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THE INDIAN CONSTITUTION AND ITS ACTUAL WORKING

BY

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SECOND EDITION

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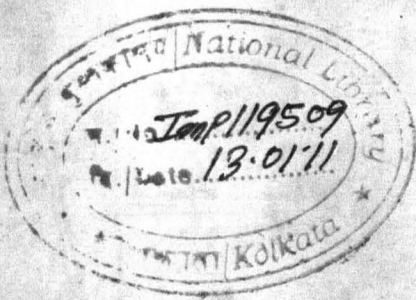
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FOREWORD TO THE FIRST EDITION

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

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

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

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

EVAN COTTON.

EXTRACTS FROM THE PREFACE TO THE FIRST EDITION

THE object of this book is to describe the present Constitution of India, with special reference to its working since its inauguration. * * *

I have attempted, as far as possible, to treat the subject in an impartial and scientific way. I have not, however, hesitated to express my own views on undecided points of law, in the hope of eliciting expressions of opinion from others who are more competent to judge of them than myself. Nor have I refrained from pointing out what appeared to me to be inherent defects in our constitutional system, by comparing it with the political systems of England and of self-governing Dominions like Canada, Australia and South Africa. Another point which I should like my readers to keep in view, is that this book treats of the existing Constitution of India and not of its Administration. The foregoing statement will, I hope, suffice to explain the general scope and plan of the work.

* * * *

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

must also thank Dr. R. C. Majumdar, Mr. C. L. Wrenn and Mr. P. K. Guha of the University of Dacca for the help I have received from them in connection with this work.

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

* * * *

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

D. N. BANERJEE.

DACCA UNIVERSITY,
February, 1925.

PREFACE TO THE SECOND EDITION

IN this edition, which has been unavoidably much delayed, the book has been thoroughly revised and an attempt has been made to bring it, as far as possible, up to date. This has entailed numerous alterations and additions. Chapter XI has been entirely rewritten and the peculiarities of the Indian electoral system have been more fully dealt with therein. A few more appendices have also been added.

I am indebted to Professor A. Berriedale Keith of the University of Edinburgh for having very kindly called my attention to two slight errors which had crept into the first edition through an oversight. They have been corrected in this edition.

The book is chiefly based upon original official documents. I have, however, occasionally made illustrative quotations from the works of various authors and I express here my deep sense of obligation to all of them. I have always acknowledged the source on which I have drawn.

I cannot thank too highly Mr. H. D. Bhattacharyya, Head of the Department of Philosophy in the University of Dacca, who has very carefully read the proofs of this edition also, and given me a number of useful suggestions. I should be failing in my duty if I did not acknowledge in this connexion the help which I have received in the preparation of this edition too, from Professor P. B. Rudra of Dacca Intermediate College, who has kindly assisted me in the correction of the proofs and whose literary criticisms have been of great value to me.

DACCA UNIVERSITY,

D. N. BANERJEE.

- January, 1930.

EXPLANATIONS OF ABBREVIATIONS USED IN THE BOOK

Joint Report = Report on Indian Constitutional Reforms.

Montagu-Chelmsford Report = Do.

Crewe Committee = The Committee on the Home Administration of Indian Affairs.

L. A. = The Legislative Assembly.

C. S. = The Council of State.

B. L. C. = The Bengal Legislative Council.

P. L. C. = Provincial Legislative Council.

E. R. = Electoral Rule.

Sch. = Schedule.

The Act = The Government of India Act (unless it appears otherwise from the context).

J. S. C. R. = Report of the Joint Select Committee on the Government of India Bill, 1919.

Ind. Gaz. = *The Gazette of India.*

Imp. Gaz. = *The Imperial Gazetteer.*

Cal. Gaz. = *The Calcutta Gazette.*

S. O. = Standing Order.

U. P. = The United Provinces.

C. P. = The Central Provinces.

Ind. = India.

Ben. = Bengal.

Mad. = Madras.

Bom. = Bombay.

L. A. D. = *The Legislative Assembly Debates.*

C. S. D. = *The Council of State Debates.*

I. L. R. = Indian Legislative Rule.

P. L. R. = Provincial Legislative Rule.

Govt. = Government.

N.B.—All references to daily newspapers are to their *dâk* editions.

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CHAPTER I

INTRODUCTORY

THE SALIENT FEATURES OF THE INDIAN CONSTITUTION

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

The Constitution of British India,¹ whereby we mean the body of rules and principles relating to its fundamental political institutions, is mainly 'written' and documentary. Its basis is an enactment of the British Parliament, namely, the Government of India Act,² and the Rules³ made thereunder. There are no doubt some

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

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

² 5 and 6 Geo. 5, Ch. 61; 6 and 7 Geo. 5, Ch. 37; 9 and 10 Geo. 5, Ch. 101; and 14 and 15 Geo. 5, Ch. 28. It is the Government of India Act, 1915, as amended by the Government of India (Amendment) Act, 1916, and as further amended by the Government of India Act, 1919, the Government of India (Leave of Absence) Act, 1924, the Government of India (Civil Services) Act, 1925, the Government of India (Indian Navy) Act, 1927, and the Government of India (Statutory Commission) Act, 1927.

³ e.g., the Devolution Rules; the Electoral Rules; the Legislative Rules, etc.

conventional elements¹ in our Constitution, but their number is, as yet, not very considerable; nor are they, with very few exceptions, of much constitutional importance. Whatever differences of opinion may exist among constitutional writers regarding the exact proportion and political significance of the conventional elements in the Constitution of

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

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

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

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

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

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

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

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

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

¹ *The Governance of England*, 1919, p. 4.

The English Constitution, says Viscount Bryce, 'is a mass of precedents, carried in men's memories or recorded in writing, of dicta of lawyers or statesmen, of customs, usages, understandings and beliefs bearing upon the methods of Government, together with a certain number of statutes, some of them containing matters of petty detail, others relating to private just as much as to public law, nearly all of them pre-supposing and mixed up with precedents and customs, and all of them covered with a parasitic growth of legal decisions and political habits, apart from which the statutes would be almost unworkable, or at any rate quite different in their working from what they really are'.—*Studies in History and Jurisprudence*, vol. i, 1901, pp. 156-57.

² Constitutions are classified as 'Rigid' and 'Flexible'.

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

³ J. A. R. Marriott, *English Political Institutions*, p. 17.

The 'rigidity' of the Indian¹ Constitution consists in the fact that it cannot be legally changed, except in respect of a few matters,² either by the Indian Legislature or by any of the Provincial legislatures. The Government of India Act which (together with the Rules made thereunder) is, as has been stated above, the basis of our Constitution, cannot be repealed except by an Act of the Imperial Parliament; nor can it be otherwise amended save in respect of some of its provisions with regard to which it has conferred upon the Indian Legislature a concurrent power of legislation.³ 'The Indian Legislature⁴ has not, unless expressly so authorised by Act of Parliament, power to make any law repealing or affecting any Act of Parliament passed after the year one thousand eight hundred and sixty and extending to British India (including the Army Act, the Air Force Act and any Act amending the same); . . . and has not power to make any law affecting the authority of Parliament, or any part of the unwritten laws or constitution of the United Kingdom of Great Britain and Ireland whereon may depend in any degree the allegiance of any person to the Crown of the United Kingdom, or affecting the sovereignty or dominion of the Crown over any part of

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

² See foot-note 3 below.

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

⁴ 'Subject to the provisions of the Government of India Act, the Indian Legislature shall consist of the Governor-General and two Chambers, namely, the Council of State and the Legislative Assembly'.—The Government of India Act, Section 63.

British India.'¹ Again, 'the local legislature of any province has not power to make any law affecting any Act of Parliament.'²

The Indian legislatures are, to use Prof. Dicey's words, 'non-sovereign law-making bodies'; their powers and authority have been derived from the Government of India Act which constitutes the supreme law of the land, and their laws are valid if they are not inconsistent with this supreme law. ✓ As Section 84(1) of the same Act distinctly lays down, 'a law made by any authority in British India and repugnant to any provision of this or any other Act of Parliament shall, to the extent of that repugnancy but not otherwise, be void.'³ The Courts in India may be called upon to pronounce upon the legality or constitutionality of an Act passed by an Indian legislature, Central or Provincial. If any particular piece of Indian legislation is not within the legal powers of the enacting authority, it is bound to be treated as void by an Indian judge. As Prof. Dicey says, 'The Courts (in India) treat Acts passed by the Indian Council⁴ precisely in the same way in which the King's Bench Division treats the bye-laws of a railway company. . . . An Indian tribunal may be called upon to say that an Act passed by the Governor-General need not be obeyed because it is unconstitutional or void.' 'No British Court', he continues, 'can give judgment, or ever does give judgment, that an Act of Parliament need not be obeyed because it is unconstitutional. Here, in short, we have the essential

¹ The Government of India Act, Section 65.

² *Ibid.*, Section 80A (4).

³ See in this connexion *Bugga vs. The King-Emperor*, 47 I.A., pp. 139-140.

⁴ He obviously means here the Indian Legislative Council. He had written his book (from which the extract has been quoted) long before the Government of India Act, 1919 (or, even, 1915), was passed.

difference between subordinate and sovereign legislative power.' ¹

We may note here that in respect of constitutional amendment the position of the Parliament of the Union of South Africa is fundamentally different from that of the Indian Legislature. There the Parliament can change the Constitution of the Union in the same way as it can amend one of its ordinary laws. 'The only limitation', says the Hon'ble Mr. R. H. Brand,² 'on the complete power of Parliament over the Constitution is the requirement of a two-thirds majority (at a joint sitting of both Houses of Parliament) in certain particular cases.'³

The third feature that we notice in our Constitution is that it is as yet unitary, and not federal. 'Federalism means,' writes Prof. Dicey, 'the distribution of the force of the State

¹ Dicey, *The Law of the Constitution*, eighth edition, pp. 96 and 98.

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

'The Indian Legislature has powers expressly limited by the Act of the Imperial Parliament which created it, and it can, of course, do nothing beyond the limits which circumscribe these powers. But when acting within these limits, it is not in any sense an agent or delegate of the Imperial Parliament, but has, and was intended to have, plenary powers of legislation, as large, and of the same nature, as those of Parliament itself. The established Courts of Justice, when a question arises whether the prescribed limits have been exceeded, must of necessity determine that question; and the only way in which they can properly do so, is by looking to the terms of the instrument by which, affirmatively, the legislative powers were created, and by which, negatively, they are restricted. If what has been done is legislation within the general scope of the affirmative words which give the power, and if it violates no express condition or restriction by which that power is limited (in which category would, of course, be included any Act of the Imperial Parliament at variance with it), it is not for any Court of Justice to inquire further, or to enlarge constructively those conditions and restrictions'. — *The Indian Law Reports*, 1879, Calcutta Series, vol. iv, pp. 180-181.

² The Hon. R. H. Brand, *The Union of South Africa*, p. 45.

³ South Africa Act, 1909 (9 Edw. 7, Ch. 9), Section 152.

among a number of co-ordinate bodies each originating in and controlled by the constitution.¹ This definition is not yet applicable to the constitutional system that we have now in our country. Congress in the United States has *exclusive* power of legislation with regard to certain definite matters² and it cannot legally exercise any legislative jurisdiction over those subjects which have been reserved to the separate States by the Constitution of the country.³

The Constitution as yet unitary and not federal.

Comparison with the United States and Canada.

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

¹ Dicey, *Law of the Constitution*, p. 153 (eighth edition).

² Cf. The Constitution of the United States.

³ The tenth amendment to the Constitution of the United States provides: 'The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.'

the foregoing terms of this Section, it is hereby declared that (notwithstanding anything in the Act) the *exclusive legislative authority* of the Parliament of Canada extends to all matters coming within the classes of subjects next hereinafter enumerated. . . .¹

(Now let us turn our attention to our own country. As regards the control of the Central Government over Provincial legislation, we find that if the Governor, Lieutenant-Governor, or Chief Commissioner, as the case may be, assents to a Bill which has been duly passed by a Provincial Legislative Council, 'he shall forthwith send an authentic copy of the Act to the Governor-General, and the Act shall not have validity until the Governor-General has assented thereto and that assent has been signified by the Governor-General to, and published by, the Governor, Lieutenant-Governor or Chief Commissioner.'² It may be noted here that though the Dominion Government in Canada can disallow a Provincial legislation, the assent of the Governor-General there is not required (except in the case of 'reserved' Bills) for the validity of a Provincial Act.³

¹ Cf. Section 92 of the British North America Act, 1867.

² The Dominion parliament and the provincial legislatures are sovereign (?) bodies within their respective constitutional limits. While the Dominion parliament has entrusted to it a jurisdiction over matters of national import, and possesses besides a general power to legislate on matters not specifically reserved to the local legislatures, the latter nevertheless have had conferred upon them powers as plenary and ample within the limits prescribed by the constitutional law as are possessed by the general parliament.—Sir J. G. Bourinot, *Constitutional History of Canada*, p. 136.

³ The Government of India Act, Section 81.

³ British North America Act, 1867, Section 90.

Whatever departures from the principle of federalism are noticed in the Constitution of Canada, are due to the fact that the Constitution is not *strictly* federal. It has a 'unitary bias'. As Mr. Egerton puts it, 'The British North America Act is further noteworthy as being a federal Constitution to a great extent drafted by men who were in favour of a legislative union'.—*Federations and Unions within the British Empire*, p. 39. See in this connexion Sir John Marriott's *Second Chambers*, pp. 150-151.

As regards the scope of legislative authority, though 'the local legislature of any province has power, subject to the provisions of the Government of India Act, to make laws for the peace and good government of the territories for the time being constituting that province,'¹ yet it is especially laid down in Section 65 of the Act² that 'the Indian Legislature has power to make laws for all persons, for all courts, and for all places and things, within British India. . . .' Besides, the local legislature of any province may not, without the previous sanction of the Governor-General, make or take into consideration certain laws enumerated in Section 80A (3) of the Act.

'Unitarianism' implies the concentration of the powers of Government in a central authority and this concentration exists in our system of government to a pre-eminent degree, as shown above.³ This justifies our characterizing our present Constitution as unitary.⁴ ✓

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

How it came to be unitary.

Before the passing of the East India Company Act of 1773 (commonly known as the Regulating Act), the Presidencies of Bengal, Bombay and Madras, which were, in each case, administered by a President or Governor and a Council composed of servants of the East India Company, 'were independent of each other, and each Government

¹ The Government of India Act, Section 80A.

² i.e. The Government of India Act.

³ That Clause 2 of Section 67 of the Government of India Act forbids the introduction into either chamber of the Indian Legislature of any measure regulating any Provincial subject (which is not subject to legislation by the Indian Legislature), or repealing or amending any Provincial Act, without the previous sanction of the Governor-General, does not in any way invalidate our proposition that the Indian Constitution is unitary.

⁴ As a further proof of this, we may cite here Section 84 (2) of the Government of India Act. See Chap. 14.

was absolute within its limits, subject to the distant and intermittent control of the Directors at Home. But the need for a common policy in the face of foreign enemies was apparent ; and when the disorder of the Company's finances and suspicions about the fortunes amassed by its servants in India drove Parliament to intervene, it was wisely decided to create one supreme Government in the country.¹ In order to ensure this the Act of 1773 provided for the appointment of a Governor-General and four counsellors for the government of the Presidency of Fort William in Bengal and further declared that the said Governor-General and Council, or the major part of them, were ' to have power of superintending and controlling the government and management of the Presidencies of Madras, Bombay and Bencoolen respectively, so far and in so much as that it should not be lawful ' for the Governments of the three Presidencies to make any orders for commencing hostilities, or declaring or making war, against any Indian Princes or Powers, or for negotiating or concluding any treaty of peace, or other treaty with any such Indian Princes or Powers, without the consent and approbation of the Governor-General and Council, except in such cases of imminent necessity as would render it dangerous to postpone such hostilities or treaties until the arrival of their orders, and except also in such cases where they had received special orders from the Company.² A President and Council acting against these provisions were liable to be suspended by the Governor-General and Council ; and they were directed to pay due obedience to orders emanating from the latter authorities.³ Thus the first step towards centralization was taken in 1773.

¹ *Report on Indian Constitutional Reforms*, para. 37.

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

³ *Ibid.*

The next step towards establishing a centralized system of government in India was taken in 1784. The East India Company Act of that year (commonly known as Pitt's Act) authorized the Governor-General and Council of Fort William to 'superintend, control and direct the several Presidencies and Governments (then existing or thereafter to be erected or established in the East Indies by the United Company) in all such points as relate to any transactions with the Country Powers, or to war or peace, or to the application of the revenues or forces of such Presidencies and Settlements in time of war, or any such other points as would be, from time to time, specially referred by the Court of Directors of the Company to their superintendence and control.'¹ The Charter Act of 1793 further emphasized this 'power of superintendence, direction and control' to be exercised by the Government of Bengal over the Governments of Madras and Bombay. The final stage in this process of centralization was reached with the passing of the Charter Act of 1833.²

Under this Act the Governor-General of Bengal in Council became the Governor-General of India in Council. 'The Governments of Madras and Bombay were drastically deprived of their powers of legislation, and left only with the right of proposing to the Governor-General in Council projects of the laws which they thought expedient.'³ Thus

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

² 3 and 4 Will. IV, Ch. 85.

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

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

the Governor-General of India in Council¹ became the sole law-making authority in India. Besides, 'the superintendence, direction and control of the whole civil and military government of the Company's territories and revenues in India' were vested in him. And it was further enacted that no Governor or Governor in Council should have the power of creating any new office, or granting any salary, gratuity or allowance, without the previous sanction of the Governor-General in Council. Thus was effected a complete concentration of all powers in one supreme authority.

Later on, measures were adopted to increase the legislative, financial and administrative powers of the Provincial Governments; but the Government of the country just before the introduction of the Montagu-Chelmsford Reforms 'was one and . . . the local Governments were literally the "agents" of the Government of India.'² A great step towards Provincial independence has no doubt been taken under the Reforms, but nothing has yet been done, in law and theory, to destroy the unitary character of our constitutional system.

What form the Government of our country will take in the future, it is extremely difficult to predict now. The problems of the territories now under the rule of the Indian Princes complicate the whole situation. At the same time, one can hardly think of India enjoying full dominion

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

in addition to that of the Governor.—The Indian Councils Act, 1861.

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

¹ His Council was increased by the addition of a law member not in the service of the Company. This additional member was not entitled 'to sit or vote in the said council except at meetings thereof for making laws and regulations.' The Charter Act, 1833, Section 40. Mukherji's *Documents*.

² *Report on Indian Constitutional Reforms*, para. 120.

status with more than one-third of its¹ area lying outside the jurisdiction of its Government. If these Indian States are to be given a worthy place in any scheme of reconstruction of our governmental system, and if their interests and privileges are to be harmonized with those of the provinces of British India, some form of federation is the only solution.² The provinces of British India may not have any innate powers of their own to surrender in a 'foedus',³ but the same cannot be said of the important Indian States. Apart from this, there are other considerations to be taken into account. 'Federalism is' according to a very distinguished authority⁴ on Constitutional Law, 'an equally legitimate resource whether it is adopted for the sake of tightening or for the sake of loosening a pre-existing bond.' In our proposed federation, the pre-existing bonds of union between the Indian States and British India will have to be tightened, and those between the central and local Governments of British India will have to be loosened.

¹ The total area of India is 1,805,332 square miles. Of the total area British territory comprises 1,094,300 square miles and the Indian States 711,032 square miles.—*Statistical Abstract for British India, 1916-17 to 1925-26*.

² 'Granted the announcement of August 20, we cannot at the present time envisage its complete fulfilment in any form other than that of a congeries of self-governing Indian provinces associated for certain purposes under a responsible government of India; with possibly what are now the Native States of India finally embodied in the same whole, in some relation which we will not now attempt to define. For such an organization the English language has no word, but "federal." '—*Report on Indian Constitutional Reforms*, para. 120.

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

Vide also Government of India's (Home Department) Despatch, dated Simla, August 25, 1911, para. 3.

³ *Report on Indian Constitutional Reforms*, para. 120.

⁴ Bryce, *The American Commonwealth* (1922), vol. i, p. 351.

But it must also be stated in this connexion that it will be a folly to ignore altogether the peculiar position of the Indian States with their traditions of independence in respect of matters of internal administration, as it will be unwise to ignore any longer the insistent demand for 'provincial autonomy' on the part of the provinces of British India. On the one hand, the States represent in a special manner the centrifugal forces in Indian politics. Such forces 'may, if too closely pent up, like heated water in the heart of the earth, produce at untoward moments explosions like those of a volcano.'¹ They may, at least, cause a 'harmful friction' and impede the smooth working of the constitutional machinery.² They may also introduce 'an element of instability' into the body politic, and may even become sources of danger in times of internal disturbance or external invasion.³ On the other hand, it may be urged on behalf of the granting of provincial autonomy that 'the energy of civic life may be better secured by giving ample range and sphere of play to local self-government, which will stimulate and train the political interest of the members of the State, and relieve the central authority of some onerous duties.'⁴ At the same time, the unity of the political system of the country as a whole, and also the stability and efficiency of its Central Government have to be maintained. Thus India will have to solve the same problem of the proper adjustment of the centrifugal and centripetal forces in its politics, that has been solved by other countries having a federal system of government. The constitutional history of the United States of America may provide us with valuable guidance in solving many of the problems presented by the Indian States, as well as in determining their status in the

¹ See Bryce, *Studies in History and Jurisprudence* (1901), vol. i, p. 294.

² *Ibid.*, p. 270.

³ *Ibid.*, p. 270.

⁴ *Ibid.*, p. 294.

future Constitution of India ; while that of Upper and Lower Canada¹ from 1841 to 1867 may prove an equally helpful guide in settling the future relations of the provinces of British India to the Central Government. As Prof. Wrong said in the course of his lecture² on 'The Creation of the Federal System in Canada,' 'In Canada, the problem was for the Union³ to get rid of some of its powers in favour of the provinces, while, in the United States, there was the opposite problem of getting the separate units to give up something, in order to create a central government. In Canada the central power retained all that it did not give up, while, in the United States, it was the separate units which did this. Thus we have the far-reaching difference in the basis of the two federations. Canada is a single State, in which the various units have prescribed powers; the United States is a union of many States, which have agreed to delegate certain powers to a central authority.' Thus, there are lessons to be learnt from both these countries.

The distribution of powers in our proposed federation will be as in a federal constitution. The Central Government with its organs reconstructed on a basis different from the present, will be in charge of those affairs of State which will be of common interest to all or which will require uniformity of action; while the provincial and 'State' Governments will enjoy complete autonomy in respect of the affairs of local interest. It may be desirable to vest in the federal executive, as in the case of Canada, the power of

¹ See Kennedy, *The Constitution of Canada* (1922); Chs. 13 and 17-19; see also *The Federation of Canada* (1917), Oxford University Press.

² Delivered in the University of Toronto in March, 1917. See *The Federation of Canada* (Oxford University Press), p. 24.

³ It means the legislative union of Upper and Lower Canada under the Imperial Union Act of 1840 (3 and 4 Victoria, c. 35). This Union was replaced by their federation along with two other provinces under the British North America Act, 1867.

disallowing provincial (or State) legislation, although it must be understood from the very beginning that this power of disallowance must be exercised with great care and caution.) Such a constitutional provision will act as a potential check on disruptive legislative activities on the part of local legislatures. Besides, it will be quite in keeping with the traditions of the centralized system of Government that has hitherto obtained in British India, as also with the implications of the suzerainty which the British Crown has so far claimed and exercised over the Indian States. Thus our idea is that though our future Constitution should be federal in form, it should have a 'unitary bias'.

Addressing the members of the Indian Legislature on August 20, 1925, Lord Reading, as Governor-General, made the following observation¹ in the course of his speech:—

'There are many in India at the present moment who hold the solution lies in Provincial autonomy. The principle that local affairs should be administered by Local Governments is one that commands general acceptance. But if we are to avoid disintegration—a danger that the history of India constantly emphasizes—there must, in my judgment, be a strong Central Government capable of exercising a legitimate degree of supervision and control. The relations of such a Government to a number of so-called autonomous Provincial Governments have not yet been thought out. It can scarcely be contemplated even by the most ardent friends of Provincial autonomy that there should be nine or more, and as some contend many more, separate and independent Provincial Governments entirely free in all directions from supervision and control. Before any scheme of Provincial autonomy could be established, the functions that should be entrusted to them and the degree of super-

¹ Legislative Assembly Debates, vol. vi, 1925, p. 14.

vision and control to be exercised over them must be explored with patience.'

The solution that we have suggested above should satisfy him as well as those who think like him about the feasibility of Provincial autonomy, or entertain honest doubts as to the possibility of success of federalism, in India, because it will meet all legitimate requirements of both union and separation.

This general survey of the political system of British India will remain incomplete if we do not notice here two other peculiarities of our present Constitution—its essentially provisional character and its elasticity. The scheme of government which was embodied in the Government of India Act, 1919, was devised by its authors to meet the requirements of the period of transition from bureaucracy to responsible government—the goal of British policy in India. For a long time the people of India had been insisting on having an effective voice in the administration of their own country and in the shaping of its destinies. The Great War and India's participation in it, the revolution in Russia and the overthrow of autocracy there, the speeches of English and American statesmen proclaiming the right of all nations to self-determination,—all these gave a new impetus to those political aspirations of the Indian people. It, therefore, became very necessary to grant them substantial political rights without further delay. But there were others again who had to be reckoned with: the representatives of vested interests as well as those who honestly believed in the danger of haste in liberalizing the Indian political institutions. The Government of India Act of 1919 was an attempt to please both these classes of people holding more or less conflicting views. Naturally it was a sort of compromise between the principle of progress and the principle of caution ; between the demands

The provisional character of the present Constitution of India.

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of a newly awakened nationalism and the warnings, not always prompted, however, by disinterested motives, of those who preferred experience to theory and were therefore afraid of anything new and untried. The result was a half-way-house arrangement between autocracy and popular government. This will explain some of the anomalies in our present constitutional system—especially the curious structure of government, commonly termed dyarchy, prevailing in the major provinces. This will also explain the continuance of an irremovable and irresponsible Executive in the Central Government and the creation of a Central Legislature with two Chambers, each having an elected majority, which, impotent to influence the course of administration of the country effectively, express their resentment in violent and bitter criticisms and, sometimes, in a policy of obstruction.

In regard to the elastic nature of our Constitution, it may be enough here to state that, if necessary, many important alterations in the constitution may be effected simply by means of rules framed under the Government of India Act, without the necessity of any Parliamentary enactment. The Act has outlined¹ the main features of the constitutional changes introduced by it, but has left these changes to be worked out in detail in the form of Rules to be made under its authority.² As Sir Courtenay Ilbert says, the

¹ See Chapter XXI in this connexion.

² 'This plan has been adopted again and again in legislation with reference to the Government of India. It is the only plan which secures elasticity and a Bill of reasonable dimensions, not overloaded with detail. The existing (1919) law as to voters' qualifications and elections in India is not embodied in any statute, and any attempt to regulate such matters by statute would involve very long and complicated provisions, which, once incorporated in the statute, could not in the ordinary course be amended except by the slow and difficult process of further legislation. It must, moreover, be recognized that this Bill provides for the introduction of new constitutional forms expressly devised to fit the conditions of a transitional stage. Elasticity is therefore essential, so as to admit of detailed arrangements being

Constitution 'owes its elasticity mainly to an extensive use of what has sometimes been called delegated legislation, legislation not directly by Parliament, but by rules and orders made under an authority given by Parliament.'¹

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

worked out in the light of experience on the basis of the general scheme outlined in the statute. The process of development would be seriously embarrassed if the whole system were made rigid at the start. It is also necessary to bear in mind that on some important matters different provisions will be required in different Provinces'.—*Memorandum by the Secretary of State for India on the Government of India Bill, 1919.*

¹ Ilbert and Meston, *The New Constitution of India*, p. 28.

CHAPTER II

LEGISLATURES—THE INDIAN LEGISLATURE :

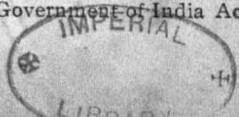
THE LEGISLATIVE ASSEMBLY

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

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

¹ The Government of India Act, Section 63.

² *Ibid.*



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

We may note here, by way of comparison, the position of the Lower House in some of the self-governing colonies of the British Commonwealth. The House of Commons in Canada continues for five years from the day of the return of the Writs for choosing the House (subject to being earlier dissolved by the Governor-General), and no longer.² In the Commonwealth of Australia every House of Representatives lasts for three years only from its first meeting ; and though the Governor-General there may dissolve it before the expiration of its normal term, he cannot prolong its life.³ The normal duration of the House of Assembly in the Union of South Africa is five years, and no longer ; but its term may be earlier terminated by the Governor-General there,⁴ as in the case of the other two colonies. Thus we find that, unlike the Governor-General in India, the Governor-General in Canada, Australia and in South Africa has no right to prolong the normal life of the Lower House in those countries.

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

The next point to be noticed in connection with our

¹ The Government of India Act, Section 63D.

² The British North America Act, 1867, Section 50.

³ The Commonwealth of Australia Act, 1900, Section 28.

⁴ South Africa Act, 1909, Section 45.

⁵ The Government of India Act, Section 63D.

Legislative Assembly is its composition. It consists at present of one hundred and forty-five members of whom one hundred and four are elected and the rest are nominated. Among the nominated members twenty-six must be officials and one¹ must be a person nominated as the result of an election held in Berar. The present number of members in the Assembly has been fixed by Rules² made under the Government of India Act, and is in excess of the statutory number which is one hundred and forty only.³ The Act declares that the maximum number in the case of the Legislative Assembly may be varied provided that, at least, five-sevenths of its members are elected, and, at least, one-third of the other members are non-officials.⁴

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

The elected members of the Indian Legislative Assembly have been allotted to the different provinces as follows :— Madras, 16; Bombay, 16; Bengal, 17; the United Provinces, 16; the Punjab, 12; Bihar and Orissa, 12; the Central

¹ Though actually elected, technically a nominee. The member in question is first elected by the Legislative Assembly constituency in Berar, which comprises the Berar Division minus the Melghat taluk of the Amraoti District, and is thereafter nominated to the Legislative Assembly by the Governor-General.—*The Berar Electoral Rules*.

² *The Legislative Assembly Electoral Rules* (corrected up to September 1, 1926).

³ The Government of India Act, Section 63.

⁴ *Ibid.*

Provinces, 5; Assam, 4; Burma, 4; Delhi, 1; Ajmer-Merwara, 1.¹

Constituencies entitled to representation.

Constituencies entitled to representation in the Legislative Assembly are as shown in the following table ² :—

Provinces	Non-Muham- madan	Muhammadan	European	Landholders	Indian com- merce	Sikh	Non-European	General	Total
Madras ...	10	3	1	1	1	...	...	...	16
Bombay ...	7	4	2	1	2	...	...	...	16
Bengal ...	6	6	3	1	1	...	...	...	17
United Provinces.	8	6	1	1	...	...	...	...	16
Bihar and Orissa.	8	3	...	1	...	...	...	...	12
Central Provinces.	3	1	...	1	...	...	...	...	5
Assam ...	2	1	1	...	...	...	...	...	4
Burma ...	...	...	1	...	...	...	3	...	4
Delhi ...	...	...	...	...	...	...	...	1	1
Punjab ...	3	6	...	1	...	2	...	...	12
Ajmer-Merwara.	...	...	...	...	...	...	...	1	1
Total ...	47	30	9	7	4	2	3	2	104

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

Representation of special interests and communities.

¹ The Legislative Assembly Electoral Rules.

² Ibid.

A nominated member is either an official or a non-official.

Nominated
Members :
their terms
of office.

He is nominated to the Assembly by the Governor-General.¹ A nominated non-official member holds office for the duration of the Legislative Assembly to which he is nominated.

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

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

The Governor-General is not a member of the Legislative Assembly; but he has the right of addressing it,

¹ The Legislative Assembly Electoral Rule 27.

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

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

In the third Legislative Assembly, there are thirteen official members from the provinces distributed among them as follows: Madras, 2; Bombay, 2; Bengal, 2; the United Provinces, 1; the Punjab, 1; Bihar and Orissa, 1; Central Provinces, 1; Assam, 1; Burma, 1; and Berar, 1.—*The Indian Year Book*, 1927 (The Times of India Press).

² The Legislative Assembly Electoral Rule 23.

³ Section 63E of the Act.

⁴ *Ibid.*

⁵ South Africa Act, 1909, Section 52.

and may for that purpose require¹ the attendance of its members.²

The President of the Assembly had, till the expiration of four years³ from its first meeting, to be appointed by the Governor-General, but since then has been, and is now, elected, subject to the approval⁴ of the Governor-General, by the Assembly from among its members.⁵ The procedure⁶ of election at present is as follows. If, owing to a vacancy in the office of an elected President,⁷ the election of a President becomes necessary, the Governor-General must fix a date for the holding of the election and the Secretary of the Assembly must send to every member thereof notice of the day so fixed. At any time before noon on the day preceding the appointed day any member of the Assembly may nominate

The President of the Assembly.

¹ For instance :

'In pursuance of sub-section (3) of section 63B of the Government of India Act, I, Rufus Daniel, Earl of Reading, hereby require the attendance of Members of the Legislative Assembly in the Assembly Chamber at 11 o'clock on the morning of Saturday, the 3rd September, 1921.

(Sd.) READING,
Viceroy and Governor-General.

² Section 63B of the Act.

³ 'Provided that, if at the expiration of such period of four years the Assembly is in session, the President then in office shall continue in office until the end of the current session, and the first election of a President shall take place at the commencement of the ensuing session.' Section 63C of the Act.

* After Mr. V. J. Patel had been re-elected to the Chair on January 20, 1927, the following message from His Excellency the Governor-General was read out to the Assembly by the Chairman :—

'In pursuance of the provisions of section 63C of the Government of India Act, I, Edward Frederick Lindley, Baron Irwin, hereby signify that I approve the election by the Legislative Assembly of Mr. Vithal-bhai Javerbhai Patel as President of the said Assembly.

(Sd.) IRWIN,
Viceroy and Governor-General.

The Legislative Assembly Debates, January 20, 1927.

⁴ Section 63C of the Act.

⁵ Indian Legislative Rule 5A.

⁷ Or, previously, owing to the expiration of the term of office of the appointed President of the Assembly.

another member for election by handing to the Secretary a nomination paper signed by himself as proposer and by a third member as seconder. He must state in the nomination paper the name of the member nominated and also the fact that the latter is willing to serve as President, if elected.

On the day fixed for election the outgoing President, or, if there is no President, the Deputy President or a Chairman of the Assembly, as the case may be, must read out to the Assembly the names of the persons duly¹ nominated, together with those of their proposers and seconders, and, if only one member has been so nominated, must declare him to be elected. If, however, more than one person has been so nominated, the Assembly must elect its President by ballot.

If only two candidates have been nominated, the candidate who receives the larger number of votes, is declared elected. But if the number of such candidates is more than two and none of them secures at the first ballot more votes than the total number of votes obtained by the other candidates, the candidate obtaining the smallest number of votes is excluded from the election and balloting continues until, by a gradual elimination of candidates securing the smallest number of votes at each ballot, 'one candidate obtains more votes than the remaining candidate or than the aggregate votes of the remaining candidates, as the case may be.'² If the election of any member of the

¹ No nomination can be valid unless the person nominated, his proposer and seconder have, before their names are read out by the presiding member, taken the oath, or made the affirmation, of allegiance to the Crown as members of the Assembly.

² Sub-rule (5) of the Indian Legislative Rule 5A.

It may be noted in this connexion that if at any ballot 'any of three or more candidates obtain an equal number of votes and one of them has to be excluded from the election under sub-rule (5) of the Indian Legislative Rule 5A), the determination as between the candidates whose votes are equal, of the candidate who is to be excluded

Assembly to the office of President is not approved by the Governor-General, he is not eligible for nomination as a candidate for the same office during the continuance of the same Assembly.

The Assembly will also have a Deputy President who will preside at its meetings in the absence of the President, and who will be elected, subject to confirmation by the Governor-General, by the Assembly from among its members.¹ The procedure² of election in this case is substantially the same as in the previous case. After the members have been sworn in at the beginning of each new Legislative Assembly, the Assembly will elect one of its members to be its Deputy President. A member who wishes to nominate another member for election, must previously ascertain that the latter is willing to serve if elected, and hand to the President a notice containing the name of the latter. The notice must be signed by him as proposer and by some other member as seconder. The President must then read out to the Assembly the names of the candidates duly nominated, together with those of their proposers and seconders, and, if only one person has been proposed for election, declare him to be duly elected. If, however, more than one person have been proposed for election, the Assembly will elect its Deputy President by ballot in the same³ way as in the case of the election of the President when more than one person is proposed for election.

If there happens to be a vacancy in the office of Deputy President during the continuance of an Assembly, or if the Governor-General disapproves the election of a particular

shall be by drawing of lots.'—Sub-rule (6) of the Indian Legislative Rule 5A.

¹ Sec. 63C. (2) of the Act.

² L.A.S.O. 5. See also *Legislative Assembly Debates*, vol. ix, pt. 1, 1927, pp. 181 and also 301-303.

³ A candidate, to be successful, must obtain 'a majority of the total votes recorded.'—L.A.D., vol. ix, pt. 1, 1927, p. 302.

candidate, a fresh election is to be held in accordance with the procedure stated above ; but it is provided that a member whose election has been disapproved by the Governor-General must not be proposed again as a candidate during the life of that Assembly.¹

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

The appointed President might resign his office if he so wished, and might be removed from office by the Governor-General.² Ordinarily, he was to hold office till the date of the election of the President under section 63C of the Act. Thus, though the term of office of Sir Frederick Whyte, the appointed President, was to have expired ordinarily early in 1925, he continued, under the proviso³ to section 63C (1) of the Act, in office till August 24, 1925,—the date on which Mr. V. J. Patel took the Chair at noon as the first elected President of the Assembly. An elected President and a Deputy President will cease to hold office if they cease to be members of the Assembly. They may resign⁴ office to the Governor-General if they like, and may be removed from office by a vote of the Assembly with the consent of the Governor-General.⁵

It may not be out of place to refer here to an interesting development of our Constitution. In the first election to the Presidential Chair, which was held on August 22, 1925, there was a contest⁶ in which Mr. V. J. Patel defeated his rival candidate, Diwan Bahadur T. Rangachariar by a majority of two votes. The voting was : Mr. Patel, 58 ; Mr. Rangachariar, 56. In the second election, however,

¹ *L.A.S.O.* 5.

³ See footnote 3 on page 25.

⁵ Sec. 63C (4) of the Act.

² Sec. 63C (3) of the Act.

⁴ Sec. 63C. (4) of the Act.

⁶ *L.A.D.*, vol. vi, 1925, p. 22.

which took place on January 20, 1927, there was no contest,¹ and Mr. Patel was unanimously elected President of the third Legislative Assembly. From this fact and from the speeches² delivered on that occasion congratulating him on his unanimous re-election to the chair, it may be reasonably concluded that our Assembly has, following the English custom, definitely established a precedent which will in course of time 'develop into a convention that, normally speaking, it will re-elect its former President if he offers himself for election'. In England, 'although the Speaker,' says President Lowell,³ 'may have been opposed when first chosen, and although he is elected only for the duration of the Parliament, it has now become the invariable habit to re-elect him so long as he is willing to serve.' Thus, the English convention is that until he dies or decides to resign, the former Speaker is re-elected unanimously at the beginning of each new Parliament. Besides, it is also a custom in Great Britain 'to allow the Speaker a walk-over in his constituency at the General Election.'⁴ In the course of their valedictory speeches⁵ to Mr. President Patel on the closing day of the last session of the second Legislative Assembly, several members had expressed their hope that it would be possible for Mr. Patel's constituency to return him to the Assembly unopposed at the ensuing general election. This would be, they held, a recognition of his services to the country as the first elected President of the Assembly. It would also be in accordance with a good English tradition. Their hope was duly fulfilled: he was returned unopposed⁶ by his constituency at the next

¹ *L.A.D.*, vol. ix, pt. 1, 1927, p. 10.

² *Ibid.*, pp. 10-13.

³ *The Government of England*, vol. i, pp. 259-260; see also MacDonagh's *Pageant of Parliament*, vol. i, ch. x.

⁴ MacDonagh, *The Pageant of Parliament*, vol. i, p. 126.

⁵ *L.A.D.*, vol. viii, 1926, pp. 650-658.

⁶ *L.A.D.*, vol. ix, pt. 1, 1927, p. 10

general election. Both the customs referred to above appear to us to be very sound and desirable as they help to maintain unimpaired the independence, the dignity and the impartiality of the Chair. We hope that both of them will be adopted by our provinces.

The qualities that are likely to make a successful President of a deliberative body like our Assembly are many and of a varied character. The President must combine strict impartiality with courtesy, and firmness with tact. Besides, he must have the gift of humour and possess an impressive personality. While in office, he can have no politics, nor should he belong to any party. In the discharge of his duties he can have no political opinions of his own to guide him. On his way to the chair he must, like the Speaker of the English House of Commons and unlike that of the American House of Representatives, 'doff' his party

¹ Vide Lowell, *The Government of England*, vol. i, pp. 259-260; also MacDonagh, *The Pageant of Parliament*, vol. i, chs. x-xi.

We may note here the following observations by Viscount Bryce:—

'The note of the Speaker of the British House of Commons is his impartiality. He has indeed been chosen by a party, because a majority means in England a party. But on his way from his place on the benches to the Chair he is expected to shake off and leave behind all party ties and sympathies. Once invested with the wig and gown of office he has no longer any political opinions, and must administer exactly the same treatment to his political friends and to those who have been hitherto his opponents, to the oldest or most powerful minister and to the youngest or least popular member. His duties are limited to the enforcement of the rules and generally to the maintenance of order and decorum in debate, including the selection, when several members rise at the same moment, of the one who is to carry on the discussion. These are duties of great importance, and his position one of great dignity, but neither the duties nor the position imply political power. It makes little difference to any English party in Parliament whether the occupant of the chair has come from their own or from the hostile ranks. The Speaker can lower or raise the tone and efficiency of the House as a whole by the way he presides over it: but a custom as strong as law forbids him to render help to his own side even by private advice. Whatever information as to parliamentary law he may feel free to give must be equally at the

colours . . . and wear, instead, the white flower of a neutral political life'. He must always keep in mind that he is the guardian of the authority, honour and dignity of the Assembly and that he has been chosen to maintain its 'traditions of good order, decorum and freedom of opinion'. Furthermore, the President must possess a sound sense of judgment, presence of mind and a power of quick decision. In the execution of his office he must sedulously avoid timorousness or irresolution, and his one constant endeavour should be to win the confidence of all sections of the Assembly in the impartiality of his rulings; otherwise, it may be extremely difficult for him to restore order when there will be 'a clash of wills and tempers' in the House. In this connexion we cannot resist the temptation of quoting an extract from the speech¹ which Mr. Patel delivered in the Assembly as its first elected President. After thanking the members of the Assembly for electing him to the chair, he stated the principles which would guide him in the performance of the duties of his office. 'In the discharge of my duties,' he said, 'I shall, I assure you, observe strict impartiality in dealing with all sections of the House, irrespective of party considerations. From this moment, I cease to be a party man. I belong to no party. I belong to all parties. I belong to all of you and I hope and trust, my Honourable friend, the Leader of the Swaraj Party, will take immediate steps to absolve me from all the obligations of a Swarajist member of this House, if, indeed, it has not been done by implication in consequence of my election to this Chair. Misgivings have been expressed in some quarters, fears have been entertained, that I would not meet the Viceroy, that I would do this, and that I would do that.

disposal of every member.'—*The American Commonwealth* (edition, 1922), vol. i, p. 140. See also *ibid.*, pp. 140–143, and Munro, *The Government of the United States*, ch. xiv.

¹ *Legislative Assembly Debates*, vol. vi, 1925, pp. 36–37.

I assure you, friends, that I am going to do nothing of the kind. If the duties of my office require me to see the Viceroy ten times a day, I am here to do so. If for the discharge of my duties it is necessary that I should see every official member of this House, I will meet him. None need have any doubt about it, and none need have any apprehensions about it.'

Like the Speaker in England, the President must 'abstain from addressing the Assembly except from the chair in the discharge of his presidential duty,' and like him again, he should aim at making 'his office a synonym for dignity and impartiality.'¹ He must not therefore take part in debate like any other member. It may also be stated in this connexion that it is not desirable that he should, during the recesses between sessions of the Assembly, deliver speeches on matters which are, or may in future be, the subject of political controversy. For if he does so, his impartiality will run some risk of being adversely commented upon. In short, during his tenure of office, he should so behave both within and without the House that every member might forget that he ever belonged to any party. In England, even at a general election, says Prof. Redlich,² 'the Speaker only offers himself as a candidate by written communications and refrains in his election address from touching upon political questions.' And 'from the moment of election he discards every outward tie that has hitherto bound him to his party; he refuses to enter a political club, and, both within the House and without, abstains from expressing any political opinion.'³ When Mr. Speaker Gully's seat at Carlisle was unsuccessfully contested in 1895 by a candidate set up by the

¹ See Redlich, *The Procedure of the House of Commons*, vol. ii, p. 131.

² *The Procedure of the House of Commons*, vol. ii, p. 133.

³ *Ibid.*, pp. 133-134.

Unionist Party, the former did not make any reference to politics in his address to his constituency.¹ 'As Speaker of the House of Commons,' says Mr. MacDonagh,² 'he could have nothing to say to party controversy. Like his predecessors, he recognized that a Speaker cannot descend into the rough strife of the electoral battle, not even to canvass the electors, without impairing the independence and the dignity of the Chair of the House of Commons.'³

The impartiality of the English Speaker is also partly secured by the observance of a convention³ that 'after resigning the chair he ought not to re-appear in the House (of Commons) either as one of the Government or as a private member.' It is hoped that our President will establish a similar convention in India after he will have resigned his office, or decided not to stand for it again.

The President has only a casting vote which he must exercise in the case of an equality of votes.⁴ Ordinarily, all questions in the Assembly are determined by a majority of votes of the members present other than the person presiding.⁵ In the English House of Commons also, the Speaker nowadays votes only if a tie occurs while he is in the chair. 'If the numbers in a division are equal,' says Sir Erskine May,⁶ 'the Speaker, who otherwise does not vote, must give the casting voice. In the performance of this duty, he is at liberty to vote like any other member, according to his conscience, without assigning a reason; but, in order to avoid the least imputation upon his impartiality, it is usual for him, when practicable, to vote in such a manner as not to make the decision of the house

¹ See MacDonagh, *The Pageant of Parliament*, vol. i, p. 127.

² *Ibid.*

³ Redlich, *The Procedure of the House of Commons*, vol. ii, p. 132.

⁴ Section 63D(4) of the Act.

⁵ *Ibid.*

⁶ *Parliamentary Practice*, 12th edition, p. 330.

final, and to explain his reasons which are entered on the journal.¹

It is obvious from what has been stated before that, in creating the office of President of the Assembly, the framers of the Indian Constitution chose² the English model for imitation rather than the American; and we believe that, in view of the peculiar circumstances of India and the complexity of its political problems, they acted very wisely in doing so. It would have been most unfortunate if the office of President had been, like the American Speakership, a political one. And we may add that the principles of conduct which have guided successive English Speakers, and the strict observance of which has made, in the words of a foreign critic, the Speaker's office 'a synonym for dignity and impartiality all over the Anglo-Saxon world,' should be faithfully followed by our President.

¹ Sir Erskine May cites in this connexion the following memorable statement of Mr. Speaker Addington made on May 12, 1796:—

'Upon all occasions when the question was for or against giving to any measure a further opportunity of discussion, he should always vote for the further discussion, more especially when it had advanced so far as a third reading; and that when the question turned upon the measure itself—for instance, that a bill do or do not pass—he should then vote for or against it, according to his best judgment of its merits, assigning the reasons on which such judgment would be founded.'

We may also note the following:—

'The only vote which a Speaker now gives is a casting vote, should the numbers on each side in a division be equal. It is the custom for the Speaker to give his casting vote in such a way as to avoid making the decision final—thus giving the House another opportunity of considering the question—and to state his reasons which are entered in the journals.'—Michael MacDonagh, *The Pageant of Parliament*, vol. i, p. 129; see also Josef Redlich, *The Procedure of the House of Commons*, vol. ii, p. 135.

² Lowell, *The Government of England*, vol. i, ch. xii; also Bryce, *The American Commonwealth*, vol. i, pt. 1, ch. xiii; MacDonagh, *The Pageant of Parliament*, vol. i, chs. x-xi; Munro, *The Government of the United States*, ch. xiv; May, *Parliamentary Practice*, chs. 7 and 14; Redlich, *The Procedure of the House of Commons*, vol. ii, part vi, chs. i-ii.

It is worthy of note here that it is not merely the President who is interested in upholding the prestige, dignity and authority of the Chair, but also every section of the Assembly. Any adverse reflection upon the impartiality of the Chair is liable to be strongly condemned by the House. In September, 1928, Mr. President Patel gave a certain ruling on a point of order raised by Pandit Motilal Nehru in connexion with the 'Public Safety (Removal from India) Bill, 1928'.¹ Some official members were dissatisfied with the ruling, and used expressions in the lobby impugning the conduct of the President.² This matter having been published in the *Pioneer* by its Simla Correspondent, it was brought to the notice of the Assembly by Pandit Motilal Nehru.³ As a result, strong resentment was expressed⁴ at the conduct of those officials both by the President and some leading members of the House. The unfortunate controversy was ended, however, by an important statement⁵ made by Mr. Crerar, Home Member of the Government of India, on the relations between the Chair and the House and the Government. In the course of this statement, Mr. Crerar, as leader of the House, expressed his full regret and that of the officials concerned, and assured both the President and the House that, so far as the Government could, it would take steps to ensure that there would be no recurrence of similar conduct on the part of its officials. Furthermore, he deplored and condemned, in common with other members of the House, all comments⁶

¹ *Vide* the *Statesman* of September 16 and 25, 1928 (dak edition) ; also *L. A. D.*, September 14, 1928.

² *Ibid.*

³ *Ibid.*

⁴ *Ibid.*

⁵ *Vide L. A. D.* of September 22, 1928.

⁶ Such comments were published in September, 1928, in the *Times of India* (Bombay) and the *Daily Telegraph* (London) by their Simla Correspondents. The action of these correspondents was strongly disapproved and condemned by every section of the Assembly. Opportunity was given to them of tendering to the Chair and the House their unqualified apology. As they failed to do so, the President directed that with effect from the date of the adjournment of the

in the Press which, directly or indirectly, reflected adversely upon the impartiality of the Chair; and declared that the President would have the full support of the Government in any action which he (i.e. the President) might think right to take, for vindicating the authority of the Chair, against those who would impute partiality to him. In conclusion, he said:

‘It is the earnest desire of myself, as of those for whom I speak, that, whatever from time to time may be our political disagreements, we may all unite to invest this House with an honourable tradition in the conduct of its affairs, and see that by lending our assistance to the Chair, who is the natural guardian of all interests in the House, this tradition should be constantly maintained.’

The Act provided that a President and a Deputy President would receive such salaries as might be determined, in the case of an appointed President, by the Governor-General, and in the case of an elected President and a Deputy President, by Act of the Indian Legislature.¹ Accordingly, the salary of an appointed President was fixed by the Governor-General at Rs. 50,000 a year,² and that of an elected President has been fixed by the Legislative Assembly (President's Salary) Act, 1925, at Rs. 4,000 a month.³ The

The Salaries of the President and the Deputy President.

House *sine die* (i.e. from September 25, 1928), the Press passes granted to them would stand cancelled and that no notice papers, Bills, etc., would be sent to them until further directions from him. He added, however, that the correspondents concerned or their papers would be eligible for renewing their applications, and that these (i.e. the applications) would be considered by him if in the meantime a full, frank and unqualified apology to the Chair and the House was forthcoming in terms approved by him and published in such newspapers and in such manner as he might approve. — *Vide Legislative Assembly Debates*, September 25, 1928, pp. 1422–23.

¹ Sec. 63 C (5) of the Act.

² See Earl Winterton's statement in the House of Commons on the cost of the Reforms in India, in *The Englishman* (Aug. 2, 1922, dak ed.)

³ See in this connexion the Legislative Assembly Proceedings of February 11 and 18, 1925.

Deputy President receives Rs. 1,000 a month for the periods during which he is engaged on work connected with the business of the Legislative Assembly.¹ The Speaker in England receives a salary of £ 5,000 a year, payable by statute directly out of the Consolidated Fund without the need of any annual parliamentary sanction. The salary is free of all taxes.² Besides, he enjoys a residence in the Palace of Westminster, 'furnished by the State and free of rent, rates and taxes, with coal and light supplied.'³ He is the first commoner, and now, in respect of rank and precedence, the sixth subject, of the realm.⁴ It does not appear that our President obtains anything in addition to his salary. In the Indian Warrant of Precedence, he has rank next to the President of the Council of State, but just before the Chief Justice of a High Court other than that of Bengal, and his place is twelfth from that of the Governor-General.⁵

The President is a whole-time officer of the Assembly, in the sense that he must devote all his time to the duties of his office. It is distinctly laid down in the Legislative Assembly (President's Salary) Act, 1925, that 'the elected President of the Legislative Assembly shall not during his

¹ See Earl Winterton's statement in the House of Commons on the cost of the Reforms in India.

² MacDonagh, *The Pageant of Parliament*, vol. i, p. 135. According to Prof. Redlich, the Speaker's salary continues even after a dissolution, lasting until the election of a Speaker for the new Parliament.—*The Procedure of the House of Commons*, vol. ii, p. 134.

³ MacDonagh, *The Pageant of Parliament*, vol. i, p. 135.

When a Speaker retires from office 'he is practically sure of a peerage and a life pension of £4,000 a year.'—Redlich, vol. ii, p. 134. In addition to his salary, a Speaker gets 'an allowance of £100 a year for stationery and receives £1,000 for equipment' on his first appointment.—Redlich, vol. ii, p. 134; also MacDonagh, vol. ii, p. 135.

⁴ Whitaker's *Almanack*, 1926, p. 131.

The order is : Archbishop of Canterbury, Lord High Chancellor, Archbishop of York, Prime Minister, Lord President of the Council, the Speaker of the House of Commons, etc.

⁵ *The Indian Year Book*, 1927, p. 536.

tenure of that office practise any profession or engage in any trade or undertake for remuneration any employment other than his duties as President of the Legislative Assembly.¹ This does not mean, however, that he is precluded from undertaking duties of an honorary nature. The intention of the authors of the Act fixing the salary of the President, was that 'he should undertake nothing which might possibly raise a suspicion of impartiality.'² It was also held by many of them that no person who might have 'any personal interest in the deliberations of the Assembly should be allowed to guide its deliberations in the capacity of its chief.'³ Thus it is not open to the President to accept, or to continue in, the office of a director of a joint-stock company, and it is doubtful whether a person who holds a large number of shares in such a company, can be elected, or can continue as, President.⁴

The Joint Select Committee had stated in its Report⁵ on the Government of India Bill that the President of the Legislative Assembly should for four years be a person appointed by the Governor-General. He should be qualified by experience in the House of Commons and a knowledge of parliamentary procedure, precedents, and conventions. He should be the guide and advisor of the Presidents of the provincial Legislative Councils, and he should be chosen with a view to the influence which, it was hoped by the Committee, he would have on the whole history of parliamentary procedure in India. The first appointment was made in accordance with this recommendation, and it

¹ See in this connexion the Legislative Assembly Proceedings of February 11 and 18, 1925.

² *Ibid.*

³ The Legislative Assembly Proceedings, February 18, 1925.

⁴ *Ibid.*

⁵ Report of the (Parliamentary) Joint Select Committee on the Government of India Bill, Clause 20.

appears to us from the testimony of both official and non-official members of the Assembly that Sir Frederick Whyte discharged to the utmost the very heavy responsibilities that had been laid upon him as the first President of the Assembly.

We have previously referred to the office of Deputy President of the Assembly and seen how election to it takes place. The Deputy President presides at meetings of the Assembly in the absence of the President and has, when so presiding, all the powers of the President.¹ There is an unwritten convention in the House that he should be precluded from taking part in debate, and must maintain an attitude of strict neutrality in political contests.² This is considered necessary for the purpose of ensuring his absolute impartiality. As the Chairman of Committees in the British House of Commons, who takes the chair, as Deputy Speaker, during the absence of the Speaker, follows the latter as his model so far as his conduct in the Commons is concerned, so our Deputy President is expected to take the President as his model so far as his conduct in the Assembly is concerned. Defining his position and contrasting it with that of the English Deputy Speaker, Sir Frederick Whyte, our first President, spoke in the Assembly in 1921 as follows³ :—

‘ In point of fact, the House of Commons has no Rule nor Standing Order which forbids the Deputy Speaker . . . to take part in debate ; but the conditions of his office and the established tradition of the House effectively preclude him from doing so. . . . In the matter of the analogy between the Deputy Speaker and the Deputy President, I would suggest to the Assembly the desirability of following faithfully the spirit of Westminster but of modifying to its own

¹ Indian Legislative Rule 4.

² *Vide India's Parliament*, vol. ii, pp. 3-4.

³ *Ibid.*

needs the letter of the House of Commons practice. To illustrate the contrast between the two positions, I must enter upon a description of the office of the Deputy Speaker¹ in the House of Commons. . . .

'At Westminster, the Chairman of Committees, that is to say, the Deputy Speaker, is selected² by the Government: here he is the choice of the Chamber itself. At Westminster, he actually presides over the House, in a busy session, for at least as many hours as the Speaker himself: here he can never be called upon, except in very exceptional circumstances, to eclipse the President in the number of hours during which he occupies the chair. At Westminster, when not presiding over the deliberations of the House (in Committee), he is fully engaged in supervising Private Bill Legislation, for which he is responsible as Chairman of the Committee on Unopposed Bills: here no such function can be assigned to the Deputy President, for the procedure known as Private Bill Legislation does not exist. At Westminster, finally, as Chairman of the Court of Referees, the Deputy Speaker discharges another important function for which there is no Indian parallel. The Assembly will thus realize that the position of the Deputy Speaker in England is very onerous. He, indeed, is the hardest-worked functionary in the House of Commons; and, even if he wished, and even if tradition permitted, he would be precluded from any active share in current controversy by the weight of his official duties. . . .

'It is for this Assembly to evolve its own practice, and to establish its own institutions for the discharge of its duties as a legislative body. Your Deputy President

¹ The salary of the Deputy Speaker is £2,500 per annum.

² The Chairman of Committees is appointed by the House of Commons at the beginning of a new Parliament for the whole period of its duration, on the nomination of the leader of the House.—MacDonagh, *The Pageant of Parliament*, vol. ii, pp. 150-151; also May, *Parl. Prac.*, pp. 406-407.

carries upon his shoulders the obligation to uphold the even-handed impartiality of the chair even when he himself is not the occupant of it. That obligation is laid upon him by the will of his colleagues when they elect him; and it should ever be his first care to observe it. It must be obvious to those who survey his position that he does not, and cannot, enjoy perfect freedom to take part in debate, and in accepting election to the office, he also accepts the sacrifice of many otherwise tempting parliamentary opportunities.'

We have no officer in the Assembly corresponding to the **Chairmen.** Deputy Chairman of the House of Commons, 'who, whenever the Chairman of ways and means is absent from the chair, is entitled to exercise all his powers, including those as Deputy Speaker.'¹ Now it may so happen that, for some reason or other, both the President and the Deputy President may not be in a position to preside at a meeting of the Legislative Assembly. In order to prevent any possible inconvenience from such unavoidable absence of both these officers, it has been provided by a Rule² made under the Act that at the beginning of every session, the President of the Assembly will nominate from among its members a panel of not more than four Chairmen, any one of whom may preside over the Assembly in the absence of the President and the Deputy President, when so requested by the President or, in his absence, by the Deputy President. A Chairman so nominated will hold office until a new panel of Chairmen is nominated.³ If, however, there is a vacancy in the office of President and there is no person authorized and competent to preside over the Assembly, the Governor-General must appoint⁴ from among its members a Chairman to

¹ May, *Parliamentary Practice*, 12th edition, p. 181. The salary of the Deputy Chairman is £1,000 per annum.

² Indian Legislative Rule 3.

³ *Ibid.*

⁴ *Ibid.*

preside until a President has been duly elected and the assent of the Governor-General to the election has been communicated to the Assembly. Such a situation occurs ordinarily after a general election following a dissolution of the Assembly. Thus when the third Legislative Assembly met for the first time on January 19, 1927, and there was no person competent to preside, the Secretary of the Assembly read out a message from the Governor-General that the latter had appointed Mr. M. Ruthnaswamy (Nominated: Indian Christians) to be its Chairman.¹ Mr. Ruthnaswamy accordingly occupied the chair, after taking the necessary oath of allegiance. Any Chairman of the Assembly, when presiding over it, can exercise all the powers of the President.²

The Secretary of the Legislative Assembly and such assistants of the Secretary as the Governor-General considers to be necessary, are appointed by the Governor-General, and hold office during his pleasure.³ Subject to the control of the President, the Secretary may authorize any of his assistants to execute such of his duties as he may direct.⁴ Hitherto (1928) the Secretary of the Assembly has been no other person than the Secretary⁵ of the Legislative Department of the Government of India, and as such has been a nominated member of the Assembly. Mr. President Patel having raised a very serious objection⁶ to the continuance

The
Secretary
of the
Assembly.

¹ The Legislative Assembly Proceedings of January 19, 1927.

² Indian Legislative Rule 4.

³ Indian Legislative Rule 5.

⁴ L.A.S.O. 2.

⁵ *Vide* the Government of India's Despatch to the Secretary of State on the Assembly Establishment, in *Legislative Assembly Debates*, September 17, 1928, pp. 922-928. At the request of Mr. President Patel the Viceroy has discontinued the practice of nominating the Secretary to the Assembly from its September (1928) session.—*Vide* Mr. Patel's statement on the subject in the *Statesman* (dak ed.) of September 7, 1928.

⁶ Mr. President Patel's objection was based chiefly upon the following grounds:—

'The President is an impartial interpreter and administrator

of this arrangement, a scheme¹ for the separation of the

of the rules of the House, but these rules are not made by it, nor has it the power to amend them to suit its requirements. . . . In the interpretation of the rules, the President has to rely on the advice of the Secretary of the Assembly, and in the administration thereof by the office he has to rely on the efficiency, independence and reliability of the staff and the Secretary. Every member of the House has in the discharge of his duties to deal both with the Secretary and his staff, and if he fails to get satisfaction, the fault is naturally laid at the door of the President, who is supposed to be the controlling authority. It goes without saying that if the business of the House is to be carried on to its satisfaction, the Secretary and the staff must in some form be responsible to the House and its President, and not be subordinate to any outside authority. The President must feel that he is getting independent and impartial advice from the Secretary; the Secretary and the staff must also feel that they are there solely to serve and further the best interests of the Assembly.

As matters stand at present, the Secretary of the Assembly owes no allegiance to it or to the President; he is for all practical purposes responsible to the Governor-General in Council. In every question at issue between the Government and the representatives of the people, he is bound to identify himself with Government. He is invariably nominated a Member of the House and, as such, he joins a party, votes with them, works for them, and is one of them. Neither the Assembly nor its President has any authority over him and can, therefore, in any way control his conduct in any matter connected with the Assembly. The President cannot in the nature of things, therefore, regard the advice of the Secretary in connexion with the business of the Assembly as coming from a wholly impartial, unbiassed and independent source, and it is natural for the same reason that the Assembly should desire radical reform in the present state of things. . . . As regards the staff, I will only make one observation. My experience is that they feel difficulty in approaching the President freely, or in seeking his advice in the discharge of their duties lest, by doing so, they should run the risk of offending their official superiors to whom they are subordinate. . . . Apart from these considerations, the very idea that the Secretary of the Assembly should be occupying a position of subordination not to the House but to an outside authority is in itself, to say the least, anomalous.—Quoted from Mr. Patel's speech in the Legislative Assembly on September 5, 1928; *vide Legislative Assembly Debates*, September 5, 1928, pp. 219-220.

It appears from a letter of Mr. Patel to the Government of India, dated August 17, 1927, that Sir Frederick Whyte also was in favour of the constitution of a separate office for the Legislative Assembly.—*Vide Legislative Assembly Debates*, September 17, 1928, p. 929.

¹ *Vide* the Government of India's Despatch to the Secretary of State on the subject, in *Legislative Assembly Debates*, September 17, 1928, pp. 922-928.

Secretariat of the Assembly from the Legislative Department has been forwarded by the Government of India to the Secretary of State for India for the latter's consideration. According to the scheme there will be a Secretary, a Deputy Secretary and an Assistant Secretary of the Assembly. They will be all appointed by the Governor-General. The Secretary will correspond¹ to the Clerk² of the British House of Commons, and the Deputy Secretary and the Assistant Secretary will correspond to the Clerk Assistants. 'The Secretary will be in close relations, on the one hand, with the President of the Assembly and, on the other hand, with the leader of the House, but he will be subordinate to neither.'³

It may also be mentioned here that since the publication of the Government of India's scheme, the Legislative Assembly has itself recommended⁴ a somewhat modified scheme for the separation of its Secretariat. Presumably, this scheme too has been transmitted by the Government of India to the Secretary of State.⁵ According to it, the Secretariat of the Assembly 'will not be an attached department under the control of any member of the Executive Council', as was suggested by the Government of India in its scheme, 'but a separate department in the portfolio of the Governor-General in the same way as the Foreign and Political Department is (now) included. The principal officers of the new department will be appointed by the

¹ *Vide* the Government of India's Despatch to the Secretary of State on the subject, in *Legislative Assembly Debates*, September 17, 1928, pp. 922-928.

² See Prof. Redlich's *Procedure of the House of Commons*, vol. ii, pp. 172-179, for the position and functions of the Clerk; also May's *Parliamentary Practice*, pp. 184-185.

³ The Government of India's Despatch to the Secretary of State on the question of the Assembly establishment.—*Vide Legislative Assembly Debates*, September 17, 1928, pp. 922-928.

⁴ *Vide* the *Statesman* (Dak edition) of October 16, 1928.

⁵ See *ibid.*

Governor-General, in consultation with the President, while other members¹ of the establishment' will be appointed by the President from among those who will be recommended by the Public Service Commission, will be subject to discipline by the President acting in consultation with the Secretary of the Assembly, and will have a right of appeal to the Governor-General. Both the schemes are now under the consideration of the Secretary of State whose decision thereon is likely to be communicated to the Government of India by December 1, 1928.²

The Marshall³ of the Assembly, a retired officer of the Indian Army, corresponds to a certain extent to the Serjeant-at-arms of the House of Commons. He is appointed by the Governor-General in Council, and practically belongs to the personal staff of the President.⁴ We may add here that so far no provision has been made for the appointment of a separate legal adviser for the President corresponding to the Counsel to the English Speaker.⁵

¹ According to the Government of India's scheme, these members are to be appointed by the Secretary of the Assembly in the first instance 'from the members of the Legislative Department who will be placed at his disposal for that purpose. Thereafter the establishment will be recruited by the Secretary of the Assembly in the manner in which the ministerial establishments of the Government of India Secretariat are recruited, and will serve under precisely the same conditions in respect of pay, discipline and the like as those establishments.'—*Vide* the Government of India's Despatch on the subject to the Secretary of State in *Legislative Assembly Debates*, September 17, 1928, p. 925.

² It may be mentioned here that the sanction of the Secretary of State has since been received for the appointment of a Secretary, a Deputy Secretary and an Assistant Secretary of the Legislative Assembly, and that he has approved in principle the proposal of the Government of India in connexion with the separation of the Assembly establishment.—*Vide* the *Statesman* (Dak edition), December 16, 1928.

³ *Vide* the Government of India's Despatch to the Secretary of State on the question of the Assembly establishment, in the *Statesman* of September 19, 1928.

⁴ *Ibid.*

⁵ *Ibid.*

CHAPTER III

LEGISLATURES—THE COUNCIL OF STATE

3
7
Constitution of the Council of State—The original scheme about its character and composition—Views of the Joint Select Committee regarding the scheme—Constituencies entitled to representation in the Council of State—Representation of special interests and communities in the Council—The nominated members of the Council—Their terms of office—Duration of the Council—The President of the Council—Nomination of a panel of Chairmen for the Council—The appointment of the President by the Governor-General, an anomaly—The President of the Senate in Australia and in the Union of South Africa—Concluding remarks.

The Council of State consists at present of sixty members, of whom thirty-three are elected and the rest are nominated.¹ Of the non-elected members not more than twenty may be officials,² and one must be a person nominated as the result of an election held in Berar.³ The maximum number of members in the case of the Council of State has been fixed by statute at sixty.⁴

¹ Council of State Electoral Rule 3.

² In actual practice the Governor-General refrains from nominating the full number of officials allowed by the Act and nominates non-officials in their place. The number of officials is now (1927) only 17. In the case of the first Council of State also, the number was reduced to 17.—See the Viceroy's farewell address to the first Council of State, delivered on September 17, 1925.

³ The representative of Berar, though technically a nominee, is for all practical purposes an elected member. He is first elected by the Council of State constituency in Berar, which comprises the Berar Division minus the Melghat *taluk* of the Amraoti District, and is thereafter nominated to the Council of State.—*The Berar Electoral Rules*.

⁴ Section 63A of the Act.

The original
scheme
about its
character
and compo-
sition.

The original intention of the authors of the Report on Indian Constitutional Reforms was to create a Council of State which would be 'the supreme legislative authority for India on all crucial questions, and also the revising authority upon all Indian legislation'.¹ Besides, it was their desire that the Council 'should develop something of the experience and dignity of a body of Elder Statesmen'.² In order that this body might effectually discharge its functions as 'the final legislative authority in matters which the Government regarded as essential,' they proposed to retain an official majority in its composition.³ It was hoped by them that with the help of this official majority the Government would be able to get a Bill passed by the Council of State in cases of emergency, so certified by the Governor-General in Council, and also when the Legislative Assembly had refused leave to the introduction of a Bill or had thrown out a Bill which the Government had regarded as necessary.⁴

In pursuance of this recommendation it was provided in the original Government of India Bill introduced into the House of Commons by Mr. Montagu, the then Secretary of State for India, that the Council of State would consist of fifty-six members (exclusive of the Governor-General who would be its President); and that the number of non-elected members thereof would be thirty-two, of whom at least four would be non-officials, and the number of elected members would be twenty-four.⁵

The Joint Select Committee of both Houses of Parliament appointed to consider the Bill, stated in its Report,⁶

¹ *The Montagu-Chelmsford Report*, para. 278.

² *Ibid.*, para 278.

³ *Ibid.*, para. 277.

⁴ *Ibid.*, para. 279.

⁵ Section 15 of the Government of India Bill, 1919, presented by Mr. Secretary Montagu.

⁶ Report of the Joint Select Committee, Clause 18.

'a constitutional document of first-rate importance,' that it did not accept the device,¹ in the Bill as drafted, of carrying Government measures through the Council of State without

Views of
the Joint
Select
Committee
about the
scheme.

reference to the Legislative Assembly, in cases where the latter body could not be got to assent to a law which the Governor-General considered essential. It held that there was no necessity to retain the Council of State as an organ

for Government legislation and that it should be constituted from the commencement as a true second Chamber.² It had however no hesitation in accepting the view³ that the Governor-General in Council should in all circumstances be fully empowered to secure legislation which was required for the discharge of his responsibilities, but it thought it was unworthy that such responsibility should be concealed through the action of a Council of State specially devised in its composition to secure the necessary powers. It believed that in such a case it would add strength to the Government of India to act before the world on its own responsibility. It therefore amended the relevant clause of the original Bill in the way⁴ in which we find it in the Act.

Our second Chamber, as we have seen above, consists partly of elected members and partly of nominated members. The principle underlying its composition is

¹ The original Bill contained the following clause (Section 20 (4)) :—

'When the Governor-General in Council certifies that it is essential for the safety, tranquillity, or interests of British India or any part thereof, or for the purpose of meeting a case of emergency which has arisen, that any law shall be passed, the Council of State shall have power to pass that law without the assent of the Legislative Assembly, and it shall, if so passed, have the like effect as laws passed by both Chambers.'

² Report of the Joint Select Committee, Clause 18.

³ *Ibid.*, Clause 26.

⁴ The Government of India Bill (as amended by the Joint Select Committee), Section 18.

a sort of compromise between the Canadian system of pure nomination and the Australian system of entire election.

Constituencies entitled to representation in the Council of State are as shown in the following table¹ :—

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

¹ The Council of State Electoral Rule 4, Schedule I.

² The Muhammadan community in the Punjab is entitled to elect two Muhammadans to the first, third, fifth and succeeding alternate Councils of State, and only one Muhammadan to the second, fourth and succeeding alternate Councils of State.

³ The Bihar and Orissa non-Muhammadan constituency elects two members to the first, third and succeeding alternate Councils of State ; and three members to the second, fourth and succeeding alternate Councils of State.

⁴ Assam is entitled to elect a non-Muhammadan to the first, third and succeeding alternate Councils of State and a Muhammadan to the second, fourth and succeeding alternate Councils of State.

Representation of special interests and communities.

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

Before the date of the first meeting of every new Council of State, the Governor-General makes such nominations as are necessary to complete the Council.¹

Nominated members: their terms of office.

A nominated non-official member is to hold office for the duration of the Council of State to which he is nominated.² The term of office of an official member is for the duration of the

Council to which he is nominated or for such shorter period as the Governor-General may determine at the time of his nomination.³ A vacancy in the case of a nominated member is filled by the Governor-General by another nomination.⁴

While the second Chambers of England, France, the United States, Canada and Australia⁵ have a sort of continuous existence, the normal duration of our Council of State is limited to a period of only five years from its first meeting. The Governor-General can, however, dissolve it before the date of its expiry by effluxion of time; and he can also prolong its life for a further period if he thinks it necessary in special circumstances.⁶ As we have seen in the case of the Legislative Assembly, the Governor-General is bound, within six months, or with the sanction of the Secretary of State within nine months, to appoint a date for its next session.⁷

Duration of the Council.

¹ Council of State Electoral Rule 27 (3).

² *Ibid.*, 23 (1).

³ *Ibid.*, 23 (2).

⁴ *Ibid.*, 26 (2).

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

⁶ Section 63D of the Act.

⁷ *Ibid.*

The President of the Council of State is appointed by the Governor-General from among its members.¹

The President of the Council.

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

Accordingly, at the beginning of every session, the Governor-General nominates from among the members of the Council a panel of not more than four Chairmen, any one of whom may preside over the Council in the absence of the President when so requested by the latter, and can, when presiding over it, exercise the powers of the President.²

It appears to be rather a strange anomaly that, while the Legislative Assembly and the Governors' Legislative Councils have had the power, from after the first four years of the Reforms, to elect their Presidents from among their members, subject to the approval of the Governor-General or the Governor, as the case may be, the President of such a dignified body as the Council of State should continue to be appointed by the Governor-General. The Senate in Australia³ as well as in the Union of South Africa⁴ chooses its President from among its members. He ceases to hold his office if he ceases to be a Senator, or if he is removed from office by a vote of the Senate, or if he resigns his office. In the interests of its dignity and influence, the second Chamber of India should be placed, in respect of the appointment and removal of its President, on

The appointment of the President by the Governor-General: an anomaly.

¹ Section 63A of the Act.

The late Sir Alexander Muddiman was the first, and Sir Montagu Butler the second, President of the Council of State. On the latter's appointment to the office of Governor of the Central Provinces in 1925, Sir Henry Moncrieff Smith, the present (1928) incumbent, was appointed President of the Council of State.

² Order of the Governor-General under Section 63A (2) of the Act.—*Council of State Manual*, 1926, chapter iii.

³ The Commonwealth of Australia Constitution Act, 1900, Section 17.

⁴ South Africa Act, 1909, Section 27.

a similar footing with the second Chambers in Australia and South Africa. It is hoped that the existing anomaly will be removed at the next revision of the Act.

Curiously enough, there is no provision in the Government of India Act relating to the salary of the President of the Council of State. But it appears from a statement ¹ made in the House of Commons by Earl Winterton as Under-Secretary of State for India that the salary of the President has been fixed at Rs. 50,000 a year.

The Secretary of the Council of State.

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

A few remarks on the Council of State.

In the course of his speech at the inauguration of the India Legislature, His Royal Highness, the Duke of Connaught, observed ² that in the Council of State it had been the intention of Parliament to create a true Senate, a body of elder statesmen endowed with mature knowledge, experience of the world and the consequent sobriety of judgment. Its functions would be to exercise a revising but not an over-riding influence for caution and moderation, and to review and adjust the acts of the larger Chamber. Opinions differ as to how far the Council of State has fulfilled the responsible rôle assigned to it by the Constitution. It has been said that in dealing with the measures that have come before it, it has shown enough of moderation but very little of fearlessness or the capacity for sound judgment. Even if it be granted that it has throughout been ' animated by a lofty sense of duty and a steadfast determination to advance the interests of India ', it must also be admitted that it has not so far been able to inspire public confidence either in its ability or in its sense of devotion to those interests.

¹ See foot-note 2 on page 36 *ante*.

² See the Viceroy's farewell address to the first Council of State on September 17 1925.

Probably, one fault of our Council of State is the so-called fault attaching to all second chambers by the very nature of their function as revising bodies. But it is also probable that its composition is largely responsible for this lack of public confidence in it. The excess of the number of its elected members over that of the nominated members is very small. Secondly, the elected members represent only a very small section of the population of India, the electoral qualifications for the Council being very high. The total number¹ of electors in British India for the second general election to the Council of State was only 32,126. It is hoped that in the next revision of the Act provision will be made for the reconstitution of the Council in such a way as will enable it to command public confidence both in its ability and integrity.

¹ *Vide East India (Constitutional Reforms—Elections* Cmd. 2923, 1927), published by His Majesty's Stationery Office.

CHAPTER IV

LEGISLATURES—THE PROVINCIAL LEGISLATIVE COUNCILS

The Provinces of British India—Governors' Provinces—Chief Commissionerships—Composition of a Governor's Legislative Council—The Governor of a Province and his Legislative Council—Constitution of the Legislative Councils of Madras, Bombay, Bengal, the United Provinces, the Punjab, Bihar and Orissa, the Central Provinces, Assam and Burma—Representation of special classes and interests in the Legislative Councils—Duration of a Legislative Council—The President of the Legislative Council—Its Deputy President—Nomination of a panel of Chairmen for each Legislative Council—Terms of office of the President and the Deputy President—Their salaries.

British India has been divided for administrative purposes into nine major and seven minor provinces. The nine major provinces are Madras, Bombay, Bengal, the United Provinces, the Punjab, Burma, Bihar and Orissa, Assam and the Central Provinces. They are each governed, in relation to Reserved subjects, by a Governor in Council, and in relation to Transferred subjects, except in special circumstances, by the Governor acting with Ministers, and are distinguished as Governors' Provinces.¹ The Province of Burma had at first been excluded from the scheme of Reforms introduced by the Act of 1919 ; but it was constituted a Governor's Province under the Government of India Act with effect from January 2, 1923.²

¹ Section 46 of the Act.

² The province of Burma was constituted a Governor's Province under Sub-section 1 of Section 52A of the Act. See notification No. 225, dated October 7, 1921, in the *Gazette of India* (Extraordinary) 1921, p. 381, and notification No. 1192, dated January 2, 1923, in the *Gazette of India* (Extraordinary) 1923, p. 37 ; also *The Government of India Act*, published by the Government of India, pp. 251-253.

The seven minor provinces are the North-West Frontier Province, British Baluchistan, Delhi, Ajmer-Merwara, Coorg, the Pargana of Manpur,¹ and the Andaman and Nicobar Islands. They are each administered by a Chief Commissioner and are, except Coorg,² without any Legislative Council.

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

Not more than twenty per cent. of the members of each Council can be officials, and, except in the case of the Burma Council in which the minimum percentage of elected members has been fixed at sixty, at least seventy per cent. must be elected members. The Governor of a province cannot be a member of the provincial Legislative Council, but has the right of addressing the Council and may for that purpose require the attendance of its members.³

In addition to the ordinary members of his Legislative Council, a Governor may nominate, for the purpose of any Bill, not more than two persons (or only one in the case of Assam), having special knowledge or experience of the subject-matter of the Bill, who will, in relation to the Bill, have, for the period for which they are nominated, all the rights of members of the Council.⁴ The object of this provision is to secure the services of experts in connection with legislation.

¹ The Pargana of Manpur (Central India) was constituted a Chief Commissionership under Section 59 of the Act. *Vide* notification No. 310-I, dated June 11, 1924, in the *Gazette of India*, 1924, pt. 1, p. 483.

² A Legislative Council with very limited powers was set up in Coorg in January, 1924. It consists of 15 elected members and 5 nominated members. *The Indian Year Book*, 1927.

³ Section 72A of the Act.

⁴ *Ibid.*

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

THE MADRAS LEGISLATIVE COUNCIL

It¹ consists of the members of the Executive Council *ex-officio*, ninety-eight elected members, and such number of members nominated by the Governor as, with the addition of the members of the Executive Council, amount to thirty-four. Of the members so nominated not more than ~~nineteen~~ ^{ten} may be officials, and one is to represent the inhabitants of backward tracts and ten to represent the following communities, namely, the Paraiyans, Pallans, Vallubans, Malas, Madigas, Chakkiliyans, Tottiyans, Cherumans and Holeyas. The Governor may at his discretion make regulations providing for the selection of these eleven members by the communities concerned.²

THE BOMBAY LEGISLATIVE COUNCIL

It³ consists of the members of the Executive Council *ex-officio*, eighty-six elected members and such number of members nominated by the Governor as, with the addition of the members of the Executive Council, amount to twenty-eight. Of the members so nominated, not more than sixteen may be officials, and eight must be persons nominated to represent the following classes or interests as shown below :—

(i) The Anglo-Indian community, ...	...	1
(ii) The Indian Christian community	...	1
(iii) The labouring classes	...	3
(iv) Classes which, in the opinion of the Governor, are depressed classes	...	2
(v) The cotton trade	...	1

¹ Madras Electoral Rule 3.

² *Ibid.*

³ Bombay Electoral Rule 3.

THE BENGAL LEGISLATIVE COUNCIL 114

It¹ consists of the members of the Executive Council *ex-officio*, one hundred and fourteen elected members, and such number of members nominated by the Governor as, with the addition of the members of the Executive Council, amount to twenty-six. Of the members so nominated not more than eighteen² may be officials and not less than six must be non-officials, and two are to be persons nominated to represent respectively the following classes or interests, namely, (i) the Indian Christian community, and (ii) classes which, in the opinion of the Governor, are depressed classes, and two must be persons nominated to represent the labouring classes.

THE UNITED PROVINCES LEGISLATIVE COUNCIL

It³ consists of the members of the Executive Council *ex-officio*, one hundred elected members, and such number of members nominated by the Governor as, with the addition of the members of the Executive Council, amount to twenty-three. Of the members so nominated not more than sixteen may be officials and three must be persons nominated to represent respectively the following classes or interests, namely, (i) the Anglo-Indian community, (ii) the Indian Christian community, and (iii) classes which, in the opinion of the Governor, are depressed classes.

THE PUNJAB LEGISLATIVE COUNCIL

It⁴ consists of the members of the Executive Council *ex-officio*, seventy-one elected members, and such number of members nominated by the Governor as, with the addition of the members of the Executive Council, amount to twenty-three. Of the members so nominated not more

¹ Bengal Electoral Rule 3.

³ The United Provinces Electoral Rule 3.

⁴ The Punjab Electoral Rule 3.

² *Ibid.*

than fourteen may be officials, and five are to be persons nominated to represent the classes mentioned below according to the following distribution, namely :—

- | | | | | |
|--|-----|-----|-----|---|
| (1) the European and Anglo-Indian communities | ... | ... | ... | 2 |
| (2) the Indian Christian community | ... | ... | ... | 1 |
| (3) the Punjabi officers and soldiers of His Majesty's Indian Forces | ... | ... | ... | 1 |
| (4) the labouring classes | ... | ... | ... | 1 |

THE BIHAR AND ORISSA LEGISLATIVE COUNCIL

It ¹ consists of the members of the Executive Council *ex-officio*, seventy-six elected members, and such number of members nominated by the Governor as, with the addition of the members of the Executive Council, amount to twenty-seven. Of the members so nominated not more than eighteen may be officials and nine must be persons nominated to represent the classes or interests hereinafter mentioned according to the following distribution, namely:—

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

THE CENTRAL PROVINCES LEGISLATIVE COUNCIL

It ² consists of the members of the Executive Council *ex-officio*, thirty-eight ³ elected members and such number

¹ Bihar and Orissa Electoral Rule 3.

² The Central Provinces Electoral Rule 3.

³ Including one member for the Nagpur University constituency.

of members nominated by the Governor as, with the addition of the members of the Executive Council, amount to thirty-five. Of the members thus nominated not more than eight may be officials, and seventeen must be persons nominated¹ as the result of elections held in Berar, and seven must be persons nominated to represent the classes mentioned below according to the following distribution, namely:—

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

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

THE ASSAM LEGISLATIVE COUNCIL

It² consists of the members of the Executive Council *ex-officio*, thirty-nine elected members and such number of members nominated by the Governor as, with the addition of the members of the Executive Council, amount to fourteen. Of the members so nominated not more than

¹ Though actually elected, technically nominated.

These seventeen members are first elected by the seventeen Legislative Council constituencies in Berar and are thereafter nominated by the Governor of the Central Provinces to his Legislative Council.—*The Berar Electoral Rules*.

² Assam Electoral Rule 3.

seven may be officials and two must be non-official persons nominated to represent respectively the following classes, namely:—

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

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

THE BURMA LEGISLATIVE COUNCIL

It¹ consists of the members of the Executive Council *ex-officio*, seventy-nine elected members and such number of members nominated by the Governor as, with the addition of the members of the Executive Council, amount to twenty-four. Of the members so nominated, not more than fourteen may be officials and two must be persons nominated to represent the following classes or interests, namely :—

- (1) Indian Commerce ; and
- (2) the labouring classes.

The distribution of the elected members in the different Legislative Councils is as shown in the table² on the next page.

¹ Burma Electoral Rule 3.

² *Vide* the Electoral Rules of the different provinces, as corrected up to September 1, 1926.

It may be stated in connexion with this table that ' Commerce and Industry ' is divided in the Punjab into two constituencies—one ' Commerce ', and the other ' Industry '.

Provinces	Non-Muhammadan	Muhammadan	Sikh	Indian Christian	European	Anglo-Indian	Landholders	University	Planting	Commerce and Industry	Mining	General	India urban	Karen rural	Total
Madras	65 ¹	13	...	5	1	1	6	1	1	5	...	...	...	...	98
Bombay	46 ²	27	...	...	2	...	3	1	...	7	...	...	...	...	86
Bengal	46	39	...	...	5	1	5	2	...	15	...	...	...	...	114
United Provinces	60	29	...	...	1	...	6	1	...	3	...	...	...	...	100
Punjab	20	32	12	...	...	...	4	1	...	2	...	...	...	...	71
Bihar and Orissa	48	18	...	...	1	...	5	1	1	...	2	...	...	...	76
Central Provinces ³	29	4	...	...	...	...	2	1	...	1	1	...	...	...	38
Assam	20	12	...	...	...	...	...	...	5	1	...	1 ⁴	...	...	39
Burma	...	...	...	...	1	1	...	1	...	5	...	58	8	5	79

¹ Out of sixty-five seats allotted to non-Muhammadans, twenty-eight seats are reserved for non-Brahmans; 'provided that, if the number of non-Brahman candidates at the date of the election is less than the number of reserved seats, the number of reserved seats shall be reduced to the extent of that deficiency.'—Madras Electoral Rule 4, Schedule I.

² Seven out of forty-six seats are reserved for the Mahrattas: but no seat is to be deemed to be a reserved seat for the purposes of any election . . . if the constituency concerned is already represented by a Mahratta member or if there is no Mahratta candidate.

³ If the seventeen members from Berar who—though they are nominated after their election—are to be deemed as elected members under Section 72A of the Act, are included in our calculation, the corresponding numbers in the case of the Central Provinces will be: non-Muhammadan, 41; Muhammadan, 7; Landholders, 3; University, 1; Commerce and Industry, 2; and Mining, 1; Total, 55.

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

✓ The foregoing table shows that communal representation has been given to the Sikhs in the Punjab, to the Indian Christians in Madras, to the Anglo-Indians in three, to the Europeans in six and to the Muhammadans in eight provinces.¹ Besides, the planting, mining, commercial, industrial and land-owning interests have been granted special representation so that their peculiar rights and privileges may be protected.

Representation of special classes and interests. The normal duration² of every Governor's Legislative Council is three years; but it can be earlier dissolved by the Governor who can also prolong its life for a further period not exceeding one year if he so think fit in special circumstances. Within six months, or within nine months with the sanction of the Secretary of State, of the dissolution of a Legislative Council, the Governor is required by the law to appoint a date for the next session of the Council. He appoints times and places for holding the sessions of his Legislative Council and he can prorogue the Council by notification or otherwise.³

The President of the Legislative Council. The President of a Governor's Legislative Council had,⁴ till the expiration⁵ of four years from its first meeting, to be appointed⁶ by the Governor, but since then has been, and is now, elected, subject to the approval of the Governor, by the Council

¹ Including Berar along with the Central Provinces.

² Section 72B (1) of the Act.

³ Section 72B (2) of the Act.

⁴ Section 72C (1) of the Act.

⁵ 'Provided that, if at the expiration of such period of four years the Council is in session, the President then in office shall continue in office until the end of the current session, and the first election of a President shall take place at the commencement of the next ensuing session.'—Proviso to Section 72C (1) of the Act.

⁶ We may note here the observations of the Parliamentary Joint

from among its members. The procedure of his election is exactly the same ¹ *mutatis mutandis* as that of the election of the President of the Legislative Assembly. There is also a Deputy President of the Council, who is, and has all along been, elected by the Council from among its members subject to the approval of the Governor. The method of his election varies slightly from province to province. Generally it is as follows.² After the members have been sworn in at the beginning of each new Council, the Council elects one of its members to be its Deputy President. Every member who wishes to propose another member for election as Deputy President, ascertains previously that the latter is willing to serve if elected, and hands to the President ³ of the Council 'a notice, containing the name of the member he desires to propose, signed by himself and by some other member as seconder'. If only one member is proposed for election, the President reads out his name together with the names of his proposer and seconder, and declares him to be

Select Committee on the question of the Presidency of the Legislative Council :

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

¹ See Rule 5A of the Provincial Legislative Rules and also pages 25-27 *ante*.

² See the relevant Standing Orders of the Bengal, Madras, Bombay and the United Provinces Legislative Councils.

³ To the Secretary in the case of the Bombay Legislative Council.

duly elected. If more than one person are proposed, the President reads out their names together with those of their proposers and seconders, and the Council then votes on the question by ballot, and the President declares the person who receives the majority of votes to be duly elected. The ballot is held in most¹ cases in such manner as the President directs. No member can vote for more than one candidate. If a vacancy in the office of Deputy President occurs during the continuance of a Council, or if the Governor withholds his assent from the election of a particular member, a fresh election must be held in accordance with the procedure stated above; but it is provided that a member whose election has not been ratified by the Governor must not be proposed again as a candidate during the life of that Council.

As we have seen in the case of the Legislative Assembly, the President of a Governor's Legislative Council
Chairmen. also nominates, at the beginning of every session, from among the members of the Council a panel of not more than four Chairmen, any one of whom may preside over the Council in the absence of the President and the Deputy President, when so requested by the President or, in his absence, by the Deputy President.² Besides, if at any time the office of President is vacant and there is no person authorized and competent to preside over the Council, the Governor appoints³ from among its members a Chairman to preside until a President is duly elected and

¹ In the case of the Bombay Legislative Council the manner of holding the ballot has been prescribed in the Standing Order relating to the election of the Deputy President. See *Rules and Standing Orders of the Bombay Legislative Council*, 1926, p. 12. See pages 311-312 of *The Bengal Legislative Council Manual*, 1927, for the manner in which the ballot for the election of the Deputy President is held in the Bengal Legislative Council.

² Rule 3 (1) of the Legislative Council Rules.

³ Rule 3 (2) of the Legislative Council Rules.

the approval of the Governor to his election is announced to the Council. The Deputy President and any Chairman of the Council have,¹ when presiding over the Council, the same powers as the President.

The appointed President might resign his office to the Governor, and might also be removed from office by the Governor.² An elected President and a Deputy President must cease to hold office as soon as they cease to be members of the Council. They too may resign office to the Governor, and may be removed from office by a vote of the Council with the concurrence of the Governor.³

Terms of
office of the
President
and the
Deputy
President.

It was provided in the Act that the President and the Deputy President would receive⁴ such salaries as would be determined, in the case of an appointed President,⁵ by the Governor, and in the case of an elected President⁶ or Deputy President,⁷ by Act of the local Legislature.

¹ Rule 4 of the Legislative Council Rules.

² Section 72 C of the Act.

³ *Ibid.*

⁴ *Ibid.*

⁵ The salaries of the appointed Presidents of the different Legislative Councils varied ordinarily from Rs. 12,000 to Rs. 48,000 a year. The office of President of the Bihar and Orissa Legislative Council was once held (August, 1922) by a member of the local Executive Council. The appointed Presidents of the Bengal, Bombay and Madras Legislative Councils received each a salary of Rs. 36,000 a year.—*Vide* Earl Winterton's statement on the subject in the House of Commons in the *Englishman* (dak edition) of August 2, 1922.

⁶ The salaries of the elected Presidents of the Bengal, Bombay, Madras, Assam, and the Punjab Legislative Councils have been fixed at Rs. 3,000, Rs. 3,000, Rs. 2,000, Rs. 500 and Rs. 3,000 a month respectively. The Presidents are whole-time officers.—*Vide* Proceedings, Bengal Legislative Council, February 18, 1925; also Proceedings, Legislative Assembly, February 11, 1925; and also *The Madras Legislative Council Manual*, 1926, p. 8.

⁷ The salaries of the Deputy Presidents of the Madras, Bombay, Bengal, United Provinces, Punjab, Bihar and Orissa, Central Provinces, and Assam have been fixed at Rs. 5,000, Rs. 1,500, Rs. 5,000, Rs. 5,000, Rs. 5,000, Rs. 3,000, Rs. 3,000, and Rs. 2,500 a year respectively.—*Vide* Earl Winterton's statement on the subject in the House of Commons, in the *Englishman* of August 2, 1922.

The Secretary of a Governor's Legislative Council and his assistants are appointed by the Governor and hold office during his pleasure.¹

The powers and duties of the President of a Governor's Legislative Council are the same as those² of the President of the Legislative Assembly. We therefore do not propose to deal with them separately here.

A NOTE ON THE DESIRABILITY OF A SECOND CHAMBER IN A GOVERNOR'S PROVINCE.

Considering the question on its merits alone, we are not in favour of the creation of a second chamber in a Governor's province. Our reason is that the legislative competence of a provincial legislature is limited and it would therefore be an avoidable luxury and an unnecessary complication of the legislative machinery to have a second chamber in the provincial legislature. We should suggest, however, that if it is decided to continue the existing unicameral system in the provinces, a certain proportion, say 10 *per cent*, of the seats in the provincial legislatures should be filled by the nomination of non-officials by The Head of the local Executive. This arrangement will enable the latter to nominate to a provincial legislature some, at least, of those persons whose presence in the legislature will be of undoubted advantage to it, but who may not have, for one reason or another, chosen to enter into an electoral contest at the previous election or who may have been defeated in such a contest as a result of the activities of a hostile combination temporarily formed against them. We do not think our suggestion, if carried out, would materially affect the democratic character of the provincial legislature.

¹ Rule 5 of the Legislative Council Rules.

² See pages 30-36 *ante*; also Chapter XV.

CHAPTER V

QUALIFICATIONS OF ELECTED AND NOMINATED MEMBERS

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

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

GENERAL QUALIFICATIONS¹

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

¹ See Rules 5 and 22 of the provincial, Legislative Assembly, and the Council of State Electoral Rules, and also Rule 4 of the Berar Electoral Rules—all as corrected up to September 1, 1926.

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

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

It is provided, however, that, in the case of a provincial Legislative Council, the Local Government may remove, subject to such conditions as it may prescribe, the disqualification arising from not being a British subject, so far as the Ruler of any State in India or a subject of any such State¹ is concerned. And if the Ruler of any State in India or any subject of such a State is eligible for election or nomination to the Legislative Council of a province, such Ruler or subject will not, by reason only of not being a British subject, be ineligible for election or nomination² to the Council of State or the Legislative Assembly, as the case may be.³

It is also provided that if a resolution is passed by a Legislative Council 'after not less than a month's notice has been given of an intention to move such a resolution, recommending that the sex disqualification for election to

¹ Or any class of such subjects.

² To represent that province.

³ It is also laid down that no subject of such a State will for that reason be ineligible for election to the Legislative Assembly by the Delhi constituency or for nomination to it to represent the province of Delhi; and that no subject of a State in Rajputana will for that reason be ineligible for election to the Assembly by the Ajmer-Merwara constituency or for nomination to it to represent the province of Ajmer-Merwara.—Legislative Assembly Electoral Rules 5(1) and 22(1).

the Council should be removed either in respect of women generally or any class of women', the Local Government must¹ make regulations providing that women, or a class of women, as the case may be, will not be disqualified for election or nomination to the Council by reason only of their sex.² And if a similar resolution is passed in the like manner by the Legislative Assembly either in respect of women generally, or any class of women, the Governor-General in Council is required to make regulations providing that women, or a class of women, as the case may be, will not be disqualified, by reason only of their sex,—

(i) for election to the Assembly—

(a) by the Delhi constituency or the Ajmer-Merwara constituency, or

(b) by any other constituency if they are not so disqualified for election to the Legislative Council of their province; and

(ii) for nomination to the Assembly.

In the same way (and subject to the similar³ condition in the case of election only) the sex-disqualification for

¹ But in the case of election (only) to the Burma Legislative Council, the Local Government *may*, and is not bound to, remove the sex disqualification by an order in this behalf.—Burma Electoral Rule 5(1).

² *Vide* Electoral Rules 5(1) and 22(1); also Berar Electoral Rule 4(1).

The sex disqualification for election or nomination has so far been removed in Madras, Bombay, and the Punjab. Madras was the first province to admit its women to the membership of its legislature. Under the 'Madras Electoral Sex Disqualification (Candidature) Removal Regulation', 'no woman shall be disqualified by reason only of her sex for election or nomination as a member of the Legislative Council of Madras.'—(*The Madras Legislative Council Manual*, 1926, vol. i, p. 151 n). The first Indian lady to be a member of a legislature in British India is Dr. Muthalakshmi Ammal who has been nominated to the (third) Madras Legislative Council. She has also been elected to the office of Deputy President of the Council.

Another lady, Dr. Mrs. Shave, a non-official, has been nominated (Nov., 1928) a member of the Punjab Legislative Council.

³ I.e. eligibility for election to the provincial Legislative Council.

election or nomination to the Council of State may also be removed.

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

'A person against whom a conviction by a criminal court involving a sentence of transportation or imprisonment for a period of more than one year is subsisting', is, unless the offence of which he was convicted has been pardoned, ineligible for election or nomination for five years from the date of the expiration of the sentence.¹ But if a person thus disqualified makes an application² asking for the removal of the disqualification, the disqualification may be removed by order in this behalf—

(i) by the local Government with the previous approval of the Governor-General in Council, so far as—

(a) election or nomination to the local Legislative Council, or

(b) election to either Chamber of the Indian Legislature from the particular province, or

¹ Electoral Rules 5(2) and 22(2); also Berar Electoral Rule 4(2).

² 'A sentence of more than one year's imprisonment', says an official notification, '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.'—See the *Englishman* (dak edition) of October 26, 1925; also the Government of India (Home Department) notifications of July 23 and October 24, 1925, on the subject.

(c) nomination to either Chamber of the Indian Legislature as the result of an election held in Berar,

is concerned; and

(ii) by the Governor-General in Council, so far as nomination to either Chamber of the Indian Legislature otherwise than as the result of an election held in Berar, is concerned.

Previously to July, 1925, any conviction by a criminal court which involved a sentence of more than six months would, unless the offence had been pardoned, constitute a disqualification for both election and nomination for a period of five years from the date of the expiration of the sentence. The relevant Electoral Rule has since been amended as shown above, on the recommendation¹ of the Reforms Enquiry Committee, 1924, of which the late Sir Alexander Muddiman was the Chairman. The Committee was of opinion that the period of six months was too short, and that it should be increased to one year.² It further held that the disqualification following from a conviction by a criminal court 'should be modified by enabling it to be removed, subject to provisions to secure uniformity,

¹ See para 72 of the Majority Report of the Committee; also its twelfth recommendation.

² The following may be noted in this connexion:—

'No person shall be capable of being chosen or of sitting as a Senator or as a member of the House of Assembly who has been at any time convicted of any crime or offence for which he shall have been sentenced to imprisonment without the option of a fine for a term of *not less than twelve months*, unless he shall have received a grant of amnesty or a free pardon, or unless such imprisonment shall have expired at least five years before the date of his election'.—South Africa Act, 1909, Section 53(a).

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

by orders of the Local Government instead of only by pardon.¹

Persons convicted of an offence¹ under Chapter IXA of the Indian Penal Code punishable with imprisonment for more than six months or reported by Election Commissioners as guilty of a corrupt practice² as specified in Part I, or in paragraphs 1, 2 or 3 of Part II, of Schedule V to Electoral Rules, are not eligible for either election or nomination to any legislative body for five years from the date of such conviction or of the finding of the Commissioners, as the case may be; and a person reported by such Commissioners to be guilty of any other corrupt practice is similarly disqualified for three years from such date.³

'If, in respect of an election to any legislative body constituted under the Government of India Act, a return of the election expenses of any person who has been nominated as a candidate at that election', is not submitted within a certain time⁴ and in a prescribed manner, or if any such return is submitted which is found either by Election Commissioners or by a Magistrate in a judicial proceeding, to be false in any material respect, neither the candidate nor his election agent is eligible for election or nomination for five years from the date of such election.⁵

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

It may be noted in this connexion that an official is not

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

² *Ibid.*

³ See Electoral Rules 5 (3) and 22 (3); also the Berar Electoral Rules.

⁴ Within 35 days from the date of the publication of the result of the election.—Electoral Rule 19(1).

⁵ See Electoral Rules 5 (4) and 22 (4); also the Berar Electoral Rules.

qualified for election as a member of either Chamber of the Indian Legislature or of a local Legislative Council. And if any non-official member of either Chamber of the Indian Legislature or of a local Legislative Council, whether elected or nominated, accepts any office in the service of the Crown in India, his seat in that Chamber or on the Council, as the case may be, will become vacant.¹ But a Minister is not to be deemed an official and a person is not to be deemed to accept office on appointment as a Minister.²

SPECIAL QUALIFICATIONS

We shall now deal with the special qualifications necessary for election to the different legislative bodies. These qualifications will *mutatis mutandis* also apply to women, if and where they are eligible for election.

THE COUNCIL OF STATE³

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

(a) in the United Provinces or in Assam, unless his name is on the electoral roll of a general constituency in the same province ;⁴

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

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

For the definition of the term 'official' in this connexion, see App. H.

² Proviso to Sec. 80 B of the Act.

³ The Council of State Electoral Rule 6; and Berar Electoral Rule 5(1).

⁴ It appears from this that in the United Provinces and Assam a non-Muhammadian is eligible for election to the Council of State to represent a Muhammadian constituency, and *vice versa*.

(c) in the Central Provinces or in Burma, unless his name is on the electoral roll of the constituency.¹

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

'Special constituency' here means a European Commerce constituency.

'General constituency' means a General constituency in the case of the Central Provinces and Burma,² or a non-Muhammadan, Muhammadan, or Sikh constituency, as the case may be, in the case of the other provinces.

THE LEGISLATIVE ASSEMBLY³

1. No person is eligible for election as a member of the Legislative Assembly to represent a general constituency other than a European constituency or a constituency in the province of Burma or the Delhi constituency or the Ajmer-Merwara constituency, unless his name is on the electoral roll of the constituency or 'of a constituency situate in the same province and prescribed for elections to the provincial Council by Rules under section 72(A) of the Act'; and unless he happens to be a non-Muhammadan, Muhammadan or Sikh in the case of a non-Muhammadan, Muhammadan or Sikh constituency respectively in the province of Madras, Bombay, Bengal, the Punjab, Bihar and Orissa or the Central Provinces.⁴

¹ This qualification also applies to the election (for nomination) to the Council of State by the Council of State constituency in Berar.

² Or the Council of State constituency in Berar.

³ L. A. E. R. 6. Also Berar Electoral Rule 5(2).

⁴ It is clear from this that in the United Provinces and Assam a non-Muhammadan is eligible for election to the Legislative Assembly to represent a Muhammadan constituency, and *vice versa*. But neither a Muhammadan nor a non-Muhammadan is so eligible to represent a European constituency.

It may also be stated here that no person can represent the Legislative Assembly constituency in Berar, unless his name is on the

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

3. No person is eligible for election as a member of the Legislative Assembly to represent a European constituency, unless he is himself a European and his name is on the electoral roll of the constituency or of any other European constituency authorized to send a representative (or representatives) to the Assembly.

‘General constituency’ here means a non-Muhammadan, Muhammadan, European, non-European, or Sikh constituency or the Delhi or the Ajmer-Merwara constituency.

‘Special constituency’ means a Landholders’ or Indian Commerce constituency.

THE MADRAS LEGISLATIVE COUNCIL¹

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

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

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

electoral roll of the constituency or of a constituency of the Central Provinces Legislative Council or if he is a Muhammadan.

¹ The Madras Legislative Council Electoral Rule 6.

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

THE BOMBAY LEGISLATIVE COUNCIL ¹

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

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

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

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

Provided that ‘(i) for the purposes of clause (b) the City of Bombay shall be deemed to be a division, and (ii) nothing in clause (b) shall be deemed to render ineligible for election any person who has held office as a Minister, within the period of six months referred to in that clause, and (iii) the provisions of clause (b) shall not apply to candidates for European constituencies.’

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

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

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

¹ The Bombay Legislative Council Electoral Rule 6.

THE BENGAL LEGISLATIVE COUNCIL¹

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

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

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

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

THE UNITED PROVINCES LEGISLATIVE COUNCIL²

No person is eligible for election as a member of the Council to represent a general constituency other than the European constituency, unless he is registered as an elector of the constituency or of any other constituency in the province other than the European constituency.³

2. To be eligible for election as a member of the Council to represent a special constituency or the European constituency, a person must have his name registered on the electoral roll of the constituency.

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

¹ The Bengal Legislative Council Electoral Rule 6.

² The United Provinces Legislative Council Electoral Rule 6.

³ Thus in the United Provinces a Muhammadan can represent a non-Muhammadan constituency in the Local Legislative Council, and *vice versa*.

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

THE PUNJAB LEGISLATIVE COUNCIL¹

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

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

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

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

THE BIHAR AND ORISSA LEGISLATIVE COUNCIL²

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

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

¹ The Punjab Legislative Council Electoral Rule 6.

² The Bihar and Orissa Legislative Council Electoral Rule 6.

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

‘ Special constituency ’ means a Landholders’, University, Planting, or Mining constituency.

THE CENTRAL PROVINCES LEGISLATIVE COUNCIL¹

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

(a) must have his name registered on the electoral roll of the constituency or of any other constituency² in the province ;

(b) must possess ‘ a place of residence³ in a district, any part of which is included in the constituency or, in the case of an urban constituency, in any such district or within two miles of the boundary of the constituency ’ ; and

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

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

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

‘ Special constituency ’⁴ means a Landholders’, University, Mining, or Commerce and Industry constituency.

¹ C. P. L. C. E. R. 6. See also the Berar Electoral Rule 5(3).

² Or of another constituency of the Legislative Council in the case of Berar.

³ In this connexion a person is to be deemed to have a place of residence, if he has actually dwelt in a house or part of a house.

. . . for an aggregate period of not less than 180 days during the calendar year preceding that in which the electoral roll for the time being under preparation is first published, or has maintained for the same period a house, or part of a house, as a dwelling for himself . . . and has visited the same during that year.

⁴ In the case of Berar, ‘ Special constituency ’ means the Landholders’ or the Commerce and Industry constituency.

THE ASSAM LEGISLATIVE COUNCIL¹

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

(1) the Shillong constituency or a non-Muhammadan or Muhammadan rural constituency,² unless his name is registered on the electoral roll of the constituency or of another constituency in the province; or

(2) a Planting, or Commerce and Industry constituency,³ unless his name is registered as an elector of the constituency.

THE BURMA LEGISLATIVE COUNCIL⁴

No person is eligible for election as a member of the Council to represent a general constituency, unless he is registered as an elector of a constituency in the province, and unless he happens to be a Karen, an Indian, an European or an Anglo-Indian in the case of a Karen, Indian, European or Anglo-Indian constituency respectively.

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

'General constituency' here means a General Urban, General Rural, Indian Urban, Karen Rural, Anglo-Indian or European constituency.

'Special constituency' means a University or Commerce constituency.

¹ The Assam Legislative Council Electoral Rule 6.

² These constituencies are referred to in the Assam Electoral Rules as 'general constituencies.'

Thus in Assam, as in the case of the United Provinces, a Muhammadan can represent a non-Muhammadan constituency in the local Legislative Council, and *vice versa*.

³ These constituencies are referred to in the Assam Electoral Rules as 'Special constituencies'.

⁴ Burma Legislative Council Electoral Rule 6.

CHAPTER VI

THE ELECTORAL ROLL¹

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

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

- (1) is not a British subject³ ; or
- (2) is a female⁴ ; or
- (3) has been declared by a competent court to be of unsound mind ; or

¹ The Electoral Rules (as corrected up to the 1st of September, 1926), Part III.

² Electoral Rule 7 ; also Berar Electoral Rule 6.

³ Or is not a subject of the Hyderabad State also in the case of a constituency in Berar.

⁴ There is no disqualification on the ground of sex in Burma where female franchise has been adopted since the introduction of the Reforms there.

In regard to other provinces, we may note the following :

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

Further, until the custom of seclusion of women, followed by many classes and communities, is relaxed, female suffrage would hardly be a reality ; it would be out of harmony with the conservative feeling of the country ; and it would involve great difficulties in the actual recording of votes. . . . At the next revision (as contemplated by the Joint Report) of the constitutions of the Councils the matter should be reconsidered in the light of the

(4) is under twenty-one years of age.¹

It is provided, however, that² a local Government may direct, subject to such conditions as it may prescribe, that the Ruler of any State in India or a subject of any such State will not be disqualified, by reason only of not being a British subject, for registration on the electoral roll of a constituency of the local Legislative Council.³ And if such a Ruler or such a subject is eligible for registration on the electoral roll of a constituency of the Legislative Council of a province, such Ruler or subject will not, by reason of not being a British subject, be ineligible for registration on the electoral roll of any constituency of either Chamber of the Indian Legislature in that province. Furthermore, no subject of an Indian State is for that reason disqualified for registration on the electoral roll of the Delhi constituency of the Legislative Assembly, and no subject of a State in Rajputana is for that reason disqualified for registration on the electoral roll of the Ajmer-Merwara constituency of the Assembly.

experience gained of the working of the electoral system and of social conditions as they then exist'.—Report by the Franchise Committee, para. 8.

See in this connexion footnote 3 on page 83.

¹ Or is under eighteen years of age in the case of a constituency of the Burma Legislative Council.

² Proviso to Electoral Rule 7.

³ Or of the Council of State constituency or the Legislative Assembly constituency in Berar.

We may notice in this connexion the following notification of the Government of Bengal :—

(1) 'A subject of any State in India shall not be ineligible for election as a member of the Legislative Council of the Governor of Bengal by reason only of his not being a British subject.

(2) A Ruler of any State in India or a subject of any such State, shall not be disqualified for registration on the electoral roll of a constituency for the election of a member of the Legislative Council of the Governor of Bengal by reason only of his not being a British subject.

(3) A subject of any State in India shall not be disqualified for nomination to the Legislative Council of the Governor of Bengal by reason only of his not being a British subject.

It is further provided¹ that the sex disqualification for registration as voters for a provincial Legislative Council must be removed by the local Government concerned, if a resolution is passed to that effect by the local Legislative Council 'after not less than one month's notice has been given of an intention to move such a resolution.' And if a similar resolution is passed in the like manner by either Chamber of the Indian Legislature either in respect of women generally or any class of women, the Governor-General in Council² must remove³ the sex disqualification for registration as electors for the Chamber in respect of those women or that class of women, as the case may be, if they are not ineligible for registration as voters of the Legislative Council of their province on the ground of their sex. Further, the sex disqualification for registration on the electoral roll of the Delhi or the Ajmer-Merwara constituency of the Legislative Assembly must be removed by the Governor-General in Council, if a resolution is passed by the Assembly in the same manner as in the previous cases.

¹ Proviso to Electoral Rule 7.

² And the local Government in the case of the constituency of either Chamber in Berar.

³ So far women have been enfranchised, both for the provincial Legislative Councils and the Legislative Assembly, in Madras, Bombay, the United Provinces, the Punjab, Burma, Assam and Bengal. It need not perhaps be pointed out here that the women have been admitted to the franchise on the same terms as men. The number of women who actually voted in contested constituencies at the third (1926) General Election to provincial Legislative Councils was not large. In Madras only 18.5 per cent. of women voters actually voted in such constituencies; in Bombay, 20.1 per cent.; in the United Provinces, 6.3 per cent.; and in the Punjab, 8.9 per cent. The corresponding percentages in the case of the third (1926) General Election to the Legislative Assembly were 22.1 per cent. (in Madras), 12.2 per cent. (in Bombay), 4.5 per cent. (in the United Provinces) and 12.3 per cent. (in the Punjab). In the second (1926) General Election to the Burma Legislative Council only 9.8 per cent. of women voters actually recorded their votes—Vide *East India (Constitutional Reforms—Elections)*, Cmd. 2923 (1927); *The Indian Year Book*, 1927; also *The Bengal Legislative Council Manual*, 1927, p. 165n.

If any person¹ is convicted of an offence under Chapter IX(A) of the Indian Penal Code punishable with imprisonment for a period exceeding six months or is reported by Election Commissioners, specially appointed for the purpose, 'as guilty of a corrupt practice² as specified in Part I, or in paragraph 1, 2 or 3 of Part II, of Schedule V' to Electoral Rules, he is disqualified from voting for a period of five years from the date of the conviction or the report by the Commissioners, as the case may be; and if any person is declared guilty by such Commissioners of any other corrupt practice, he is similarly disqualified for a period of three years. But this disqualification against any person may be removed by the Governor-General in Council or by the local Government, as the case may be.

Every person registered on the electoral roll of a constituency is entitled³ to vote at an election of a member or members for that constituency. But no person can be registered⁴ as an elector in more than one general constituency and, consequently, no person can vote⁵ at any general election in more than one general constituency.⁶ Nor can a person vote⁷ at any election who is subject to any disability mentioned before.⁸

Right to
vote.

¹ Electoral Rule 7 (2), also Berar Electoral Rule 6 (2).

² The offences and corrupt practices, referred to in the sentence, are bribery, undue influence, false personation, etc.

³ Electoral Rule 10 (1); also Berar Electoral Rule 9 (1).

⁴ Electoral Rule 7 (1); also Berar Electoral Rule 6 (1).

⁵ Proviso to Electoral Rule 10 (1); also Berar Electoral Rule 9 (1).

⁶ Or both in the Calcutta University and in the Dacca University constituency.

⁷ Proviso to Electoral Rule 10 (1); also Berar Electoral Rule 9 (1).

Nor can a person vote at any election if on the date on which the poll is taken he is undergoing a sentence of transportation, penal servitude, or imprisonment.—*Ibid.* *The Gaz. of India*, April 30th, 1927, Pt. 1, p. 452.

⁸ If any person is proved, in the course of the hearing of an election petition, to have voted in violation of the proviso to Electoral Rule 10 (1) (see footnote 7 above), his vote will be void.—Electoral Rule 10.(2). This also applies to elections in Berar.

The qualifications of an elector for a general¹ constituency are based,

(A) in the case of the Council of State,² on—

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

(B) in the case of the Legislative Assembly,³ on—

- (1) community,⁴
- (2) residence, and
- (3) (a) the ownership or occupation of a building, or
(b) assessment to, or payment of, municipal or cantonment rates or taxes or local cesses, or
(c) assessment to, or payment of, income-tax, or
(d) the holding of land, or
(e) membership of a local body ; and

(C) in the case of a provincial Legislative Council,⁵ generally on—

- (1) community,⁶

¹ The qualifications of electors for special constituencies have been stated in Chapters VII-X.

² The Council of State Electoral Rule 8 (1).

³ The Legislative Assembly Electoral Rule 8 (1).

⁴ This does not apply to the Delhi constituency or the Ajmer-Merwara constituency.

⁵ Provincial Legislative Councils Electoral Rule 8 (1).

⁶ Except in the case of the Shillong constituency in Assam.

- (2) residence, and
- (3) (a) the occupation of a building, or
 - (b) assessment to property-tax, tax on companies or profession tax, or
 - (c) assessment to income-tax, or
 - (d) military service, or
 - (e) the holding of land, or,
 - (f) as in the case of Bengal, Assam and Bihar and Orissa, the payment of local rates,¹ or
 - (g) payment of municipal or cantonment taxes or capitation-tax, or
 - (h) the holding of a rural office, or
 - (i) the payment of cesses, or,
 - (j) entry (in the case of Burma) in the capitation-tax or the *thathameda-tax* assessment roll.

Electoral Roll.

An electoral roll is prepared for every constituency,² on which are entered the names of all persons entitled to be registered as electors for that constituency. It has to be published in the constituency. Any mistake or omission in the preparation of the electoral roll is to be brought to the notice of the Revising Authority for correction.³ His decision with regard to any point of dispute is final,⁴ and the electoral roll amended in accordance therewith is republished. It comes into force from the date of such republication and continues in force for a period of three years at the end of which period a fresh roll is to be prepared.⁵ This is the ordinary rule. It is provided, however, against it that the Governor-General in Council or a local Government, as the case may be, may direct the

¹ For instance, under the Village Chaukidari Act, 1870, or under the Bengal Village Self-Government Act, 1919, or under the Bengal Municipal Act, 1876, or under the Bihar and Orissa Village Administrative Act, 1922.

² Electoral Rule 9 (1).

⁴ *Ibid.*, 9 (3).

³ *Ibid.*, 9 (1).

⁵ *Ibid.*, 9 (4).

preparation of a fresh roll at any time before the completion of the said period.¹

If a constituency is required to elect a member or members after an electoral roll has ceased to be effective and before a fresh roll has been prepared, the old electoral roll will remain valid for the purposes of the particular election.²

Notwithstanding anything that has been said before, any person may apply to the proper authority for the amendment of an electoral roll for the time being in force and the Governor-General in Council or a local Government, as the case may be, may order the preparation of a list of amendments thereto, if necessary.³

Every local Government⁴ is required to make regulations providing for—

(1) the authority by whom the electoral roll is to be prepared and the particulars to be contained in the roll;

(2) the time for the preparation of the roll;

(3) 'the publication of the roll in such manner and in such language as to give it wide publicity in the constituency to which it relates';

(4) the manner in which and the time within which claims and objections may be preferred;

(5) the constitution and appointment of Revising Authorities to dispose of claims and objections;

(6) the manner in which notices of claims or objections should be published; and

(7) the place, date and time at which and the manner in which claims or objections should be heard.

Such regulations made by a provincial Government for the purpose of elections to the provincial Legislative

¹ Electoral Rule 9 (4)

³ *Ibid.*, 9 (6).

² *Ibid.*, 9 (5).

⁴ *Ibid.*, 9 (2).

Council will also apply,¹ unless the Governor-General in Council otherwise directs, for the purpose of elections within that province to the Council of State or to the Legislative Assembly, as the case may be. And for the purpose of elections to the Legislative Assembly, similar regulations for the time being in force in the Punjab will apply to Delhi, and those for the time being in force in the United Provinces, to Ajmer-Merwara.

¹ The Legislative Assembly and the Council of State Electoral Rule 9 (2).

CHAPTER VII

ELECTORS FOR THE COUNCIL OF STATE¹

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

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

MADRAS ²

A person is qualified as an elector for a general constituency who resided in the Presidency of Madras for not less than 120 days in the previous year³ and who—

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

(2) is a pattadar or inamdar of land in the Presidency on which the assessment, including the water rate, is not less than Rs. 1,500; or

¹ The Council of State Electoral Rule 8, Schedule II.

² *Ibid.*, Schedule II, Part I, Madras.

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

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

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

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

(6) is or has been a non-official President of the Madras Municipal Council or of a District Board or Taluk Board constituted under the Madras Local Boards Act, 1884, or the Madras Local Boards Act, 1920, or is the non-official Vice-President of the said Council or of a District Board; or

(7) is or has been the non-official Chairman or is the non-official Vice-Chairman of a Municipal Council constituted under the Madras District Municipalities Act, 1884, or the Madras District Municipalities Act, 1920; or

(8) is or has been a Fellow or an Honorary Fellow or is a Member of the Senate or Court of any University constituted by law in British India or is a member of the Council of the University of Rangoon; or

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

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

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

BOMBAY ¹General
constitu-
encies.

A person is qualified as an elector for a general constituency who has a place of residence² in the constituency and who—

(1) is in Sind either a Jagirdar of the first or second class or a Zamindar who, in each of the three previous³ revenue years, paid not less than Rs. 2,000 as land revenue on land situated in any district in Sind ; or

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

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

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

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

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

(7) is or has been the President of the Municipal Corporation of the City of Bombay, or is or has been the non-official President or is the non-official Vice-President of a City Municipality within the meaning of section 3 (1)

¹ The Council of State Electoral Rule 8, Schedule II, Part II, Bombay.

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

³ i.e. previous to the year in which the electoral roll for the time being under preparation is first published.

of the Bombay District Municipal Act, 1901, or of a District Local Board established under the Bombay Local Boards Act, 1884.

As in the case of Madras, no person other than a Muhammadan is qualified to be an elector for a Muhammadan constituency,¹ and no Muhammadan is qualified to be an elector for the non-Muhammadan constituency.

Special Constituency

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

BENGAL ²

General Constituencies—Non-Muhammadan

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

(1) (a) in the Burdwan or the Presidency Division paid during the previous ³ year, on his own account as a proprietor, land revenue amounting to not less than Rs. 7,500, or road and public works cesses amounting to not less than Rs. 1,875; or

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

¹ In Bombay there are two Muhammadan constituencies; in Madras, there is only one.

² The Council of State Electoral Rule 8, Schedule II, Part III. Bengal.

³ See the note on it in the case of Madras.

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

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

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

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

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

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

Muhammadan' Constituency

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

(1) paid during the previous¹ year, on his own account as a proprietor, land revenue amounting to not less than Rs. 600 or road and public works cesses amounting to not less than Rs. 125 ; or

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

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

¹ See the note on it in the case of Madras.

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

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

Special Constituency

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

THE UNITED PROVINCES ¹

Non-Muhammadian and Muhammadian Constituencies

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

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

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

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

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

¹ The Council of State Electoral Rule 8, Schedule II, Part IV.