

and having for at least three years served as, or exercised the powers of, a District Judge; or (c) a person having held judicial office, not inferior to that of a Subordinate Judge or a Judge of a Small Cause Court, for a period of not less than five years; or (d) a person who has been a pleader of a chartered High Court, or of any Court which is a High Court within the meaning of Section 3 (24) of the General Clauses Act, 1897, for an aggregate period of not less than ten years. At least one-third of the Judges of a High Court, including the Chief Justice,¹ but excluding additional Judges, must be 'such barristers or advocates as aforesaid,' and at least one-third must be members of the Indian Civil Service. The Chief Justice of a High Court has rank and precedence before the other Judges of the same Court. All the other Judges have rank and precedence 'according to the seniority of their appointments, unless otherwise provided in their patents.' Every Judge of a High Court holds his office during the pleasure of the Crown.² He may resign his office, in the case of the High Court at Calcutta, to the Government of India, and in other cases to the local Government.³ In England the Judges of the High Court of Justice and of the Court of Appeal hold office during good behaviour. They can, however, be removed from office by the Crown on an address presented by both Houses of Parliament. 'This means,' says Mr. Maitland,⁴ 'that a judge cannot be dismissed except either in consequence of a conviction for some

¹ Section 101(4) of the Government of India Act.

Under this Section the Chief Justice of a High Court must be a barrister. 'The position is,' to quote Sir Tej Bahadur Sapru, 'that an Indian Vakil Judge may officiate as Chief Justice, but he cannot be confirmed. Some of the most eminent Indian Judges like the late Sir Ashutosh Mukherjee, Sir Subramania Aiyar, Sir Narayan Chandavarkar, Sir Pramada Charan Banerje have officiated as Chief Justices, but . . . they could not be confirmed' — *The Indian Constitution, A Note on Its Working*, p. 125.

² Section 102 of the Government of India Act.

⁴ *The Constitutional History of England*, p. 313.

³ *Ibid.*

offence, or on the address of both houses.' This restriction on the power of dismissal of Judges is regarded as essential to their independence, and thus it acts as a great constitutional safeguard against the executive interference with the administration of justice. In the Dominion of Canada also, the Judges of the Superior Courts hold office during good behaviour, but, as in England, can be removed by the Governor-General 'on address of the Senate and House of Commons,'¹

If a vacancy occurs in the office of Chief Justice of a High Court, and during the absence of such a Chief Justice, the Governor-General in Council in the case of the High Court at Calcutta, and the local Government in other cases, must appoint one of the other Judges of the same High Court to act as Chief Justice, until some person is appointed by the Crown to the office, and enters on the duties of that office, or until the Chief Justice returns from his absence, as the case may be.² And if a vacancy occurs in the office of any other Judge of a High Court, and during the absence of any such Judge, or on the appointment of any such Judge to act as Chief Justice, the Government of India in the case of the High Court at Calcutta, and the local Government in the case of any other High Court, may appoint a duly qualified person to act as a Judge of the Court.³

The Secretary of State in Council is empowered⁴ to fix the salaries, allowances, furloughs, retiring pensions and, where necessary, expenses for equipment and voyage of the Chief Justices and other Judges of the several High Courts, and

¹ Section 99 of the British North America Act, 1867; see also Section 72 of the Commonwealth of Australia Constitution Act, 1900, and Section 101 of South Africa Act, 1909.

² Section 105 (1) of the Government of India Act.

³ Section 105 (2), *ibid.*

⁴ Section 104, *ibid.*

also to alter them. But no such alteration can affect the salary of any Judge who has already been appointed. The remuneration fixed for a Judge cannot be diminished during his continuance in office.¹ If a Judge of a High Court dies during his voyage to India, or within six months of his arrival in India, the Secretary of State is required² to pay to his legal personal representatives such a sum of money out of the revenues of India 'as will, with the amount received by or due to him at the time of his death on account of salary, make up the amount of one year's salary.' And if he dies after the expiration of six months from his arrival in India, the Secretary of State must pay, out of the same revenues, to his legal personal representatives a sum equal to six months' salary, in addition to the sum due to him at the time of his death.³ These provisions are obviously meant for the benefit of the English lawyers who are sent out from England as Judges.

The jurisdiction of every High Court has been defined by Letters Patent. The Letters Patent may be amended from time to time by the Crown by further Letters Patent. Each High Court is a court of record and has⁴ 'such jurisdiction, original and appellate, including admiralty jurisdiction in respect of offences committed on the high seas, and all such powers and authority over or in relation to the administration of justice, including power to appoint clerks and other ministerial officers of the Court, and power to make rules for regulating the practice of the Court, as are vested in it by Letters Patent.' The High Courts cannot exercise any original jurisdiction in any matter 'concerning the revenue, or concerning any act ordered or done in the

¹ Section 104 of the Government of India Act.

² *Ibid.*

³ *Ibid.*

⁴ Section 106 (1) of the Act. See Ilbert's *Government of India* (1916), pp. 268-73.

collection thereof, according to the usage and practice of the country or the law for the time being in force.'¹

Each High Court has superintendence over all courts for the time being subject to its appellate jurisdiction, and is empowered to²—

**Powers of
High Courts
with respect
to subordinate
Courts.**

- (1) call for returns ;
- (2) direct the transfer of any suit or appeal from any such court to any other court of equal or superior jurisdiction ;
- (3) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts ;
- (4) prescribe forms in which books, entries and accounts are to be kept by the officers of any such courts ; and
- (5) settle tables of fees to be allowed to the sheriff, attorneys, clerks and officers of the courts.

But these rules, forms and tables must not be inconsistent with the provisions of any law for the time being in force, and must require the previous approval, in the case of the High Court at Calcutta, of the Governor-General in Council, and, in other cases, of the local Government.³

Rules may be made by each High Court providing for the exercise, by one or more Judges, or by Division Courts constituted by two or more Judges, of the Court, of its original and appellate jurisdiction.⁴ The Chief Justice of the Court has to determine what Judge in each case is to sit alone, and what Judges of the Court, whether with or without the Chief Justice, are to constitute the several Division Courts.⁵

¹ Section 106 (2) of the Act. See *Libert's Government of India* (1916), p. 273.

² Section 107 of the Government of India Act.

See in this connection *Imperial Gazetteer*, vol. iv, p. 149.

³ Proviso to Section 107 of the Act.

⁴ Section 108 of the Act.

⁵ *Ibid.*

The Governor-General in Council may,¹ by order, transfer any territory from the jurisdiction of one to that of any other High Court, and empower any High Court to exercise jurisdiction in any part of British India not included within the limits for which it was established, and also to exercise jurisdiction over any British subject for the time being within any part of India outside British India. Such an order may, however, be disallowed by the Crown.

As has been stated before, the highest officials² and Ministers in India are exempted from the original jurisdiction of any High Court in respect of anything counselled, ordered or done by any of them in his public capacity; from liability to arrest or imprisonment in any suit or proceeding in any High Court acting in the exercise of its original jurisdiction; and from the original criminal jurisdiction of any High Court in respect of any offence other than treason or felony.³ The exemption from liability to arrest and imprisonment extends also to the Chief Justices and other Judges of the several High Courts. The written order of the Governor-General in Council for any act is, in any proceeding, civil or criminal, in any High Court acting in the exercise of its original jurisdiction, a full justification⁴ of the act, except so far as the order extends to any European British subject. But the Governor-General, or

Exemption
from juris-
diction of
High Courts.

¹ Section 109 of the Act.

² i.e., the Governor-General, Governors, Lieutenant-Governors, Chief Commissioners and Executive Councillors. It is not clear from the Government of India Act whether or not these officials can be sued in the Courts of India for private debts. In the absence of anything to the contrary we may presume that they can be sued for private debts. The Governor-General of a self-governing Dominion can be sued in the Courts of the Dominion for such debts as if he were not Governor-General. (See Prof. Keith's *Responsible Government in the Dominions*, 1909, p. 33.)

³ See Section 110 of the Government of India Act.

⁴ Section 111, *ibid.*

any member of his Executive Council, or any person acting under their orders, is not exempted from any proceedings in respect of any such act before any competent court in England. Again, if any person holding office under the Crown in India does any of the following things he will be guilty¹ of a misdemeanour :—

(1) oppression of any British subject within his jurisdiction or in the exercise of his authority ;

(2) wilful disobedience or neglect of the orders or instructions of the Secretary of State ;

(3) wilful breach of the trust and duty of his office ;

(4) trading for his own benefit or of any other person, otherwise than as a shareholder in any joint-stock company or trading corporation ; and

(5) receiving of presents except in accordance with such rules as may be made by the Secretary of State as to the receipt of presents.

But if any member of the central Executive Council or any member of any local Government was concerned in any trade at the time of his appointment, he may, during the term of his office, with the sanction of the Governor-General, or, in the case of Ministers, of the Governor of the province, and in any case subject to such general conditions as the Governor-General in Council may prescribe, retain his concern or interest in the trade, but cannot, during that term, take part in its direction or management.²

If any European British subject, without the sanction of the Secretary of State in Council or of the Governor-General in Council, or of a local Government, is concerned in any loan to a Prince or Chief in India, he will be guilty of a misdemeanour.³ The carrying on by any person of any illicit correspondence, dangerous to the peace or safety

¹ Section 124 of the Government of India Act.

² *Ibid.*

³ See Section 125 of the Act.

of any part of British India, with any Prince or with any other person having authority in India, is also a misdemeanour.¹ Any person suspected of carrying on any such correspondence may be secured and detained in custody under a warrant issued by the Governor-General or a Governor.

Any of the aforesaid offences may, without prejudice to any other jurisdiction, be tried and 'determined' before His Majesty's High Court of Justice in England. Every prosecution before a High Court in British India in respect of any of those offences must be commenced within six months of its commission.

Judicial Commissioners are appointed by the Government of India for those parts of British India which are outside the jurisdiction of the chartered High Courts or Chief Courts.² They exercise in respect of all courts subject to their appellate jurisdiction the same powers of revision and supervision as the High Courts do with respect to the courts subordinate to them.³ They derive their authority from various Indian enactments. There are Judicial Commissioners⁴ in the Central Provinces, North-West Frontier Province, Coorg, Sind, and Chota-Nagpur. The province of Assam is under the jurisdiction of the Calcutta High Court.

Every province⁵ is divided into a number of sessions divisions, each comprising one or more districts.⁶ For every sessional division the local Government is required to establish a court of sessions, and to appoint a Sessions Judge and also, if necessary, Additional and Assistant Sessions Judges. A court of sessions is competent to try

**Judicial
Commis-
sioners.**

**Subordinate
Judiciary :
Inferior
Criminal
Courts.**

¹ See Section 126 of the Government of India Act.

² See *Imperial Gazetteer*, vol. iv, p. 147 ; see also Ilbert's *Government of India* (1916), p. 163. At present only Oudh has a Chief Court.

³ *Ibid.*

⁴ *The Fifth Decennial Report*, p. 75. ⁵ Outside a Presidency town.

⁶ See *Imperial Gazetteer*, vol. iv, pp. 147-48.

all persons who have been duly committed to it and to inflict any punishment that may be allowed by law. But every sentence of death passed by it must be confirmed by 'the highest court of criminal appeal in the province.' Below the court of sessions there are the courts of magistrates, which are divided again into three classes,¹ first, second, and third.

The constitution, jurisdiction and procedure of the inferior civil courts in each province are as provided by special Acts or Regulations.² The subordinate civil courts as constituted in the different provinces are essentially identical, though they differ in respect of certain details.³ The usual arrangement is that for each district or group of districts there is a District Judge who also generally exercises criminal jurisdiction as a Sessions Judge.⁴ Next to the District Judge there are Subordinate Judges; and below them come Munsifs, who preside over the lowest courts.

Criminal cases are tried in the High Courts with the aid of jurors. Trials before courts of sessions are conducted with the help either of jurors or of assessors, as the local Government concerned may direct.⁵ The assessors 'assist, but do not bind, the Judge by their opinions.' In the case of a trial by a jury before a court of sessions, the Sessions Judge is required by law, if he considers that the jury has returned a 'manifestly wrong verdict,' to submit the case to the High Court, which can set aside or modify the finding of the jury.⁶

¹ 'From a conviction by a second or third-class magistrate an appeal lies to the District Magistrate or to any specially empowered first class magistrate; and, subject to certain limitations, original convictions by magistrates of the first class are appealable to the Sessions Judge, whose own original convictions are in turn appealable to the highest court in the Province.'—*Imperial Gazetteer*, vol. iv, p. 149.

² *Imperial Gazetteer*, vol. iv, p. 149.

³ *Ibid.* ⁴ See Ilbert, *Government of India* (1916), p. 163.

⁵ *Imperial Gazetteer*, vol. iv, pp. 148 and 149. ⁶ *Ibid.*

An Advocate-General for each of the Presidencies of Bengal, Madras and Bombay is appointed by the Advocate-General. Crown.¹ He is empowered to take on behalf of the Crown such proceedings as are taken by the Attorney-General in England.² The Advocate-General of Bengal is also the principal Law Officer of the Government of India. If a vacancy occurs in the office of Advocate-General, or during the absence of an Advocate-General, the Governor-General in Council in the case of Bengal, and the local Government in other cases, may appoint a person to act as Advocate-General until some person is appointed by the Crown to the office, or until the Advocate-General has returned from his absence, as the case may be.³

The ecclesiastical establishment is maintained primarily for the purpose of providing 'the ministration of religion for British-born European servants of the Crown, and specially for soldiers and their families.'⁴ The total estimated charges of this establishment for the year 1922-23 were about thirty-three lakhs of rupees.⁵ The Bishops of Calcutta, Madras and Bombay are appointed by the Crown by Letters Patent.⁶ They are paid out⁷ of the revenues of India such salaries and allowances as may be fixed by the Secretary of State in Council. Besides, they are paid, out of the same revenues, such 'expenses of visitations' as may be allowed by the Secretary of State in Council.

If the Bishop of Calcutta dies during his voyage to India, or if the Bishop of Calcutta, Madras or Bombay dies within

¹ Section 114 of the Government of India Act.

² *Ibid.*

³ *Ibid.*

⁴ Vide *Report of the Indian Retrenchment Committee, 1922-23*, p. 269.

⁵ *Ibid.*, p. 268.

⁶ Section 118 of the Government of India Act.

⁷ *Ibid.*

six months of his arrival in India, the Secretary of State is required to pay to his legal personal representatives such a sum of money out of the Indian revenues 'as will, with the amount received by him or due to him at the time of his death on account of salary, make up the amount of one year's salary.'¹ And if he dies after the expiration of six months from his arrival in India, the Secretary of State must pay to his legal personal representatives a sum equal to six months' salary out of the same revenues, in addition to the amount due to him at the time of his death.² The Government of India Act has also provided for the payment of pensions to the retired Bishops.³ The expenditure⁴ on the three Bishops and their establishments excluding the Chaplains and Archdeacons under them, was about Rs. 1,50,000 in 1922-23.

There were in 1922-23 as many as 161 Chaplains of the Church of England, maintained by the Government of India.⁵ Besides, the Government maintained eighteen Chaplains of the Church of Scotland.

The Bishop of Calcutta is the Metropolitan Bishop in India and exercises such ecclesiastical jurisdiction and functions as the Crown may direct by Letters Patent.⁶ He is subject to the 'general superintendence and revision' of the Archbishop of Canterbury. The Bishops of Madras and Bombay are 'subject' to the Bishop of Calcutta and must, either at the time of their appointment or at the time of their consecration as Bishops, take an oath of obedience to him, in such manner as the Crown may direct by Letters Patent.⁷

¹ Section 119 of the Government of India Act.

² *Ibid.*

³ Section 120 of the Act.

⁴ *Report of the Indian Retrenchment Committee*, p. 272.

⁵ See *ibid.*, p. 271 and also p. 268.

⁶ Section 115 of the Government of India Act.

⁷ *Ibid.*

The Governor-General in Council may,¹ with the sanction of the Secretary of State in Council, grant 'to any sect, persuasion or community of Christians, not being of the Church of England or Church of Scotland, such sums of money as may be expedient for the purpose of instruction or for the maintenance of places of worship'.

¹ Section 123 of the Act.

CHAPTER XXV¹

✓ THE REFORMS SCHEME IN OPERATION

Lord Chelmsford on the Reforms—Working of the Reforms : in the sphere of the central Government—In the sphere of the provincial Government—How 'dyarchy' has been worked : it has not had a fair trial—The principle of joint deliberation, not always observed—One of the inherent defects in dyarchy—Relations between Ministers and the public services—The English system—Relations between Governors and Ministers—Official *bloc* incompatible with ministerial responsibility—Collective responsibility of Ministers, not much encouraged—Relations between Ministers and the Finance Department, not very happy—System of separate purse, how far desirable—Parliament and the administration of Transferred subjects—Statutory Commission—Can a Commission be appointed before 1929?—Sir Tej Bahadur Sapru and Mr. C. Y. Chintamani on the point—Conclusion.

We have in the preceding chapters attempted to describe the constitutional system established under the Government of India Act. We have also, in the course of our description, pointed out some of its defects and anomalies, specially as experienced in the actual working of the system. We now propose to close this volume with a general survey of its operation during the last four years.

For the first time the principle of autocracy which had not been wholly discarded in all earlier reforms was definitely abandoned ; the conception of the British Government as a benevolent despotism was finally renounced ; and in its place was substituted that of a guiding authority whose rôle it would be to assist the steps of India along the road that in the

Lord
Chelmsford
on the
Reforms.

¹ This chapter was written in January, 1925. This will explain its manner of treatment.

fulness of time would lead to complete self-government within the Empire.' These were the words in which Lord Chelmsford stated in 1921, in the course of his inaugural address to the first reformed Legislature of India, the underlying principles of the Reforms. How one would wish that these principles so beautifully expressed by the ex-Viceroy, had been uniformly followed in practice in the succeeding years! Although it is really difficult to deny that there have been provocations, sometimes of the gravest character, given by the people and their representatives, yet one could have certainly expected a little more forbearance in those on whom devolved the task of giving effect to those underlying principles as explained by Lord Chelmsford. But, at the same time, we must say that we cannot agree with his Lordship that the Constitution, at the inauguration of which he made the statement quoted above, and in the framing of which he played so prominent a part, has definitely abandoned the principle of autocracy.

The powers of 'certification,' of 'restoration,' of 'authorization,' as well as the power of making 'Ordinances' vested in the different ruling authorities by the Government of India Act, are undeniable proofs of the existence of the elements of autocracy in the Constitution. Nor, again,

Working of
the Reforms:
in the
sphere of
the central
Govern-
ment.

can it be said that the mechanism of the central Government has been constructed according to the principles of democracy. Face to face with a Legislature consisting of two Houses, each having an elected majority, has been set up an irremovable and irresponsible Executive

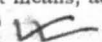
Government invested, subject, of course, to the ultimate control and direction of the Home Government, with a decisive power in respect of every question of Indian administration. The result has been, as should have been anticipated by the authors of the Constitution in such circumstances, dissensions between the Executive and the

Legislature. The history of the working of the central Government during the last three years is full of bickerings between them. The Executive, having power, has come out apparently triumphant from these quarrels; the Legislature, lacking it, has used, on most occasions, whatever influence it has had, to oppose and to obstruct the Executive. No Government can act in such circumstances with confidence, vigour and courage; and no Legislature can help becoming irresponsible, before long, in such circumstances. Such a state of things is bound to continue unless the machinery of the central Government is radically altered. The remedy for these evils is the introduction of the principle of 'ministerial responsibility on the English pattern' into the central Government.

The 'dualized form of Government' which, as we have seen before, has been established in the major provinces of India is popularly known as 'dyarchy.' According to Mr. Curtis,¹ the word 'dyarchy' was first applied to this form of Government by the late Sir William Meyer, when the latter was the Finance Member of the Government of India. We propose to say in this chapter a few words about its working during the last four years. At the outset, it must be admitted that, ordinarily, one can hardly judge of the merits of a new system of Government from its working for so short a period as three or four years. But, sometimes, the system may be so inherently defective and so full of anomalies that it may not take much time for an intelligent observer to detect its weaknesses. It is not, however, our intention here to pronounce our judgment on dyarchy; we shall only attempt to describe how it

In the
sphere of the
provincial
Govern-
ment.

¹ See *Dyarchy*, Introduction, p. xxxii.

The word 'dyarchy' is compounded of two Greek words signifying 'two' and 'government'.—See *ibid.*, p. 105. It means, according to Murray's dictionary, Government by two rulers. 

has been worked during the four years it has been in operation.

At the very beginning, we must point out that it is extremely difficult to form any definite and correct conclusions as to how it has been worked in the various provinces. The data that are available to the public regarding its working, are mostly unreliable. The mass of evidence that has been placed before the Reforms Enquiry Committee¹ (1924) by the various witnesses who appeared before it is, for the greater part, hopelessly conflicting. For instance, what Mr. Harkishan Lal, an ex-Minister of the Punjab Government, said about the working of dyarchy in his province when he was a Minister, has been contradicted² by Sir John Maynard, the present (1924-25) Finance Member of the Punjab Government, who has been a member of that Government since the introduction of the Reforms. Similarly, what Sir Chimanlal Setalvad, an ex-Executive Councillor of the Government of Bombay, stated about the working of dyarchy in his province when he was a member of the Government, has been contradicted,³ by Sir George Lloyd who had been, till very recently, the Governor of Bombay, and, secondly, by Sir Maurice Hayward, the present (1924-25) Home Member to the Government of Bombay. But, in spite of the conflicting, and sometimes misleading, character of the statements made by some of the witnesses before the Reforms Enquiry Committee, certain conclusions in regard to the working of dyarchy in some of the provinces at least, are

¹ The Committee was appointed by the Government of India and is popularly known as the Muddiman Committee.

² See for the evidence of Mr. Harkishan Lal and Sir John Maynard, *The Statesman* (Dak edition) of August 16 and of October 22, 1924, respectively.

³ See *The Statesman* (Dak edition) of October 23, of November 8, of December 4, of December 23, and of December 27, 1924. Sir George Lloyd's reply to Sir C. Setalvad was first published in *The Times*.

irresistible to those who have carefully studied the published evidence given by other witnesses and who have impartially followed the political history of India during the last four years.

First, it is difficult to deny that dyarchy has not had a fair trial since its introduction. The atmosphere created by the non-co-operation movement; the spirit of hostility to the Reforms engendered by it; the open preaching of the boycotting of the first elections held under the Reforms; the emergence

of the Swarajist party with the destruction of the Reforms as its creed; the financial difficulties of the provincial Governments; some of the measures, both administrative and legislative, adopted by the Governments, central and provincial; the attitude of some members of the civil services towards the Reforms and Ministers in some provinces; and the policy pursued by some of the Governors,—all these conspired as it were to make the smooth and successful working of the dyarchical system of Government practically impossible.

Secondly, it appears from the evidence of some of the witnesses who were examined by the Reforms Enquiry Committee that the principle of joint deliberation between the two halves of the provincial Government under the chairmanship of the Governor, upon which so much stress had been laid by the Joint Select Committee and which was further emphasized by the Instrument of Royal Instructions issued to every Governor, has not been uniformly followed in practice in some provinces. For this the Governors of those provinces are to be held responsible. They were directed to encourage the habit of such joint deliberation by the Royal Instructions. By failing to do so, they acted not merely against the wishes of the Crown, but against the underlying spirit of the Reforms also. Apart

How 'dyarchy' has been worked: it has not had a fair trial.

The principle of joint deliberation, not always observed.

from the reasons set forth before in support of joint deliberation, such deliberation brings Ministers into touch with the work of the Reserved departments, gradually familiarizes them with the needs of those departments and considerations affecting their administration, and thus prepares the way 'for the assumption by Ministers of further responsibility . . . as additional subjects are transferred, until the ultimate goal of complete responsibility' is attained.¹

The habit of joint deliberation seems to have been encouraged both in Madras and Bengal. It is said that Lord Willingdon, who was till recently the Governor of Madras, treated his 'entire Government as a unified Government.'² In dismissing the first Bengal Legislative Council Lord Lytton³ is reported to have said as follows:—

'It has always been my practice since I assumed office to treat my Government as a whole. All questions of policy, whichever department may be responsible for them, are discussed at joint sittings, and I have no hesitation in saying that the practice has been fully justified by the results. I believe that by this means we have made as much progress as it was possible to make in the time towards a unified Cabinet which recognizes a responsibility towards the legislature for its acts.'

Both Messrs. A. K. Ghuznavi and A. K. Fazl-ul Huq, who were the Ministers in Bengal till September 1924, have borne testimony, in their evidence⁴ given before the Reforms Enquiry Committee, to the continuance of the above 'practice' when they were Ministers.

In this connection we must point out one of the inherent defects in the dyarchical system of Government. The

¹ See Mr. Montagu's Memorandum, p. 4.

² See Sir Tej Bahadur Sapru's *The Indian Constitution, A Note on Its Working*, Besant Press, Madras, p. 86.

³ See *The Capital*, August 30, 1923.

⁴ See *The Statesman* (Dak edition), October 14 and October 21, 1924.

position ¹ of the Minister in it is extremely difficult. Joint deliberation between the two halves of the provincial

One of the
inherent
defects in
dyarchy.

Government is essential, as has been shown before, for more than one reason. It is specially necessary for ensuring unity of purpose in provincial administration, as, after all, the Government of a province is one, its different parts being closely inter-related. Now let us suppose that a certain decision is arrived at by a provincial Government after a free consultation between its two halves and that the decision relates to a matter under the Reserved side of the Government. The Transferred side does not approve of the decision. Let us next suppose that the action actually taken or proposed to be taken by the Reserved side on the basis of the decision already so reached, is strongly disapproved by the local Legislative Council. What then should be the attitude of the Ministers in the Council? The Joint Select Committee advised ² that members of the Executive Council and Ministers should not oppose each other in the Legislative Council by speech or vote; and that they should not be required to support either by speech or vote proposals of each other of which they did not approve. The only course open to the Ministers in our supposed case, next of course, to that of resignation, is to remain silent spectators of the scene that is enacted before them. They cannot conscientiously support the action in question in the Legislative Council; nor can they, without embarrassing their colleagues on the Reserved side, join the Council in its disapproval of the action. Their silence in such circumstances is bound to be misunderstood by the Council or, at least, by a considerable section of it. And this Council, it must be

¹ See on this point Dr. Pramatha Nath Banerjee's speech in the Bengal Legislative Council.—*Bengal Legislative Council Proceedings*, February 18 and 20, 1924, vol. xiv, No. 2.

² Joint Select Committee Report on Clause 6 of the Government of India Bill.

borne in mind, is their real master. Theoretically, they hold office during the pleasure of the Governor; but in actual practice, they can retain office only so long as they can retain the confidence of the Council. This, however, is not the case with their colleagues on the other side. Thus, in order to show loyalty to their colleagues on the Reserved side, the Ministers have to displease their master who grants their salaries, and prepare the way for their own dismissal. Really, the position of Ministers in the dyarchical system of Government is unenviable.

Our third conclusion in regard to the working of dyarchy is that in some provinces at least, the relations between Ministers and the officers of the public services working under them—particularly the Secretaries—have not been what they should have been. As a matter of fact, one ex-Minister¹ has gone so far as to say that the position of the Minister in his province 'was one of humiliation and irritation.' Orders passed by the Minister had been challenged by one of his subordinates. This attitude of insubordination on the part of officials working under Ministers may be attributed to two reasons principally. First, as we have shown before, under the Government of India Act and the Rules made thereunder (Ministers have practically no authority over the members of the All-India Services, from amongst whom the Secretaries, Under-Secretaries, etc., are generally recruited.) Under Devolution Rule 10, even no order for the posting of an officer of an All-India Service can be made without the personal concurrence of the Governor. Secondly, under the rules of executive business framed by the Governor in each province, (the Secretaries attached to the different departments of the provincial Government have the right of

¹ Mr. N. K. Kelkar, ex-Minister of the Central Provinces; see *The Amrita Bazar Patrika* (Dak edition) of August 13, 1924.

access to the Governor for bringing to his notice any case which they consider to be necessary for him to attend to personally.) They have even, as appears from the evidence¹ of Mr. Harkishan Lal, an ex-Minister of the Punjab Government, 'the right of pre-audience with the Governor,' and thus the opportunity of influencing him before Ministers can present their case. The Secretaries to the Government of India have, as has been seen before, similar right of access to the Governor-General. Whatever may be the advantages of this system we cannot support its underlying principle. Moreover, the system is particularly indefensible in connection with the administration of the Transferred departments, because it is, as Professor Keith stated in his Minority Report,² 'incompatible with responsible government in any real sense.' Besides, there is another consideration. The members in charge of the Reserved departments in a province or the members of the Executive Council of the Governor-General are, together with the Secretaries working under them, responsible to the same authority, namely, the Secretary of State for India, for the administration of the subjects committed to their charge. They have, therefore, so to speak, a homogeneity of interests. But the case is entirely different with Ministers. The latter are responsible for the administration of the subjects entrusted to their charge not to the Secretary of State, but to the provincial Legislative Council. And it is they who will have to defend before the Council every action relating to those subjects. The final decision in respect of every important question, therefore, should rest with them so long as they would retain the confidence of that Council. It should be the duty of the officers of the public services serving under them to supply them with all necessary materials to enable them to arrive at a correct decision on

¹ See *The Statesman* (Dak edition) of August 16, 1924.

² See the Crewe Committee's Report, p. 45, foot-note 2.

a particular question; but the decision itself should be theirs. When the decision is once reached, it should be the further duty of those officers to give effect to it.

It may be mentioned here that, unlike the other members of Lord Chelmsford's Government, Sir C. Sankaran Nair apprehended the danger to the smooth and successful working of dyarchy, which might arise from the right of access of the secretaries, working under Ministers, to the Governor. In a minute of dissent appended to the First Despatch of the Government of India on Indian Constitutional Reforms, he expressed his views on the question as follows¹ :—

'According to my colleagues, the permanent heads of departments and the secretaries under a minister should have access to the Governor to bring to his notice any case which they consider that the Governor should see. In fact, the secretary or the permanent head of a department would be entitled to appeal to the Governor against any decision of the minister overruling him. My colleagues also expect that the Governor would direct all cases of particular types and all cases of major importance to be brought to him as a regular practice. The result would naturally be to weaken considerably the position of the minister in relation to his subordinates. In fact, he might be reduced to a figure-head by the Governor and the secretary. I do not think that this could have been contemplated by the authors of the Reforms Report, and I do not think it right. No secretary or head of a department should have any access to the Governor for this purpose. No one should come between him and the minister. It is one thing for a Governor to tell the minister himself that he would like to be consulted on cases of a certain type, and it is a very different thing to all — a

¹ *Government of India's Despatch of March 5, 1919, and Co. Papers*, p. 97.

secretary to bring to him such cases for decision in appeal against a minister.'

In England, the permanent Under-Secretary attached to a department of State has no such right of access to the Crown or to the Prime Minister over the head of the Minister in charge of the department. It may be said that the actual relations between a Minister and his Secretary depend very much on their personality. This is true to a certain extent. But where there are statutory limitations on the powers of the Minister in relation to his subordinates, mere personality of the Minister will not always help to make the relations between them such as they should be.

We may note here what President Lowell states¹ to be the theoretical relation between the political chief and his permanent subordinate in England. The function of the political chief, who furnishes the lay element in the concern, 'is to bring the administration into harmony with the general sense of the community and especially of Parliament. He must keep it in accord with the views of the majority in the House of Commons, and conversely he must defend it when criticised, and protect it against injury by any ill-considered action of the House. He is also a critic charged with the duty of rooting out old abuses, correcting the tendency to red tape and routine, and preventing the department from going to sleep or falling into ruts; and, being at the head, it is for him, after weighing the opinion of the experts, to decide upon the general policy to be pursued. The permanent officials, on the other hand, are to give their advice upon the questions that arise, so as to enable the chief to reach a wise conclusion and keep him from falling into mistakes. When he has made his decision they are to carry it out; and they must keep the department

¹ Lowell, *Government of England*, vol. i, p. 182

running by doing the routine work. In short the chief lays down the general policy, while his subordinates give him the benefit of their advice, and attend to the details.'

If the ministerial system of Government is to be made a success in India, Ministers must have full control of the officers of the public services under them.

Our fourth conclusion is that in some provinces, the Governors have tried to control their Ministers, to reduce them to the position of their mere advisors, and to concentrate power in themselves even in respect of the administration of the Transferred departments; and that often the Ministers

in those provinces have been able to pursue their own policy only 'with the help of the weapon of resignation in the background.' In so acting, those Governors have violated the spirit, if not the letter, of the Constitution. Only in exceptional cases, the Governor is empowered by the Act to take action otherwise than in accordance with the advice of his Ministers; ordinarily, he must let the Ministers have their way. The advice¹ of the Joint Select Committee on this question is very clear. 'Ministers who enjoy the confidence of a majority in their legislative council will be given the fullest opportunity of managing that field of government which is entrusted to their care. In their work they will be assisted and guided by the Governor, who will accept their advice and promote their policy whenever possible. If he finds himself compelled to act against their advice, it will only be in circumstances roughly analogous to those in which he has to override his executive council. . . .' The control of Ministers by the Governor and their responsibility to the Legislative Council are incompatible. If the Council's control over Ministers is to be made real and effective, the

¹ Joint Select Committee Report on the Government of India Bill, para. 5.

Governor's control over them must disappear, and he must occupy the position of a purely constitutional Governor like the Governor of a self-governing Dominion. The present position is anomalous. The Governor interferes in the administration of the Transferred subjects, but he enjoys immunity from all criticism by the Legislative Council.

Fifthly, the presence of the official *bloc* in each Legislative Council has tended to obscure the responsibility of Ministers to the Council. It has thus helped to weaken the control of Ministers by the Council. An unpopular Minister may, under the existing arrangement, continue in office and have all his demands for grants passed by the Council with the help of this 'silent official phalanx,' even though the majority of the elected members of the Council may have no confidence in him. Indeed, the official *bloc* and ministerial responsibility are irreconcilable. If responsible government is to be realized in the sphere of the Transferred side of the provincial Government, either the official *bloc*, as it is constituted now, must be forbidden to vote on any question relating to a Transferred subject, or provision must be made for its early disappearance.

In the sixth place, it does not appear from the evidence placed before the Reforms Enquiry Committee that the principle of the collective responsibility of Ministers was recognized except in one or two provinces.¹ This may be due to two reasons. First, except in those provinces,² there were,

Official *bloc*
incompati-
ble with
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Collective
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Ministers,
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encouraged.

¹ It appears from the evidence of Mr. Chintamani, an ex-Minister of the Government of the United Provinces, that he and his colleague, Pandit Jagat Narain, worked on the principle of joint responsibility. According to Sir Tej Bahadur Sapru, both of them tendered their resignations upon a difference arising between one of them and the Governor.

² e.g. in Madras all the first three Ministers were appointed from among the non-Brahmin members of the Legislative Council as the non-Brahmin party commanded a majority in the Council.

till recently, no well-organized parties in the provincial Legislative Councils. Speaking of the English Constitution, President Lowell has remarked that it is inconceivable that government by a responsible ministry should have appeared if Parliament had not been divided into Whigs and Tories. In fact, the whole plan would be senseless if parties did not exist.¹ But it may also be said that if the principle of the joint responsibility of Ministers is once recognized and acted upon, it will bring parties into existence and tend to perpetuate them. For 'the parliamentary system', to quote the same writer² again, 'like every rational form of government, reacts upon and strengthens the conditions of its own existence. It is based upon party, and by the law of its nature tends to accentuate party'. Secondly, the principle of the collective responsibility of Ministers has not received much encouragement from most of the Governors. It has transpired that in one province at least, there was even no joint consultation between its two Ministers during the whole tenure of their office. Following the letter of the law, some Governors directed that each Minister should act on his own individual responsibility. It is true that the Government of India Act has made no provision for the joint responsibility of Ministers. But it must be borne in mind that this is a matter which depends in many countries, e.g., in England and Italy, on mere conventions. Law has no direct concern with such matter in those countries. Such conventions may be usefully built up in our country too. We may note here what the Joint Select Committee suggested³ on this question:—

'. . . . They think that it should be recognized from the commencement that ministers may be expected to act

¹ Lowell, *Government of England*, vol. i, p. 456.

² *Ibid.*, p. 457.

³ Joint Select Committee Report on Clause 4 of the Government of India Bill.

in concert together. They probably would do so, and in the opinion of the Committee it is better that they should. . . .

Thus, though the Act has not provided for the joint responsibility of Ministers, it was at least contemplated by the Joint Select Committee.

Lastly, we may observe that the relations between the Finance Department, which, by the way, is, under Devolution Rule 36 (1), controlled by a member of the Executive Council, and Ministers have not been, in most of the provinces, as happy as they should have been, and that this is partly responsible for the present unpopularity of dyarchy. Complaints have been made by several ex-Ministers and other

Relations between Ministers and the Finance Department, not very happy.

witnesses before the Reforms Enquiry Committee about the attitude of this department towards the Transferred side of the provincial Governments. It is quite possible that some of these complaints are groundless and may be attributed to an inadequate appreciation of the duties and responsibilities of the Finance Department of every Government in relation to its revenues and expenditures. As we have previously shown, this department is seldom popular in any country with the spending departments of the Government because of the peculiar nature of its work. But, on the other hand, there is evidence of an unimpeachable character to prove that in some provinces at least, the Finance Members have often shown a 'conscious bias' against Transferred departments; that the principle of 'charity begins at home' has more influenced their attitude towards the two halves of the provincial Governments than considerations of equity and justice; that, in regard to proposals of new expenditure relating to Transferred subjects, they have been sometimes unduly strict in their interpretation of the rules of the Finance Department;

and that they have often betrayed by their actions their inability to appreciate the difficulties of Ministers, who have had to carry a very critical majority with them. Some ex-Ministers have stated in their evidence before the Reforms Enquiry Committee that they had often had to use threats of resignation in order to have their way in financial matters. Certainly the system of Government under which it is necessary to employ such threats to carry on the administration is anything but sound.

It may also be noted here that Devolution Rule 36 (1), which lays down that the Finance Department in each Governor's province must be controlled by a member of the Executive Council, is, as Mr. C. Y. Chintamani, an ex-Minister of the United Provinces, has pointed out in his evidence,¹ a reflection upon Ministers. And it is difficult to say that the Rule, as it is, does not give 'an unfair and initial advantage' to the Reserved side of the Government over its Transferred side, and that it does not operate to the disadvantage of Ministers.

Mr. A. K. Ghuznavi, an ex-Minister of the Government of Bengal, is of opinion² that on account of the 'minute and meticulous scrutiny by the Finance Department of the smallest technical details of each project, . . . ministers are only too often unable to carry through their schemes in the form approved by them and in which they are put by the heads of departments and other expert officers, who alone are in a position to judge as to the soundness or otherwise of such schemes.' He has suggested that the Rules relating to the Finance Department should be so amended as to limit its powers.

In order to avoid the inevitable financial conflicts between the two halves of the provincial Government under the

¹ See *The Statesman* (Dak edition) of August 20, 1924.

² *Ibid.* of October 14, 1924.

existing arrangement, many persons advocate the introduction of the 'separate purse' system. Under it, certain sources of revenue will be allocated to the Reserved, and certain sources to the Transferred side of the Government. With all the advantages of this system, we feel that it will, if introduced, tend to destroy the unity of provincial administration; and that, secondly, it will involve in practice many difficulties, no less serious than those under the existing arrangement,—arising specially from the fluctuations of receipts from the heads of revenue allocated to the one or the other side of the Government and its consequent deficit budgets in some years.

We may note here that the Government of India had recommended this system in its first Despatch on Indian Constitutional Reforms. But the Joint Select Committee did not accept² the recommendation. It suggested, on the other hand, the system of joint purse now in vogue.

We have stated above our conclusions in regard to the working of the Reforms since their introduction. We may be justly charged with presenting only the dark side of the picture. We are fully aware, however, of the fact that a good deal of useful work has been and is being done under the Reforms and that the latter have provided a good training in responsible government to the people of India. Our object in writing this chapter has been to point out some of the inherent defects in our present Constitution and also some of the difficulties that have been experienced in its practical working. These defects and difficulties have in no small degree contributed to the present unpopularity of the Reforms and are partly responsible for the practically universal demand for the abolition of dyarchy, for the

¹ See para. 70 of the Despatch.

² Joint Select Committee Report on Clause 1 of the Government of India Bill.

establishment of 'provincial autonomy', and for the introduction of the principle of responsible government into the Government of India. We also feel that the dyarchical form of Government, as recommended to be worked, cannot but involve difficulties in its actual working. If, on the other hand, it is worked, as some have suggested, on strictly dyarchical lines, the unity of provincial administration will be seriously affected and its educative value will be lost. Because of these inherent weaknesses in dyarchy we are opposed to its introduction into the domain of the central Government also.

We may state here a few words about Parliament's attitude towards the administration of the Transferred subjects. The authors of the Joint Report recommended¹ that in respect of all matters in which responsibility would be entrusted to representative bodies in India, Parliament must be prepared to forego the exercise of its own power of control, and that this process must continue *pari passu* with the development of responsible government in the provinces and eventually in the Government of India. This recommendation has been followed in practice by the House of Commons. It is now a well-established convention of the House that it will not interfere in the administration of the Transferred subjects. This convention was established in 1921 by a ruling of the Speaker of the House. The occasion² of the ruling was as follows. On February 23, 1921, a question was addressed to the late Mr. Montagu, the then Secretary of State for India, in regard to the appointment of Mr. Harkishan Lal³ as a

Parliament
and the
administra-
tion of
Transferred
subjects.

¹ Joint Report, para. 291.

² Vide *The Indian Annual Register*, 1922-23, vol. ii, pp. 14-22. This useful publication is edited by Mr. H. N. Mitra, M.A., B.L.

³ Mr. Harkishan Lal was convicted of conspiracy to wage war against the King and was sentenced to transportation for life and forfeiture of property. He was subsequently pardoned.

Minister in the Punjab. The reply given by Mr. Montagu provoked a number of supplementary questions. The Speaker's final ruling¹ on the subject was as follows :—

‘ . . . I have come to the conclusion that, having started upon this new departure of granting a measure of self-government to the provinces of India, it is highly undesirable that this House should interfere in any way with the control by those provincial legislatures of their own affairs. The Ministers who are selected by the provincial Governors . . . are responsible to the Legislative Councils of those provinces, and even if this House were to pass some censure, either direct or indirect, upon such a Minister, it would be futile. . . . Upon the question of transferred subjects I still hold that there is no right of interference by this House.’

This ruling established the principle of non-interference with the administration of the Transferred subjects by the House of Commons. We think that this principle has been accepted also by the House of Lords.

The authors of the Joint Report recommended² that ten years after the institution of the Reforms, and again at intervals of twelve years thereafter, a Statutory Commission. Commission approved by Parliament should investigate the working of the changes introduced into the provinces, and recommend as to their further progress. It should be, they continued, equally the duty of the Commission to examine and report upon the new constitution of the Government of India, with particular reference to the working of the machinery for representation, the procedure by certificate, and the results of joint sessions. The Commission would, doubtless, if it saw fit, have proposals to make for further changes in the light of the experience

¹ See *The Indian Annual Register*, 1922-23, vol. ii, pp. 20 and 21.

² See para. 288 of the Joint Report; see also paras. 261 and 264 of *ibid.*

gained. In accordance with these proposals, it has been provided in Section 84A of the Government of India Act as follows :—

‘(1) At the expiration of ten years after the passing of the Government of India Act, 1919, the Secretary of State with the concurrence of both Houses of Parliament shall submit for the approval of His Majesty the names of persons to act as a commission for the purposes of this section.

‘(2) The persons whose names are so submitted, if approved by His Majesty, shall be a commission for the purpose of inquiring into the working of the system of government, the growth of education, and the development of representative institutions, in British India, and matters connected therewith, and the commission shall report as to whether and to what extent it is desirable to establish the principle of responsible government, or to extend, modify or restrict the degree of responsible government then existing therein, including the question whether the establishment of second chambers of the local legislatures is or is not desirable.

‘(3) The commission shall also inquire into and report on any other matter affecting British India and the provinces, which may be referred to the commission by His Majesty.’

Commenting on this Section the Joint Select Committee remarked¹ as follows :—

‘The Committee are of opinion that the Statutory Commission should not be appointed until the expiration of ten years, and that no changes of substance in the constitution, whether in the franchise or in the lists of reserved and transferred subjects or otherwise, should be made in the interval. The Commission will be fully empowered to

¹ Joint Select Committee Report on Clause 41 of the Government of India Bill, 1919.

examine the working of the constitutions in all their details in the provinces, and to advise whether the time has come for full responsible government in each province, or in the alternative whether and to what extent the powers of self-government already granted should be extended, or modified, or restricted. It should be clearly understood, also, that the Commission should be empowered to examine into the working of the Government of India and to advise in respect of the Government of India no less than in respect of the provincial governments.'

Now, the question is: is there anything in the Section quoted above to prevent the appointment of a Commission, constituted in the way prescribed therein or otherwise, before the expiry of the ten-year period? We think that there is nothing in it to prevent such appointment. According to it a Commission, constituted in the manner prescribed in it, must be appointed 'at the expiration of ten years after the passing of the Government of India Act, 1919.' This Commission will be required, among other things, to report as to whether and to what extent it is desirable to extend, modify, or restrict the degree of responsible government existing in British India at the expiration of the ten years. The expression 'then existing' does not necessarily mean that the present Constitution of British India must remain unaltered until ten years have elapsed after the passing of the Government of India Act, 1919. It may mean any other form of Constitution that may happen to exist at that time.

Our conclusion, therefore, is that the Section quoted above does not, notwithstanding what the Joint Select Committee stated, bar the earlier appointment of a Royal (or any other) Commission to enquire into and report upon the working of the present Constitution of India and to recommend its amendment; and that, apart from the power of Parliament to amend any of its Acts at any time, it does

Can a Commission be appointed before 1929?

not prevent further extension of the existing Reforms before 1929.

We may note in this connection that Sir Tej Bahadur Sapru is reported to have said at the National Conference¹ held at Delhi that he was certain that the provisions of the Government of India Act did not exclude the appointment of a Royal Commission earlier, and that he challenged any other legal interpretation.² He also referred to the late 'Mr. Montagu's reply to Colonel Wedgwood in the House of Commons in justification of an earlier appointment of a Commission if conditions warranted it.'³ Similarly, Mr. C. Y. Chintamani is also reported to have stated to the Reforms Enquiry Committee⁴ that 'he had been told by the late Secretary of State (Mr. Montagu) that there was nothing (in the Government of India Act) to prevent an inquiry being held before the statutory period of ten years.'

Finally, we cannot do better than conclude this chapter with the following quotation from the late Viscount Bryce's great work,⁵ *The American Commonwealth* :—

'No constitution can be made to stand unsusceptible of change, because if it were, it would cease to be suitable to the conditions amid which it has to work, that is, to the actual forces which sway politics. And being unsuitable it would be weak, not rooted in the nature of the State and in the respect of the citizens for whom it exists ; and being weak, it would presently be overthrown.'

¹ Held at Delhi in February, 1923.

² See *The Statesman* (Dak edition) of February 26, 1924.

³ See *ibid* of February 26, 1924.

⁴ See *ibid* of August 21, 1924.

⁵ Page, 362, new edition, 1917.

APPENDIX A

PREAMBLE TO THE GOVERNMENT OF INDIA ACT, 1919.

* WHEREAS it is the declared policy of Parliament to provide for the increasing association of Indians in every branch of Indian administration, and for the gradual development of self-governing institutions, with a view to the progressive realization of responsible government in British India as an integral part of the empire :

And whereas progress in giving effect to this policy can only be achieved by successive stages, and it is expedient that substantial steps in this direction should now be taken :

And whereas the time and manner of each advance can be determined only by Parliament, upon whom responsibility lies for the welfare and advancement of the Indian peoples :

And whereas the action of Parliament in such matters must be guided by the co-operation received from those on whom new opportunities of service will be conferred, and by the extent to which it is found that confidence can be reposed in their sense of responsibility :

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

Be it therefore enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

APPENDIX B

THE DEVOLUTION RULES¹

IN exercise of the powers conferred by sections 45A and 129A of the Government of India Act, the Governor-General in Council, with the sanction of the Secretary of State in Council, is pleased to make the following rules, the same having been approved by both Houses of Parliament :—

1. (1) These Rules may be called the Devolution Rules.

¹ *Vide* Notification No. 308 S. in *The Gazette of India* (Extra.) December 16, 1920. *Vide* also *The Bengal Legislative Council Manual*, 1924, pp. 104-32.

(2) They shall come into force on a date to be appointed by the Governor-General in Council, with the approval of the Secretary of State in Council, and different dates may be appointed for different parts of India, and for different provisions of these rules.

2. In these rules, unless there is anything repugnant in the subject or context,—

(1) 'all-India revenues' means such portion of the revenues of India as is not allocated to local Governments under these rules ;

(2) 'Schedule' means a Schedule to these rules ;

(3) 'the Act' means the Government of India Act.

PART I.—CLASSIFICATION OF SUBJECTS

3. (1) For the purpose of distinguishing the functions of the local Governments and local legislatures of Governors' provinces from the functions of the Governor-General in Council and the Indian legislature, subjects shall, in those provinces, be classified, in relation to the functions of Government, as central and provincial subjects in accordance with the lists set out in Schedule I.

(2) Any matter which is included in the list of provincial subjects set out in Part II of Schedule I shall, to the extent of such inclusion, be excluded from any central subject of which, but for such inclusion, it would form part.

4. Where any doubt arises as to whether a particular matter does or does not relate to a provincial subject, the Governor-General in Council shall decide whether the matter does or does not so relate, and his decision shall be final.

5. The local Government shall furnish to the Governor-General in Council from time to time such returns and information on matters relating to the administration of provincial subjects as the Governor-General in Council may require and in such form as he may direct.

6. The provincial subjects specified in the first column of Schedule II shall, in the Governors' provinces shown against each subject in the second column of the said Schedule, be transferred subjects : provided that the Governor-General in Council may, by notification in the *Gazette of India*, with the previous sanction of the Secretary of State in Council, revoke or suspend for such period as he may consider necessary the transfer of any provincial subject in any province, and

upon such revocation or during such suspension the subject shall not be a transferred subject.

7. If any doubt arises as to whether any matter relates to a reserved or to a transferred subject, the Governor shall decide the question, and his decision shall be final.

8. Where an Act of the Legislative Council of a Governor's province confers on local authorities powers of the management of matters relating to reserved subjects, those matters shall, to the extent of the powers conferred by such legislation, be deemed in that province to form part of the transferred subject of local self-government.

9. (1) When a matter appears to the Governor to affect substantially the administration both of a reserved and of a transferred subject, and there is disagreement between the member of the Executive Council and the minister concerned as to the action to be taken, it shall be the duty of the Governor, after due consideration of the advice tendered to him, to direct in which department the decision as to such action shall be given : provided that, in so far as circumstances admit, important matters on which there is such a difference of opinion shall, before the giving of such direction, be considered by the Governor with his Executive Council and his ministers together.

(2) In giving such a direction as is referred to in sub-rule (1), the Governor may, if he thinks fit, indicate the nature of the action which should in his judgment be taken, but the decision shall thereafter be arrived at by the Governor in Council or by the Governor and minister or ministers, according as the department to which it has been committed is a department dealing with reserved or a department dealing with transferred subjects.

10. The authority vested in the local Government over officers of the public services employed in a Governor's province shall be exercised in the case of officers serving in a department dealing with reserved subjects by the Governor in Council, and in the case of officers serving in a department dealing with transferred subjects by the Governor acting with the minister in charge of the department : provided that—

(1) no order affecting emoluments or pensions, no order of formal censure, and no order on a memorial shall be passed to the disadvantage of an officer of an all-India or provincial service without the personal concurrence of the Governor ; and

(2) no order for the posting of an officer of an all-India service shall be made without the personal concurrence of the Governor.

11. If an officer performs duties both in a department dealing with reserved subjects and in a department dealing with transferred subjects, the Governor shall decide in which department he shall be deemed to be serving.

12. A local Government shall employ such number of Indian Medical Service officers in such appointments and on such terms and conditions as may be prescribed by the Secretary of State in Council.

13. Subject to the provisions of these rules, provincial subjects shall be administered by the local Government. But, save in the case of transferred subjects, nothing in these rules shall derogate from the power of superintendence, direction, and control conferred on the Governor-General in Council by the Act.

PART II.—FINANCIAL ARRANGEMENTS

14. (1) The following sources of revenue shall in the case of Governors' provinces be allocated to the local Government as sources of provincial revenue, namely :—

- (a) balances standing at the credit of the province at the time when the Act comes into force ;
- (b)¹ receipts accruing in respect of provincial subjects ;
- (c) a share (to be determined in the manner provided by rule 15) in the growth of revenue derived from income-tax collected in the province, so far as that growth is attributable to an increase in the amount of income assessed ;
- (d) recoveries of loans and advances given by the local Government and of interest paid on such loans ;
- (e) payments made to the local Government by the Governor-General in Council or by other local Governments, either for services rendered or otherwise ;
- (f) the proceeds of any taxes which may be lawfully imposed for provincial purposes ;
- (g) the proceeds of any loans which may be lawfully raised for provincial purposes ; and
- (h) any other sources which the Governor-General in Council may by order declare to be sources of provincial revenue.

¹ See *The Government of India Act*, published by the Government of India, p. 188.

(2) The revenues of Berar shall be allocated to the local Government of the Central Provinces as a source of provincial revenue. This allocation shall be subject to the following conditions, namely :—

(a) that the local Government of the Central Provinces shall be responsible for the due administration of Berar ; and

(b) that if in the opinion of the Governor-General in Council provision has not been made for expenditure necessary for the safety and tranquillity of Berar, the allocation shall be terminated by order of the Governor-General in Council, or diminished by such amount as the Governor-General in Council may by order in writing direct.

15. (1) Whenever the assessed income of any year subsequent to the year 1920-21 exceeds in any Governor's province or in the province of Burma the assessed income of the year 1920-21, there shall be allocated to the local Government of that province an amount calculated at the rate of three pies in each rupee of the amount of such excess.

(2) In this rule ' the assessed income ' of any year (other than the year 1920-21) means the amount of income brought under assessment under the Indian Income-tax Act, 1918, in that year in respect of which income-tax is collected, whether in that year or thereafter :

Provided that the assessed income of any year subsequent to the year 1920-21 shall not include income in respect of which no share of the tax collected would have been credited to provincial revenues if such income had accrued and been brought under assessment in the year 1920-21.

(3) The assessed income of the year 1920-21 shall be such amount as the Governor-General in Council, after making due allowance for arrears caused by any abnormal delays in the collection of the tax, may determine as the amount of income brought under assessment under the Indian Income-tax Act, 1918, in that year in respect of which income-tax is collected. It shall not include income in respect of which no share of the tax collected was credited to provincial revenues :

Provided that where in any year subsequent to the year 1920-21 the income derived from any business is for any reason assessed to income-tax in a province other than that in which it was assessed in that year, the assessed income of the year 1920-21 of such first-mentioned province shall be increased, and that of the other province shall be

decreased, by the amount of the income of the business brought under assessment in that year on which income-tax was collected.

16. All moneys derived from sources of provincial revenue shall be paid into the public account, of which the Governor-General in Council is custodian, and credited to the Government of the province. The Governor-General in Council shall have power, with the previous sanction of the Secretary of State in Council, to prescribe by general or special order the procedure to be followed in the payment of moneys into, and in the withdrawal, transfer and disbursement of moneys from, the public account, and for the custody of moneys standing in the account.

Such orders may, to such extent and for such purposes as may be stipulated, delegate power to prescribe procedure for the said purposes to the Auditor-General, the Controller of the Currency and to local Governments.

17. In the financial year 1921-22 contributions shall be paid to the Governor-General in Council by the local Governments mentioned below according to the following scale :—

Name of Province	Contributions (In lakhs of rupees)	
Madras 348
Bombay 56
Bengal 63
United Provinces 240
Punjab 175
Burma 64
Central Provinces and Berar 22
Assam 15

18. (1) From the financial year 1922-23 onwards a total contribution of 983 lakhs, or such smaller sum as may be determined by the Governor-General in Council, shall be paid to the Governor-General in Council by the local Governments mentioned in the preceding rule. When for any year the Governor-General in Council determines as the total amount of the contribution a smaller sum than that payable for the preceding year, a reduction shall be made in the contributions of those local Governments only whose last previous annual contribution exceeds the proportion specified below of the smaller sum so determined as the

total contribution ; and any reduction so made shall be proportionate to such excess :—

Madras	...	...	...	17-90ths.
Bombay	...	...	...	13-90ths.
Bengal	...	...	...	19-90ths.
United Provinces	...	...	...	18-90ths.
Punjab	...	...	...	9-90ths.
Burma	...	...	...	6½-90ths.
Central Provinces and Berar	...	...	...	5-90ths.
Assam	...	...	...	2½-90ths.

(2) Notwithstanding anything contained in sub-rule (1), the contribution payable thereunder by the local Government of Bengal in the financial years 1922-23, 1923-24 and 1924-25 shall be remitted by the Governor-General in Council :

Provided that for the purposes of sub-rule (1)—

(a) the sum determined by the Governor-General in Council as the total amount of the contribution for each of the said financial years shall include the contribution so remitted, and

(b) for the financial year 1925-26, the last previous annual contribution of the local Government of Bengal shall be deemed to be the remitted contribution for the year 1924-25.

19. In cases of emergency, the local Government of any province may be required by the Governor-General in Council, with the sanction of, and subject to the conditions approved by, the Secretary of State, to pay to the Governor-General in Council a contribution for any financial year in excess of the amount required by the preceding rules in the case of that year.

20. The contributions fixed under the preceding rules shall be a first charge on the allocated revenues and moneys of the local Governments concerned, and shall be paid in such instalments, in such manner, and on such dates, as the Governor-General in Council may prescribe.

21. At any time when he considers this course to be essential in the financial interests of India as a whole, the Governor-General in Council shall have power to require any local Government to which revenues have been allocated under these rules so to regulate its programme of expenditure as not to reduce the balance at its credit in the public account on a specific date or dates below a stated figure, and shall have power to take the

necessary steps by the restriction of issues of moneys to secure this end. Subject to this power, those local Governments shall be at liberty to draw on their balances, provided that notice of the amount which they propose to draw during the ensuing financial year is given to the Governor-General in Council before such date in each year as the Governor-General in Council may by order fix.

22. Whenever the Governor-General in Council has, on receipt of due notice of the intention of the local Government to draw on its balances, required it to reduce the extent of the proposed draft, he shall, at the end of the financial year in which the local Government is debarred from drawing, credit the local Government with interest on the amount which it was not permitted to draw. Such interest shall be a charge on the revenues of India, and shall be calculated at the average rate at which the Governor-General in Council has borrowed money in the open market during the year by the issue of treasury bills.

23. Any moneys which, on the 1st day of April, 1921, are owed to the Governor-General in Council on account of advances made from the provincial loan account of any province shall be treated as an advance to the local Government from the revenues of India, and shall carry interest at a rate calculated on the average rate carried by the total amount owed to the Governor-General in Council on this account on the 31st March, 1921. The interest shall be payable upon such dates as the Governor-General in Council may fix. In addition, the local Government shall pay to the Governor-General in Council in each year an instalment in repayment of the principal amount of the advance, and this instalment shall be so fixed that the total advance shall, except where, for special reasons, the Governor-General in Council may otherwise direct, be repaid before the expiry of twelve years. It shall be open to any local Government to repay in any year an amount in excess of the fixed instalment.

24. (1) The capital sums spent by the Governor-General in Council upon the construction in the various provinces of productive and protective irrigation works and of such other works financed from loan funds as may from time to time be handed over to the management of local Governments shall be treated as advances made to the local Governments from the revenues of India. Such advances shall carry interest at the following rates, namely :—

(a) in case of outlay up to the end of the financial year 1916-17, at the rate of 3·3252 *per centum* ;

(b) in the case of outlay incurred after the financial year 1916-17, at the average rate of interest paid by the Governor-General in Council on loans raised in the open market since the end of that year.

(2) The interest shall be payable upon such dates as the Governor-General in Council may fix.

25. The Governor-General in Council may at any time make to a local Government an advance from the revenues or moneys accruing to the Governor-General in Council on such terms as to interest and repayment as he may think fit.

Advances by
the Govern-
ment of
India.

26. The payment of interest on loans and advances made under the three preceding rules, and the repayment of the principal of an advance under rule 23, shall be a charge on the annual allocated revenues of the local Government, and shall have priority over all other charges, save only contributions payable to the Governor-General in Council.

Priority of
interest
charges.

27. (1) The local Government of a Governor's province shall not, without the previous sanction of the Secretary of State in Council or of the Governor-General in Council, as the case may be, include any proposal for expenditure on a transferred subject in a demand for a grant, if such sanction is required by the provisions of Schedule III to these rules.

Powers of
sanctioning
transferred
expenditure.

(2) Subject to the provisions of sub-rule (1), the local Government of a Governor's province shall have power to sanction expenditure on transferred subjects to the extent of any grant voted by the Legislative Council.

(3) The local Government of a Governor's province shall have power to sanction any expenditure on transferred subjects which relates to the heads enumerated in section 72D (3) of the Act, subject to the approval of the Secretary of State in Council or of the Governor-General in Council, if any such approval is required by any rule for the time being in force.

28. (1) The powers of a local Government under the preceding rule to sanction expenditure may be delegated by the local Government to an authority subordinate to it, after previous consultation with the Finance Department, to such extent as may be required for the convenient and efficient despatch of public business.

Delegation
of powers
of sanction.

(2) Any sanction accorded under these rules shall remain valid for the specified period for which it is given, subject, in the case of voted expenditure, to the voting of grants in each year.

29. Each local Government mentioned in Schedule IV shall establish and maintain out of provincial revenues a famine insurance fund in accordance with the provisions of that Schedule, and such fund shall be controlled and administered as required by those provisions.

30. All proposals for raising taxation or for the borrowing of money on the revenues of a province shall, in the case of a Governor's province, be considered by the Governor with his Executive Council and ministers sitting together, but the decision shall thereafter be arrived at by the Governor in Council, or by the Governor and minister or ministers, according as the proposal originates with the Governor in Council or the Governor and ministers.

31. Expenditure for the purpose of the administration of both reserved and transferred subjects shall, in the first instance, be a charge on the general revenues and balances of each province, and the framing of proposals for expenditure in regard to transferred and reserved subjects will be a matter for agreement between that part of the Government which is responsible for the administration of transferred subjects and that part of the Government which is responsible for the administration of reserved subjects.

32. (1) If at the time of the preparation of the budget the Governor is satisfied that there is no hope of agreement within a reasonable time between the members of his Executive Council on the one hand and ministers or the other as to the apportionment of funds between reserved and transferred departments respectively, he may, by order in writing, allocate the revenues and balances of the province between reserved and transferred subjects, by specifying the fractional proportions of the revenues and balances which shall be assigned to each class of subjects.

(2) An order of allocation under this rule may be made by the Governor either in accordance with his own discretion, or in accordance with the report of an authority to be appointed by the Governor-General in this behalf on the application of the Governor.

33. Every such order shall (unless it is sooner revoked) remain in force for a period to be specified in the order, which shall be not less than the duration of the then existing Legislative Council, and shall not exceed by more than one year the duration thereof :

Provided, that the Governor may at any time, if his Executive

Council and ministers so desire, revoke an order of allocation or make such other allocation as has been agreed upon by them :

Provided, further, that if the order which it is proposed to revoke was passed in accordance with the report of an authority appointed by the Governor-General, the Governor shall obtain the consent of the Governor-General before revoking the same.

34. Every order of allocation made under these rules shall provide that, if any increase of revenue accrues during the period of the order on account of the imposition of fresh taxation, that increase, unless the legislature otherwise directs, shall be allocated in aid of that part of the Government by which the taxation is initiated.

35. If at the time of the preparation of any budget no agreement or allocation such as is contemplated by these rules has been arrived at, the budget shall be prepared on the basis of the aggregate grants respectively provided for the reserved and transferred subjects in the budget of the year about to expire.

PART III.—FINANCE DEPARTMENT

36. (1) There shall be in each Governor's province a Finance Department, which shall be controlled by a member of the Executive Council.

(2) Immediately subordinate to the member there shall be a financial secretary, with whom shall be associated, if the ministers so desire, a joint secretary, appointed by the Governor after consultation with the ministers.

(3) The joint secretary shall be specially charged with the duty of examining and dealing with financial questions arising in relation to transferred subjects and with proposals for taxation or borrowing put forward by any minister.

37. The Finance Department shall perform the following functions, namely :—

(1) it shall be in charge of the account relating to loans granted by the local Government, and shall advise on the financial aspect of all transactions relating to such loans ;

(2) it shall be responsible for the safety and proper employment of the famine insurance fund ;

(3) it shall examine and report on all proposals for the increase or reduction of taxation ;

(4) it shall examine and report on all proposals for borrowing by the local Government ; shall take all steps necessary for the purpose of

raising such loans as have been duly authorized; and shall be in charge of all matters relating to the service of loans ;

(5) it shall be responsible for seeing that proper financial rules are framed for the guidance of other departments, and that suitable accounts are maintained by other departments and establishments subordinate to them ;

(6) it shall prepare an estimate of the total receipts and disbursements of the province in each year, and shall be responsible during the year for watching the state of the local Government's balances ;

(7) in connection with the budget and with supplementary estimates—

(a) it shall prepare the statement of estimated revenue and expenditure which is laid before the Legislative Council in each year and any supplementary estimates or demands for excess grants which may be submitted to the vote of the Council ;

(b) for the purpose of such preparation, it shall obtain from the departments concerned material on which to base its estimates, and it shall be responsible for the correctness of the estimates framed on the material so supplied ;

(c) it shall examine and advise on all schemes of new expenditure for which it is proposed to make provision in the estimates, and shall decline to provide in the estimates for any scheme which has not been so examined ;

(8) on receipt of a report from an audit officer to the effect that expenditure for which there is no sufficient sanction is being incurred, it shall require steps to be taken to obtain sanction or that the expenditure shall immediately cease ;

(9) it shall lay the audit and appropriation reports before the committee on public accounts, and shall bring to the notice of the committee all expenditure which has not been duly authorized and any financial irregularities ;

(10) it shall advise departments responsible for the collection of revenue regarding the progress of collection and the methods of collection employed.

38. (1) After grants have been voted by the Legislative Council—

(a) the Finance Department shall have power to sanction any re-appropriation within a grant from one major, minor or subordinate head to another ;

(b) the member or minister in charge of a department shall have power to sanction any re-appropriation within a grant between heads subordinate to a minor

Powers of
Finance
Department
with
reference to
re-appropriation,

head which does not involve undertaking a recurring liability, provided that a copy of any order sanctioning such a re-appropriation shall be communicated to the Finance Department as soon as it is passed.

(2) The Finance Department shall have power to sanction the delegation by a member or minister to any officer or class of officers of the power of re-appropriation conferred on such member or minister by clause (1) (b) above.

(3) Copies of orders sanctioning any re-appropriation which does not require the sanction of the Finance Department shall be communicated to that department as soon as such orders are passed.

39. No expenditure on any of the heads detailed in section 72D (3) of the Act, which is in excess of the estimate for that head shown in the budget of the year, shall be incurred without previous consultation with the Finance Department.

Matters to be referred to Finance Department.

40. No office may be added to, or withdrawn from, the public service in the province, and the emoluments of no post may be varied, except after consultation with the Finance Department; and, when it is proposed to add a permanent or temporary post to the public service, the Finance Department shall, if it thinks necessary, refer for the decision of the Audit Department the question whether the sanction of the Secretary of State in Council is, or is not, necessary.

Establishment changes.

41. No allowance and no special or personal pay shall be sanctioned for any post or class of posts or for any Government servant without previous consultation with the Finance Department.

Allowances and pay.

42. No grant of land or assignment of land revenue, except when the grant is made under the ordinary revenue rules of the province, shall be given without previous consultation with the Finance Department; and no concession, grant or lease of mineral or forest rights, or right to water power or of right-of-way or other easement, and no privilege in respect of such rights shall be given without such previous consultation.

Grants and concessions.

43. No proposal involving an abandonment of revenue for which credit has been taken in the budget, or involving expenditure for which no provision has been made in the budget, shall be submitted for the consideration of the local Government or the Legislative Council, nor shall any orders giving effect to such proposals issue without a previous reference to the Finance Department.

Abandonment of revenue, etc.

44. Every report made by the Finance Department on any matter on which it is required to advise or report under these rules shall be forwarded to the department concerned, and shall, if the Finance Department so require, be submitted by the department concerned to the Governor for the orders of the local Government. The Governor may, if he thinks fit, direct that any such report shall be laid before the committee on public accounts.

45. Wherever previous consultation with the Finance Department is required by these rules it shall be open to that department to prescribe, by general or special order, cases in which its assent may be presumed to have been given.

PART IV.—AGENCY

46. The Governor-General in Council may employ the agency of the Governor in Council of any province in the administration of central subjects in so far as such agency may be found convenient.

46-A. Where, in respect of a central subject, powers have been conferred by or under any law upon a local Government, such powers shall be exercised by the Governor in Council.

47. The cost of an establishment employed by the Governor in Council of any province exclusively on the administration of central subjects shall be a charge against all-India revenues.

48. If a joint establishment is employed upon the administration of central and provincial subjects, the cost of such establishment may be distributed in such manner as the Governor-General in Council and the Governor in Council of the province concerned may agree, or, in the case of disagreement, in such manner as may be determined by the Secretary of State in Council.

PART V.—LIMITATION OF CONTROL

49. The powers of superintendence, direction, and control over the local Government of a Governor's province vested in the Governor-General in Council under the Act shall, in relation to transferred subjects, be exercised only for the following purposes, namely:—

(1) to safeguard the administration of central subjects;

(2) to decide questions arising between two provinces, in cases where the provinces concerned fail to arrive at an agreement ; and

(3) to safeguard the due exercise and performance of any powers and duties possessed by, or imposed on, the Governor-General in Council under, or in connection with, or for the purposes of the following provisions of the Act, namely, section 29 A, section 30 (1-A), Part VII A, or of any rules made by, or with the sanction of, the Secretary of State in Council.

SCHEDULE I

(See Rule 3)

PART I.—CENTRAL SUBJECTS

1. (1) Defence of India, and all matters connected with His Majesty's Naval, Military and Air Forces in India, or with His Majesty's Indian Marine Service, or with any other force raised in India other than military and armed police wholly maintained by local Governments.

(2) Naval and military works and cantonments.

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

3. Relations with States in India.

4. Political charges.

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

(1) railways and extra-municipal tramways, in so far as they are not classified as provincial subjects under entry 6(4) of Part II of this Schedule ;

(2) aircraft and all matters connected therewith ; and

(3) inland waterways, to an extent to be declared by rule made by the Governor-General in Council or by or under legislation by the Indian legislature,

6. Shipping and navigation, including shipping and navigation on inland waterways, in so far as declared to be a central subject in accordance with entry 5(3).

7. Light-houses (including their approaches), beacons, lightships and buoys.

8. Port quarantine and marine hospitals.

9. Ports¹ declared to be major ports by rule made by the Governor-General in Council or by or under legislation by the Indian legislature.

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

11. Customs, cotton excise duties, income-tax, salt and other sources of all-India revenues.

12. Currency and coinage.

13. Public debt of India.

14. Savings Banks.

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

16. Civil law, including laws regarding status, property, civil rights and liabilities, and civil procedure.

17. Commerce, including banking and insurance.

18. Trading companies and other associations.

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

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

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

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

23. Control of petroleum and explosives.

24. Geological survey.

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

26. Botanical survey.

27. Inventions and designs.

28. Copyright.

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

¹ The ports of Calcutta, Bombay, Karachi, Aden, Rangoon and Madras have been declared to be major parts.

30. Criminal Law, including criminal procedure.
31. Central police organization.
32. Control of arms and ammunition.
33. Central agencies and institutions for research (including observatories) and for professional or technical training or promotion of special studies.
34. Ecclesiastical administration, including European cemeteries.
35. Survey of India.
36. Archaeology.
37. Zoological Survey.
38. Meteorology.
39. Census and statistics.
40. All-India services.
41. Legislation in regard to any provincial subject, in so far as such subject is in Part II of this Schedule stated to be subject to legislation by the Indian legislature, and any powers relating to such subject reserved by legislation to the Governor-General in Council.
42. Territorial changes, other than inter-provincial, and declaration of laws in connection therewith.
43. Regulation of ceremonial, titles, orders, precedence and civil uniform.
44. Immovable property acquired by, and maintained at the cost of, the Governor-General in Council.
45. The Public Service Commission.
46. All matters expressly excepted by the provisions of Part II of this Schedule from inclusion among provincial subjects.
47. All other matters not included among provincial subjects under Part II of this Schedule.

PART II.—PROVINCIAL SUBJECTS

1. Local self-government, that is to say, matters relating to the constitution and powers of municipal corporations, improvement trusts, district boards, mining boards of health, and other local authorities established in a province for the purpose of local self-government, exclusive of matters arising under the Cantonments Act, 1910; subject to legislation by the Indian legislature as regards—

(1) the powers of such authorities to borrow otherwise than from a provincial government, and

(2) the levying by such authorities of taxation not included in Schedule II to the Scheduled Taxes Rules.

2. Medical administration, including hospitals, dispensaries, and asylums, and provision for medical education.

3. Public health and sanitation and vital statistics, subject to legislation by the Indian legislature in respect to infectious and contagious diseases to such extent as may be declared by any Act of the Indian legislature.

4. Pilgrimages within British India.

5. Education : provided that—

(1) the following subjects shall be excluded, namely :—

(a) the Benares Hindu University (the Aligarh Muslim University) and such other Universities constituted after the commencement of these rules as may be declared by the Governor-General in Council to be central subjects, and

(b) Chiefs' Colleges and any institution maintained by the Governor-General in Council for the benefit of members of His Majesty's Forces or of other public servants or of the children of such members or servants ; and

(2) the following subjects shall be subject to legislation by the Indian legislature, namely :—

(a) the control of the establishment and the regulation of the constitutions and functions of Universities constituted after the commencement of these rules, and

(b) the definition of the jurisdiction of any University outside the province in which it is situated, and

(c) for a period of five years from the date of the commencement of these rules, the Calcutta University, and the control and organization of secondary education in the Presidency of Bengal.

6. Public Works, other than those falling under entry 14 of this Part and included under the following heads, namely :—

(1) construction and maintenance of provincial buildings used or intended for any purpose in connection with the administration of the province ; and care of historical monuments, with the exception of ancient monuments as defined in section 2 (1) of the Ancient Monuments Preservation Act, 1904, which are for the time being declared to be protected monuments under section 3 (1) of that Act ; provided that the Governor-General in Council, may, by notification in *The Gazette of India*, remove any such monument from the operation of this exception ;

(2) roads, bridges, ferries, tunnels, ropeways and causeways, and other means of communication, subject to such conditions as regards

control over construction and maintenance of means of communication declared by the Governor-General in Council to be of military importance, and as regards incidence of special expenditure connected therewith, as the Governor-General in Council may prescribe ;

(3) tramways within municipal areas ; and

(4) light and feeder railways and extra-municipal tramways, in so far as provision for their construction and management is made by provincial legislation ; subject to legislation by the Indian legislature in the case of any such railway or tramway which is in physical connection with a main line or is built on the same gauge as an adjacent main line.

7. Water-supplies, irrigation and canals, drainage and embankments, water storage and water power ; subject to legislation by the Indian legislature with regard to matters of inter-provincial concern or affecting the relations of a province with any other territory.

8. Land revenue administration as described under the following heads, namely :—

(1) assessment and collection of land revenue ;

(2) maintenance of land records, survey for revenue purposes, records-of-rights ;

(3) laws regarding land tenures, relations of landlords and tenants, collection of rents ;

(4) Courts of Wards, encumbered and attached estates ;

(5) land improvement and agricultural loans ;

(6) colonization and disposal of Crown lands and alienation of land revenue ; and

(7) management of Government estates.

9. Famine relief.

10. Agriculture, including research institutes, experimental and demonstration farms, introduction of improved methods, provision for agricultural education, protection against destructive insects and pests and prevention of plant diseases, subject to legislation by the Indian legislature in respect to destructive insects and pests and plant diseases to such extent as may be declared by any Act of the Indian legislature.

11. Civil Veterinary Department, including provision for veterinary training, improvement of stock, and prevention of animal diseases ; subject to legislation by the Indian legislature in respect to animal diseases to such extent as may be declared by any Act of the Indian legislature.

12. Fisheries.

13. Co-operative Societies.

14. Forests, including preservation of game therein and all buildings and works executed by the Forest Department; subject to legislation by the Indian legislature as regards disforestation of reserved forests.

15. Land acquisition; subject to legislation by the Indian legislature.

16. Excise, that is to say, the control of production, manufacture, possession, transport, purchase, and sale of alcoholic liquor and intoxicating drugs, and the levying of excise duties and licence fees on, or in relation to, such articles, but excluding, in the case of opium, control of cultivation, manufacture and sale for export.

17. Administration of justice, including constitution, powers, maintenance and organization of courts of civil and criminal jurisdiction within the province; subject to legislation by the Indian legislature as regards High Courts, Chief Courts and Courts of Judicial Commissioners, and any courts of criminal jurisdiction.

18. Provincial law reports.

19. Administrators-General and Official Trustees; subject to legislation by the Indian legislature.

20. Non-judicial stamps, subject to legislation by the Indian legislature, and judicial stamps, subject to legislation by the Indian legislature as regards amount of court-fees levied in relation to suits and proceedings in the High Courts under their original jurisdiction.

21. Registration of deeds and documents; subject to legislation by the Indian legislature.

22. Registration of births, deaths, and marriages; subject to legislation by the Indian legislature for such classes as the Indian legislature may determine.

23. Religious and charitable endowments.

24. Development of mineral resources which are Government property, subject to rules made or sanctioned by the Secretary of State, but not including the regulation of mines.

25. Development of industries, including industrial research and technical education.

26. Industrial matters included under the following heads, namely:—

- (1) factories;
- (2) settlement of labour disputes;
- (3) electricity;
- (4) boilers;
- (5) gas;
- (6) smoke-nuisances; and

(7) welfare of labour, including provident funds, industrial insurance (general, health and accident) and housing ; subject as to heads (1), (2), (3), (4), and (7) to legislation by the Indian legislature.

27. Stores and stationery, subject, in the case of imported stores and stationery, to such rules as may be prescribed by the Secretary of State in Council.

28. Adulteration of foodstuffs and other articles ; subject to legislation by the Indian legislature as regards import and export trade.

29. Weights and measures ; subject to legislation by the Indian legislature as regards standards.

30. Ports, except such ports as may be declared by rule made by the Governor-General in Council or by or under Indian legislation to be major ports.

31. Inland waterways, including shipping and navigation thereon so far as not declared by the Governor-General in Council to be central subjects ; but subject as regards inland steam-vessels to legislation by the Indian legislature.

32. Police, including railway police ; subject, in the case of railway police, to such conditions as regards limits of jurisdiction and railway contributions to cost of maintenance as the Governor-General in Council may determine.

33. The following miscellaneous matters, namely :—

(1) regulation of betting and gambling ;

(2) prevention of cruelty to animals ;

(3) protection of wild birds and animals ;

(4) control of poisons ; subject to legislation by the Indian legislature ;

(5) control of motor-vehicles ; subject to legislation by the Indian legislature as regards licences valid throughout British India ; and

(6) control of dramatic performances and cinematographs ; subject to legislation by the Indian legislature in regard to sanction of films for exhibition.

34. Control of newspapers, books and printing presses ; subject to legislation by the Indian legislature.

35. Coroners.

36. Excluded areas.

37. Criminal tribes ; subject to legislation by the Indian legislature.

38. European vagrancy ; subject to legislation by the Indian legislature.

39. Prison, prisoners (except State prisoners) and reformatories, subject to legislation by the Indian legislature.
40. Pounds and prevention of cattle trespass.
41. Treasure trove.
42. Libraries (except the Imperial Library) and museums (except the Indian Museum, the Imperial War Museum and the Victoria Memorial, Calcutta) and Zoological Gardens.
43. Provincial Government Presses.
44. Elections for Indian and provincial legislatures; subject to rules framed under Sections 64 (1) and 72A (4) of the Act.
45. Regulation of medical and other professional qualifications and standards; subject to legislation by the Indian legislature.
46. Local Fund Audit, that is to say, the audit by Government agency of income and expenditure controlled by local bodies.
47. Control, as defined by rule 10, of members of all-India and provincial services serving within the province, and control, subject to legislation by the Indian legislature, of public services within the province other than all-India services.
48. Sources of provincial revenue, not included under previous heads, whether—
- (1) taxes included in the Schedules to the Scheduled Taxes Rules; or
- (2) taxes not included in those Schedules, which are imposed by or under provincial legislation which has received the previous sanction of the Governor-General.
49. Borrowing of money on the sole credit of the province; subject to the provisions of the local Government (Borrowing) Rules.
50. Imposition by legislation of punishments by fine, penalty, or imprisonment for enforcing any law of the province relating to any provincial subject; subject to legislation by the Indian legislature in the case of any subject in respect of which such a limitation is imposed under these rules.
51. Any matter which, though falling within a central subject, is declared by the Governor-General in Council to be of a merely local or private nature within the province.

SCHEDULE II

(See Rule 6)

LIST OF PROVINCIAL SUBJECTS FOR TRANSFER

Column I	Column II
1. Local self-government—that is to say, matters relating to the constitution and powers of municipal	All Governors' provinces.

Column I

Column II

corporations, improvement trusts, district boards, mining boards of health, and other local authorities established in the province for purposes of local self-government, exclusive of matters arising under the Cantonments Act, 1910 ; subject to legislation by the Indian legislature as regards (a) the powers of such authorities to borrow otherwise than from a provincial Government, and (b) the levying by such authorities of taxation not included in Schedule II to the Scheduled Taxes Rules.

All Governors' provinces.

2. Medical administration, including hospitals, dispensaries and asylums, and provision for medical education.

Ditto.

3. Public health and sanitation and vital statistics ; subject to legislation by the Indian legislature in respect to infectious and contagious diseases to such extent as may be declared by any Act of the Indian legislature.

Ditto.

4. Pilgrimages within British India.

Ditto.

5. Education, other than European and Anglo-Indian education, provided that—

Ditto.

(1) the following subjects shall be excluded, namely :—

(a) the Benares Hindu University, the Aligarh Muslim University, and such other Universities, constituted after the commencement of these rules, as may be declared by the Governor-General in Council to be central subjects ; and

(b) Chiefs' Colleges and any institution maintained by the Governor-General in Council for the benefit of members of His Majesty's Forces or of other public servants or of the children of such members or servants ; and

(2) the following subjects shall be subject to legislation by the Indian legislature, namely :—

(a) the control of the establishment and the regulation of the constitutions and

Column I

Column II

functions of Universities constituted after the commencement of these rules ; and

(b) the definition of the jurisdiction of any University outside the province in which it is situated ; and

(c) for a period of five years from the date of the commencement of these rules, the Calcutta University and the control and organization of secondary education in the Presidency of Bengal.

6. Public works, other than those falling under entry II of this part, and included under the following heads, namely :—

All Governors' provinces, except Assam.

(1) construction and maintenance of provincial buildings, other than residences of Governors of provinces, used or intended for any purpose in connection with the administration of the province on behalf of the departments of Government concerned, save in so far as the Governor may assign such work to the departments using or requiring such buildings ; and care of historical monuments, with the exception of ancient monuments, as defined in section 2(1) of the Ancient Monuments Preservation Act, 1904, which are for the time being declared to be protected monuments under section 3(1) of that Act : provided that the Governor-General in Council may, by notification in *The Gazette of India*, remove any such monument from the operation of this exception ;

(2) roads, bridges, ferries, tunnels, ropeways and causeways, and other means of communication, subject to such conditions as regards control over construction and maintenance of means of communication declared by the Governor-General in Council to be of military importance, and as regards incidence of special expenditure connected therewith, as the Governor-General in Council may prescribe ;

(3) tramways within municipal areas ; and

Column I

Column II

(4) light and feeder railways and extra-municipal tramways, in so far as provision for their construction and management is made by provincial legislation, subject to legislation by the Indian legislature in the case of any such railway or tramway which is in physical connection with a main line or is built on the same gauge as an adjacent main-line.

7. Agriculture, including research institutes, experimental and demonstration farms, introduction of improved methods, provision for agricultural education, protection against destructive insects and pests and prevention of plant diseases ; subject to legislation by the Indian legislature in respect to destructive insects and pests and plant diseases to such extent as may be declared by any Act of the Indian legislature.

All Governors' provinces.

8. Civil Veterinary Department, including provision for veterinary training, improvement of stock, and prevention of animal diseases ; subject to legislation by the Indian legislature in respect to animal diseases to such extent as may be declared by any Act of the Indian legislature.

Ditto.

9. Fisheries.

All Governors' provinces, except Assam.

10. Co-operative Societies.

All Governors' provinces.
Bombay.

11. Forests, including preservation of game therein, and all buildings and works executed by the Forest Department, subject to legislation by the Indian legislature as regards disforestation of reserved forests.

12. Excise, that is to say, the control of production, manufacture, possession, transport, purchase and sale of alcoholic liquor and intoxicating drugs, and the levying of excise duties and license fees on, or in relation to, such articles, but excluding, in the case of opium, control of cultivation, manufacture, and sale for export.

All Governors' provinces, except Assam.

Column I	Column II
13. Registration of deeds and documents, subject to legislation by the Indian legislature.	All Governors' provinces.
14. Registration of births, deaths, and marriages; subject to legislation by the Indian legislature for such classes as the Indian legislature may determine.	Ditto.
15. Religious and charitable endowments.	Ditto.
16. Development of industries, including industrial research and technical education.	Ditto.
17. Stores and stationery required for transferred departments; subject, in the case of imported stores and stationery, to such rules as may be prescribed by the Secretary of State in Council.	Ditto.
18. Adulteration of foodstuffs and other articles; subject to legislation by the Indian legislature as regards import and export trade.	Ditto.
19. Weights and measures, subject to legislation by the Indian legislature as regards standards.	Ditto.
20. Libraries (other than the Imperial Library), Museums (except the Indian Museum, the Imperial War Museum, and the Victoria Memorial, Calcutta), and Zoological Gardens.	Ditto.

SCHEDULE III

(See Rule 27)

RULES RELATING TO TRANSFERRED SUBJECTS.

1. The previous sanction of the Secretary of State in Council is necessary—

(1) to the creation of any new or the abolition of any existing permanent post, or to the increase or reduction of the pay drawn by the incumbent of any permanent post, if the post in either case is one which would ordinarily be held by a member of an all-India service, or to the increase or reduction of the cadre of an all-India service;

(2) to the creation of a permanent post on a maximum rate of pay exceeding Rs. 1,200 a month, or the increase of the maximum pay of a sanctioned permanent post to an amount exceeding Rs. 1,200 a month ;

(3) to the creation of a temporary post with pay exceeding Rs. 4,000 a month or to the extension beyond a period of two years of a temporary post (or deputation) with pay exceeding Rs. 1,200 a month ;

(4) to the grant to any Government servant or to the family or other dependants of any deceased Government servant of an allowance, pension or gratuity which is not admissible under rules made or for the time being in force under section 96B of the Act, except in the following cases :—

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

(b) pensions or gratuities to Government servants wounded or otherwise injured while employed in Government service or to the families of Government servants dying as the result of wounds or injuries sustained while employed in such service, granted in accordance with such rules as have been or may be laid down by the Secretary of State in Council in this behalf ; and

(5) to any expenditure on the purchase of imported stores or stationery otherwise than in accordance with such rules as may be made in this behalf by the Secretary of State in Council.

2. (1) Every application for the sanction of the Secretary of State in Council required by paragraph 1 shall be addressed to the Governor-General in Council, who shall, save as hereinafter provided, forward the same with his recommendations, and with such further explanations of the proposal as he may have seen fit to require from the local Government, to the Secretary of State in Council.

(2) If the application relates to—

(a) the grant in an individual case of any increase of pay, or

(b) the creation of a temporary post,

the Governor-General in Council may, at his discretion, on behalf of the Secretary of State in Council, sanction the proposal, or may, and, if he dissents from the proposal, shall, forward the application with his recommendations, and with such further explanations of the proposal as he may have seen fit to require from the local Government, for the orders of the Secretary of State in Council.

SCHEDULE IV

(See Rule 29)

1. The local Governments mentioned below shall, save as hereinafter provided, make in every year provision in their budgets for expenditure upon relief of, and insurance against, famine, of such amounts respectively, (hereinafter referred to as the annual assignments), as are stated against each :—

				Rs.
Madras...	...	...	...	6,61,000
Bombay	...	...	...	53,50,000
Bengal...	...	...	...	2,00,000
United Provinces ...	...	...	...	39,60,000
Punjab	...	...	...	3,81,000
Burma	...	...	...	67,000
Bihar and Orissa ...	...	...	...	11,62,000
Central Provinces...	...	...	...	47,26,000
Assam ...	...	...	...	10,000

2. The annual assignment shall not be expended, save upon the relief of famine or the construction of protective irrigation works or other works for the prevention of famine. Any portion of an assignment which is not so spent shall be transferred to the famine insurance fund of the province.

3. The local Government, in making provision in its budget for the annual assignment, shall include in demands for grants such portion of the assignment as is proposed to be expended for the relief of famine or the construction of protective irrigation works or other works for the prevention of famine. The amount required, over and above the grants voted for the aforesaid purposes, to make up the total of the annual assignment shall not be included in a demand for a grant, but shall be provided in the shape of a lump sum allocated for transfer to the famine insurance fund.

4. The famine insurance fund shall consist of the unexpended balances of the annual assignments for each year, transferred to the fund under paragraph 2 of this Schedule, together with any interest which may accrue on these balances.

5. The local Government may, in any year when the accumulated total of the famine insurance fund of the province is not less than six times the amount of the annual assignment, suspend temporarily the provision of the annual assignment.

6. The famine insurance fund shall form part of the general balances of the Governor-General in Council, who shall pay at the end of each year interest on the average of the balances held in the fund on the last day of each quarter. The interest shall be calculated at the average rate at which the Governor-General in Council has during the year borrowed money by the issue of treasury bills. Such interest shall be credited to the fund.

7. The local Government may at any time expend the balance at its credit in the famine insurance fund for any of the purposes specified in paragraph 2 of this Schedule.

8. Such balances may further be utilized in the grant of loans to cultivators, either under the Agriculturists' Loans Act, 1884, or for relief purposes. When such loans have been granted, payments of interest on loans and repayments of principal shall be credited to the fund as they occur, and irrecoverable loans written off shall form a final charge against the fund.

9. In case of doubt whether the purpose for which it is proposed to spend any portion of the annual assignment or the famine insurance fund is one of the purposes specified in paragraph (2) of this Schedule, the decision of the Governor shall be final.

10. The annual accounts of the annual assignments and of the fund shall be maintained in forms to be prescribed in this behalf by the Auditor-General.

APPENDIX C

THE LOCAL GOVERNMENT (BORROWING) RULES¹

Short title and commencement. 1. (1) These rules may be called the Local Government (Borrowing) Rules.

(2) They shall come into force on a date to be appointed by the Governor-General in Council, with the approval of the Secretary of State in Council, and different dates may be appointed for different parts of India.

Purposes for which loans may be raised. 2. A local Government may raise loans on the security of the revenues allocated to it for any of the following purposes, namely :—

(1) to meet capital expenditure on the construction or acquisition (including the acquisition of land, maintenance during

¹ See Notification No. 309-S. in *The Gazette of India* (Extra.), December 16, 1920; see also *The Bengal Legislative Council Manual*, 1924, pp. 133 and 134.

construction and equipment) of any work or permanent asset of a material character in connection with a project of lasting public utility, provided that—

- (a) the proposed expenditure is so large that it cannot reasonably be met from current revenues ; and
 - (b) if the project appears to the Governor-General in Council unlikely to yield a return of not less than such percentage as he may from time to time by order prescribe, arrangements are made for the amortization of the debt ;
- (2) to meet any classes of expenditure on irrigation which have under rules in force before the passing of the Act been met from loan funds ;
- (3) for the giving of relief and the establishment and maintenance of relief works in times of famine or scarcity ;
- (4) for the financing of the Provincial Loan Account ; and
- (5) for the repayment or consolidation of loans raised in accordance with these rules or the repayment of advances made by the Governor-General in Council.

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

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

4. Every loan raised by a local Government in accordance with these rules shall be a charge on the whole of the revenues allocated to the local Government, and all payments in connection with the service of such loans shall be made in priority to all payments by the local Government other than the payments of—

- (1) the fixed provincial contribution payable to the Governor-General in Council ;
- (2) interest due on sums advanced to the local Government by the Governor-General in Council from the revenues of India ; and
- (3) interest due on all loans previously raised by the local Government.

APPENDIX D

THE TRANSFERRED SUBJECTS (TEMPORARY ADMINISTRATION)
RULES ¹Short title
and com-
mencement.

1. (1) These rules may be called the Transferred Subjects (Temporary Administration) Rules.

(2) They shall come into force on a date to be appointed by the Governor-General in Council with the approval of the Secretary of State in Council, and different dates may be appointed for different parts of India.

Vacancy in
office of
minister.

2. In case of emergency where, owing to a vacancy, there is no minister in charge of a transferred subject, the Governor—

(1) shall, if another minister is available and willing to take charge of the subject, appoint such minister to administer the subject temporarily; or

(2) may, if the vacancy cannot be provided for in the manner aforesaid, himself temporarily administer the subject, and, while so doing, shall exercise, in relation to such subject, all such powers in addition to his own powers as Governor as he could exercise if he were the minister in charge thereof.

3. In any case in which the Governor himself undertakes temporarily to administer a subject under these rules, he shall certify that an emergency has arisen in which, owing to a ministerial vacancy, it is necessary for him so to do, and shall forthwith forward a copy of such certificate for the information of the Governor-General in Council.

Certification
of necessity.Administra-
tion to be
temporary.

4. Such temporary administration by the Governor shall only continue until a minister has been appointed to administer the subject.

Certification
of legisla-
tion.

5. The Governor shall not exercise in respect of such subject the powers conferred on him by section 72E of the Government of India Act.

¹ See Notification No. 310-S. in *The Gazette of India* (Extra.), December 16, 1920; see also *The Bengal Legislative Council Manual*, 1924, pp. 134-35.

APPENDIX E

THE SCHEDULED TAXES RULES ¹

1. (1) These rules may be called the Scheduled Taxes Rules.
 (2) They shall come into force on a date to be appointed by the Governor-General in Council, with the approval of the Secretary of State in Council, and different dates may be appointed for different parts of India.
2. The Legislative Council of a province may, without the previous sanction of the Governor-General, make and take into consideration any law imposing, for the purposes of the local Government, any tax included in Schedule I to these rules.
3. The Legislative Council of a province may, without the previous sanction of the Governor-General, make and take into consideration any law imposing, or authorizing any local authority to impose, for the purposes of such local authority, any tax included in Schedule II to these rules.
4. The Governor-General in Council may at any time, by order, make any addition to the taxes enumerated in Schedules I and II to these rules.
5. Nothing in these rules shall affect the right of a local authority to impose a tax without previous sanction or with the previous sanction of the local Government when such right is conferred upon it by any law for the time being in force.

SCHEDULE I

1. A tax on land put to uses other than agricultural.
2. A tax on succession or on acquisition by survivorship in a joint family.
3. A tax on any form of betting or gambling permitted by law.
4. A tax on advertisements.
5. A tax on amusements.
6. A tax on any specified luxury.
7. A registration fee.
8. A stamp duty other than duties of which the amount is fixed by Indian legislation.

¹ See Notification No. 311-S. in *The Gazette of India* (Extra.), December 16, 1920; see also *The Bengal Legislative Council Manual*, 1924, pp. 135-36.

SCHEDULE II

(In this Schedule the word 'tax' includes a cess, rate, duty or fee.)

1. A toll.
2. A tax on land or land values.
3. A tax on buildings.
4. A tax on vehicles or boats.
5. A tax on animals.
6. A tax on menials and domestic servants.
7. An octroi.
8. A terminal tax on goods imported into a local area in which an octroi was levied on or before the 6th July, 1917.
9. A tax on trades, professions and callings.
10. A tax on private markets.
11. A tax imposed in return for services rendered, such as—
 - (a) a water rate ;
 - (b) a lighting rate ;
 - (c) a scavenging, sanitary or sewage rate ;
 - (d) a drainage tax ; and
 - (e) fees for the use of markets and other public conveniences.

APPENDIX F

THE LOCAL LEGISLATURES (PREVIOUS SANCTION) RULES.¹

1. (1) These rules may be called the Local Legislatures (Previous Sanction) Rules.
 Short title and commencement. (2) They shall come into force on a date to be appointed by the Governor-General in Council, with the approval of the Secretary of State in Council, and different dates may be appointed for different parts of India.
2. A local legislature may not repeal or alter, without the previous sanction of the Governor-General—
 Laws requiring previous sanction. (1) any law made by any authority in British India before the commencement of the Indian Councils Act, 1861 : provided that the Governor-General in Council may, by notification in *The Gazette of India*, declare that this provision shall not apply to any such law which he may specify, and if he does

¹ See Notification No. 312-S. in *The Gazette of India* (Extra.), December 16, 1920 ; see also *The Bengal Legislative Council Manual*, 1924, pp. 137-38.

so, previous sanction shall not thereafter be necessary to the alteration or repeal of that law ; or

(2) any law specified in the Schedule to these rules or any law made by the Governor-General in Council amending a law so specified.

SCHEDULE.

Year.	No.	Short title.
1860	XLV	The Indian Penal Code, 1860.
1864	III	The Foreigners Act, 1864.
1865	III	The Carriers Act, 1865.
„	X	The Indian Succession Act, 1865.
„	XV	The Parsi Marriage and Divorce Act, 1865.
„	XXI	The Parsi Intestate Succession Act, 1865.
1866	XXI	The Native Converts' Marriage Dissolution Act, 1866.
„	XXVIII	The Trustees' and Mortgagees' Powers Act, 1866.
1867	XXV	The Press and Registration of Books Act, 1867.
1869	IV	The Indian Divorce Act, 1869.
1870	XXI	The Hindu Wills Act, 1870.
1872	I	The Indian Evidence Act, 1872.
„	III	The Special Marriage Act, 1872.
„	IX	The Indian Contract Act, 1872.
„	XV	The Indian Christian Marriage Act, 1872.
1873	X	The Indian Oaths Act, 1873.
1874	III	The Married Women's Property Act, 1874.
„	XIV	The Scheduled Districts Act, 1874.
„	XV	The Laws Local Extent Act, 1874.
1875	IX	The Indian Majority Act, 1875.
1877	I	The Specific Relief Act, 1877.
1881	V	The Probate and Administration Act, 1881.
„	XIII	The Fort William Act, 1881.
„	XXVI	The Negotiable Instruments Act, 1881.
1882	II	The Indian Trusts Act, 1882.
„	IV	The Transfer of Property Act, 1882.
„	VII	The Powers of Attorney Act, 1882.
1889	IV	The Indian Merchandise Marks Act, 1889.
„	VII	The Succession Certificate Act, 1889.
„	XV	The Indian Official Secrets Act, 1889.
1890	VIII	The Guardians and Wards Act, 1890.
„	IX	The Indian Railways Act, 1890.

Year.	No.	Short title.
1891	XVIII	The Bankers' Books Evidence Act, 1891.
1895	XV	The Crown Grants Act, 1895.
1897	III	The Epidemic Diseases Act, 1897.
"	X	The General Clauses Act, 1897.
"	XIV	The Indian Short Titles Act, 1897.
1898	V	The Code of Criminal Procedure, 1898.
"	IX	The Live-stock Importation Act, 1898.
1899	IX	The Indian Arbitration Act, 1899.
1903	XIV	The Indian Foreign Marriage Act, 1903.
"	XV	The Indian Extradition Act, 1903.
1908	V	The Code of Civil Procedure, 1908.
"	IX	The Indian Limitation Act, 1908.
"	XIV	The Indian Criminal Law Amendment Act, 1908.
"	XV	The Indian Ports Act, 1908.
"	XVI	The Indian Registration Act, 1908.
1909	III	The Presidency-towns Insolvency Act, 1909.
"	IV	The Whipping Act, 1909.
"	VII	The Anand Marriage Act, 1909.
1910	I	The Indian Press Act, 1910. ¹
1911	X	The Seditious Meetings Act, 1911.
1912	IV	The Indian Lunacy Act, 1912.
"	V	The Provident Insurance Societies Act, 1912.
"	VI	The Indian Life Assurance Companies Act, 1912.
1913	VI	The Mussalman Wakf Validating Act, 1913.
"	VII	The Indian Companies Act, 1913.
1914	II	The Destructive Insects and Pests Act, 1914.
"	III	The Indian Copyright Act, 1914.
"	IX	The Local Authorities Loans Act, 1914.
1916	XV	The Hindu Disposition of Property Act, 1916.
1917	I	The Inland Steam-Vessels Act, 1917.
"	XXVI	The Transfer of Property (Validating) Act, 1917.
1918	X	The Usurious Loans Act, 1918.
1919	XI	The Anarchical and Revolutionary Crimes Act, 1919. ²
1920	V	The Provincial Insolvency Act, 1920.
"	X	The Indian Securities Act, 1920.
"	XIV	The Charitable and Religious Trusts Act, 1920.

¹ It has been repealed.² It has been repealed.

APPENDIX G

THE RESERVATION OF BILLS RULES¹

Short title
and com-
mencement.

1. (1) These rules may be called the Reservation of Bills Rules.

(2) They shall come into force on a date to be appointed by the Governor-General in Council, with the approval of the Secretary of State in Council, and different dates may be appointed for different parts of India.

2. The Governor of any Governor's province shall reserve, for the consideration of the Governor-General, any Bill which has been passed by the Legislative Council of the province and is presented to the Governor for his assent, if the Bill appears to the Governor to contain provisions in respect of which the Bill has not been previously sanctioned by the Governor-General under sub-section (3) of section 80A of the Government of India Act,—

(1) affecting the religion or religious rites of any class of British subjects in British India, or,

(2) regulating the constitution or functions of any University, or

(3) having the effect of including within a transferred subject matters which have hitherto been classified as reserved subjects, or

(4) providing for the construction or management of a light or feeder railway or tramway other than a tramway within municipal limits, or

(5) affecting the land revenue of a province either so as to—

(a) prescribe a period or periods within which any temporarily-settled estate or estates may not be re-assessed to land revenue, or

(b) limit the extent to which the assessment to land revenue of such an estate or estates may be made or enhanced, or

(c) modify materially the general principles upon which land revenue has hitherto been assessed,

if such prescription, limitation or modification appears to the Governor to be likely seriously to affect the public revenues of the province.

¹ See Notification, No. 313-S. in *The Gazette of India* (Extra.), December 16, 1920; see also, *The Bengal Legislative Council Manual*, 1924, pp. 138-40.

3. The Governor of any Governor's province may reserve for the consideration of the Governor-General, any Bill which has been passed by the Legislative Council of the province and is presented to the Governor for his assent, if any provisions of the Bill in respect of which it has not been previously sanctioned by the Governor-General under sub-section (3) of section 80A of the Government of India Act, appear to the Governor—

(1) to affect any matter wherewith he is specially charged under his Instrument of Instructions, or

(2) to affect any central subject, or

(3) to affect the interests of another province.

APPENDIX H

NON-OFFICIAL (DEFINITION) RULES¹

Short title
and com-
mencement.

1. (1) These rules may be called the Non-official (Definition) Rules.

(2) They shall come into force on a date to be appointed by the Governor-General in Council, with the approval of the Secretary of State in Council, and different dates may be appointed for different parts of India.

Certain
persons not
to be treated
as officials
for purposes
of the Gov-
ernment of
India Act.

2. The holder of any office in the civil or military service of the Crown, if the office is one which does not involve both of the following incidents, namely, that the incumbent—

(1) is a whole-time servant of Government, and

(2) is remunerated either by salary or fees,

shall not be treated as an official for any of the purposes of the Government of India Act.

Decision of
Governor-
General in
Council to
be final.

3. If any question arises, whether any officer is or is not a whole-time servant of Government for the purposes of Rule 2, the decision of the Governor-General in Council shall be final.

¹ Vide *The Bengal Legislative Council Manual*, 1924, p. 140.

APPENDIX I

A. RULES¹ RELATING TO EXPENDITURE BY THE GOVERNMENT OF INDIA ON SUBJECTS OTHER THAN PROVINCIAL

The previous sanction of the Secretary of State in Council is necessary—

(1) to the creation of any new or the abolition of any existing permanent post, or to the increase or reduction of the pay drawn by the incumbent of any permanent post, if the post in either case is one which would ordinarily be held by a member of one of the services named in the Schedule, or to the increase or reduction of the cadre of any of those services ;

(2) to the creation of a permanent post on a maximum rate of pay exceeding Rs. 1,200 a month, or the increase of the maximum pay of a sanctioned permanent post to an amount exceeding Rs. 1,200 a month ;

(3) to the creation of a temporary post on pay exceeding Rs. 4,000 a month, or the extension beyond a period of two years (or, in the case of a post for settlement operations, of five years) of a temporary post or deputation on pay exceeding Rs. 1,200 a month ;

(4) to the grant to any Government servant or to the family or other dependants of any deceased Government servant of an allowance, pension or gratuity which is not admissible under rules made or for the time being in force under section 96B of the Government of India Act, except in the following cases :—

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

(b) pensions or gratuities to Government servants wounded or otherwise injured while employed in Government service, or to the families of Government servants dying as the result of wounds or injuries sustained while employed in such service, granted in accordance with such rules as have been or may be laid down by the Secretary of State in Council in this behalf ;

(5) to any expenditure on the purchase of imported stores or stationery, otherwise than in accordance with such rules as may be made in this behalf by the Secretary of State in Council ; and

¹ Resolution No. 1448-E.A., September 29, 1922. Vide *The Gazette of India*, October 7, 1922, Part I, p. 1215.

(6) to any expenditure, otherwise than in accordance with such rules as have been or may be laid down in this behalf by the Secretary of State in Council, upon—

- (a) the erection, alteration, furnishing or equipment of a church; or a grant-in-aid towards the erection, alteration, furnishing or equipment of a church not wholly constructed out of public funds; or
- (b) the provision of additions to the list of special saloons and inspection railway carriages reserved for the use of high officials; or
- (c) the staff, household and contract allowances, or the residences and furniture provided for the use of the Governor-General; or
- (d) railways and military services.

THE SCHEDULE

- (1) Indian Civil Service.
- (2) Indian Police Service.
- (3) Indian Forest Service.
- (4) Indian Educational Service.
- (5) Indian Agricultural Service.
- (6) Indian Service of Engineers.
- (7) The Imperial Branch of the Civil Veterinary Department.
- (8) Indian Medical Service.
- (9) Imperial Customs Service.
- (10) Indian Audit and Accounts Service.
- (11) Superintendents and Class I of the Survey of India Department.
- (12) The Superior Staff of the Geological Survey of India Department.

B. RULES¹ RELATING TO EXPENDITURE BY A GOVERNOR IN COUNCIL ON PROVINCIAL RESERVED SUBJECTS

1. The previous sanction of the Secretary of State in Council is necessary—

- (1) to the creation of any new or the abolition of any existing permanent post, or to the increase or reduction of the pay drawn by the incumbent of any permanent post, if the post in either case is one

¹ Resolution No. 1449-E.A., September 29, 1922; Vide *The Gazette of India*, October 7, 1922, Part I, pp. 1216-17.

which would ordinarily be held by a member of an all-India service, or to the increase or reduction of the cadre of an all-India service ;

(2) to the same as (2) in A above ;

(3) to the same as (3) in A above ;

(4) to the same as (4) in A above ;

(5) to the same as (5) in A above ;

(6) to capital expenditure upon irrigation and navigation works, including docks and harbours, and upon projects for drainage, embankment and water-storage and the utilization of water power, in any of the following cases, namely :—

(a) where the project concerned materially affects the interests of more than one local Government ;

(b) where the original estimate exceeds 50 lakhs of rupees ;

(c) where a revised estimate exceeds by 15 per cent. an original estimate sanctioned by the Secretary of State in Council ; and

(d) where a further revised estimate is proposed, after one revised estimate has already been sanctioned by the Secretary of State in Council ;

(7) to a revision of permanent establishment involving additional establishment charges exceeding Rs. 5 lakhs a year ; provided that, if a resolution has been passed by the Legislative Council recommending an increase of establishment charges for this purpose, the sanction of the Secretary of State in Council shall not be required unless the expenditure so recommended exceeds 15 lakhs a year ;

(8) to any increase of the contract, sumptuary or furniture grant of a Governor ;

(9) to expenditure upon original works on the residences of a Governor exceeding Rs. 50,000 in any year ; ¹

(10) to any expenditure upon railway carriages or water-borne vessels specially reserved for the use of high officials, otherwise than in connection with the maintenance of such carriages or vessels already set apart with the sanction of the Secretary of State in Council for the exclusive use of a Governor.

2. (1) Every application for the sanction of the Secretary of State in Council required by Rule 1 shall be addressed to the Governor-General in Council, who shall, save as hereinafter provided, forward the same with his recommendations, and with such further explana-

¹ The Governor-General in Council shall, if necessary, decide whether a charge falls under the head of original works.

tions of the proposal as he may have seen fit to require from the local Government, to the Secretary of State in Council.

(2) If the application relates—

(a) to the grant in an individual case of any increase in pay, or

(b) to the creation or extension of a temporary post,

the Governor-General in Council may at his discretion, on behalf of the Secretary of State in Council, sanction the proposal, or may, and, if he dissents from the proposal, shall, forward the application with his recommendations, and with such further explanations of the proposal as he may have seen fit to require from the local Government, for the orders of the Secretary of State in Council.

APPENDIX J

STANDING COMMITTEES

Under the orders¹ of the Governor-General, Standing Committees consisting of members of the Indian Legislature, have been attached to the following departments of the Government of India :—

(1) the Home Department ;

(2) the Departments of Commerce and Industries ; and

(3) the Department of Education and Health.

The Member of the Governor-General's Executive Council in charge of the department to which a Standing Committee is attached is the Chairman of the Committee. He may, however, depute an officer to act as Chairman on his behalf. A Secretary or a Deputy Secretary to the Government of India in the department concerned acts as Secretary to the Committee.

A Standing Committee consists of five members of the Indian Legislature of whom two must be members of the Council of State, and three, members of the Legislative Assembly. The members of each Committee are nominated, subject to the approval of the Governor-General, by the Member in charge of the department to which the Committee is assigned, from a panel¹ consisting of such number of members, not less than ten and not more than fifteen, as the Governor-General may direct.¹ The members of the panel are elected by the two Chambers of the Legislature according to the principle of proportional representation by means of a single transferable vote. The term of office of the members of each Committee

¹ See the Government of India Notification No. F.-49, dated August 22, 1922. Vide *The Gazette of India*, August 26, 1922, Part I, pp. 1052-53.

is one year, and if they are summoned to attend a meeting at a time when the Indian Legislature is not sitting, they are entitled to receive the allowances admissible to them for attendance at meetings of the Legislature.

The following subjects are laid before the Standing Committees :—

" (1) All Bills introduced or proposed to be introduced, by non-official members of the legislature, and legislative proposals which the Department concerned intends to undertake and on which the Member in charge of the Department desires the advice of the Committee.

(2) Reports of Committees and Commissions on which the Indian Legislature is not adequately represented and on which the Member in charge of the Department desires the advice of the Committee.

(3) Major questions of general policy on which the Member in charge of the Department desires the advice of the Committee.

(4) Annual Reports "

It is provided, however, that in cases of urgency and for other reasons a reference to a Standing Committee may be dispensed with by the department concerned ; and that the following cases are to be excluded from the purview of the Committee :—

(1) cases concerning appointments ; and

(2) all cases which the Member in charge of the department concerned considers cannot be placed before the Committee consistently with the public interest.

The functions of the Standing Committees are purely advisory and their proceedings are strictly confidential. No press representatives are allowed to attend any meeting of a Committee.

A Standing Committee meets as and when the Member in charge of the department to which it is attached, directs. The meeting is summoned by the Secretary of the department. The agenda of each meeting are drawn up and circulated by the Secretary together with a memorandum explaining the nature of each item of business, and copies of such papers as the Member in charge of the department directs to be supplied to the Committee. Such papers have to be returned by the members of the Committee to the Secretary at the close of the meeting. When the Committee meets, the Secretary may be requested by the Member in charge to explain each item of business. The Chairman then invites a discussion and the Secretary notes on the departmental file the general opinion of the Committee.

In addition to the Standing Committees mentioned above there

are the Standing Finance Committee, the Standing Committee for Emigration and the Central Advisory Council for Railways. The procedure of these Committees is governed by the rules under which they are constituted. The Standing Finance Committee consists of fourteen members elected by the Legislative Assembly and a Government Member, usually the Finance Member, who is the Chairman of the Committee. It (a) 'examines all proposals for new votable expenditure in all departments of the Government of India; (b) sanctions allotments out of lump sum grants; (c) suggests retrenchments and economy in expenditure; and (d) generally helps the Finance Department of the Government of India by advice in such cases as may be referred to it by that department.' Its powers are, as in the case of other Standing Committees, advisory; but it undoubtedly exercises a wholesome influence over the expenditure of public revenues.

Standing Committees have been attached, under the orders of the Governor, to the following departments of the Government of Bengal¹ :—

Rules for
Standing
Committees
in Bengal.

- (1) Police.
- (2) Judicial and Jails.

- (3) Local Self-Government.
- (4) Medical and Public Health.
- (5) Education.
- (6) Commerce and Marine.
- (7) Public Works (Roads and Buildings).
- (8) Irrigation.
- (9) Agriculture (including Civil Veterinary, Fisheries and Co-operative Credit).
- (10) Excise.
- (11) Land Revenue.

Each Standing Committee consists of the Member or Minister in charge of the department to which the Committee is attached, the head of the department, where there is one, and four non-official members of the local Legislative Council. The Member or Minister in charge is the Chairman of the Committee and the departmental Secretary is its Secretary. The four non-official members are appointed by the Governor 'after consideration of the names of the persons' elected for the Committee by the Council. They are entitled to the allowances payable under the Legislative Council Rules if they are summoned at a time when the Council is not sitting.

¹ Vide *The Bengal Legislative Council Manual*, 1924, pp. 304-5

The following matters must be laid before the Standing Committee attached to a department, namely :—

- (1) all major questions of departmental policy ;
- (2) all schemes involving large expenditure ;
- (3) annual Reports issued by the department ; and
- (4) any other matter concerning the department on which the Member or Minister in charge may desire its opinion.

It is provided, however, that in cases of urgency a reference to the Committee may be dispensed with, and that the following cases will be excluded from its purview :—

- (1) ' cases concerning appointments ; and
- (2) all cases which the Member or Minister in charge, with the concurrence of the Governor, considers cannot be submitted to it consistently with the public interest.'

The meetings of the Committee are summoned by the Secretary concerned under the direction of the Member or Minister in charge. The agenda are 'drawn up and circulated by the Secretary together with a memorandum explaining the nature of each item of business, and copies of such papers as the Member or Minister-in-charge directs to be furnished to the Committee.' At every meeting of the Committee the Secretary explains each case brought before it and is entitled to take part in the discussion that follows. He then notes on the departmental file the general opinion of the Committee.

The powers of the Standing Committees are advisory only, and their proceedings are confidential.

APPENDIX K

OFFICES RESERVED TO THE INDIAN CIVIL SERVICE

A.—Offices under the Governor-General in Council.

1. The offices of secretary, joint secretary and deputy secretary in every department except the Army, Marine, Education, Foreign, Political and Public Works Departments: Provided that if the office of secretary or deputy secretary in the Legislative Department is filled from among the members of the Indian Civil Service, then the office of deputy secretary or secretary in that department, as the case may be, need not be so filled.

2. Three offices of Accountants-General

B.—Offices in the provinces which were known in the year 1861 as 'Regulation Provinces.'

The following offices, namely :—

- (1) Member of the Board of Revenue.
- (2) Financial Commissioner.
- (3) Commissioner of Revenue.
- (4) Commissioner of Customs.
- (5) Opium Agent.
- (6) Secretary in every department except the Public Works or Marine Department.
- (7) Secretary to the Board of Revenue.
- (8) District or sessions Judge.
- (9) Additional district or sessions Judge.
- (10) District magistrate.
- (11) Collector of Revenue or Chief Revenue Officer of a district.

APPENDIX L

Provisions of the Government of India Act which may be repealed or altered by the Indian Legislature.

(Fifth Schedule to the Act)

Section	Subject
62	Power to extend limits of Presidency towns.
106	Jurisdiction, powers and authority of High Courts.
108 (1)	Exercise of jurisdiction of High Court by single judges or division courts.
109	Power for Governor-General in Council to alter local limits of jurisdiction of High Courts, etc.
110	Exemption from jurisdiction of High Courts.
111	Written order by Governor-General in Council a justification for act in High Court.
112	Law to be administered in cases of inheritance, succession, contract and dealing between party and party.
114 (2)	Powers of Advocate-General.

Section	Subject
124 (1) ...	Oppression.
124 (4)—so far as it relates to persons employed or concerned in the collection of revenue or the administration of justice.	Trading.
124 (5)—so far as it relates to persons other than the Governor-General, a Governor, or a member of the Executive Council of the Governor-General or of a Governor.	Receiving presents.
125 ...	Loans to Princes or Chiefs.
126 ...	Carrying on dangerous correspondence.
128 ...	Limitation for prosecutions in British India.
129 ...	Penalties.

APPENDIX M

INSTRUCTIONS¹ TO GOVERNORS

Whereas by the Government of India Act provision has been made for the gradual development of self-governing institutions in British India with a view to the progressive realization of responsible government in that country as an integral part of Our Empire :

And whereas it is Our will and pleasure that in the execution of the office of Governor in and over the Presidency or the Province of . . . you shall further the purposes of the said Act to the end that the institutions and methods of Government therein provided shall be laid upon the best and surest foundations, that the people of the said Presidency or Province shall acquire such habits of political action and respect such conventions as will best and soonest fit them for self-government, and that Our authority and the authority of Our Governor-General in Council shall be duly maintained :

¹ *The Calcutta Gazette* (Extra.), January 3, 1921, pp. 6 and 7.

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

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

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

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

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

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

6. In considering a Minister's advice and deciding whether or not there is sufficient cause in any case to dissent from his opinion, you shall have due regard to his relations with the Legislative Council

and to the wishes of the people of the Presidency or Province, as expressed by their representatives therein.

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

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

(3) to take care that due provision shall be made for the advancement and social welfare of those classes amongst the people committed to your charge, who, whether on account of the smallness of their number, or their lack of educational or material advances, or from any other cause, specially rely upon Our protection and cannot as yet fully rely for their welfare upon joint political action, and that such classes shall not suffer or have cause to fear neglect or oppression ;

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

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

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

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

APPENDIX N

INSTRUCTIONS TO THE GOVERNOR-GENERAL ¹

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

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

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

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

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

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

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

II. And We do authorize and require Our said Governor-General from time to time, by himself or by any other person to be authorized

¹ See *The Gazette of India*, June 11, 1921, pp. 850-51; the Government of India Notification No. 1552, June 8, 1921.

by him in that behalf, to administer to every person who shall be appointed by Us by Warrant under Our Royal Sign Manual to be a Governor of one of Our presidencies or provinces in India, and to every person who shall be appointed to be a Lieutenant-Governor or a Chief Commissioner, the Oaths of Allegiance and of Office in the said forms.

III. And We do authorize and require Our said Governor-General from time to time, by himself or by any other person to be authorized by him in that behalf, to administer to every person who shall be appointed by Us by Warrant under Our Royal Sign Manual or by the Secretary of State in Council of India to be a Member of the Governor-General's Executive Council or a Member of a Governor's Executive Council, and to every person who shall be appointed to be a Member of a Lieutenant-Governor's Executive Council, and to every person whom any of Our said Governors shall appoint to be a Minister, the Oaths of Allegiance and of Office in the said forms together with the Oath of Secrecy hereto appended.

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

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

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

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

VIII. Similarly, it is Our will and pleasure that Our said Governor-General shall use all endeavour consistent with the fulfilment of his responsibilities to Us and to Our Parliament for the welfare of Our Indian subjects, that the administration of the matters

committed to the direct charge of Our Governor-General in Council may be conducted in harmony with the wishes of Our said subjects as expressed by their representatives in the Indian Legislature, so far as the same shall appear to him to be just and reasonable.

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

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

APPENDIX O¹PROVISIONS OF THE GOVERNMENT OF INDIA
(LEAVE OF ABSENCE) ACT, 1924.

(Section 1 of the Government of India (Leave of Absence) Act, 1924, has been incorporated in the Government of India Act as Sections 86 and 87 with the consequential changes in the latter Act; similarly, Section 2 of the former Act has been incorporated in the latter as its Sub-sections (4) and (4A) of Section 92.)

86. (1) The Secretary of State in Council may grant to the Governor-General and, on the recommendation of the Governor-General in Council, to the Commander-in-Chief, leave of absence for urgent reasons of public interest, or of health or of private affairs.

(2) The Secretary of State in Council may, on the recommendation of the Governor-General in Council, grant to a Governor, and the Governor-General in Council, or a Governor in Council or a Lieutenant-Governor in Council, as the case may be, may grant to any member of his Executive Council (other than the

¹ See *The Government of India Act* published by the Government of India, pp. 118a, 118b and 119; also pp. 122-23; also pp. 228a and 228b.

Commander-in-Chief) leave of absence for urgent reasons of health or of private affairs.

(3) Leave of absence shall not be granted to any person in pursuance of this section for any period exceeding four months nor more than once during his tenure of office :

Provided that the Secretary of State in Council may, if he thinks fit, extend any period of leave so granted, but in any such case the reasons for the extension shall be set forth in a minute signed by the Secretary of State and laid before both Houses of Parliament.

(4) Where leave of absence is granted to any person in pursuance of this section, he shall retain his office during the period of leave as originally granted, or, if that period is extended by the Secretary of State in Council, during the period as so extended, but, if his absence exceeds that period, his office shall be deemed to have become vacant in the case of a person granted leave for urgent reasons of public interest as from the termination of that period and in any other case as from the commencement of his absence.

(5) Where a person obtains leave of absence in pursuance of this section, he shall be entitled to receive during his absence such leave-allowances as may be prescribed by rules made by the Secretary of State in Council, but, if he does not resume his duties upon the termination of the period of the leave, he shall, unless the Secretary of State in Council otherwise directs, repay, in such manner as may be so prescribed as aforesaid, any leave allowances received under this sub-section.

(6) If the Governor-General or the Commander-in-Chief is granted leave for urgent reasons of public interest, the Secretary of State in Council may, in addition to the leave allowances to which he is entitled under this section, grant to him such further allowances in respect of travelling expenses as the Secretary of State in Council may think fit.

(7) Rules made under this section shall be laid before both Houses of Parliament as soon as may be after they are made.

87. (1) Where leave is granted in pursuance of the foregoing section to the Governor-General, or to the Commander-in-Chief, or to a Governor, a person shall be appointed to act in his place during his absence, and the appointment shall be made by His Majesty by warrant under the Royal Sign Manual. The person so appointed during the absence of the Commander-in-Chief may, if the Commander-in-Chief was a member of the Executive

Acting
appoint-
ments
during the
absence
of the
Governor-
General, etc.
on leave.

il of the Governor-General, be also appointed by the Governor-General in Council to be a temporary member of that Council.

2) The person so appointed shall, until the return to duty of the permanent holder of the office, or, if he does not return, until a successor arrives, hold and execute the office to which he has been appointed and shall have and may exercise all the rights and powers of and shall be entitled to receive the emoluments and advantages appertaining to the office, foregoing the emoluments and advantages (if any) to which he was entitled at the time of his being appointed to that office.

3) When during the absence on leave of the Governor-General a person is appointed to act in his place, the provisions of this section relating to the appointment of a person to act in the place of a Governor to whom leave of absence has been granted in pursuance of the foregoing section shall apply in the same manner as if leave of absence had been so granted to the Governor.

2. (4) Until the return to duty of the member so incapable or absent, the person temporarily appointed shall hold and execute the office to which he has been appointed, and shall have and may exercise all the rights and powers thereof, and shall be entitled to receive the emoluments and advantages appertaining to the office, foregoing the emoluments and advantages (if any) to which he was entitled at the time of his being appointed to that office.

(5) When a member of an Executive Council is by infirmity or otherwise rendered incapable of acting or attending to act as such a temporary member of council is appointed in his place, the latter member shall be entitled to receive half his salary for the period of his absence.

MONTHLY RATES OF LEAVE ALLOWANCES PAYABLE¹

	RS.	A.	P. ²
Governor-General	6,000	0	0
Commander-in-Chief and Governors (other than the			
Governors of the Central Provinces and Assam ...	4,000	0	0
Governor of the Central Provinces ...	3,000	0	0
Governor of Assam	2,750	0	0

Schedule to Rules under Section 86 of the Government of India Act 1919.
See pages 228a and 228b of *The Government of India Act 1919* as amended by the Government of India.

	RS.	A.	P.
Member of the Governor-General's Executive Council ...	3,333	5	4
Member of the Executive Council of the Governor of Bengal, Madras, Bombay or the United Provinces ...	2,666	10	8
Member of the Executive Council of the Governor of the Punjab, Bihar and Orissa, or Burma ...	2,500	0	0
Member of the Executive Council of the Governor of the Central Provinces ...	2,000	0	0
Member of the Executive Council of the Governor of Assam ...	1,750	0	0

APPENDIX P¹

AMENDMENTS TO ELECTORAL RULES.

Rules for the election of members of the Council of State, the Legislative Assembly and the provincial Legislative Councils have recently² (July, 1925) been amended in respect of the clause dealing with the general qualifications for election, as follows :—

¹ Sub-Rule 2 of Rule 5 of the Electoral Rules for the two Chambers of the Indian Legislature :—A person against whom a conviction by a criminal court, involving a sentence of transportation or imprisonment for a period of more than one year, is subsisting, shall, unless the offence of which he was convicted has been pardoned, not be eligible for election for five years from the date of the expiration of the sentence, provided that on an application made by a person disqualified under this sub-rule and with the previous approval of the Governor-General in Council the Local Government of a province may, by order in this behalf, remove the disqualification in respect of eligibility of such person for election as a member of either Chamber of the Indian Legislature to represent any constituency within that province.

Sub-Rule 2 of Rule 5 of the Provincial Electoral Rules :—A person against whom a conviction by a criminal court, involving a sentence of transportation or imprisonment for a period of more than one year, is subsisting, shall, unless the offence of which he was convicted has been pardoned, not be eligible for election for five years from the date of the expiration of the sentence, provided that on an application made by a person disqualified under this Sub-Rule and with

¹ See *The Englishman* (dak edition) of October 26, 1925.

² See the Government of India (Home Department) Notifications of 23rd July and 24th October, 1925.

the previous approval of the Governor-General-in-Council, the Local Government may remove the disqualification by order in this behalf.

A sentence of more than one year's imprisonment must now have been imposed before there is any disqualification, and further it is open to the Local Government, with the approval of the Governor-General-in-Council, on consideration of the circumstances of any individual case, to remove the disqualification. The rules require an application by the person disqualified, but any person, who desires to stand for election for any of the Local Councils or for either Chamber of the Indian Legislature, has only to address the Local Government, and in a written application give particulars of the sentence which constitutes a disqualification in his case and say that he wishes to stand for election and ask that the disqualification may be removed. The Local Government will then be in a position to consider the circumstances of the conviction in his case by the amendments which have been made.'

*This is the best and
perhaps the only book
on Government of
India Act.*

*Note: There is difference between
Govt of India Act, 1919,
and Govt of India Act.*

Sd/-

26-8-59.

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PRINTED IN INDIA
BY GEORGE KENNETH AT THE DIOCESAN PRESS,
MADRAS—1926 C8988.

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