
amend-
ments.**

¹ Legislative Assembly Standing Order 43 (2) and Council of State Standing Order 42 (2).

² L. A. S. O. 44 and C. S. S. O. 43.

³ *Ibid.*, 44 and *ibid.*, 43.

⁴ *Ibid.*, 45 and *ibid.*, 44.

⁵ *Ibid.*, 47 and *ibid.*, 46.

⁶ *Ibid.*, 48 and *ibid.*, 47.

If a motion that a Bill be taken into consideration has been carried and if the Bill is not amended, the member in charge may at once move that the Bill be passed.¹ If, however, the Bill is amended, any member may object to any motion, on the same day, that the Bill be passed. If the objection is allowed by the President, a motion that the Bill be passed may be made on any subsequent day.² To such a motion no amendment is in order which is not either formal or consequential on an amendment made after the Bill was taken into consideration.³ When a Bill is passed by one House, a copy thereof is signed by the President of the House.⁴

Withdrawal of a Bill. The member who has brought in a Bill may at any stage of the Bill move for leave to withdraw it; and, if such leave is given, no further motion can be made with reference to the Bill.⁴

Reconsideration of a Bill. We have seen before that the Governor-General may, where a Bill has been passed by both Houses, return the Bill for reconsideration by either House. When a Bill is sent back for reconsideration, the point or points referred for reconsideration must be put before each House and must be discussed and voted on in the same way as amendments to a Bill, or in such other way as the President may consider most convenient.⁵

It has been stated before that, except as otherwise⁶ provided by the Act, a Bill is not considered to have been passed by the Indian Legislature unless it has been agreed

¹ Legislative Assembly Standing Order 49 and Council of State Standing Order 48.

² *Ibid.*

³ *Ibid.*

⁴ L. A. S. O. 50 and C. S. S. O. 49.

⁵ *Ibid.*, 53 and *ibid.*, 52.

⁶ For instance, a Bill may become an Act on 'certification' by the Governor-General if it has been assented to only by one Chamber, or even if it has been assented to by neither Chamber.

**Procedure
regarding
legislation
in both
Chambers.**

to by both Houses either without amendment or with such amendments only as may be agreed to by both Houses. When a Bill has been passed by the originating House, it is sent up to the other House to pass through its several stages there.

These stages practically correspond to those in the originating House. But there is one thing to be noted here. If the Bill has already been referred to a Select Committee of the originating House or to a Joint Committee of both Houses, it cannot be again committed to a Select Committee in the other House.¹ Nor is there any provision for further circulation of the Bill at this stage. If the Bill is passed by the other House without amendment, a message is sent to the originating House to the effect that the other House has agreed to the Bill without any amendment.² If, however, the Bill is amended by the other House, it is sent back with a message requesting the concurrence of the originating House in the amendments. The originating House may refuse to take them into consideration, or may move further amendments to their subject-matter, or may agree to them. But no further amendment can be moved to the Bill at this stage, unless it is consequential on, or an alternative to, an amendment made by the other House.

If, however, the originating House disagrees with the amendments made by the other House or with any of them, the Bill is sent to that House with a message intimating its disagreement.³ Or, if it agrees to the amendments or any of them with further amendments, or if it proposes further amendments in the place of the amendments made by the other House, the Bill as further amended is sent to the other House with a message to that effect.⁴ The other House may either agree to the Bill as

¹ Indian Legislative Rule 29.

³ *Ibid.*, 36.

² *Ibid.*, 31.

⁴ *Ibid.*