

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

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

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

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

THE PUNJAB ¹

Non-Muhammadan, Muhammadan and Sikh Constituencies

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

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

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

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

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

(5) is a Provincial Punjab Darbari; or

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

(7) is or has been the non-official President or Vice-President of any Municipal Committee established under the Punjab Municipal Act, 1911, which has a population of 20,000 or over, or which is situate at the head-quarters

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

station of a district, or is or has been the non-official Chairman or Vice-Chairman of a District Board constituted under the Punjab District Boards Act, 1883.

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

BIHAR AND ORISSA ¹

Non-Muhammadan Constituency

A person is qualified as an elector for the non-Muhammadan constituency who is not a Muhammadan and who has a place of residence² in the province of Bihar and Orissa and who—

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

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

(3) was in the previous³ year assessed on his own account to income-tax on an income of not less than Rs. 12,800; or

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

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

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

² See the note on it in the case of Bombay.

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

President of a Municipal Committee, or is or has been the Chairman of a District Council ; or

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

Muhammadian Constituency

A person is qualified as an elector for the Muhammadian constituency who is a Muhammadian and has a place of residence¹ in the province of Bihar and Orissa and who—

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

(2) holds in his own right a tenure or tenures for which an aggregate amount of not less than Rs. 187-8-0 per annum is payable as local cess either directly to Government or through a superior landlord ; or

(3) was in the previous² year assessed on his own account to income-tax on an income of not less than Rs. 6,400 ; or

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

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

THE CENTRAL PROVINCES³

A person is qualified as an elector for the Central Provinces constituency who has a place of residence⁴ in the constituency and who—

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

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

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

² See the note on it in the case of Madras.

³ The Council of State Electoral Rule 8, Schedule II, Part VII.

⁴ See the note on it in the case of Bombay.

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

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

BERAR¹

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

(1) holds in other than tenancy right agricultural land, the land revenue assessed or assessable on which is not less than Rs. 1,000; or

(2) has any of the qualifications mentioned in clauses (2) and (3) above in the case of the Central Provinces ; or

(3) is or has been the non-official President of a Municipal Committee established under the Central Provinces Municipalities Act, 1922, as applied to Berar, or has been the non-official Chairman of a Municipal Committee established under the Berar Municipal Law, 1886 ; or is or has been the non-official Chairman of a District Council established under the Central Provinces Local Self-Government Act, 1920, as applied to Berar, or has been the non-official Vice-Chairman of a District Board established under the Berar Rural Boards Law, 1885.

ASSAM²

Non-Muhammadan and Muhammadan Constituencies

A person is qualified as an elector for either of the general constituencies who has a place of residence³ in the province of Assam and who—

(1) is liable to pay annually not less than Rs. 2,000

¹ The Berar Electoral Rule 7, Schedule II.

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

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

ELECTORS FOR THE COUNCIL OF STATE 99

as land revenue or not less than Rs. 200 as local rate ; or

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

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

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

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

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

BURMA¹

The General Constituency

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

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

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

(3) has *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 IX.

² See the note on this in the case of Bombay.

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

(5) is or has been the President or Vice-President of the Rangoon Municipal Committee or is or has been the President or is the Vice-President of any other Municipal Committee established under the Burma Municipal Act 1898, or of a District Council.

The European Commerce Constituency

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

Joint Families

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

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

CHAPTER VIII

ELECTORS FOR THE LEGISLATIVE ASSEMBLY¹

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

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

MADRAS²

General Constituencies

A person is qualified as an elector for the Madras City constituency who is neither a Muhammadan nor a European and who resided in the constituency for not less than 120 days in the previous year³ and who—

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

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

¹ The Legislative Assembly Electoral Rule 8, Schedule II.

² *Ibid.*, Part I.

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

Rural
consti-
tuencies.

A person is qualified as an elector in any other general constituency¹ who resided in the constituency for not less than 120 days in the previous year and who—
(a) is registered as a ryotwari pattadar or as an inamdar of land of which the annual rent value is not less than Rs. 50; or

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

(c) is registered jointly with the proprietor under Section 14 of the Malabar Land Registration Act, 1895, as the occupant of land of which the annual rent value is not less than Rs. 50; or

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

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

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

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

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

A European is not to be disqualified to be an elector for the Madras (European) constituency by reason only of non-residence, if he is employed in the constituency and his non-residence is due to absence on leave from such employment.

¹ The Legislative Assembly Electoral Rule 8, Schedule II, Part I.

Special Constituencies

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

A person is qualified to be an elector for the landholders' constituency¹, if his name is on the electoral roll of any landholders' constituency of the Madras Legislative Council.

**The Indian
Commerce
consti-
tuency.**

'Every Indian and one duly authorized representative of every Indian partnership shall be qualified as an elector on the roll of the Indian Commerce constituency² if such person has resided in the Presidency for not less than 120 days in the previous year, and if he or the partnership, as the case may be, has been assessed to income-tax in the previous year on an income of not less than Rs. 10,000 derived from business, within the meaning of the Income-tax Act, 1922.'

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

The rule with regard to joint families³ in respect of elections to the Legislative Assembly is practically the same as in the case of the Council of State.

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

BOMBAY⁴*General Constituencies*

A person⁵ is qualified as an elector for a non-Muhamadan or Muhammadan constituency who, on the first day

¹ The Legislative Assembly Electoral Rule 8, Schedule II, Part I.

² *Ibid.*, Part I.

³ *Ibid.*, Part I.

⁴ *Ibid.*, Part II.

⁵ *Ibid.*

of January preceding the date of publication of the electoral roll, had a place of residence within the constituency or

within a contiguous constituency of the same communal description and who—

Non-Muhamma-
dan and
Muhamma-
dan consti-
tencies.

(1) in the case of the Sind constituencies, held in his own right, on the first day of January aforesaid, land on which, in any one of the five revenue years previous to the publication of the electoral roll, 'an assessment of not less than Rs. 37-8-0 land revenue in the Upper Sind Frontier District and of not less than Rs. 75 land revenue in any other district' had been paid; or

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

(3) was on the aforesaid date the alienee of the right of Government to the payment of rent or land revenue, amounting to Rs. 37-8-0 in the Panch Mahals or Ratnagiri or Upper Sind Frontier District and of Rs. 75 elsewhere, or was a Khot or a sharer in a Khoti village in the constituency or a sharer in a bhagdari or narvadari village in the constituency, responsible for the payment of Rs. 37-8-0 as land revenue in the Panch Mahals or Ratnagiri District and Rs. 75 as land revenue elsewhere; or

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

A person is qualified as an elector for the Bombay
The Euro-
pean consti-
tency. European constituency¹ whose name is on the electoral roll of either European constituency of the Bombay Legislative Council or who is qualified for enrolment in either of such rolls.

¹ The Legislative Assembly Electoral Rule 8, Schedule II, Part II.

Special Constituencies

1. A person¹ is qualified as an elector for the Sind Jagirdars and Zamindars' constituency who is a Jagirdar of the first or second class in Sind, or a Zamindar who, in each of the three revenue years preceding the publication of the electoral roll, paid not less than Rs. 1,000 as land revenue on land situated in any district in Sind.

2. A person is qualified as an elector for the Deccan and Guzarat Sardars and Inamdars' constituency whose name is entered in the list for the time being in force under the Resolutions of the Government of Bombay in the Political Department, No. 2363, dated July 23, 1867, and No. 6265, dated September 21, 1909, or who, on the first day of January preceding the publication of the electoral roll, was the sole alienee of the right of Government to the payment of rent or land revenue in respect of an entire village in the Presidency of Bombay excluding Sind and Aden, or was the sole holder on talukdari tenure of such a village.

The members² of the Indian Merchants' Chamber and Bureau and of the Bombay Millowners' Association and of the Ahmedabad Millowners' Association are qualified as electors respectively for the constituency comprising the Association of which they are members.

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

¹ The Legislative Assembly Electoral Rule 8, Schedule II, Part II.

² *Ibid.*

BENGAL ¹*General Constituencies*

1. A person² is qualified as an elector for the Calcutta non-Muhammadan constituency who is neither a Muhammadan nor a European and who has a place of residence in Calcutta and who—

Calcutta Non-Muhammadan constituency.

(a) during and in respect of the previous³ year paid not less than Rs. 60 as consolidated rate levied under Chapter X of the Calcutta Municipal Act, 1923, or as taxes levied under Chapter XII of that Act⁴; or

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

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

2. A person⁵ is qualified as an elector for any other general constituency who has a place of residence in the constituency and who—

Non-Muhammadan and Muhammadan Constituencies.

(a) during and in respect of the previous⁶ year, or, as the case may be, during and in respect of the Bengali year preceding that in which the electoral roll for the time being under preparation is first published, paid not less than Rs. 60 as consolidated rate levied under Chapter X of the Calcutta Municipal Act, 1923, or as taxes levied under Chapter XII of that Act⁷; or

(b) paid, during and in respect of such year, in the

¹ L. A. E. R. 8, Sch. II, Part III.

² *Ibid.*

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

⁴ Provided that his name is entered in the Municipal assessment book in respect of the payment.

⁵ The Legislative Assembly Electoral Rule 8, Schedule II, Part III.

⁶ See the note on it in the case of Madras.

⁷ Provided that his name is entered in the municipal assessment book in respect of the payment.

Municipality of Howrah, municipal taxes or fees of not less than Rs. 10, or in any other Municipality or in a Cantonment municipal or cantonment taxes or fees of not less than Rs. 5; or

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

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

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

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

2. A person¹ is qualified as an elector for the Bengal European constituency who is a European and has a place of residence² in the constituency and who—

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

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

The same communal qualification is required of an elector in Bengal as in Bombay.

Special Constituencies³

A person is qualified as an elector for the Bengal Land-holders' constituency who has a place of resi-

¹ The Legislative Assembly Electoral Rule 8, Schedule II, Part III.

² i.e., he must ordinarily live within the constituency, or maintain within its limits a dwelling house ready for occupation and occasionally occupy it.

³ The Legislative Assembly Electoral Rule 8, Schedule II, Part III.

dence in the constituency and who during the previous year—

The Land-
holders' con-
stituency.

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

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

The members¹ of the Bengal National Chamber of Commerce and of the Marwari Association and of the Bengal Mahajan Sabha are qualified as electors respectively for the constituency comprising the Chamber, Association and Sabha of which they are members.

The Indian
Commerce
constitu-
encies.

THE UNITED PROVINCES²

General Constituencies

A person³ is qualified as an elector for a non-Muhammadan or Muhammadan urban constituency who is not a European and who—

Urban
constitu-
encies.

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

(a) is, in any place in the area aforesaid in which a house or building tax is in force, the owner or

¹ 'Member' includes any person entitled to exercise the rights and privileges of membership on behalf and in the name of any firm, company or corporation registered as a member.

² The Legislative Assembly Electoral Rule 8, Schedule II, Part IV.

³ *Ibid.*

tenant of a house the rental value of which is not less than Rs. 180 per annum ; or

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

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

(d) has within the constituency any of the qualifications based on the holding of land, as stated below, for an elector of a rural constituency ; or

(2) has a place of residence in the constituency and was in the previous year assessed to income-tax.

A person¹ is qualified as an elector for a non-Muhammadan or Muhammadan rural constituency who is not a European and who has a place of residence in the constituency and—

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

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

(3) is, in an urban area included in the constituency where neither a house or building tax nor a municipal tax

¹ The Legislative Assembly Electoral Rule 8, Schedule II, Part V.

based on income is in force, the owner or tenant of a house or building, the rental value of which is not less than Rs. 180 per annum ; or

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

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

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

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

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

(c) owns land in the hill pattis 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 hill pattis, amounts to not less than Rs. 25 per annum ; or

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

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

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

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

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

A person¹ is qualified as an elector for the United Provinces (European) constituency who is a European and has a place of residence in the United Provinces of Agra and Oudh and has any of the qualifications mentioned in clauses (4), (5), (6), (7), (8) and (9) above in the case of a non-Muhammadan or Muhammadan rural constituency.

*Special Constituencies*²

A person is qualified as an elector for the United Provinces Landholders' constituency who has a place of residence in the constituency and—
 The Landholders' constituency.
 (1) is the owner³ 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 owner⁴ 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.

¹ The Legislative Assembly Electoral Rule 8, Schedule II, Part IV.

² *Ibid.*

³ In his own personal right and not in a fiduciary capacity.

⁴ *Ibid.*

THE PUNJAB¹*General Constituencies*

A person² is qualified as an elector for a general constituency who resides in the constituency and who—

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

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

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

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

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

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

¹ The Legislative Assembly Electoral Rule 8, Schedule II, Part V.

² *Ibid.*

Special Constituency¹

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

The Land-holders' constituency.

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

BIHAR AND ORISSA²*General Constituencies*

A person³ is qualified as an elector for a general constituency who has a place of residence in the constituency and—

Non-Muhamma-dan and Muhamma-dan constituencies.

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

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

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

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

is payable direct to the treasury as local cess ; or

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

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

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

¹ The Legislative Assembly Electoral Rule 8, Schedule II, Part V.

² *Ibid.*, Part VI.

³ *Ibid.*

- (c) in the case of tenures in the Bhagalpur Division, than Rs. 200 per annum, or
- (d) in the case of tenures in the Tirhut Division, than Rs. 150 per annum, or
- (e) in the case of tenures in the Orissa Division, than Rs. 100 per annum ; or

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

- (a) to Rs. 160 and Rs. 5 in the Patna Division, or
- (b) to Rs. 96 and Rs. 3 in the Tirhut Division, or
- (c) to Rs. 64 and Rs. 2 in the Orissa Division, or
- (d) to Rs. 40 and Rs. 1-4-0 in the Chota Nagpur Division, or
- (e) to Rs. 144 and Rs. 4-8-0 in the Bhagalpur and Monghyr Districts, or
- (f) to Rs. 96 and Rs. 3 in the Purnea and Santhal Parganas Districts ; or

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

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

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

Special Constituency

A person is qualified as an elector for the landholders' constituency who has a place of residence in the Province of Bihar and Orissa and pays¹ annually land revenue or local cess of an aggregate amount of not less than Rs. 10,000 and

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

Rs. 2,500 respectively.

¹ As proprietor in his own right and not in a fiduciary capacity.

THE CENTRAL PROVINCES ¹*General Constituencies*

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

Muhamma-
dan and non-
Muhamma-
dan consti-
tuencies.

(1) owns or occupies as a tenant within an urban area in the constituency a house, or part of a house, the annual rental value of which is not less—

(a) in the case of a house in the Nagpur Municipality or in the Jubbulpore Municipality or Cantonment, than Rs. 240, and

(b) in the case of a house in any other urban area, than Rs. 180,

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

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

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

(a) in the case of land in Raipur, Bilaspur, Drug, Chanda and Betul Districts, than Rs. 90, or

(b) in the case of land in Bhandara, Balaghat, Nimar, Chhindwara and Seoni Districts, than Rs. 120, or

¹ Legislative Assembly Electoral Rule 8, Schedule II, Part VII.

(c) in the case of land in any other district, than Rs. 150 ; or

(4) was in the previous year¹ assessed to income-tax.

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

*Special Constituency*²

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

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

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

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

BERAR³

A person is qualified as an elector for the Berar Legislative Assembly constituency who is not a Muhammadan and who has a place of residence in the constituency, and—

(a) owns or occupies as a tenant within an urban area in the constituency a house or building, or part of a house or building, the annual rental value of which is not less—

(i) in the case of a house or building in the Amraoti City and Camp Municipalities, than Rs. 240, and

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

² Legislative Assembly Electoral Rule 8, Schedule II, Part VII.

³ Berar Electoral Rule 7, Schedule II.

- (ii) in the case of a house, or building in any other urban area, than Rs. 180¹; or
- (b) holds in the constituency agricultural land in other than tenancy right which is assessed or assessable to land revenue of not less—
 - (i) in the Yeotmal district, than Rs. 120, and
 - (ii) in all other districts, than Rs. 150; or
- (c) was in the previous year assessed to income-tax.

ASSAM²

A person³ is qualified as an elector for any constituency who during the previous year resided within the constituency and who—

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

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

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

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

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

¹ 'Provided that, where such house or building or part is held by two or more persons in shares, no person shall be qualified in respect of a share the annual rental value of which is less than Rs. 240 or Rs. 180, as the case may be.'

² Legislative Assembly Electoral Rule 8, Schedule II, Part VIII.

³ *Ibid.*

(b) is liable to pay a local rate of not less than Rs. 3 per annum ; or

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

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

A European is not to be ' disqualified to be an elector for the Assam European constituency by reason only of non-residence, if he is employed in the constituency and his non-residence is due to absence on leave from such employment.'

BURMA¹

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

(1) paid during and in respect of the previous agricultural² year land revenue amounting to not less than—

(a) Rs. 150 in Lower Burma, or

(b) Rs. 100 in Upper Burma ; or

(2) paid during and in respect of the previous agricultural year thathameda-tax amounting to not less than Rs. 25 ; or

(3) was in the previous financial year² assessed to income-tax.

¹ Legislative Assembly Electoral Rule 8, Schedule II, Part IX.

² " " Previous agricultural year " and " previous financial year " mean, respectively, the agricultural and financial year preceding that in which the electoral roll or the list of amendments thereto, as the case may be, for the time being under preparation is first published.'

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

DELHI¹

The Delhi
constitu-
ency.

A person² is qualified as an elector for the Delhi constituency who resides in the constituency and who—

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

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

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

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

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

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

¹ Legislative Assembly Electoral Rule 8, Schedule II, Part X.

² *Ibid.*

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

AJMER-MERWARA ¹

A person is qualified as an elector for the Ajmer-Merwara constituency who resides in the constituency and who —

(a) owned ' in the constituency for the twelve months preceding the date of the publication of the electoral roll immovable property, not being land assessed to land revenue or granted free of land revenue, but including any building erected on such land, of the value of not less than Rs. 5,000, or of an annual rental of not less than Rs. 300, or has been tenant of such immovable property for a like period :

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

(b) owns land in the constituency assessed to land revenue of not less than Rs. 150 per annum ; or

(c) is the assignee of land revenue amounting to not less than Rs. 150 per annum ; or

(d) pays rent of not less than Rs. 200 per annum as an ex-proprietary tenant of agricultural land ; or

(e) pays rent of not less than Rs. 300 per annum as a tenant, otherwise than in ex-proprietary right, of agricultural land of which he has been such tenant during the three years preceding the date of the publication of the electoral roll ; or

(f) was assessed to income-tax during the financial year preceding the date of the publication of the electoral roll.

¹ Legislative Assembly Electoral Rule 8, Schedule II, Part XI.

CHAPTER IX

QUALIFICATIONS OF ELECTORS FOR THE BENGAL AND UNITED PROVINCES LEGISLATIVE COUNCILS

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

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

QUALIFICATIONS ¹ OF ELECTORS FOR THE BENGAL LEGISLATIVE COUNCIL

General Constituencies

A person is qualified as an elector (a) for a non-Muhammadan constituency² if he is neither a Muhammadan nor a European nor an Anglo-Indian, and (b) for a Muhammadan, European or Anglo-Indian constituency according as he is a Muhammadan, European or Anglo-Indian. This is not all that is required for qualifying a person for registration as an elector. He must possess further qualifications as stated below:—

Subject to the communal requirements stated above,

¹ Bengal Legislative Council Electoral Rule 8, Schedule II.
We have, in stating the Electoral Rules, retained in most cases the exact language of the Rules in order to ensure accuracy.

² Bengal Electoral Rule 8, Schedule II.

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

Urban and rural constituencies other than Calcutta constituencies.

(1) paid, during and in respect of the previous¹ year or, as the case may be, during and in respect of the Bengali year preceding that in which the electoral roll for the time being under preparation, is first published,—

(a) in the Municipality of Howrah municipal taxes or fees of not less than Rs. 3 or in any other municipal or cantonment area, municipal or cantonment taxes or fees of not less than Rs. 1-8-0, or

(b) road and public works cesses under the Cess Act, 1880, of not less than Re. 1, or

(c) chaukidari tax under the Village Chaukidari Act, 1870, or union rate under the Bengal Village Self-Government Act, 1919, of not less than Rs. 2; or

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

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

Subject to the communal requirements stated before, a person is entitled to be an elector for a Calcutta constituency³ who has a place of residence therein or who, having a place of residence in Calcutta as defined in Section 3 (11) of the

Calcutta constituencies.

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

² Bengal Electoral Rule 8, Schedule II.

³ *Ibid.*

Calcutta Municipal Act, 1923, has a place of business within the constituency, and who—

(1) during the previous year—

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

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

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

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

(b) paid in respect of that year on his sole account and in his own name not less than Rs. 24 either in respect of the consolidated rate levied under Chapter X, or in respect of the taxes levied under Chapter XI, or in respect of the taxes levied under Chapter XII, of the Calcutta Municipal Act, 1923 :

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

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

(b) is a member of a firm which in the previous

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

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

Subject to the communal requirements stated before, a person is qualified as an elector for a European constituency¹ who has a place of residence in the constituency and has any of the qualifications prescribed for an elector of any urban or rural constituency included in the area of such European constituency.

Subject to the communal requirements stated before, a person is qualified as an elector for the Anglo-Indian constituency² who has a place of residence in Bengal and has any of the qualifications prescribed for an elector of any urban or rural constituency.

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

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

SPECIAL CONSTITUENCIES

A person is qualified as an elector for a landholders' constituency⁴ who has a place of residence in the constituency and who during the previous year—

(1) in the case of the Burdwan Landholders'

¹ Bengal Electoral Rule 8, Schedule II.

² *Ibid.*

³ *Ibid.*

⁴ *Ibid.*

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

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

A person is qualified as an elector for the Calcutta University constituency¹ who has a place of residence in Bengal and is a member of the Senate or an Honorary Fellow of the University, or a graduate of the University of not less than seven years' standing.

A person is qualified as an elector for the Dacca University constituency² who—

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

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

The Chamber members of the Bengal Chamber of Commerce³ and the permanent members of the Indian Jute Mills Association, of the Indian Tea Association, and of the Indian Mining Association are qualified respectively as electors

¹ Bengal Electoral Rule 8, Schedule II.

² *Ibid.*

No person can vote at any general election both in the Calcutta University and in the Dacca University constituency. See Bengal Electoral Rule 10.

³ *Ibid.*

for the constituency comprising the Chamber or Association of which they are such members :

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

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

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

¹ Bengal Electoral Rule 8, Schedule II, Clause 13(2).

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

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

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

We may note here the following interesting case :—

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

In this case, the petitioner, Mr. Amulyadhan Addy, contended that Mr. Chakravarty was not entitled to be a candidate by reason of the

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

QUALIFICATIONS OF ELECTORS FOR THE UNITED
PROVINCES LEGISLATIVE COUNCIL¹

A person is qualified as an elector—

Qualifica-
tions based
on commu-
nity.

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

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

General Constituencies

A person is qualified as an elector for an urban
constituency² who has the necessary communal
qualification and who—

Urban
constituen-
cies.

- (1) has a place of residence in the consti-
tuency or within two miles of its boundary, and
- (a) is, in any place in the aforesaid area in which a
house or building tax is in force, the owner or
tenant of a house or building the rental value
of which is not less than Rs. 36 per annum ; or

fact that his name did not appear on the electoral roll, though the Bengal National Bank, Limited, of which he was a director, was on the roll. Mr. Chakravarty replied that the Bengal National Bank, Limited, was an ordinary member of the constituency known as the Bengal National Chamber of Commerce constituency and was therefore rightly registered as an elector and that he as a director of the aforesaid bank was duly qualified to be nominated and elected and returned as a member of the Bengal Legislative Council.—Bengal Election Case No. 8 of 1924. *The Calcutta Gazette*, March 26, 1924. We think that the Bengal Electoral Rule 8, Schedule II, Section 13(2) ought to be made more clear and definite.

¹ The United Provinces Legislative Council Electoral Rule 8, Schedule II.

² *Ibid.*

- (b) was, in an area in the constituency in which no house or building tax is in force, assessed in the previous year to municipal tax on an income of not less than Rs. 200 per annum ; or
 - (c) is, in any area in the constituency in which neither a house or building tax nor a municipal tax based on income is in force, the owner or tenant of a house or building of which the rental value is not less than Rs. 36 per annum ; or
 - (d) has within the constituency any of the qualifications based on the holding of land, as stated below, for an elector of a rural constituency ; or
- (2) has a place of residence in the constituency and
- (a) was in the previous year assessed to income-tax ; or
 - (b) is a retired, pensioned or discharged officer, non-commissioned officer or soldier of His Majesty's regular forces.

Rural constituencies. A person is entitled to be registered as an elector for a rural constituency¹ who has a place of residence in the constituency, and has the necessary communal qualification, and who—

(1) is, in an urban area included in the constituency in which a house or building tax is in force, the owner or tenant of a house or building, the rental value of which is not less than Rs. 36 per annum ; or

(2) was, in an urban area included in the constituency in which no house or building tax is in force, assessed in the previous year to municipal tax on an income of not less than Rs. 200 per annum ; or

(3) is, in an urban area included in the constituency where neither a house or building tax nor a municipal tax based on income is in force, the owner or tenant of a house

¹ The United Provinces Electoral Rule 8, Schedule II.

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

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

(5) owns land in the constituency free of land revenue, if the land revenue nominally assessed on such land in order to determine the amount of rates payable in respect of the same, either alone or together with any land revenue payable by him as owner in respect of other lands in the constituency, amounts to not less than Rs. 25 per annum ; or

(6) being a resident in the hill pattis of Kumaon, owns a fee-simple estate or is assessed to the payment of land revenue or cesses of any amount or is a Khaikar ; or

(7) being in the constituency a permanent tenure holder or a fixed-rate tenant, as defined in the Agra Tenancy Act, 1901, or an under-proprietor or occupancy tenant, as defined in the Oudh Rent Act, 1886, is liable to pay rent as such of not less than Rs. 25 per annum ; or

(8) (a) being in the constituency a tenant as defined in the Agra Tenancy Act, 1901, or the Oudh Rent Act, 1886, other than a sub-tenant, holds land as such in respect of which rent of not less than Rs. 50 per annum or its equivalent in kind is payable, or

(b) in areas in the United Provinces in which the Agra Tenancy Act, 1901, or the Oudh Rent Act, 1886, is not in force, holds land as a tenant in respect of which rent of not less than Rs. 50 per annum or its equivalent in kind is payable ; or

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

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

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

*Special Constituencies*²

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

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

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

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

Commerce and Industry constituencies. A person is qualified as an elector—
(1) for the Upper India Chamber of Commerce constituency who—

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

¹ The United Provinces Electoral Rule 8, Schedule II.

² *Ibid.*

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

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

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

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

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

- (1) resides in India and is a member of the Court, of the Executive Council or of the Academic Council of the University of Allahabad ;
- or

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

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

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

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

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

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

¹ The United Provinces Electoral Rule 8, Schedule II, Section 2.

CHAPTER X

QUALIFICATIONS OF ELECTORS FOR THE MADRAS AND BOMBAY LEGISLATIVE COUNCILS

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

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

QUALIFICATIONS¹ OF ELECTORS FOR THE MADRAS LEGISLATIVE COUNCIL

General Constituencies

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

Non-Muhammadan
constituencies (urban
and rural).

A person is qualified as an elector—

- (1) for a Madras City constituency² who—
(a) was assessed in the previous year to property-tax or tax on companies or profession-tax ; or

¹ Madras Legislative Council Electoral Rule 8, Schedule II.

² *Ibid.*

- (b) occupied for not less than six months in the previous year a house in the city, not being a house in any military or police lines, of an annual value of not less than Rs. 60 ; or
 - (c) was assessed in the previous year to income-tax ; or
 - (d) is a retired, pensioned or discharged officer, non-commissioned officer or soldier of His Majesty's regular forces ; and
- (2) for an urban constituency other than a Madras City constituency¹ who—
- (a) was assessed in the previous year to an aggregate amount of not less than Rs. 3 in respect of one or more of the following taxes, namely, property-tax, tax on companies or profession-tax ; or
 - (b) has any of the qualifications in respect of the holding of land, as stated below, for an elector of a rural constituency ; or
 - (c) has any of the qualifications specified in clauses (1) (c) and (1) (d) above.

A person is qualified as an elector for a rural constituency² who—

Rural constituencies.

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

¹ Madras Electoral Rule 8, Schedule II.

² *Ibid.*

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

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

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

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

A person is entitled to be an elector—

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

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

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

¹ Madras Electoral Rule 8, Schedule II, Section 7.

² *Ibid.*, Section 8.

³ *Ibid.*, Section 9.

⁴ *Ibid.*

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

SPECIAL CONSTITUENCIES

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

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

(2) is registered as the Janmi of land situated within the Presidency of Madras on which the assessment is not less than Rs. 1,500 ; or

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

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

OTHER SPECIAL CONSTITUENCIES

A person is qualified as an elector for the Madras University constituency³ who has a place of residence in India and is a member of the Senate, or an Honorary Fellow, or a graduate of over seven years' standing of the University of Madras.

¹ Madras Electoral Rule 8, Schedule II, Section 14.

² *Ibid.*, Section 19.

³ *Ibid.*, Section 23.

The Planters' constituency.

A person is qualified as an elector for the Madras Planters' constituency¹ who is a member of one of the associations affiliated to the United Planters' Association of Southern India.

The Madras Chamber of Commerce and Industry constituency.

A person is qualified to be an elector for the Madras Chamber of Commerce² constituency who is a member of the Madras Chamber of Commerce or of a Chamber affiliated to it.

Other Commerce constituencies.

The members of the Madras Trades Association, the Southern India Chamber of Commerce and the Nattukkottai Nagarathars' Association are qualified respectively as electors for the constituency comprising the Chamber or Association of which they are members.³

QUALIFICATIONS OF ELECTORS FOR THE BOMBAY
LEGISLATIVE COUNCIL⁴

General Constituencies

Subject to the communal requirements stated hereinafter, a person is qualified as an elector for a non-Muhammadan or Muhammadan urban constituency who is not a European and who, on the first day of April preceding the date of publication of the electoral roll, had a place of residence within the constituency or, in the case of a Bombay City constituency, within the limits of the said city or within the limits of the North Salsette Mahal or the South Salsette Taluqa, or, in the case of any other urban constituency, within two miles of the boundary thereof, and who—

Non-Muhammadan and Muhammadan urban constituencies.

(1) on the first day of April aforesaid occupied, as

¹ Madras Electoral Rule 8, Schedule II, Section 24.

² *Ibid.*, Section 25.

³ *Ibid.*, Section 26.

⁴ Bombay Legislative Council Electoral Rule 8, Schedule II.

owner or tenant, in such constituency a house, or part of a house separately occupied, as a dwelling or for the purpose of any trade, business or profession,—

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

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

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

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

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

Subject to the communal requirements stated hereinafter, a person is entitled to be an elector for a non-Muham-
 madan and Muham-
 madan rural con-
 stituencies. Muhammadan or Muhammadan rural consti-
 tuency² who is not a European and who, on
 the first day of January preceding the date of
 publication of the electoral roll, had a place of
 residence within the constituency or within a

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

² *Ibid.*, Section 3.

contiguous constituency of the same communal description, and who—

- (1) (a) in the case of any constituency in Sind, on the first day of January aforesaid, held. . . land in such constituency, on which, in any one of the five revenue years preceding the publication of the electoral roll, an assessment of not less than Rs. 16 as land revenue in the Upper Sind Frontier District and of not less than Rs. 32 as land revenue elsewhere had been paid (or would have been paid, if the land had not been alienated); or
- (b) in the case of any other constituency, held, on the same date, alienated or unalienated land assessed at or of the assessable value of not less than Rs. 16 as land revenue in the Panch Mahals or Ratnagiri District and not less than Rs. 32 as land revenue elsewhere; or
- (2) on the aforesaid date ' was the alienee of the right of Government to the payment of rent or land revenue, amounting to not less than Rs. 16 in the Panch Mahals or Ratnagiri or Upper Sind Frontier District and to not less than Rs. 32 elsewhere, leviable in respect of land so alienated and situate within the constituency, or was a Khot or a sharer in a Khoti village in the constituency or a sharer in a bhagdari or narvadari village in the constituency ', responsible for the payment of not less than Rs. 16 as land revenue in the Panch Mahals or Ratnagiri or Upper Sind Frontier District and not less than Rs. 32 as land revenue elsewhere; or
- (3) has any of the qualifications hereinbefore specified in clauses (2) and (3) in the case of the urban constituencies; or
- (4) in any municipal district, cantonment or notified area in the constituency, on the first day of April preceding

the date of publication of the electoral roll, occupied, as owner or tenant, a house or building, or part of a house or building separately occupied, as a dwelling or for the purpose of any trade, business or profession, —

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

Both in the case of rural and urban constituencies no person who is not a Muhammadan is qualified as an elector for a Muhammadan constituency and no Muhammadan is qualified as an elector for a non-Muhammadan constituency.

A person is qualified as an elector—

- (1) for the Bombay City (European) constituency¹ who is a European and has a place of residence within the Presidency and, save in these two respects, has the qualification stated before for an elector of a Bombay City constituency; and
- (2) for the Presidency (European) constituency² who is a European and who has a place of residence within the Presidency and, save in these two respects, has the qualification stated before for an elector of an urban other than a Bombay City constituency or of a rural constituency

European
Constitu-
cies.

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

² *Ibid*, Section 4 (ii).

according as he has a place of residence within an urban or rural constituency.

Special Constituencies

A person is qualified as an elector¹—

**Landhold-
ers' consti-
tuencies.** (1) for the constituency of the Deccan Sardars and Inamdars whose name is in the list for the time being in force under the Resolution of the Government of Bombay in the Political Department, No. 2363, dated July 23, 1867, or who, on the first day of January preceding the date of publication of the electoral roll, was the sole alienee of the right of Government to the payment of rent or land revenue in respect of an entire village situated within the constituency ;

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

(3) for the constituency of the Jagirdars and Zamindars (Sindi) who is a Jagirdar of the first or second class in Sind, or who in each of the three revenue years previous to the publication of the electoral roll paid not less than Rs. 1,000 as land revenue on land situate in any district in Sind ;

¹ Bombay Electoral Rule 8, Schedule II, Section 5.

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

(5) for a Commerce and Industry constituency² whose name is in the list of members, for the time being in force, of the association forming such constituency³ or who is entitled to exercise the rights and privileges of membership on behalf of and in the name of any firm or company or corporation entered in such list of members.

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

² *Ibid.*, Section 7.

³ For the qualifications of the electors for the Bihar and Orissa, Assam, Punjab, Burma and the Central Provinces Legislative Councils, the reader is referred to the relevant Electoral Rules. We have not been able to state them in this volume for want of space.

CHAPTER XI

THE NATURE OF THE ELECTORAL SYSTEM

Complexity of the electoral system—Residential qualification—Communal representation—Representation of special interests—Restricted nature of the present franchise, one of the great defects of the Reforms.

The six preceding chapters will enable the reader to form an idea of the present electoral system in this country. One striking feature of the system is its complexity. The electoral rules and regulations in force in different parts of British India, even in respect of elections to the same legislative body, e.g., the Legislative Assembly or the Council of State, are of a bewildering variety. This, indeed, is inevitable in a country like India. As the authors of the Joint Report had recognized,¹ owing to unequal distribution of population and wealth, it was considered necessary to differentiate the qualifications for a vote not merely between provinces, but between different parts of the same province. Thus the Franchise Committee did not seek² to attain uniformity in the standard of property qualifications for the various provinces, and recommended differing qualifications even within the same province where it was satisfied that social and economic differences³ justified the discrimination.

¹ *Joint Report*, para. 226.

² *Report of the Franchise Committee*, para. 10.

³ See, for illustration, the electoral qualifications for the Council of State. Also note the following :—

‘The Muhammadans are the poorer community, and therefore any property qualification common to them and the Hindus will make the Muhammadan electorate smaller in proportion to the Muhammadan census than will be the case with the Hindus.’—*Fifth Despatch on Indian Constitutional Reforms* (Franchises, para. 22.)

There is also a lack of uniformity in respect of qualifications for candidature. For instance, no communal qualification is required for the representation of a Muhammadan or a non-Muhammadan constituency in the Legislative Councils¹ of the United Provinces and Assam, as in the case of other provinces. Again, in some provinces²

Residential
qualifica-
tion.

a residential qualification is necessary, whereas in others it is not required. It is desirable that this qualification should be dispensed with, as there is no adequate justification either for restricting the choice of electors by such a device, or for preventing a candidate from contesting a constituency in which he has no place of residence. It has been urged in favour of the residential qualification that it encourages³ the 'candidature of persons with knowledge of local interests and actually representative of such interests, and that the chance of securing such candidates among the rural population, hitherto unversed in politics, would be impaired by the competition of candidates from outside.' Thus, 'much⁴ of the educative effect of the franchise would be lost, and the representative character of the Councils impaired.' Although it may be admitted that an actual resident is likely to possess a more intimate knowledge of the needs and conditions of his constituents and to have a deeper concern in their welfare, yet the disadvantages of the restriction of choice are many and serious. Such restriction deprives the legislatures concerned of the services of men of experience and capacity residing elsewhere in the province. The absence of any residential qualification in England 'not only has the effect,' says

¹ See pages 77 and 80. See also page 74.

² E.g. in Bombay and in the Central Provinces and Berar. See pages 76 and 79.

³ Report of the Franchise Committee, para 29.

⁴ *Ibid.*

Dr. Garner, 'of securing the election of representatives who are free from the tyranny of petty local interests and who are likely to take broad national views of public questions, but it affords a means of bringing into and retaining in public life able statesmen who otherwise would be unable to obtain seats in Parliament. . . . In the United States, where the opposite practice prevails, the country has, as a consequence, been deprived of the services of some of its ablest and most experienced statesmen.'¹

Another distinguished authority² criticises the American practice³ of preventing a man resident in one part of a State from representing another part as follows :—

'The mischief is two-fold. Inferior men are returned, because there are many parts of the country which do not grow statesmen, where nobody, or at any rate nobody desiring to enter Congress, is to be found above a moderate level of political capacity. And men of marked ability and zeal are prevented from forcing their way in. Such men are produced chiefly in the great cities of the older States. There is not room enough there for nearly all of them, but no other doors to Congress are open. . . . As such men cannot enter from their place of residence, they do not enter at all, and the nation is deprived of the benefit of their services. Careers are moreover interrupted. A promising

¹ *Introduction to Political Science*, p. 453.

'The election of non-residents to represent constituencies to which they are to all intents and purposes strangers is an occurrence so common in England that it has come to be almost as much the rule as the exception.'—*Ibid.*, p. 452.

² Bryce, *The American Commonwealth*, vol. i, p. 195.

³ 'The choice of members of Congress is locally limited by law and by custom. Under the Constitution every representative and every senator must when elected be an inhabitant of the State whence he is elected. Moreover State law has in many and custom practically in all States, established that a representative must be resident in the congressional district which elects him.'—*Ibid.*, p. 191.

politician may lose his seat in his own district through some fluctuation of opinion, or perhaps because he has offended the local wire-pullers by too much independence. Since he cannot find a seat elsewhere he is stranded ; his political life is closed, while other young men inclined to independence take warning from his fate.'

It is hoped that the residential qualification will be abolished at the next revision of our electoral rules. ✓

Another noticeable feature of our electoral system is its provision for separate representation of certain communities through communal electorates. This subject of communal representation has been one of the most vexed questions of Indian politics in recent years. On the one hand, it has been held by these communities, and particularly by the Muhammadans, that separate representation through a system of communal electorates is the only adequate safeguard against their oppression by majorities, and is the sole guarantee of their special rights and interests. On the other hand, it has been argued that any kind of communal representation tends to weaken the growing sentiment of Indian nationalism and to intensify communal differences. 'The truth is,' says a distinguished writer,¹ 'that if India is to remain a Nation, she must cleanse herself from this pernicious political disease of communal electorates. . . . No country can become prosperous or peaceful under such conditions. It enters on the downward grade, and will sink lower and lower. It loses Nationhood and splits itself into fragments, and can never play its part nor speak with authority among Nations, who have learnt that the Nation is greater than any party, class, or caste, or interest.' Again, 'India, that was growing into a Nation, is now going backwards into

¹ Annie Besant. See *Work of the Indian Legislatures* (compiled under the order of the National Conference), p. 264.

innumerable divisions; disintegration has succeeded integration; the Motherland that was recovering her Nationhood through terrible sufferings and humiliations is being rent in pieces again by the fighting of groups, ever increasing in number. As for Democracy, it has not even a look-in. Citizenship is unrepresented, while separate 'interests' fly at each other's throats, and every sordid motive is strengthened, while none thinks of the public interest, the interest of the country as a whole. Merit is no longer sought in public servants, but caste or creed overbears ability, and must be bribed into quietude.'¹ Such is the nature of the conflict of opinions on the question of separate representation. Before we state our own views on the question, we may say here a few words in regard to the history of communal electorates in India.

In 1906, when the question of the next stage of constitutional progress was being discussed in the country, a large and representative deputation of Muhammadans, led by His Highness the Aga Khan, waited,² on the 1st of October, on Lord Minto, the then Governor-General, and, among

¹ Annie Besant. See *Work of the Indian Legislatures*, p. 263.

While giving evidence before the Simon Commission, Mr. C. W. A. Turner, I. C. S., Officiating Chief Secretary to the Government of Bombay, made the following admission:—

'Communal representation to my mind has led in the past few years to a very serious fall in the efficiency of local self-governing administration and by that fall in efficiency the interests of the whole of the community must have suffered. . . . Communal representation has led to a serious fall in the standard of efficiency in the administration.'—Vide *The Statesman* of October 17, 1928 (dak edition).

According to him, communalism has even tainted the judgment of Ministers.—*Ibid.*, of October 18, 1928.

² 'The Muhammadans had become uneasy as to the place which they would occupy in the reforms which were under discussion in 1906. . . . The object of the deputation was to present the claims of 62,000,000 of Muhammadans to a fair share in any modified system of representation that might be contemplated, the share to be commensurate with their numbers and political importance.'—Sir Verney Lovett, *A History of the Indian Nationalist Movement*, p. 74

other things, 'pressed for and obtained from him a promise that Muhammadans should elect their own members in separate Muhammadan constituencies.'¹ In a circular² addressed to the Local Governments in 1907, the Government of India suggested to them for their consideration certain proposals for the special representation of Muhammadans on the provincial Legislative Councils; and in a Despatch³ addressed to the Secretary of State in 1908, it stated, among many other things, that representation by classes and interests was the only practicable method of embodying the elective principle in the constitution of the Indian Legislative Councils. It cited⁴ a great array of authorities in support of this view. Lord Morley, however, was originally opposed to any scheme of special electorates for Muhammadans. In his Despatch of November 27, 1908, to the Government of India, he suggested to it for its consideration a plan⁵ for the proportional representation of different communities on Indian legislative bodies through a system of indirect elections by mixed or composite electoral colleges in which Muhammadans and Hindus would pool their votes, so to say. 'The political idea at the bottom of that recommendation was that such composite action would bring the two great communities more closely together and this idea of promoting harmony was held by men of very high Indian authority and

¹ *Joint Report*, para. 75.

'Any electoral representation in India would be doomed to mischievous failure which aimed at granting a personal enfranchisement regardless of the beliefs and traditions of the communities composing the population of this continent.'—Lord Minto. Vide the Government of India's Circular, dated August 24th, 1907, para. 16, in P. Mukherji's *Indian Constitutional Documents*, vol. i, p. 266.

² *Ibid.*, para. 17.

³ No. 21, dated October 1st, 1908,—P. Mukherji's *Indian Constitutional Documents*, vol. i, p. 283.

⁴ See *ibid.*, pp. 283–85.

⁵ *Ibid.*, p. 315 and pp. 335–36.

experience who were among' his advisers at the India Office.¹ But the Muhammadans protested against any such plan, and the Government of India doubted whether it would work at all. Consequently, Lord Morley abandoned it, though he did not think that it was a bad plan.² As a result, in the electoral regulations framed under the Indian Councils Act, 1909, provision was made for the separate representation of Muhammadans through a 'system of special electorates. Thus for the first time communal representation came to be a feature of our electoral system.

The resolution adopted by the Indian National Congress and the All-India Muslim League in their sessions held at Lucknow in December, 1916, also provided for the separate representation of Muhammadans through special electorates both on the Imperial and provincial Legislative Councils.³ It further laid down, however, that no Muhammadan should 'participate in any of the other elections to the Imperial or provincial Legislative Councils, save and except those by electorates representing special interests.'⁴

The authors of the Joint Report re-examined the question fully in the light of their new policy, and also in view of the fact that they had been pressed to extend the system of communal electorates in a variety of directions. They came to the conclusion⁵ that any system of communal electorates would be a very serious hindrance to the development of democratic institutions in India. They argued that it would be opposed to the teaching of history, since the history of self-government among the nations who had developed it and spread it through the world, was decisively

¹ P. Mukherji, *Indian Constitutional Documents*, vol. i, p. 336.

² See *Ibid.*

³ P. Mukherji, *Indian Constitutional Documents*, vol. i, pp. 765-770.

⁴ *Ibid.*

⁵ See Joint Report, paras. 227-32.

against the admission by the State of any divided allegiance; against the State's arranging its members in any way which encouraged them to think of themselves primarily as citizens of any smaller unit than itself. Secondly, they held that division by creeds and classes would mean the creation of political camps organized against each other, and teach men to think as partisans and not as citizens; and that it was difficult to see how the change from this system to national representation would ever occur. Thus class divisions would be perpetuated. Thirdly, they pointed out that existing relations between the different communities would be stereotyped. 'A minority,' they said, 'which is given special representation owing to its weak and backward state is positively encouraged to settle down into a feeling of satisfied security; it is under no inducement to educate and qualify itself to make good the ground which it has lost compared with the stronger majority. On the other hand, the latter will be tempted to feel that they have done all they need do for their weaker fellow-countrymen, and that they are free to use their power for their own purposes. The give-and-take which is the essence of political life is lacking. There is no inducement to one side to forbear, or to the other side to exert itself.'

Nevertheless they had to reckon not only with the settled existence of the system, but with a large volume of weighty opinion that no other method was feasible. And though they much regretted the necessity, they recommended that so far as the Muhammadans at all events were concerned the (then) existing system must be maintained until conditions altered, even at the price of slower progress towards the realisation of a common citizenship. But they could 'see no reason to set up communal representation for Muhammadans in any province' where they formed a majority of the voters. They also proposed, for practical reasons, to extend the communal system to the Sikhs

in the Punjab. But for the representation of other minorities in India, they preferred to rely upon nomination.

One of the authors of the Joint Report, namely, Lord Chelmsford, referred to the question again in the course of his speech at the opening of the session of the Indian Legislative Council on September 4th, 1918. He said, 'I cannot help thinking that much more has been read into our proposals than they were intended to convey. We wished indeed to make it clear that, in our opinion, communal electorates were to be deprecated for the reasons set out in our report. But it was in the main to the method of securing communal representation by communal electorates that we took exception, and not to communal representation itself. . . . I am most anxious that the fullest representation should be secured to the various classes and communities in India ; but I am frankly doubtful myself whether the best method for securing that representation is through a system of separate electorates.'

The subject was next dealt with by the Franchise Committee¹ to which it had been referred ; and in view of the evidence received by it from all quarters, official and unofficial, the Committee recommended separate electoral rolls and separate constituencies for the Sikhs in the Punjab and for the Muhammadans everywhere. It went a little further, as, by its terms of reference, it was free to make such recommendations as it thought right, unfettered by anything contained in the Joint Report. It recommended separate communal electorates for Indian Christians in Madras, for Anglo-Indians in Madras and Bengal, and Europeans in Madras, Bengal, Bombay, the United Provinces and Bihar and Orissa. In recommending, however, communal representation for these and other communities, the Committee expressed the hope that it would 'be possible at

¹ See paras. 15-17 of its Report.

no very distant date to merge all communities into one general electorate.'

In the Fifth Despatch to the Secretary of State on Indian Constitutional Reforms the Government of India stated that it felt the objections of principle to the communal system as strongly as the authors of the Joint Report, but that India was not prepared to take the first steps forward towards responsible Government upon any other road. Under the then existing conditions it could see no ground on which it could question the proposals of the Franchise Committee regarding communal representation, but it expressed the same hope in regard to the future of the communal system as the Committee had done before.

✓ As a consequence of all these, provision has been made in the existing electoral rules for the separate representation of Muhammadans, Europeans, Anglo-Indians, Indian Christians, and Sikhs through communal electorates. ✓

✓ In conclusion, we may state that the demand for separate representation through special electorates rests, partly, on a genuine feeling of distrust and suspicion entertained by minority communities of the majority ones, and, partly, on misapprehensions aroused by interested persons who excite, by their speeches and otherwise, communal jealousies and rivalries, very often for the purpose of achieving their own selfish ends. And so long as the causes of distrust and suspicion do not disappear, so long it will be difficult to get rid of the communal system, however regrettable this may be. That an undue stress on 'communalism' tends to check the growth of the feeling of nationalism in a country, does not require any proof; but it must also be borne in mind that in human affairs, specially when the interests of a very large number of men are concerned, the majority of whom have not yet come under the enlightening influence of education, sentiment and prejudice often count for more than either reason or logic. Under a system of

communal electorates, candidates of narrower sympathies, and not very regardful of scruples, are more likely to be successful in electoral contests. As a remedy for this evil and pending the total abolition of the communal system, one experiment may be tried, as has been suggested by many, as a transitional measure, namely, the plan of joint electorates combined with the reservation of seats. Such a scheme has already been adopted in Madras in the interest of the Non-Brahmans, and also in Bombay in the interest of the Mahrattas, and it has been working fairly satisfactorily in both the provinces. A definite, but small, proportion of seats on each legislative body may be reserved for every important minority community that may demand separate representation, with the additional right to contest other seats; or, alternatively, only a proportionate number of seats on each such body may be reserved for every such community without the additional right to contest other seats. Such an arrangement will at least have the merit of doing away with communal electorates which have been, as has been shown in the foregoing pages, deprecated very strongly by many distinguished persons.

We may notice in this connexion what the Reforms Enquiry Committee (1924) stated¹ on this subject. 'It must be admitted,' it said, 'that in principle these provisions (for communal representation) are open to constitutional objection, and most of us look upon them as an obstacle to political advance, but we consider that the abolition of any system of communal electorates, and in this we include reserved seats (for the Non-Brahmans and the Mahrattas), is quite impracticable at the present time. The objections of the communities concerned are, in our opinion, far too deep-rooted to enable us to justify any recommendation in this respect. We are not prepared either to recommend

¹ See para. 69 of the Majority Report.

even the substitution, in whole or in part, of reserved seats for separate electorates.' The Report from which the above extract has been quoted was signed on December 3rd, 1924, and since then many things have happened both in India and England. We believe that what might have been impracticable nearly four years ago, may not be so now. At any rate the experiment that has been suggested by us, may be given a fair trial. But at the same time we must say that no new scheme should be forced upon any community against its determined opposition. If any reform is to be effected, the minority communities should first be won over to the side of reformers by persuasion and by appeals to their sense of patriotism; and they must on no account be coerced to accept any arrangement against their will. For coercion in such matters is bound to prove disastrous.

But the minority communities should also constantly keep in mind what Prof. Hearnshaw¹ has said in connexion with the general question of the representation of minorities:

'Each elector should regard himself as a microcosm of the Great Society. Parliaments should consist, not of men whose prime concern is the programme of some group or other, but of men who represent in the first instance the nation as a whole in all its varied aspects and activities'.

He then asks, 'Is there then no remedy for the "tyranny of the majority"?' His answer is:

"There is none—and there is need of none—save the purification of public opinion, the ennobling of public life, the rousing of public spirit, the education of public conscience, the development of the sense of public responsibility. What is needed is not the accentuation and perpetuation of proportional sectionalisms, not the stereotyping of

¹ *Democracy at the Crossways*, p. 334-35.

represented minorities, but the emphasising of the unity of the nation and the enlargement of the idea of patriotism. Not in futile efforts by means of subtle devices to curb and check majorities, but in the conversion of majorities to a magnanimous use of their omnipotence lies the way of deliverance.'

The motto which should be borne in mind by every community in India, should be, to quote the words of Dr. Besant¹ : ' Aim at the good of the whole, and aim also at the good of each that is consistent with the good of the whole.'

✓ Before we close this discussion we may refer here to the recommendations of the Nehru Committee ² on the subject of communal representation. They ³ are as follows :—

I. ' There shall be joint mixed electorates throughout India for the House of Representatives and the provincial legislatures.'

II. ' There shall be no reservation of seats for the House of Representatives except for Muslims in provinces where they are in a minority and non-Muslims in the N.-W.F. Province⁴. Such reservation will be in strict proportion to the Muslim population in every province where they are in a minority and in proportion to the non-Muslim population in N.-W.F. Province⁵. The Muslims or non-Muslims where reservation is allowed to them shall have the right to contest additional seats.'

III. ' In the provinces—

' (a) there shall be no reservation of seats for any community in the Punjab and Bengal ;

¹ See *Work of the Indian Legislatures*, p. 265.

² This Committee was ' appointed by the All-Parties Conference in Bombay on May 19th, 1928, to consider and determine the principles of the Constitution for India.' Pandit Motilal Nehru was the Chairman of the Committee and therefore it has been so designated.

³ See pages 123-24 of the *Report of the Nehru Committee*.

⁴ I.e., North-West Frontier Province.

⁵ *Ibid.*

'(b) in provinces other than the Punjab and Bengal there will be reservation of seats for Muslim minorities on population basis with the right to contest additional seats, (and)

'(c) in the N.-W. F. Province there shall be similar reservation of seats for non-Muslims with the right to contest other seats.'

IV. 'Reservation of seats where allowed shall be for a fixed period of ten years.'

These recommendations are quite satisfactory, but the only question that arises in our mind, is whether they will be accepted by the different parties concerned, at the present moment. Notwithstanding Lucknow decisions¹ there is a serious difference of opinion among the leaders of the Muslim community on the question of the acceptability of the recommendations from the standpoint of Muslim interests.² It is earnestly hoped, however, that good sense and patriotism will assert themselves, and show to the different communities a way out of the present difficult situation.

Another feature of our electoral system is its provision for the representation of special interests like those of

¹ See *Supplementary Report of the (Nehru) Committee*, 1928, pp. 50-51.

In regard to the question of communal representation, the Lucknow Conference (August, 1928) added the following two provisos to recommendation III (a) and recommendation IV respectively of the Nehru Committee (as stated above) :—

(To III (a))

'Provided that the question of communal representation will be open for reconsideration if so desired by any community after working the recommended system for 10 years.'

(To IV)

'Provided that the question will be open for reconsideration after the expiration of that period if so desired by any community.'

The Lucknow Conference also made some recommendations in regard to Sind and Baluchistan.—*Ibid.*

² The Sikhs in the Punjab are also not unanimous in their support of the recommendations of the Nehru Committee on the question of communal representation.

the landed aristocracy, commerce and industry, etc. . . .

**Representa-
tion of
Special
Interests.** Though the representation of special interests is not so bad as the representation of communities, it is certainly undemocratic in character.

The principle of representation should be territorial, and not communal, religious, social, economic, or professional. The separate representation of interests has led to the introduction of the principle of plural voting into our electoral system. Under the existing electoral rules, though a person cannot vote at any general election in more than one *general* constituency, such person can vote in a number of *special* constituencies if he (or she) possesses the requisite qualifications in respect of them. Besides, such representation creates an unwholesome division of interests in the legislature. 'A system of class representation or representation of interests,' says Prof. Garner,¹ 'would tend to lower the character of the legislature, since each member would in some measure be the exclusive representative of particular interests or opinions rather than the representative of the interests of the state as a whole. A legislative assembly composed of so many elements would tend to become a debating society instead of a law-making body, and its efficiency would be diminished in proportion to the number and variety of interests represented. . . . Finally, the organization of the electorate upon the basis of class distinctions, whether economic, social, or professional, would inevitably tend to multiply artificial distinctions, divide the population into groups, array each against the others, and accentuate class antagonism generally.'²

¹ *Introduction to Political Science*, pp. 473-74.

² Another distinguished authority says—

'Though it is the aim of the representative system to secure intelligent concern for the special needs of different classes and

There is a further reason for our objection to the principle of the representation of special interests. Let us first take the case of landholders. They are, as the authors of the Joint Report¹ rightly say, 'the natural and acknowledged leaders in country areas'. Besides, 'they start with considerable advantages inasmuch as they have command both of means and position.'² There is no justification for their 'special representation through electorates composed of their own class,' as they are, because of their position, influence and education, mostly successful in electoral contests in *general* constituencies.³ This is, to a very large extent, the case also with commercial or industrial magnates. One of the arguments in favour of special representation is said to be that the representatives of the land-owning or commercial or industrial interests exercise a sort of steady influence⁴ in the legislature. There may be an element of truth in this argument. But we believe that even without any special representation there will be no dearth of members in the legislature who will both exercise a steady influence over its deliberations, and look after the special interests of commerce or industry, or of the landed aristocracy. Moreover, when the services

sections, it is hardly desirable that each representative should represent *exclusively* one set of particular interests or opinions: we want for legislators men of some breadth of view and variety of ideas, practised in comparing different claims and judgments and endeavouring to find some compromise that will harmonise them as far as possible. . . . Now it certainly seems to me that this is likely to be less the case if the community is not locally divided for electoral purposes.'—Sidgwick, *The Elements of Politics* (1908), p. 395.

¹ Para. 147.

² *Ibid.*

³ Vide the oral evidences of Sir Abdur Rahim and Rao Bahadur N. K. Kelkar—(Ex-Minister, Central Provinces) before the Reforms Enquiry Committee, 1924, in this connexion.—App. No. 6 to the *Report of the Reforms Enquiry Committee*, 1924.

⁴ See Section 68 of the *Report of the Reforms Enquiry Committee*, 1924.

of any persons having special knowledge based upon practical experience, may be considered necessary in connection with a Bill introduced or proposed to be introduced, such persons may temporarily be nominated to the legislature concerned, and be vested, in relation to the Bill and for the period for which they may be nominated, with all the rights of members of the legislature. Provision¹ for such nomination may be made in the constitution. This will meet the particular plea for the representation of special interests, namely, the necessity of the supply of expert or technical knowledge in connexion with a proposed piece of legislation affecting them.

It should, however, be noted here that it would be difficult to abolish the representation of special interests so long as communal representation would continue to be a feature of our electoral system.

Finally, though we are opposed to the principle of the representation of special interests as undemocratic, we are in favour of the maintenance of the existing arrangement by which the interests of University education are specially represented. Our reasons are twofold: Those Universities in India which are now empowered to send representatives to the provincial Legislative Councils do not look to the interests of any particular class or community; and, secondly, as Universities in India have to depend nowadays largely on financial support by the Government they should have their special spokesmen on the Councils. ✓

The last feature we propose to discuss in connection with our electoral system is the restricted nature of the present franchise. This is one of the great defects of the Montagu-Chelmsford Reforms. In 1926, out of a total population of about 247 millions inhabiting British India, only

¹ There is such a provision even now in proviso (b) to Section 72A of the Act.

8,258,723 persons¹ were entitled to vote for elections to Governors' Legislative Councils. In the same year the total number of electors² for the Legislative Assembly was only 1,125,602; and that³ for the Council of State in 1925 was only 32,126. Generally speaking, the franchise is based on a property qualification which is rather high for a poor country like India, and this is the chief reason why the number of persons who have been granted the right to vote is so small in relation to the total population of British India. The electoral rules made under the Government of India Act are responsible for this state of affairs. Under the existing electoral rules, a graduate of a University is not qualified to be an elector for the University constituency simply as a graduate. To be so qualified he must be a graduate of not less than seven years' standing. As a result, many graduates holding responsible positions are deprived of the right to vote. One fails to find any adequate justification for such restrictive rules.

In the new scheme of Reforms, now under consideration, provision should be made for such a wide extension of the franchise as to make the nearest possible approach to adult suffrage. It is not at all desirable that political authority should pass from the hands of the British bureaucracy into those of an Indian oligarchy. The extension of the suffrage is necessary for the protection of the interests of the masses in our country. As John Stuart Mill⁴ has said in another connexion, all human beings

¹ See *East India (Constitutional Reforms—Elections)*, Cmd. 2923 (1927).

In Bengal the total number of electors in 1926 was as follows :—
1,184,784 for the Provincial Council ;
224,177 for the Legislative Assembly ; and
2,393 for the Council of State.—*Ibid.*

See *ibid* also for other provinces.

² *East India (Constitutional Reforms—Elections)*, Cmd. 2923 (1927).

³ *Ibid.*

⁴ *Representative Government*, ch. viii.

have the same interest in good government; the welfare of all is alike affected by it, and they have equal need of a voice in it to secure their share of its benefits.¹ Again, men, as well as women, do not need political rights in order that they may govern, but in order that they may not be misgoverned.² Besides, the enfranchisement of our masses will create in them a new sense of self-respect and a new consciousness of power. Moreover, it will be a potent instrument of their political education. As Mill³ further says, among the foremost benefits of free government is that education of the intelligence and of the sentiments which is carried down to the very lowest ranks of the people when they are called to take a part in acts which directly affect the great interests of their country. It may be that, at the beginning, many voters will find themselves 'cajoled, or bought, or coerced into voting in a way' that will do themselves no good. But it will not be very long before they will realize their power and use it to their best advantage. It should be borne in mind that 'the habit of considering political issues as issues to be decided by a man's own judgment, of realizing the value of the proper use of a vote, . . . of judging candidates with regard to their fitness to represent the elector's views', and of holding

¹ He also says :—

'Every one is degraded, whether aware of it or not, when other people, without consulting him, take upon themselves unlimited power to regulate his destiny. And even in a much more improved state than the human mind has ever yet reached, it is not in nature that they who are thus disposed of should meet with as fair play as those who have a voice. Rulers and ruling classes are under a necessity of considering the interests and wishes of those who have the suffrage; but of those who are excluded, it is in their option whether they will do so or not, and, however honestly disposed, they are in general too fully occupied with things which they *must* attend to, to have much room in their thoughts for anything which they can with impunity disregard.'—*Representative Government*, ch. viii.

² *Representative Government*, ch. viii.

³ *Ibid.*

representatives effectively to account,¹ can be acquired by any people by constant and increasing exercise. As Mr. Curtis² said, while discussing the defects of the electoral system prevailing in our country before the introduction of the Reforms, 'wisdom can only be learned in the school of responsibility. It can only be taught by leaving men to suffer by the results of the things which they themselves do; still more, by the results of the things which they leave undone.' The character of political institutions reacts,³ even the authors of the *Joint Report* have themselves admitted, upon the character of the people and the exercise of responsibility calls forth the capacity for it. Furthermore, free institutions have the faculty of reacting on the adverse conditions in which the start has to be made.⁴ As a proof of this we may say that if one witnessed, or took part in, any of the elections held during the last few years to the central, provincial or local representative bodies, one would be in a position to bear testimony to the keen interest and political wisdom displayed by our so-called illiterate and unenlightened masses. The Reforms Enquiry Committee has also observed :⁵

'The existing electorate has been characterized as illiterate and untrained, though we have received evidence to the effect that the electors are able at present to understand broad issues which is their main function and to choose the candidate who in their opinion will serve them best. . . . The percentage of electors (generally more than 40 per cent.) who voted in the contested general constituencies at the last general election (in 1923) was, we consider, having regard to all the circumstances, satisfactory, and in that respect a great advance on the first

¹ See *Joint Report*, paras 263-64.

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

³ See *Joint Report*, para 130.

⁴ *Joint Report*, para 153.

⁵ *Majority Report*, paras. 57 and 62.

general election.' At the last two general elections to the provincial legislative Councils, the percentages of votes polled to the number of electors in the contested constituencies were¹ as shown below :—

Legislative Council.	Percentage at the general election of 1923.	Percentage at the general election of 1926.
Madras ...	36·3	48·29
Bombay ...	48·2	40·55
Bengal ...	39·0	39·25
United Provinces ...	33·0	50·2
Punjab ...	49·3	51·42
Bihar & Orissa ...	52·2	60·54
Central Provinces & Berar.	57·7	61·9
Assam ...	42·1	44·17
Average of 8 provinces ...	44·725	49·54

It may also be mentioned here that the corresponding figures for the Legislative Assembly² were 41·9 (in 1923) and 48·07 (in 1926).

Regard being had to the fact that the Reforms had only been worked for six years, the percentages of votes

¹ See *East India (Constitutional Reforms—Elections)*, Cmd. 2923 (1927).

In the second general election to the Burma Legislative Council held in 1925, the percentage in question was 16. But the case of Burma is different from the rest of British India.

² *Vide East India (Constitutional Reforms—Elections)*, Cmd. 2923 (1927).

The provincial percentages of votes polled in 1926 to the number of electors in the contested constituencies for the Legislative Assembly were as follows :

Madras	48·44	Assam	54·25
Bombay	46·18	Burma	13·77
Bengal	42·12	Delhi	65·0
United Provinces	51·76	Ajmer-Merwara	66·42
Punjab	62·79		
Bihar and Orissa	52·57		
C. P. and Berar	75·2		

polled in 1926 to the number of electors in the contested constituencies, as pointed out above, were not very unsatisfactory. If it is argued, however, against the further extension of the suffrage that many of those who will be enfranchised either will not exercise the vote at all or will exercise it at the bidding of others, our reply will be in the words of Mill¹ uttered in another connexion—‘If it be so, so let it be. If they think for themselves, great good will be done, and if they do not, no harm. It is a benefit to human beings to take off their fetters even if they do not desire to walk.’

There is one other possible argument to consider against the extension of the franchise as suggested by us. It may be urged that ‘universal teaching must precede universal enfranchisement.’ But we believe that in the peculiar circumstances of India it is universal franchise that will perforce lead to universal teaching. After the extension of the franchise the need will be keenly felt by all, to quote the celebrated phrase of Robert Lowe,² of educating ‘our future masters.’ Even in England the Elementary Education Act of 1870, as supplemented by the Elementary Education Acts of 1876 and 1880, which provided³ for a compulsory national system of elementary education, had been preceded by the extension of the suffrage under the Reform Acts of 1832 and 1867. And it was only after the further extension of the franchise there under the Representation of the People Act, 1884, that elementary education, already rendered compulsory, became free⁴ under the Elementary Education Act of 1891.

¹ *Representative Government*, ch. viii.

² Sidney Low and Sanders, *The Political History of England*, vol. xii, p. 207.

³ Henry Craik, *The State in its Relation to Education*, chs. v–vii; also Ransome, *History of England*, pp. 1010–1011.

⁴ Sidney Low and Sanders, *The Political History of England*, vol. xii, p. 414.

For three years from 1910 the late Mr. Gopal Krishna Gokhale had fought¹ hard, though in vain, for the introduction of free and compulsory elementary education into our country ; and what has been the result ? 'In 1921,' according to an official report,² 'out of a total population of 247 millions in British India, only 22·6 millions were literate,' and in 1926-27 only '7·8 million pupils, or 21·03 per cent. of the population of school-going age, were undergoing primary education.' 'It must be evident,' says the same official report, 'that the amount of literacy among the common people is practically negligible.' And this fact will be used as an argument against any wide extension of the franchise.³ We have no doubt that once the suffrage is extended as suggested by us, the process of universalization of education will be accelerated, and before long 'the greatest weakness of the present educational situation,' namely, 'the widespread illiteracy of the masses,' will be removed. Otherwise, we shall have to wait for decades to achieve the same object.

Apart from what we have said above, there is another aspect of the question to be considered. Literacy should not be regarded as the only test of the political intelligence or capacity of a people ; and we fully agree with the Nehru Committee⁴ when it says that 'political experience can only be acquired by an active participation in political institutions and does not entirely depend upon literacy'. We may further add that during the last fifteen years there have occurred many events in India and abroad which have awakened the political consciousness of our masses to an extraordinary degree.

¹ *Vide Speeches of Gokhale*, 3rd ed., Natesan & Co., Madras.

² *India in 1926-27* by J. Coatman, ch. viii.

³ See in this connexion pp. 93-94 of the Report of the Nehru Committee.

⁴ See *Ibid.*

In concluding this subject we may say that if a choice is to be made between the further continuation of communal electorates with all their attendant evils and the introduction of adult suffrage into our country at this stage, we should prefer the latter to the former. This may necessitate, just at the outset, a differential treatment of certain backward tracts in our country. If it be so, there should be no legitimate objection to it. Even now some parts of British India are differently treated from the rest of the country under section 52A (2) of the Act.

CHAPTER XII

ELECTORAL PROCEDURE AND MEMBERSHIP¹

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

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

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

¹ Electoral Rules, Parts IV, VI and VII. These rules are common to all legislative bodies in India and are identically numbered.

² Electoral Rule 27.

The Gazette here means the *Gazette of India* or a provincial Gazette, as the case may be.

however, that if the Governor-General or the Governor, as the case may be, thinks fit, such notifications may also be issued at any time not being more than three months before the date on which the duration of a legislative body will expire in the ordinary course of events.

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

Nomination
of candi-
dates.

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

On or before the date appointed for the nomination of candidates, each candidate must,³ either personally or by his proposer and seconder together, deliver to the Returning Officer or to some other authorized person a duly filled-in nomination paper⁴ subscribed by the candidate himself⁵ as signifying his assent to the nomination and by the proposer and seconder who must be registered electors of the constituency. All nomination papers must be delivered between 11 a.m. and 3 p.m. and any such paper which is not delivered before 3 p.m. on the day appointed for the

¹ Electoral Rule 11 (1).

² *Ibid.*, 11 (2).

³ *Ibid.*, 11 (3).

⁴ A copy of the form of nomination paper is given on pp. 189-90 of this book. Nomination papers are supplied by the Returning Officer 'to any elector who may apply for the same on the proper date.'—Hammond, *The Indian Candidate and the Returning Officer*, p. 100.

⁵ 'The nomination paper must bear the candidate's signature, which may cause difficulty if the prospective candidate is out of India. This can be met by the candidate leaving behind him before he goes two or three signed nomination papers.'—*Ibid.*, p. 39.

nomination of candidates will be rejected.¹ Every nomination paper to be delivered must be accompanied by a written declaration by the candidate to the effect that he has already appointed or does thereby appoint as his election agent for the election either himself or some one other person who is eligible for such appointment and who must be named in the declaration ; unless this is done, the nomination of a candidate is not complete.² The Returning Officer or any other authorized person must, on receiving a nomination paper, inform the person or persons delivering the same of the date, hour and place appointed for the scrutiny of nominations.³ He must, besides, put up in some conspicuous place in his office a notice of the nomination, containing descriptions both of the candidate and of the persons who have signed the nomination paper as proposer and seconder.

A candidate may withdraw his candidature by giving notice by 3 p.m. on the day following that appointed for the scrutiny of nominations. He will not be allowed, if he has once withdrawn his candidature, to cancel the withdrawal or to be renominated as a candidate for the same election.⁴

On or before the date appointed for the nomination, each candidate must deposit or cause to be deposited with the Returning Officer the sum of five hundred rupees or two hundred and fifty rupees, 'in cash or in Government promissory notes of equal value at the market rate of the day', according as he is a candidate for either Chamber of the Indian Legislature or for a Governor's Legislative Council. No nomination will be valid unless such deposit has been made.⁵

¹ Electoral Rule 11 (3) and (6).

³ *Ibid.*, 11 (7).

⁵ *Ibid.*, 12 (1). In England a candidate must deposit or cause to be

² *Ibid.*, 11 (5).

⁴ *Ibid.*, 11 (8).

If a candidate withdraws his candidature within the prescribed time or if his nomination is refused, the deposit will be returned to the person by whom it was made ; and, if any candidate dies after the deposit is made and before the poll is commenced, the deposit, if made by him, will be returned to his legal representative, or, if not made by him, will be returned to the person by whom it was made.¹ The deposit will be forfeited to the Government if a candidate is not elected and if the number of votes obtained by him does not exceed, in the case of a constituency returning one or two members, one-eighth of the total number of votes polled or, in the case of a constituency returning more than two members, one-eighth of the number of votes polled, divided by the number of members to be elected.² The number of votes polled is determined, in the case of an election by the ordinary method, by counting the number of ballot-papers other than the spoilt ones and, in the case of an election according to the system of proportional representation by means of the single transferable vote, by counting the first preferences in favour of a candidate.³

Again, if the seat of an elected candidate is declared vacant on account of his failure to take the necessary oath of allegiance to the Crown, his deposit money will be forfeited to the Government.⁴ The deposit will be returned, if a candidate is not elected but has secured more than one-eighth of the total votes polled or, as the case may be, one-eighth of the total votes polled, divided by the number of members to be elected. It will also be refunded to the candidate who has been elected and who has taken the necessary oath of allegiance.⁵

deposited with the Returning Officer the sum of £150 ; otherwise his candidature will be deemed to be withdrawn.

¹ Electoral Rule 12 (2).

² *Ibid.*, 12 (3). The English law on this point is identical.

³ *Ibid.*, 12 (4).

⁴ *Ibid.*, 12 (5).

⁵ *Ibid.*, 12 (6).

If, however, a candidate has been duly nominated at a general election in more than one constituency, only one of the deposits made by him or on his behalf will be returned, and the remainder will be forfeited to the Government.¹

If a duly nominated candidate dies before the poll, the Returning Officer, or any other authorized person, will have, on being satisfied of the fact of the death, to countermand the poll and all proceedings connected with the particular election have to be commenced anew; but no fresh nomination is necessary in the case of a candidate whose nomination remained valid at the time of the countermanding of the poll.²

If the number of candidates who have been duly nominated and who have not withdrawn their candidature, is greater than the number of vacancies, a poll will be taken. If, however, the number of such candidates is equal to the number of vacancies, all the candidates will be declared to be elected. If, on the other hand, the number of such candidates is less than the number of vacancies, all the candidates will be declared to be elected, and the Governor-General or the Governor, as the case may be, will call upon the constituency concerned to elect a person (or persons) for filling the remaining vacancy (or vacancies) within a certain time appointed by him.³ But, if in the last case the constituency fails to elect a person (or persons) for filling the vacancy (or vacancies) within the prescribed time, the Governor-General or the Governor, as the case may be, is not bound to call upon it again to elect any person (or persons) until such time, if any, as he thinks fit.⁴

¹ Proviso to Electoral Rule 12 (6).

² Electoral Rule 13.

³ *Ibid.*, 14 (3).

⁴ Proviso to Electoral Rule 14 (3).

Votes are given by ballot, and in general constituencies in person; but the Governor-General in Council¹ or the local Government of a province, as the case may be, may direct in certain special cases² that votes may be given otherwise than in person. Voting by proxy is allowed in no circumstances.³

In 'plural-member' constituencies each elector has as many votes as there are members to be elected, but he cannot give more than one vote to any one candidate.⁴ Votes are counted by, or under the supervision of, the Returning Officer, and each candidate, his election

¹ This applies only in the case of elections to the Legislative Assembly. The relevant Rule in the case of elections to the Council of State is as follows:—'Votes shall be given by ballot, and no votes shall be received by proxy.'—The Council of State Electoral Rule 14 (4).

² Viz., (a) 'In the case of any specified general constituency or of any specified part of any general constituency, or

(b) in respect of any person attending at a polling station in any constituency under the orders of, or under authority from, the Returning Officer of such constituency.'—Electoral Rule 14 (4).

³ Electoral Rule 14 (4).

⁴ *Ibid.*, 14 (5).

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

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

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

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

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

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

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

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

agent and his authorized representative have a right to be present at the time of counting.¹

As soon as the counting of votes is completed, the Returning Officer declares the candidate or the candidates, as the case may be, to whom the largest number of votes has been given, to be elected.² The rule in the case of a tie is rather interesting. If an equality of votes exists between candidates and the addition of one vote entitles any of the candidates to be elected, the determination of the person or persons to whom such an additional vote is deemed to have been given is made by lot in the presence of the Returning Officer and in such manner as he directs.³ The Returning Officer reports without delay the result of the election to the Secretary to the provincial Legislative Council or to the Secretary to the Government of India in the Legislative Department, as the case may be. The name or or names of the successful candidate or candidates are then published in the Gazette.⁴

The local Government of each province has been empowered to make regulations⁵ providing—

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

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

(3) in the case of general constituencies, for the

¹ Electoral Rule 14 (6).

² *Ibid.*, 14 (7).

³ *Ibid.*, 14 (8).

⁴ *Ibid.*, 14 (9).

⁵ Electoral Rule 15. Unlike the Electoral Rules, these provincial regulations vary from province to province except in respect of essential matters.

For the Bengal Regulations see *The Bengal Legislative Council Manual*, 1927.

division of the constituencies into polling areas for the convenience of electors, and for the creation of polling stations for these areas ;

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

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

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

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

(8) for the scrutiny of votes ;

(9) for the safe custody of ballot papers and other election papers and for the inspection and production of such papers ; and

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

These regulations must not be in any way inconsistent with any Electoral Rule. They apply not only to the local Legislative Council, but, so far as the particular province is concerned, to either Chamber of the Indian Legislature as well, unless the Governor-General in Council gives different directions¹ regarding their application to the latter case. Similar regulations in force in the Punjab will, as far as they are applicable, be in force in the province of Delhi; and similar regulations in force in the United Provinces will, as far as they are applicable, be in force in the province of Ajmer-Merwara.

In the preceding pages we have stated in a way the functions of the Returning Officer in the conduct and management of an election. He is, to quote a writer, 'the

¹ See Note B on page 191 in this connexion.

pivot on which the election revolves from the date of the nomination to the declaration of the result.¹

The Returning Officer and the Presiding Officer.

He receives nomination papers, examines them and decides all objections which may be made to any nomination paper. He may accept a nomination or refuse it, as the Electoral Rules may seem to him to warrant in the circumstances of the case. This is one of his most important functions in connection with an election. He must satisfy himself that a candidate is not ineligible on any ground.² An error of judgment on his part at this stage can only be rectified by an election petition later, entailing unnecessary trouble and expenditure. He must endorse on each nomination paper his decision accepting or rejecting the same. Votes are counted by him or under his supervision. He declares the result of an election and reports it to the proper authorities. In some provinces it is he who selects for each constituency as many polling stations as he thinks necessary and appoints a Presiding Officer for each polling station and Polling Officers to assist the latter.³

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

¹ *Indian Election Guide* (The Statesman Press) by I. C. S., p. 25. Hammond also says—

‘The Returning Officer is the person mainly responsible for the conduct of the actual election. It is to him that candidates and election agents should look for instructions and advice ; it is before him that objections can be lodged as to the validity of votes, or complaints as to personation and undue influence or other corrupt practices.’—*The Indian Candidate and Returning Officer*, p. 107. The functions of the Returning Officer have been well discussed in this book.

² *Ibid.*, p. 101.

³ E.g., in Bengal and Bihar and Orissa.

as may be admitted for the purpose of identifying the electors.

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

As soon as possible after the close of the poll, the Presiding Officer of each polling station must, in the presence of the candidates or their polling agents, seal with his own seal and the seal of such candidates or agents as may desire to affix their seal, each ballot box used at the station and the packets of unused, 'spoilt' or 'tendered ballot papers' and send them all, generally,¹ to the Returning Officer, with a statement showing the number of ballot papers entrusted to him and accounting for them under the heads of 'ballot papers in the ballot box,' 'unused,' 'spoilt' and 'tendered ballot papers,'² etc.

If any person is elected by a constituency of a Governor's Legislative Council as well as by a constituency of either Chamber of the Indian Legislature, the election of such person to the Governor's Legislative Council will be void and the Governor will call upon the constituency concerned to elect another person.³

If a person is elected by more than one constituency either in the same province or in different provinces, he will have to choose within seven days of the publication of the result of the later or the latest of such elections, according as he has been elected by two or more than two constituencies, for which of these constituencies he will serve and then inform the relevant authorities of his choice which must be final.⁴ When any such choice has been made, the

¹ In some provinces they are sent to such person or place as the District Collector directs.

² See Note A on pp. 190-91.

³ Electoral Rule 16.

* *Ibid.*

Governor-General or the Governor, as the case may be, will call upon the constituency or the constituencies for which he has not chosen to serve, to elect another person or persons in his place. If, however, he fails to make the required choice within the seven days, his election will be void and the Governor-General or the Governor, as the case may be, will call upon the constituency or the constituencies concerned to elect another person or persons.¹

Every person who is elected or nominated to be a member of a legislative body must, before taking his seat, make, at a meeting of the legislative body, an oath or affirmation of his allegiance to the Crown as follows ² :—

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

If any person having been elected or nominated (i) subsequently becomes subject to any of the disabilities under the Electoral Rules, which disqualify a person for membership of any legislative body, or (ii) fails to ‘ make the oath or affirmation,’ as described in the previous paragraph, within such time as the Governor-General or the Governor considers reasonable, the Governor-General or the Governor, as the case may be, must, unless the disqualification has been removed³ in his favour, declare his seat to be vacant.⁴

An official is not qualified for election as a member of either Chamber of the Indian Legislature or of a local Legislative Council; and if any non-official member of

¹ Electoral Rule 16.

³ Possible only in the first case.

² *Ibid.*, 24.

⁴ *Ibid.*, 25.

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 on the Chamber or on the Council, as the case may be, becomes vacant. But a Minister is not to be deemed an official and a person will not be deemed to accept office on appointment as a Minister.¹ 'There is no rule,' says Mr. Hammond, 'requiring a Minister to resign office before offering himself as a candidate for re-election, and in the *Habiganj South* case the (Election) Commissioners held the opinion that the Minister committed no irregularity in choosing to remain in office while conducting his election campaign.'²

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

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

If, however, any person is elected a member of both Chambers of the Indian Legislature, he will, before taking

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

² *The Indian Candidate and Returning Officer*, Addenda and Corrigenda.

³ Section 93 (1) of the Act.

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

⁵ Or the Lieutenant-Governor or Chief Commissioner.

⁶ Section 93 (2) of the Act.

⁷ Section 63E (2) of the Act.

his seat in either Chamber, have to signify in writing the Chamber of which he wishes to be a member, and thereupon his seat in the other Chamber will become vacant.¹

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

In order to prevent extravagance and to minimize the possibility of corrupt practices at elections, stringent rules have been framed regarding expenses to be incurred in connection with an election. These rules have prescribed the objects of election expenses and also provided for the fixation of their maximum scales at different elections. Within thirty-five days of the publication of the result of an election, there must be submitted to the Returning Officer in respect of each candidate for election a return,

**Return of
election
expenses.**

¹ Section 63E (3) of the Act.

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

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

⁴ Electoral Rule 18.

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

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

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

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

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

(4) the cost whether paid or incurred of—

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

(5) any other miscellaneous expenses.

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

¹ Electoral Rule 19 (1).

² *Ibid.*, 19 (3).

³ *Ibid.*, 19 (2).

⁴ *Ibid.*, 19 (3), Schedule IV.

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

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

The Governor-General in Council may fix maximum scales of election expenses and prescribe the number and descriptions of persons who may be lawfully employed for payment in connection with any election held under the Electoral Rules.³

Every election agent must, for each election for which he is appointed an agent, keep separate and regular books of account in which the particulars of all expenditure in connection with the election must be entered.⁴

Rules have been framed under the Government of India Act for the final decision of doubts and disputes as to the validity of an election.⁵ They have been supplemented

¹ Electoral Rule 19 (4).

² *Ibid.*, 19 (5).

³ *Ibid.*, 20 (1) and (2).

⁴ *Ibid.*, 21.

⁵ Electoral Rules, Part VII.

by a special legislation¹ providing for the criminal punishment of certain acts which directly or indirectly interfere with the purity of elections, thus bringing election offences within the purview of the general law of the land. These acts are known as malpractices in connection with elections. They are bribery, treating, undue influence or personation at an election, false statements or illegal payments in connection with an election, and the failure to keep election accounts. A candidate found guilty of a grave malpractice in connection with an election may not only lose his seat in the legislature and be deprived of his electoral rights for five years, but may also be criminally punished.

Election offences. Bribery at elections consists in² 'a gift, offer or promise by a candidate or his agent, or by any other person with the connivance of a candidate or his agent, of any gratifications (including all forms of entertainment and all forms of employment for reward) to any person whomsoever with the object of inducing directly or indirectly—

- (1) a person to stand or not to stand as, or to withdraw from being, a candidate, or
- (2) an elector to vote or refrain from voting at an election,

or as a reward to

- (1) a person for having so stood or not stood or for having withdrawn his candidature, or
- (2) an elector for having voted or refrained from voting.'

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

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

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

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

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

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

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

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

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

² Electoral Rule 44 (2), *Explanation*. "Treating" means that form of bribery where the gratification consists in food, drink, entertainment, or provision.—Act No. 39 of 1920.

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

⁴ *Ibid.*, Clause 2 (1).

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

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

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

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

The offences of bribery, undue influence and personation are punishable with imprisonment of either description⁴ for a term which may extend to one year, or with fine, or with both; and treating, the publication of false statements, or unauthorised expenditure in connection with an election, and the failure to keep election accounts are punishable with fine only. All these offences, however, are further punishable with the loss of electoral rights for a period varying from three to five years.

Other corrupt practices⁵, punishable simply with the loss

¹ Section 171D of the Indian Penal Code.

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

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

⁴ I. e., simple or rigorous.

⁵ *Vide* Electoral Rules, Schedule V, Parts I and II.

ELECTORAL PROCEDURE AND MEMBERSHIP 185

of electoral rights for a period varying from three to five years, are—

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

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

Hiring and using of public conveyance. (3) the hiring, borrowing or using for certain purposes in connection with an election of any boat, vehicle or animal usually kept for letting on hire or for the conveyance of passengers by hire¹;

Hiring of liquor shops. Issue of circulars without printer's and publisher's name thereon. (4) the hiring of liquor shops for the purpose of meetings to which electors are admitted, or as committee rooms ;

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

The validity of an election, when disputed, is decided by a specially appointed election tribunal. The procedure is as follows: When an election petition, by which alone an election can be called in question,² is duly presented by a candidate or an elector, or by a specially empowered officer of the Government, the Governor-General or the Governor, as the case may be, must appoint³ as

¹ The hiring of a boat, etc., by an elector for his own conveyance to or from the place where the vote is recorded, is not an offence.

² Electoral Rule 31.

³ *Ibid.*, 36 (2) (a).

By the Parliamentary Elections Act, 1858, the Parliamentary Elections and Corrupt Practices Act, 1879, and the Supreme Court of Judicature Act, 1881, the trial of election petition in England is now

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

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

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

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

¹ Electoral Rule 33 (1) and (2).

³ *Ibid.*, 35.

² *Ibid.*, 34.

⁴ *Ibid.*, 39(1).

Commissioners, as the case may be, such application has been induced by any illegal bargain or consideration.¹

If in the opinion of the Commissioners—

Grounds for declaring election void. (1) the election of a returned candidate has been procured or induced, or the result of the election has been materially influenced, by a corrupt practice, or

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

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

(4) the election has not been a free election on account of the large number of cases in which undue influence or bribery has been exercised or committed, the election of the returned candidate must be void.²

But, if the Commissioners are of opinion that in spite of all efforts on the part of the returned candidate and his election agent, some corrupt practices of trivial and unimportant character have been committed, for which the candidate or his election agent was in no way responsible, they may not declare his election void.³

When the trial is over, the Commissioners have to report whether the returned candidate or any other party to the petition who has claimed the seat has been duly elected.⁴ They will also have to state the total amount of costs payable and name the persons by and to whom such costs should be

Report of the Election Commissioners and procedure thereon.

¹ Electoral Rule 39 (4).

³ *Ibid.*, 44 (2).

² *Ibid.*, 44 (1).

⁴ *Ibid.*, 45 (1).

paid.¹ The report will have to be forwarded to the Governor-General or the Governor, as the case may be, who, on receiving the same, will issue, in accordance with it, orders which will be final.² In case of a difference of opinion among the Commissioners, the opinion of the majority will prevail.³

Where any definite charge is made in an election petition of a corrupt practice, the Commissioners must state in their report if any such practice has been proved to have been committed, and if so, who is, or are, responsible for it and what its nature is.⁴

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

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

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

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

(4) being appointed or acting as a trustee of a public trust.'⁵

In spite of all these stringent laws to restrain improper conduct at elections, elections held under the Reforms have not been altogether free from corruptions. There have been cases of bribery and undue influence. Many members of the

Corrupt practices at elections.

¹ Electoral Rule 45 (2).

³ *Ibid.*, 46.

² *Ibid.*, 45 (3).

⁴ *Ibid.*, 47.

⁵ The Indian Elections Offences and Inquiries Act, 1920, Part II, Section 13.

land-owning class, contesting seats in general constituencies in rural areas, allowed their paid servants to conduct electoral campaigns in their behalf in such a manner as very often interfered with the free exercise of electoral rights by their tenantry. The remedy, of course, lies in public watchfulness and exposure, but it is often extremely difficult to prove a case of corruption against a powerful candidate, especially when he happens to be a landlord. The system of voting by ballot does undoubtedly act as a great safeguard against many otherwise possible corruptions. It is hoped, however, that these corruptions will gradually disappear with the continued exercise by the people of their political rights and a further growth of their civic consciousness.

FORM OF NOMINATION PAPER

SCHEDULE III, ELECTORAL RULE 11.

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

Name of candidate.....

Father's name.....

Age.....

Address.....

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

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

† No. of the candidate in the electoral roll of the constituency in which he is registered as an elector.....

Name of proposer.....

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

† Where the electoral roll is sub-divided and separate serial numbers are assigned to the electors entered in each sub-division, a description of the sub-division in which the name of the person concerned is entered must also be given here.

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

Signature of the proposer.....

Name of the seconder.....

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

Signature of the seconder.....

Declaration by the Candidate

I hereby declare that I agree to this nomination.

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

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

Certificate of Delivery

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

Returning Officer or other authorized person.

Certificate of Scrutiny

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

Returning Officer or other authorized person.

NOTE A

‘ If a person representing himself to be a particular elector named on the electoral roll applies for a ballot paper after another person has voted as such elector, the applicant shall, after duly answering

† Where the electoral roll is sub-divided and separate serial numbers are assigned to the electors entered in each sub-division, a description of the sub-division in which the name of the person concerned is entered must also be given here.

ELECTORAL PROCEDURE AND MEMBERSHIP 191

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

NOTE B

If a resolution in favour of the introduction of proportional representation is passed by a provincial Legislative Council or by either Chamber of the Indian Legislature after not less than one month's notice has been given of an intention to move such a resolution, the local Government or the Governor-General in Council, as the case may be, may introduce for any plural-member constituencies the method of election by the single transferable vote, and make all necessary regulations for the purpose, and may group together single-member constituencies so as to make new plural-member constituencies.—Electoral Rule 15.

CHAPTER XIII

THE INDIAN LEGISLATURE—ITS PRIVILEGES AND POWERS

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

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

A member of the Indian Legislature enjoys² freedom of speech and is not liable to any proceedings in any court for his speech or vote in either Chamber, or for anything published in any official report of the proceedings of either Chamber.

Freedom of
speech in
the Indian
Legislature.

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

Further, members of the Legislative Assembly and of the provincial Legislative Councils do not enjoy the designation 'Honourable' which is enjoyed by the members of the Council of State during their tenure of office. But members of the Legislative Assembly and of the provincial Legislative Councils are entitled to affix the letters M. L. A. and M. L. C. respectively to their names.

² Section 67 (7) of the Act.

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

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

Limitations
on debates.

¹ *Parliamentary Practice* (twelfth edition), p. 96.

² *Parliamentary and Constitutional Law*, by Mr. J. W. Burgess, Vol. I, p. 10.

³ Legislative Assembly Standing Order 29 (2) and Council of India Standing Order 28 (2).

conduct of His Majesty the King or the Governor-General or any Governor (as distinct from the Governments of which they are respectively the heads) or any court of law in the exercise of its judicial functions; or (v) to utter treasonable, seditious or defamatory words. These safeguards are quite sufficient to keep a member on the right path.

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

Another point to be noted in this connexion is that there is nothing in the Act to protect a member from being legally dealt with in a court of law if he himself publishes his speech which is actionable. In England, 'if a member publishes his speech', says Sir Erskine May,² 'his printed statement becomes a separate publication, unconnected with any proceedings in Parliament.' In the absence of anything to the contrary, it may be presumed that the publication of a libellous speech, delivered in either Chamber of the Indian Legislature, otherwise than officially, is punishable. It may be stated here that the members of the provincial legislatures³ enjoy similar freedom of speech, subject to restrictions, as is enjoyed by the members of the Indian Legislature.

Now other privileges have been conferred on the members of the legislative bodies constituted under the Government of India Act. The Reforms Enquiry Committee, 1924, recommended⁴ that the members of the

¹ Indian Legislative Rule 16.

² See *Parliamentary Practice* (twelfth edition), p. 106.

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

⁴ *Majority Report*, para 91.

legislatures constituted under the Act should be exempted from serving as jurors or assessors in criminal trials, and that the Code of Civil Procedure, 1908, should be amended for the purpose of granting to members immunity from arrest and imprisonment for civil causes during the sessions of the legislatures and for periods of a week immediately preceding and following actual meetings.' These recommendations, slightly modified, have been embodied in an Act of the Indian Legislature. Under this Act,¹ members of the legislative bodies constituted under the Government of India Act are exempt from liability to serve as jurors or assessors. Secondly, no person is liable to arrest or detention in prison under civil process—

- (a) if he is a member of a legislative body constituted under the Government of India Act, during the continuance of any meeting of such body ;
 - (b) if he is a member of any committee of such body, during the continuance of any meeting of such committee ;
 - (c) if he is a member of either Chamber of the Indian Legislature, during the continuance of a joint sitting of the Chambers, or of a meeting of a conference or joint committee of the Chambers of which he is a member ;
- and during the fourteen days before and after such meeting or sitting.

Any person released from detention under the above provisions is liable, subject, however, to their requirements, to re-arrest and to the further detention to which he would have been liable if he had not been released under those provisions.

¹ See the Legislative Members' Exemption Act, 1925 (Act No. XXIII of 1925); also Section 320 of the Code of Criminal Procedure, 1898.

✓ We have previously¹ dwelt on the non-sovereign and subordinate character of the Indian legislative bodies and shown how their authority has been limited by the Government of India Act. We shall now describe their specific powers and functions. We propose to deal with the Indian Legislature in this chapter.

The Indian Legislature is empowered to make laws²—

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

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

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

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

(5) for all persons employed or serving in or belonging to any naval forces raised by the Governor-General in Council, wherever they are serving, in so far as they are not subject to the Naval Discipline Act³ ; and

¹ Section 65 (?) of the Act.

² Section 65 (1) of the Act.

³ The functions of the Indian Marine have hitherto been—

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

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

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

It is maintained out of the revenues of India. The total expenditure in each year from 1922-23 to 1926-27 was as follows :—

1922-23	...	...	Rs. 1,39,98,618
1923-24	...	...	" 96,54,425
1924-25	...	...	" 74,10,717
1925-26	...	...	" 67,30,028
1926-27	...	...	" 55,00,000

(Statistical Abstract for British India from 1916-17 to 1925-26 ;

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

But it is not, unless so authorized¹ by Act of Parliament, empowered to make any law repealing or affecting²—

(1) any Act of Parliament passed after the year 1860 and extending to British India (including the Army Act, the Air Force Act and any Act amending the same); or

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

Nor has it any power to make any law affecting the authority of Parliament, or any part of the unwritten laws or constitution of the United Kingdom of Great Britain and Ireland whereon may depend in any degree the allegiance of any person to the Crown of the United Kingdom, or affecting the sovereignty or dominion of the Crown over any part of British India³. Besides, it cannot without the

also *Finance and Revenue Accounts of the Government of India* for 1926-27.)

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

¹ For instance, the Indian Legislature has, under Section 131 (3) of the Government of India Act, power to repeal or alter some of the provisions of the Act mentioned in the fifth Schedule to the Act. See Appendix L.

² Section 65 (2) of the Act.

³ Sub-section 2 of Section 65 of the Act.

This limitation on the power of the Indian Legislature is, as Mr. Justice Markby said (6 Bengal Law Reports, p. 482), 'certainly couched in language to the last degree vague and obscure.'

Ilbert also is of opinion that it is 'somewhat indefinite.'—*The Government of India*, third edition, p. 235.

There are, however, some important judicial pronouncements on the purport and effect of this limitation.

In the case of *Bugga v. The King-Emperor*, the Privy Council stated in the course of its judgment as follows:—

'The sub-section does not prevent the Indian Government from passing a law which may modify or affect a rule of the constitution or

previous sanction of the Secretary of State in Council, make any law empowering any Court, other than a High Court, to sentence to the punishment of death any of His Majesty's subjects born in Europe, or the children of such subjects, or abolishing any High Court.

Subject to the requirements of the Government of India Act, the Indian Legislature may provide for the application of the provisions of the Naval Discipline Act¹ (i) to the naval forces raised and provided by the Governor-General in Council, with such modifications thereof as may be made by it to adapt the Act to the circumstances of India; and (ii) to the forces and ships of His Majesty's Navy not raised and provided by the Governor-General in Council,

of the common law upon the observance of which some person may conceive or allege that his allegiance depends. It refers only to laws which directly affect the allegiance of the subject to the Crown, as by a transfer or qualification of the allegiance or a modification of the obligations thereby imposed. In the case of *In re Ameer Khan* (2) the meaning of a similar provision in the Act of 1833 (3 and 4 Will. 4, c. 85, s. 43) was discussed at length, and Phear, J. stated his opinion as follows: "But I think it right to say that in my judgment the words 'whereon may depend, etc.,' do not refer to any assumed conditions precedent to be performed by or on behalf of the Crown as necessary to found the allegiance of the subject, but to laws or principles which prescribe the nature of the allegiance—viz., of the relations between the Crown on the one hand and the inhabitants of particular provinces, or particular classes of the community, on the other. . . ."—47 *I.A.*, p. 138; 6 *Beng. L. R.*, p. 477.

See in this connexion the judgments of Mr. Justice Norman, Mr. Justice Phear and Mr. Justice Markby in the case of *In the matter of Ameer Khan*.—6 *Bengal Law Reports*, pp. 435-56, and pp. 465-83.

We may quote here a line or two from the judgment of Mr. Justice Markby. 'I wholly repudiate the doctrine contended for,' said Mr. Justice Markby, 'that the allegiance of a subject to his Sovereign can by any possibility be legally affected by the mere withdrawal from the subject of any right, privilege, or immunity whatsoever. I think the notion of reciprocity expressed in the maxim *protectio trahit subjectionem, et subjectio protectionem* (allegiance and protection are reciprocally due from the subject and the sovereign), upon which this argument depends, is one which is wholly inadmissible in any legal consideration.'—*Ibid.*, pp. 482-83.

Vide also *L. R.* 46, *I. A.*, p. 191; also Sapru, *The Indian Constitution*, pp. 74-75.

² Obviously, it is an English Act.

with such modifications thereof as may be made by His Majesty in Council for the purpose of regulating the relations of the last-mentioned forces and ships to the forces and ships raised and provided by the Governor-General in Council. But if any forces and ships raised and provided by the Governor-General in Council are placed at the disposal of the Admiralty, the said Act will apply without any such modifications as aforesaid¹.

A member cannot, without the previous sanction of the Governor-General, introduce in either Chamber of the Indian Legislature any measure affecting²—

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

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

¹ The original section 66 of the Government of India Act has been replaced by this new provision.

Vide the Government of India (Indian Navy) Act, 1927 (17 and 18 Geo. 5, Chapter viii), Section 1(4).

² Section 67 (2) of the Act.

When in either Chamber of the Indian Legislature a Bill is introduced, or is proposed to be introduced, or an amendment thereto is moved, or proposed to be moved, and if the Governor-General certifies that the Bill, or any clause of it, or the amendment, affects the safety or tranquillity of British India, or any part thereof, and directs that no consideration, or no further consideration, is to be given to the said Bill, clause or amendment, then effect must be given to such direction.¹

When a Bill is passed by both Chambers of the Indian Legislature, the Governor-General may assent to it or may withhold his assent from it, or may reserve it for the signification of His Majesty's pleasure thereon.² He may, instead of doing any of these things, return the Bill for reconsideration by either Chamber.³ But the Bill cannot become an Act until it has received the assent of the Governor-General, or, if it was reserved for the signification of His Majesty's pleasure, until His Majesty in Council has signified his assent thereto, and that assent has been notified by the Governor-General.⁴ Finally, an Act of the Indian Legislature, duly assented to by the Governor-General, may be disallowed by His Majesty in Council and it becomes void as soon as such disallowance is notified by the Governor-General.⁵

This executive veto on legislation is not peculiar to the Indian Constitution only. It exists in England as well as in the self-governing Dominions like Canada and Australia.⁶

¹ Section 67 (2a) of the Act.

² *Ibid.*, 67 (4) of the Act.

³ *Ibid.*, 69 of the Act.

⁴ *Ibid.*, 68 (1) of the Act.

⁵ *Ibid.*, 68 (2) of the Act.

⁶ The Commonwealth of Australia Constitution Act, 1900, Sections 55-60. The British North America Act, 1867, Sections 55-57. The Colonial Governor, says Prof. Keith, 'has an absolute discretion to refuse to assent to any and every Bill.'—*Responsible Government in the Dominions* (1909), p. 176.

The danger lies not in its existence so much as in the frequency of its exercise. The royal veto on Parliamentary legislation in England is practically obsolete ;¹ and so far as the Dominion legislation is concerned, it is, according to Prof. Dicey,² 'now most sparingly exercised, and will hardly be used unless a Bill directly interferes with Imperial interests or is as regards the colonial legislature *ultra vires*.' There is, however, one point of difference in form in respect of the executive veto between India and, say, Canada. In India the Governor-General gives or withholds his own assent ; in Canada the Governor-General thereof assents to a Bill in the King's name or withholds the king's assent therefrom.

It may be pointed out here that, in the present circumstances, the occasions for the exercise of the executive veto on Bills passed by the two Chambers of the Indian Legislature will be very rare, since, under the Act,³ the Governor-General may, by mere certification, forbid the very consideration of a measure which he considers dangerous to the safety or tranquillity of British India or of any part thereof. Besides, as we have seen before, since the introduction of certain measures requires the previous sanction of the Governor-General, he may refuse such sanction in the case of any objectionable Bill.⁴

¹ The last royal veto was given in 1707 ; see p. 280 of Lowell's *Government of England*, vol. i.

² The necessity of refusing the royal assent is removed by the strict observance of the constitutional principle, that the Crown has no will but that of its ministers, who only continue to serve in that capacity so long as they retain the confidence of Parliament. This power was last exercised in 1707, when Queen Anne refused her assent to a Bill for settling the militia in Scotland.—May, *Parliamentary Practice*, p. 395.

³ Dicey, *Law of the Constitution*, Introduction, p. xxx ; see also pp. 110-16, *ibid.* (eighth edition).

⁴ Section 67 (2a) of the Act. See p. 200 *ante*.

⁵ See page 199 *ante*.

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

✓ If either Chamber of the Indian Legislature refuses leave to introduce, or fails to pass in a form recommended by the Governor-General, any Bill, the latter may certify that its passage is essential for the safety, tranquillity or interests of British India or any part thereof. Thereupon, if the Bill has already been passed by the other Chamber, it will, on signature by the Governor-General, forthwith become an Act of the Indian Legislature in the form as originally introduced or proposed to be introduced in the Indian Legislature, or, as the case may be, in the form recommended by the Governor-General, in spite of the fact that it has not been agreed to by both Chambers; but, if the Bill has not already been so passed, it must be laid before the other Chamber, and, if consented to by that Chamber in the form recommended by the Governor-General, will become an Act on the signification of his assent, or, if not so consented to, will, on his signature, become an Act.¹

✓ Every such Act must, as soon as practicable after being made, be laid before both Houses of Parliament. But it cannot have the force and effect of law until copies of it have been laid before each House of Parliament for not less than eight days on which that House has sat, and, thereafter, until His Majesty in Council has signified his assent thereto, and that assent has been notified by the Governor-General. But if, in the opinion of the Governor-General, a state of emergency exists, he may direct that any such Act will come into operation immediately, and thereupon it will have the force and effect

¹ Section 67B(1) of the Act.

of law, subject, however, to disallowance by His Majesty in Council.¹

The above provision has been inserted in the Act in order, in the words of the Joint Select Committee,² to empower the Governor-General in Council to secure in all circumstances legislation which is required for the discharge of his responsibilities. The Committee, however, advised³ that all Acts passed in this (extraordinary) manner should be laid before Parliament that it might be fully apprised of the position and of the circumstances which led to the exceptional procedure. But it is very unlikely that Parliament will ever disapprove of an action taken by the Governor-General under the above Section, even if the latter may have acted most arbitrarily; since, such disapproval may force his resignation—a situation which Parliament will not ordinarily like to face.

The first exercise of this extraordinary power by the Governor-General took place in September, 1922, in connection with the passing of the 'Indian States (Protection against Disaffection) Bill,' popularly known as the Princes' Protection Bill.⁴ We need not enter here into the merits of the measure. The Legislative Assembly refused leave for the introduction of the Bill. Thereupon the Governor-General certified that the passage of the Bill was essential for the interests of British India. It was then introduced into the Council of State with a recommenda-

Supplementary Finance Bill

¹ Section 67B (2) of the Act.

² Report from the Joint Select Committee on the Government of India Bill, Clause 26.

³ *Ibid.*

⁴ *India in 1922-23* by Dr. Rushbrook Williams, pp. 98 and 284.

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

tion from the Governor-General to pass it in the form in which it was presented. And it was so passed by the Council of State. The Bill then, on signature by the Governor-General, became an Act without the assent of the Assembly. The next occasion for the use of this power arose in connection with the passing of the Finance Bill of the year 1923.¹ The Bill as first introduced into the Legislative Assembly contained a clause providing for an increase in the salt duty from Re. 1-4-0 to Rs. 2-8-0 per maund. The Assembly, however, accepted an amendment in favour of the maintenance of the then rate of Re. 1-4-0 per maund. The Finance Bill thus amended in respect of the salt tax was carried by the Assembly. It then came up in the form recommended by the Governor-General before the Council of State, with the salt duty doubled. It was passed by the Council by a majority of twenty-eight votes against ten. The Council thus reversed the decision of the Assembly regarding salt tax. The Bill was reintroduced into the Assembly in the form in which it had been passed by the Council, with a recommendation by the Governor-General to pass it. But it was rejected by the Assembly by fifty-eight votes against forty-seven. It was then certified by the Governor-General and became an Act. The Finance Bill of the year 1924 was also passed into Act by 'certification' by the Governor-General.² The Bill, as recommended by the Governor-General, was rejected by the Assembly, but consented to by the Council this time also.

It may be noted here that the insertion of this empowering clause in the Act and its use in connection with the passing of the Princes' Protection Bill and the Finance

¹ *India in 1922-23* by Dr. R. Williams, pp. 115-16 and 295; see also *India's Parliament at Delhi—Delhi Session 1923*, by the Director, Central Bureau of Information, pp. 37-40. For full details see the relevant proceedings of the Indian Legislature.

² See the Government of India's Notification No. 996-F., dated Delhi, March 28, 1924.—*The Gazette of India (Extra.)*, March 31, 1924.