

Bill of the year 1923, have done much, in the opinion of many responsible persons, to make the Reforms unpopular.

The estimates of the annual expenditure and revenue of the Governor-General in Council are placed before each Chamber of the Indian Legislature in the form of a statement.¹ These estimates as embodied in the statement are referred to as the Indian Budget. They are presented to each House on such day or days as the Governor-General appoints.² No member can make any proposal for the expenditure of public revenue, except on the recommendation of the Governor-General.³ This apparent curtailment of the rights of the non-official members is not peculiar to our Constitution only. The House of Commons⁴ in England 'will not receive any petition, or proceed upon any motion, for a grant or charge upon the public revenue unless recommended from the Crown.' Such a restrictive clause is to be found in the Constitutions of self-governing Dominions⁵ like Canada, Australia and South Africa. Experience has

¹ Section 67A (1) of the Act.

² The Indian Legislative Rule 43.

Under the new budget procedure, introduced with effect from 1925-26, Railway Finance has been separated from General Finance, and the Budget of the Government of India is presented to the Legislature in two parts. They are known as the Railway Budget and the General Budget. Each Budget is presented to the two Chambers of the Legislature simultaneously on a day in each year appointed by the Governor-General. The Railway Budget is introduced in advance of the General Budget which is introduced nowadays in the afternoon of the last day of February every year. The General Budget is presented to the Legislative Assembly by the Finance Member, and to the Council of State by the Finance Secretary. Similarly, the Railway Budget is introduced into the Assembly by the Member for Commerce and Railways, and into the Council of State by the Chief Commissioner for Railways. The procedure for dealing with either Budget is the same.

³ Section 67A (2) of the Act.

⁴ Lowell, *Government of England*, vol. i. p. 279.

⁵ The British North America Act, 1867, Section 54. The Commonwealth of Australia Constitution Act, 1900, Section 56; South Africa Act, 1909, Section 62.

proved that such a restriction is absolutely necessary to prevent the expenditure of public money on projects of local and, very often, of questionable importance, on the initiative of private members who, in most cases, in order to ensure their return at the next election, do everything they can, regardless of consequences of their action to the public treasury, to please their respective constituencies.¹ Speaking about the English system, President Lowell says that it has proved not only an invaluable protection to the Treasury, but a bulwark for the authority of the Ministry.² Commenting on the relevant clause in the British North America Act, 1867, Prof. Egerton³ remarks that 'before 1840 the proposals by private members to make grants of public money had become a scandal and a nuisance. The remedy was to secure the previous recommendation of the Crown.

As a further extension of the principle just discussed, we find that when any motion is made demanding a grant for a definite object, no amendment is in order either to increase the grant or to alter its destination.⁴ But, as will be seen later, motions may be moved at this stage to reduce the grant.⁵

We shall now consider the non-votable⁶ heads of expenditure. Section 67A (3) of the Act lays down that the proposals of the Governor-General in Council for the appropriation of public revenue relating to the following heads of expenditure

Non-votable
heads of ex-
penditure.

¹ This argument is at present particularly applicable in the case of provincial budgets.

² *The Government of England*, vol. i, pp. 279-80.

³ *Federations and Unions in the British Empire*, p. 136, note 2.

⁴ The Indian Legislative Rule 48 (2).

⁵ *Ibid.*

⁶ In 1925-26 the total 'voted' expenditure of the central Government was about Rs. 128 crores and the total 'non-voted' expenditure was about Rs. 119.25 crores. The corresponding figures for 1924-25 were about Rs. 130.50 crores and Rs. 114.34 crores.—*Statistical Abstract for British India* from 1916-17 to 1925-26, pp. 152-54

shall not be submitted to the vote of the Legislative Assembly, and that they shall not be open to discussion by either Chamber at the time when the annual statement is under consideration, unless the Governor-General otherwise directs:—

- (1) interest and sinking fund charges on loans ;
- (2) expenditure of which the amount is prescribed by or under any law ;
- (3) ¹ salaries and pensions² payable to or to the dependants of—
 - (a) persons appointed by or with the approval of His Majesty or by the Secretary of State in Council ;
 - (b) Chief Commissioners and Judicial Commissioners;
 - (c) persons appointed before the 1st of April, 1924, by the Governor-General in Council or by a local Government to services or posts classified by Rules under the Act as superior services or posts ; and
- (4) sums payable to any person who is or has been in the civil service of the Crown in India, under any order of the Secretary of State in Council, of the Governor-General in Council, or of a Governor made upon an appeal made to him in pursuance of Rules made under the Act ; and
- (5) expenditure classified by the order of the Governor-General in Council as
 - (a) Ecclesiastical ;
 - (b) Political ; and

¹ *Vide* the Government of India (Civil Services) Act, 1925.

² The expression 'Salaries and pensions' here includes remuneration, allowances, gratuities, any contributions (whether by way of interest or otherwise) out of the revenues of India to any provident fund or family pension fund, and any other payments or emoluments payable to or on account of a person in respect of his office. — *Ibid.*

(c) Defence.¹

The Governor-General is to decide whether any proposed expenditure does or does not relate to the above heads and his decision must be final.²

The proposals of the Government for the appropriation of revenue relating to the heads of expenditure other than those specified above are submitted to the vote of the Assembly in the form of demands for grants.³ From this it is evident that the Council of State has no power to authorize expenditure. At first, under the Council of State original Standing Order 70, the Council had not even the power to discuss the Budget after it had been presented to it. The Standing Order has since been altered and the Budget is now open to discussion by the Council. After the proposals of the Government have been submitted to it in the aforesaid manner, the Assembly either assents or refuses its assent to any demand, or reduces the amount referred to in any demand by a reduction of the whole grant.⁴

Regarding the non-votable heads of expenditure specified above, the Joint Select Committee held that it considered it necessary (as suggested to it by the Consolidated Fund charges⁵ in the Imperial Parliament) to exempt certain charges of a special or recurring nature, which had been set out in the (Government of India) Bill, e.g., the cost of defence, the debt charges, and certain

✓ Indian non-votable expenditure

vs.

English Consolidated Fund charges.

¹ In 1925-26 the total expenditure for items (a), (b) and (c) were about Rs. 31·75 lacs, Rs. 3·36 crores and Rs. 60·39 crores respectively. — *Statistical Abstract for British India*, from 1916-17 to 1925-26, p. 148.

² Section 67A (4) of the Act.

³ Section 67A (5) of the Act.

⁴ Section 67A (6) of the Act.

⁵ These charges are 'interest on the national debt, the Civil List or personal provision for the King, annuities for the royal family, certain pensions, and the salaries of the judges, of the Comptroller and Auditor-General, of the Speaker, and of a few officers of lesser importance.' — Lowell, *Government of England*, vol. i, p. 120.

fixed salaries, from the process of being voted.¹ But the suggested similarity is more apparent than real: there is one fundamental difference between the Consolidated Fund charges in England and the non-votable heads of expenditure of the Indian Budget. The former 'are payable by statute out of the Consolidated Fund, and hence do not require an annual vote of Parliament, or come before the Committee of Supply.'² We should note the expression 'by statute.' Now this statute is made by no other authority than the British Parliament itself and can be amended or repealed to-morrow by the same body if it so desires. The authority to pay Consolidated Fund charges is given to the Government of England by permanent Acts³ of Parliament, e.g., the Civil List Act, the National Debt and Local Loans Act, 1887, etc. But by 'permanent Acts' it is not to be understood that they are unalterable by Parliament. The expression simply means that these Acts are not annually made. Parliament's authority over the distribution of public money is as unlimited as it is unquestionable. 'Not a penny of revenue,' says Prof. Dicey,⁴ 'can be legally expended except under the authority of some Act of Parliament.' The position in India is entirely different. Certain heads of expenditure have been made non-votable not by any Act of the Indian Legislature, but by an Act of the Imperial Parliament; and until the

¹ Joint Select Committee's Report, Clause 25. Note also the following:—

'There is a further safeguard against irresponsible action by the Legislature in the matter of supply—that certain heads of expenditure are not to require an annual vote—in much the same way as the Consolidated Fund in this country.'—Lord Sinha's speech in the House of Lords. See *The Indian Constitution* by P. Mukherjee, p. 581.

² Lowell *Government of England*, vol. i, p. 284.

³ See Dicey, *Law of the Constitution* (eighth edition), p. 313.

⁴ *Ibid.*

Government of India Act is itself amended in respect of the relevant Section, they will continue to remain non-votable so far as the Legislative Assembly is concerned. Hence the analogy suggested by the Joint Select Committee appears to us to be rather misleading.

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

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

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

³ It says : 'The proposals of the Governor-General in Council for the appropriation of revenue or moneys relating to heads of expenditure not specified in the above heads (i.e. items (1) to (5) on pages 207-208) shall be submitted to the vote of the Legislative Assembly in the form of demands for grants.'

was consequently placing the matter before the Law Officers of the Crown. The Resolution as amended by Mr. McCarthy was then adopted by the Assembly. On February 28, 1922, Sir Malcolm Hailey stated, in reply to a question, that the opinion of the Law Officers of the Crown had been received. In their view it was not competent for the Governor-General to place on the vote subjects which were by the statute reserved from that vote.¹

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

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

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

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

³ See pp. 207-208 *ante*.

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

Commenting on this Sub-section, the Joint Select Committee stated in its Report¹ that it was not within the scheme of the Government of India Bill to introduce at that stage any measure of responsible Government into the central administration, and that a power must be reserved to the Governor-General in Council of treating as sanctioned any expenditure which the Assembly might have refused to vote if he considered the expenditure to be necessary for the fulfilment of his responsibilities for the good government of the country. It should be understood from the beginning, it continued, that this power of the Governor-General in Council was real, and that it was meant to be used if and when necessary.

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

It may be mentioned here that there are no such provisions for the 'restoration' and 'authorization' of grants in the Constitutions² of Canada, Australia and the Union of South Africa as are provided by Sub-sections³ (7) and (8) of Section 67A of the Government of India Act. Let us take, for instance, the Constitution of Canada. Under it the Parliament of Canada can appropriate its Consolidated Revenue Fund as it thinks fit, the only limitation on its power in this respect being that the Fund is permanently charged with its cost of collection, with the interest of the provincial public debts, and with the

Joint Select
Committee
on 'restora-
tion' power.

Financial
powers of
the Parlia-
ments of
Canada,
Australia
and the
Union of
South
Africa.

¹ On Clause 25 of the Government of India Bill.

² See the British North America Act, 1867, the Commonwealth of Australia Act, 1900, and the Union of South Africa Act, 1909.

³ See p. 211 and also the preceding paragraph.

salary of the Governor-General, fixed at £10,000 subject to alteration by the Parliament.¹ The last three payments will consecutively form the first, second and the third charge on the Fund.

It will not be at all an exaggeration to state that in respect of the granting of supplies as in respect of other affairs under the administration of the Government of India, the advance made by the Montagu-Chelmsford Reforms upon the Morley-Minto Reforms² is, in essence, really insignificant³ except in certain matters of form and procedure. Both in respect of finance and administration, the Central Legislature of India to-day plays practically the same rôle of critic and adviser as the Indian Legislative Council used to do under the Morley-Minto Reforms. This, as we shall see, can also be stated of the Governors' Legislative Councils, so far as the administration of the 'Reserved' subjects is concerned.

Montagu-
Chelmsford
Reforms and
the Central
Government.

¹ The British North America Act, 1867, Sections 103-6.

² See the Indian Councils Act, 1909, and the Rules made thereunder.

³ As that acute observer, Sir Valentine Chirol, says, 'The Act of 1919, it is true, transfers to the Indian Legislature no direct or complete statutory control over revenue and expenditure, and powers are still vested in the Government of India to override the Assembly in cases of emergency and to enact supplies which it refuses if the Governor-General in Council certifies them to be essential to the peace, tranquillity, and interests of India.'—*India Old and New*, p. 233

CHAPTER XIV

POWERS OF THE PROVINCIAL LEGISLATIVE COUNCILS

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

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

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

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

² Section 72D (2) of the Act and the Provincial Legislative Rule 25.

³ Section 72D (2) (c) of the Act.

submitted to the vote of the Council in the form of demands for grants¹ :—

(1) contributions² payable by the local Government to the Governor-General in Council ;

(2) interest and sinking fund charges on loans ;

(3) expenditure of which the amount is prescribed by or under any law ;

(4) salaries and pensions³ payable to or to the dependants of—

(a) persons appointed by or with the approval of His Majesty or by the Secretary of State in Council ;

(b) judges of the High Court of the province ;

(c) the Advocate-General ;

(d) persons appointed before the 1st of April, 1924, by the Governor-General in Council or by a local Government to services or posts classified by Rules under the Act as superior services and posts ; and

(5) sums payable to any person who is or has been in the civil service of the Crown in India, under any order of the Secretary of State in Council, of the Governor-General in Council, or of a Governor, made upon an appeal made to him in pursuance of Rules made under the Act.⁴ ✓

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

Financial
powers of a
Governor's
Legislative
Council.

¹ Section 72D (2) and (3) of the Act.

² The provincial contributions to the Government of India have been completely and finally remitted with effect from the year 1928-29. See Chapter xxiii, in this connexion.

³ For the meaning of the expression ' Salaries and pensions ' see page 207 *ante*.

⁴ *Vide* the Government of India (Civil Services) Act, 1925.

order either to increase, or to alter the destination of, a grant.¹

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

✓ If any demand relating to a Reserved subject is refused either in its entirety or partially, and if the Governor certifies that the expenditure provided for by the demand is essential to the discharge of his responsibility for the subject, the local Government has power to act as if the demand had been granted.³ ✓ Under this provision of the Act, the Governor has, in respect of Reserved subjects, power to restore ✓ in the words of His Excellency Lord Lytton,⁴ Governor of Bengal (1922-1927), ✓ every single grant in the Budget which has been rejected. With regard to Transferred subjects, however, he has no power, whatever his wishes may be, to restore a single grant.⁵ Even if he may be temporarily in charge of the Transferred departments, ✓ they do not thereby become, to quote His Excellency again, Reserved departments, and his power of certification does not apply to them.⁶ This power of

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

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

² Section 72D (4) of the Act. ³ Section 72D (2) (a) of the Act.

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

⁵ Lord Lytton's speech in the Bengal Legislative Council on March 18, 1924. *Vide* also His Excellency's speech in reply to the address of the representatives of the Indian Inspecting Officers (educational), delivered on June 12, 1924. In the course of his speech His Excellency said:—

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

⁶ *Ibid.*

restoration by certification has been rather frequently used since the inauguration of the Reforms. In the year 1924 the Governors of Bengal¹ and the Central Provinces² exercised this power in order to restore practically all the Budget demands for Reserved subjects, which were rejected by their Legislative Councils. Commenting on this certification clause in the Government of India Bill, the Joint Select Committee³ held that where the Council had reduced a provision for a Reserved subject, which the Governor considered essential to the proper administration of the subject concerned, he would have a power of restoration. It wished it to be perfectly clear that this

¹ See a communique of the Finance Department of the Government of Bengal.—*The Amrita Bazar Patrika*, dak ed., April 16, 1924.

² Notification by the Financial Secretary, the Central Provinces, dated March 24, 1924.—*The Statesman*, dak ed., March 26, 1924.

³ The Joint Select Committee's Report on Clause 11 of the Government of India Bill. We may also note here the Committee's views regarding Transferred subjects:—

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

The Committee made this recommendation probably because of the want of experience of the provincial Legislative Councils in the parliamentary form of Government. But it appears to us that this recommendation goes against the principle of ministerial responsibility and is, if actually followed in practice, very likely to retard the growth of a due sense of responsibility in many members of those Councils. If the members of a Council, when voting against a grant, have this in their minds, that their action, so far as the particular grant is concerned, is final and will probably decide the fate of a particular Minister, they will seriously consider the question in all its aspects before they actually vote. But if they know that their first vote in respect of a particular demand is not decisive for the financial year and will not necessarily cause the fall of a Minister as he may advise the Governor to resubmit to the Council that very demand, they may, when the demand is made for the first time, vote against it in a spirit of lightheartedness. Such is human nature. Nor do we find any necessity for the resubmission of a demand relating to a Transferred subject which has been simply altered, in view of the provision for supplementary grants. See in this connexion pages 277-82.

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

Besides possessing the power of restoration as stated above, the Governor can, in cases of emergency, authorize, under Proviso (b) to Section 72D (2) of the Act, such expenditure as may be, in his opinion, necessary for the safety or tranquillity of his province or for the carrying on of any department. The word 'any' is very significant here. It implies any department of Government, whether Reserved or Transferred. The construction which Lord Lytton, Governor of Bengal, put upon the proviso is as follows²:—'This proviso is not limited to Reserved

Lord
Lytton's
interpreta-
tion of the
'emergency
clause' in
Sec. 72D (2)
of the Act.

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

² *Vide* Lord Lytton's speech in the Bengal Legislative Council already referred to.—*The Statesman* (dak edition), March 20, 1924.

subjects, and the power of authorizing expenditure may, therefore, be exercised in respect of any department of Government; but it is limited by the two considerations specified, namely, that the expenditure must be necessary for the safety and tranquillity of the province, or for carrying on a department. Here, again, I have certain powers within my discretion; but whereas in the case of Reserved subjects I have power to restore everything, in the case of Transferred subjects I can "restore" nothing, though I can "authorize" expenditure within very strict limits.' 'I can', he continued, 'if I so desire, authorize expenditure, for the carrying on of any department—that is to say, I can provide funds for all the Services, for all the departments and institutions of Government These institutions could be provided, if I so desire, with the salaries of their staff and the bare necessities of their existence, but nothing more. I could provide nothing for their expansion or improvement. It will not be in my power, whether I wish it or not, to do more than this. Government contributions to all aided institutions would at once lapse. No loans, no grants-in-aid, could be "authorized" by me. . . . Government aid to all local institutions would cease.' While the Governor of Bengal could not under the Proviso authorize any grant-in-aid and the Government aids to all local institutions would accordingly cease if the Budget proposals of the Government were rejected *in toto*, the Governor of the Central Provinces authorized certain items¹ which were classed as new expenditure, although they were really commitments of the Government in accordance with practice, such, for instance, as grants to local bodies for general purposes. It seems from the above that the Governor of the Central Provinces

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

put a more liberal interpretation upon the Proviso. This difference in the construction put upon the Proviso in question by the two Governors may presumably be due to the fact that the interpretation of such vague expressions in it as 'in cases of emergency', 'the safety or tranquillity of the province', and 'for the carrying on of any department', has been left by the Act entirely to the discretion of the Governor.¹ It may be stated, however, as a general principle that the less this emergency power is exercised in respect of the demands for the Transferred subjects, the more will the object of the Reforms be fulfilled.

If any bill is introduced or proposed to be introduced, or any amendment to a Bill is moved or proposed to be moved, in a Legislative Council, and if the Governor certifies that the Bill or any clause of it or the amendment affects the safety or tranquillity of his province or any part of it or of another province, and directs 'that no proceedings or no further proceedings shall be taken by the Council in relation to the Bill, clause or amendment,' then effect must be given to any such direction.² Of course, the determination of what constitutes a danger to the safety or tranquillity of a province is left to the discretion of the Governor himself.

¹The Governor of Bengal is reported to have said in the course of his reply to the members of the deputation from the Inspecting Officers of the Education Department (Foot-note 5, p. 216) :—

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

² Section 72D (4) of the Act.

POWERS OF THE LEGISLATIVE COUNCIL

Let us now consider the extraordinary power of legislation vested in the Governor by Section of the Act. ✓ If a Governor's Legislative Council refuses leave to introduce, or fails to pass in the form recommended by the Governor, any Bill relating to a Reserved subject, the latter may certify¹ that the passage of the Bill is essential for the discharge of his responsibility for the subject. Thereupon the Bill will, notwithstanding that it has not been agreed to by the Council, become, on signature by the Governor, an Act of the local Legislature in the form as originally introduced or proposed to be introduced in the Council or, as the case may be, in the form recommended by the Governor.²

The Governor must send an authentic copy of every Act made in this way to the Governor-General who will have to reserve the Act for the signification of His Majesty's pleasure. The Act cannot have the force and effect of law until it has received the assent of His Majesty in Council and that assent has been notified by the Governor-General.³

But for the avoidance of delay in case of an emergency, the Governor-General may, instead of reserving such Act, signify his assent thereto, and thereupon the Act will have the force of law, subject, however, to disallowance by His Majesty in Council.⁴

An Act made under this Section must, as soon as possible, be laid before each House of Parliament, and an Act which is required to be presented for His Majesty's assent, cannot be so presented until copies of it have been

¹ *E.g.*, the Bengal Criminal Law Amendment Bill, 1925, which was introduced which had been refused by the local Legislative Council was certified by the Governor under Section 72E of the Act.

² Section 72E (1) of the Act.

³ Section 72E (2) of the Act.

⁴ proviso to Section 72E (2) of the Act.

before each House of Parliament for not less than at days on which it has sat.¹

In justification of the necessity of vesting in the Governor such an extraordinary power of legislation, the Joint Select Committee, stated² that, as the responsibility for legislation on Reserved subjects would be with the Governor in Council, the Governor should be empowered to pass an Act in respect of any Reserved subject, if he considered that the Act was necessary for the proper fulfilment of his responsibility to Parliament. The Committee advised, however, that he should not do so until he had given every opportunity for the matter to be thoroughly discussed in the Legislative Council, and as a sensible man he should, of course, endeavour to carry the Council with him in the matter by the strength of his case. But, it continued, if he found that that could not be so, then he should have the power to proceed on his own responsibility. Acts passed on his sole responsibility should be reserved by the Governor-General for His Majesty's pleasure, and be laid before Parliament. His Majesty would necessarily be advised by the Secretary of State for India, and the responsibility for the advice to be given to His Majesty could only rest with the Secretary of State.

The Joint
Select Com-
mittee on the
extraordi-
nary power
of legisla-
tion.

POWERS OF LOCAL LEGISLATURES³

Section 89A of the Act lays down:—

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

¹ Section 72E (3) of the Act.

² Report from the Joint Select Committee on Clause 13 of the Government of India Bill.

³ Including the Legislative Council of a Lieutenant-Governor (if any) or of a Chief Commissioner (e.g., of Coorg).

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

Powers of
any local
Legislative
Council.

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

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

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

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

(5) regulating any Central ² subject; or

(6) regulating any provincial ³ subject which has been declared by Rules under the Act to be, either wholly or partly, subject to legislation by the Indian Legislature, in respect of any matter to which such declaration applies; or

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

(8) altering or repealing the provisions of any law

¹ See the Scheduled Taxes Rules, Appendix E.

² Devolution Rule 3, Schedule I, Part I. Appendix B.

³ *Ibid.*, Part II, Appendix B.

... which is declared by Rules made under the Act to be a law which cannot be repealed or altered by it without such previous sanction ;¹ or

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

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

✓ Finally, the local legislature of any province has not power to make any law affecting any Act of Parliament.³ As a further limitation upon the powers of the members of a local Legislative Council, it is laid down that it will not be lawful for any member of the Council to introduce, without the previous sanction of the Governor, Lieutenant-Governor or Chief Commissioner, as the case may be, any measure affecting the public revenues of a province, or imposing any charge on those revenues.⁴ ✓ This provision has been inserted, probably with a view to preventing the creation of a public charge on the initiative of private members and maintaining the authority of the Executive over the distribution of provincial revenues unimpaired.⁵ But it cannot altogether prevent the Council from forcing the hands of the Government by passing a resolution in favour, say, of a certain kind of expenditure.

✓ A Bill passed by a local Legislative Council cannot become

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

² I.e. the Government of India Act.

³ Section 80A (4) of the Act.

⁴ Section 80C of the Act.

⁵ See in this connexion pages 205-206 *am*.

law until it has received the assent of the head¹ of the local Government as well as of the Governor-General.² If either of them withholds his assent from the Bill, it lapses.³ Where the Governor-General withholds his assent from a Bill duly assented to by the head of a local Government, he must inform the latter of his reason for such action.⁴ The head of a local Government may, instead of assenting to or withholding his assent from a Bill passed by his Legislative Council, return it for reconsideration by the Council, either in whole or in part, together with any amendments which he may recommend,⁵ or, in cases prescribed by Rules under the Act, may, and if the Rules so require, must reserve⁶ it for the consideration of the Governor-General. A 'reserved' Bill, if assented to by the Governor-General within a period of six months from the date of the reservation, becomes law on the publication of such assent. But if it fails to receive the assent of the Governor-General within the period of six months, it lapses, unless before the expiration of that period either—

- (1) it has been returned by the head of the local Government for further consideration by the Council; or
- (2) in the case of the Council not being in session, a notification has been published of an intention so to return the Bill at the beginning of the next session.⁷

Further, where a Bill is reserved for the consideration of the Governor-General, the head of the local Government concerned may, at any time within six months from the date of the reservation of the Bill, with the consent of the Governor-General, return the Bill for further consideration by the

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

² Section 81 of the Act.

⁴ *Ibid.*

³ *Ibid.*

⁵ Section 81A (1) of the Act.

⁶ For the Reservation of Bills and Rules, see Appendix G.

⁷ Section 81A (2) (c) of the Act.

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

✓The Governor-General may (except where a Bill has been reserved for his consideration), instead of assenting to or withholding his assent from any Act passed by a local legislature, reserve the Act for the signification of His Majesty's pleasure thereon, and in such case the Act will not have validity until His Majesty in Council has signified his assent thereto and his assent has been notified by the Governor-General.²

Finally, His Majesty in Council has power to disallow any provincial Act even after it has been assented to by the Governor-General³ ✓ and if His Majesty in Council actually disallows any such Act, it will cease to have any effect from the date of the notification of such disallowance by the head of the local Government.⁴

VALIDITY OF INDIAN LAWS

Section 84 of the Act provides for the removal of doubts as to the validity of certain laws. It lays down—
 Removal of doubts as to the validity of certain Indian laws. that (I) a law made by any authority in British India shall not be deemed invalid solely on account of any one or more of the following reasons :—

(1) in the case of an Act of the Indian Legislature or

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

² Section 81A (3) of the Act.

³ When an Act has been assented to by the Governor-General, he must send an authentic copy thereof to the Secretary of State.

⁴ Section 82 of the Act.

a local legislature, because it affects the prerogative of the Crown; or

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

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

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

that (III) nothing in the Government of India Act, 1919, or the Government of India Act, or in any Rules made thereunder, shall be construed as diminishing in any respect the powers of the Indian Legislature as laid down in Section¹ 65 of the Act, and the validity of any Act of the Indian Legislature or any local Legislature must not be open to question in any legal proceedings on the ground that the Act affects a provincial subject, or a central subject, as the case may be, and the validity of any Act made by the Governor of a province must not be so open to question on the ground that it does not relate to a Reserved subject.²

¹ See pages 196-98 *ante*.

² We may note the following in this connexion:—

'It is our intention to reserve to the Government of India a general over-riding power of legislation for the discharge of all functions which it will have to perform. It should be enabled under this power to intervene in any province for the protection and enforcement of the interests for which it is responsible; to legislate on any provincial matter in respect of which uniformity of legislation is desirable either for the whole of India or for any two or more provinces. . . . We think that the Government of India must be the

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

sole judge of the propriety of any legislation which it may undertake under any one of these categories, and that its competence so to legislate should not be open to challenge in the courts. . . . There are advantages in a statutory demarcation of power such as is found in some federal constitutions, but we feel that if this is to leave the validity of Acts to be challenged in the courts on the ground of their being in excess of the powers of the particular legislature by which they are passed, we should be subjecting every Government in the country to an almost intolerable harassment. Moreover, in India where the central Government must retain large responsibilities, as for defence and law and order, a statutory limitation upon its legislative functions may be inexpedient. . . . We think therefore that it may be better, instead of attempting to bar the legislative power of the Government of India in certain spheres of provincial business, to leave it to be settled as a matter of constitutional practice that the central Government will not interfere in provincial matters unless the interests for which it is itself responsible are directly affected.'—*The Montagu-Chelmsford Report*, para. 212. See also para. 239 of the Report.

¹ Pages 6-9 *ante*.

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

The decision of such controversial matters has been left by the Act to the Executive, lest the course of administration should be held up in any way. Under the Devolution Rules if any doubt arises as to—

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

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

¹ Devolution Rule 4.

² *Ibid.*, Rule 7

CHAPTER XV

PROCEDURE IN THE INDIAN LEGISLATURE

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

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

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

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

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

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

PROCEDURE IN THE INDIAN LEGISLATURE

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

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

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

³ Section 129A (1) of the Act.

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

⁵ *Ibid.*

Rules and
Standing
Orders for
regulating
business in
Indian
legisla-
tures.

Legislature.¹ The Secretary² of each Chamber issues a summons to every member thereof for the date and place thus appointed.³ After the commencement of a session, each House sits on such days as its President, having regard to the state of its business, directs from time to time.⁴ A session of either House is brought to a close by prorogation which is effected by the Governor-General by notification or otherwise.⁵ On the termination of a session by prorogation all pending notices lapse, and fresh notices must be given for the next session.⁶ But Bills which have already been introduced are carried over to the pending list of business of the next session and begin their progress again at the point they have already reached.⁷ Thus the Indian practice avoids that unfortunate necessity of the 'slaughter of the innocents,'⁸ which is generally the effect of a prorogation of a session of Parliament in England. But if the member in charge of a Bill makes no motion with regard to it during two complete sessions, it will lapse unless the House, in which the Bill has been introduced, makes, on a motion by that member in the next session, a special order for its continuance.⁹ But on the dissolution of either House all Bills which have been introduced into the House which has been dissolved, or which have been sent to that House

Summoning
of the
Assembly
and the
Council.

Proroga-
tion.

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

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

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

⁴ *Ibid.*, 3 (3).

⁵ Section 63D (2) of the Act.

⁶ The Legislative Assembly and the Council of State Standing Order 4 (1).

⁷ *Ibid.*, 4 (2).

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

⁹ The Legislative Assembly and the Council of State Standing Order 4 (Proviso).

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after being passed by the other House but which have not yet been passed by the Indian Legislature, must lapse. A meeting of each House is adjourned by its President.¹ An adjournment only suspends the transaction of current business.

Adjournment.

Time of meetings.

Ordinarily, each Chamber meets at 11 a.m. and sits till 4 p.m., unless the Governor-General otherwise directs.²

The presence of at least twenty-five members is necessary to constitute a quorum in the case of the

Quorum.

Legislative Assembly, and of at least fifteen members, in the case of the Council of State.³ Neither House can transact any business unless there is a quorum in it. If the President of either House ascertains on a count at any time during a meeting, that a quorum is not present, he must adjourn the House until the next day of sitting.⁴ The members of each House must

Seating of members.

sit in such order as its President may direct. A member desiring to make any observation on any matter before the House must speak from his place, rise when he speaks, and address the President. Whenever the President rises, any member speaking must resume his seat.⁵ If,

Members to rise when speaking.

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

Explanation.

¹ Section 63D (3) of the Act.

² The Legislative Assembly Standing Order 6 and the Council of State Standing Order 5.

³ Indian Legislative Rule 13.

⁴ L. A. S. O. 25 and C. S. S. O. 24. But no demand for a count to ascertain the presence of a quorum can be made within one hour of any previous count.

⁵ *Ibid.*, 27 and *ibid.*, 26.

⁶ *Ibid.*, 28 and *ibid.*, 27.

The business of each Chamber of the Indian Legislature is to be transacted in English ; but the President thereof may permit any of its members unacquainted with English to address the Chamber in a vernacular language.¹

Language in
the Indian
Legislature.

If any matter requires the decision of either House, it must be brought forward by means of a question put by the President on a motion proposed by a member.² All questions are determined by a majority of votes of the members present other than the person presiding, who, however, has and must exercise a casting vote in the case of an equality of votes.³

Motions.

Voting. Votes are taken by voices or division.⁴ The procedure adopted is as follows : When the President states the question to be voted upon, those members who are in favour of it say 'aye' and those against, say 'no'. According to the apparent preponderance of voices he declares whether the 'ayes' or 'noes' 'have it'. If, however, his opinion is challenged and a division is wanted by any member, he orders a division. The result of the division is then announced by the President and is not open to further challenge.⁵ A motion in either House must not raise a question substantially identical with one on which the House has given

Repetition
of motions.

¹ Indian Legislative Rule 14.

² The Legislative Assembly Standing Order 30 (1) and the Council of State Standing Order 29 (1).—For instance :

'Mr. President : The question is :

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

The motion then is either adopted or negatived.

³ Section 63D (4) of the Act. See pages 33-34 in this connexion.

⁴ The Legislative Assembly Standing Order 30 (2) and the Council of State Standing Order 29 (2). Votes must be taken by division if any member so desires. This is the case also in Bengal.

⁵ The Legislative Assembly Standing Order 30 (3) and the Council of State Standing Order 29 (3). Vide *The Bengal Legislative Council Manual*, 1927, p. 317, for the method of taking votes by division in Bengal.

a decision in the same session.¹ An amendment must be relevant to, and within the scope of, the motion to which it is moved.² It is not in order if it has merely the effect of a negative vote.³ Besides, an amendment on a question must not be inconsistent with a previous decision on the same question at the same stage of any Bill or other matter.⁴ The President can refuse to put an amendment which he considers frivolous.⁵

After the member who makes a motion has finished his speech, other members may speak to it in such order as the President may call upon them.⁶ Except in the exercise of a right of reply or as otherwise provided by the Rules or Standing Orders, no member can speak more than once to any motion.⁷ But, with the permission of the President, he may offer a personal explanation which will not raise any debatable issue.⁸ A member who has moved a motion may speak again by way of reply, and if the motion is moved by a non-official member, the Member of the Government to whose department the motion relates has the right of speaking (whether he has previously spoken in the debate or not), after the mover has replied.⁹ The President of either House may address the House before submitting a question to its vote.¹⁰

All points of order are decided by the President and his decision is final.¹¹ A member may at any time submit a point of order for his decision, but in doing so he must confine himself to stating the point only.¹²

¹ Legislative Assembly Standing Order 31 and Council of State Standing Order 31

² *Ibid.*, 33 and *ibid.*, 32.

³ *Ibid.*

⁴ *Ibid.*

⁵ *Ibid.*

⁶ *Ibid.*

⁷ *Ibid.*

⁸ *Ibid.*

⁹ *Ibid.*

¹⁰ *Ibid.*

¹¹ *Ibid.*

¹² *Ibid.*

¹³ *Ibid.*

¹⁴ *Ibid.*

¹⁵ *Ibid.*

¹⁶ *Ibid.*

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ *Ibid.*

²⁰ *Ibid.*

²¹ *Ibid.*

²² *Ibid.*

²³ *Ibid.*

²⁴ *Ibid.*

²⁵ *Ibid.*

²⁶ *Ibid.*

²⁷ *Ibid.*

²⁸ *Ibid.*

²⁹ *Ibid.*

³⁰ *Ibid.*

³¹ *Ibid.*

³² *Ibid.*

³³ *Ibid.*

³⁴ *Ibid.*

¹¹ Indian Legislative Rule 15. See App. v in this connexion.

It is the duty of the President of either House to preserve order.¹ He has all powers necessary for the purpose of enforcing his decisions on all points of order.² He may direct any member whose conduct is in his opinion grossly disorderly to withdraw immediately from the House to which he belongs, and any member so directed to withdraw must do so forthwith and must absent himself during the remainder of the day's meeting.³ If a member is ordered to withdraw a second time in the same session, he may be directed by the President to absent himself from the meetings of the House for any period not longer than the remainder of the session, and such direction must be obeyed.⁴ The President of either House may, in the case of grave disorder, suspend its sitting for a time fixed by him.⁵

The admission of visitors to the Visitors' gallery, of representatives of the Press to the Press gallery, and of officials to the Official gallery, in each Chamber during its sittings, is regulated in accordance with orders made by the President thereof with the approval of the Governor-General.⁶ The President may, whenever he thinks fit, order the Visitors' or Press gallery in it to be cleared.⁷

President Lowell says that almost all great legislative bodies at the present day have been forced to adopt some method of cutting off debate, and bringing matters under discussion to a decisive vote.⁸ They have been driven, he continues, to do so partly as a

¹ Indian Legislative Rule 17 (1).

² *Ibid.*, 17 (2).

³ *Ibid.*, 17 (3).

⁶ The Legislative Assembly Standing Order 35 and the Council of State Standing Order 34.

⁷ *Ibid.*, 36 and *ibid.*, 35.

⁸ Lowell, *Government of England*, vol. i, p. 292.

⁴ *Ibid.*

⁵ *Ibid.*

defence against wilful obstruction by minorities, and partly as a means of getting through their work.¹ The mode of procedure adopted to achieve this end is known as closure. Recourse to this process is had in the Indian Legislature (as well as in our local legislatures). At any time after a motion has been made, any member may move 'that the question be now put', and, unless it appears to the President that the request is an abuse of the Rules or Standing Orders of the House, or an infringement of the rights of reasonable debate, the motion 'that the question be now put' must be put without amendment or debate.² If such a motion is carried, the original question, the debate on which has thus been terminated, must be put without further amendment or debate.³ But in the case of a motion relating to an official⁴ Bill, there is a further provision. At any time after such a motion has been made, the Member in charge of the Bill may request the President to put the question, and unless it appears to the President that the request is an abuse of the Rules or Standing Orders of the House, or an infringement of the rights of reasonable debate, the question must be put without amendment or debate.⁵ A closure may be moved at the conclusion of a speech, or while a member is addressing the House.

It need not, perhaps, be pointed out that the discretion left to the Chair as to when a motion for the closure should be allowed is a great safeguard against the infringement

¹ Lowell, *Government of England*, vol. i, p. 292.

² The Legislative Assembly Standing Order 34 and the Council of State Standing Order 33.

³ Provided that the President may allow any member any right of reply which he may have under the Standing Orders of the House.

⁴ And also in the case of a motion relating to a Bill relating to a Reserved subject in the provincial legislature. This, however, is not the case in Bombay.

⁵ But the proviso stated in footnote 3 above will also apply to this case. The Legislative Assembly Standing Order 34 and the Council of State Standing Order 33.

of the rights of minorities. To no small extent does the proper consideration of a question depend upon an impartial exercise of this discretion; since, the House itself will seldom reject a closure motion if it gets a chance to vote upon it.

The Governor-General, after considering the state of business of each House, allots, at the beginning of each session, as many days as are in his opinion possible, compatibly with the public interests, for the business of non-official members in the House. He may allot different days for the disposal of different classes of such business, and, on days so allotted for any particular class of business, business for that class has precedence. On other days no business other than Government business can be transacted except with the consent of the Governor-General in Council.¹

On days allotted for the transaction of official business, the Secretary of each House arranges that business in such order as the Governor-General in Council may direct.² The relative precedence of notices of Bills and resolutions given by non-official members of either House is determined by ballot held in the presence of the Secretary of the House.³ Any member may attend at the time of the ballot if he wishes to do so.⁴ Bills introduced by non-official members, which have reached certain stages in their progress, are arranged in such order as to give priority to the Bills which are most advanced.⁵ The

¹ Indian Legislative Rule 6.

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

³ The ballot, in the case of the Assembly only, is held on such day, not being less than fifteen days before the day with reference to which the ballot is held, as the President may direct.

Legislative Assembly Standing Order 7A and 7B and Council of State Standing Order 6. See App. P in this connexion.

⁴ *Ibid.*, Schedule I.

⁵ For further details, see the Legislative Assembly Standing Order 7A and 7B and also the Council of State Standing Order 6.

relative precedence of the other non-official Bills which have been introduced, but which have not yet reached those stages, is determined by ballot.¹ If, however, any such Bills stand over from the last session, they will have priority in the order of their date of introduction.²

A list of business for each day is prepared by the Secretary of each House, and a copy of it is given to every member.³ Except as otherwise provided in the Rules or Standing Orders of the House, no business other than that included in the list is to be transacted at any meeting without the permission of the President.⁴ Any business, in the case of the Council of State, not disposed of on the day is to stand over till the next day of the session available for the business of the class to which it belongs, or till such other day in the session so available as the Member in charge may desire; but non-official business so standing over will have no priority on such day unless it has been commenced, in which case it will have priority over non-official business fixed for that date⁵. In the case of the Assembly, non-official business set down for any day and not disposed of on that day cannot be set down for any subsequent day, unless it has gained priority at the ballot held with reference to that date. But any such business which has been commenced must be set down for the next date allotted to business of that class, and will have precedence over all other business set down for that date.⁶ Every notice required by the Rules or Standing Orders of either House must be given in writing addressed to the Secretary.⁷ It is the duty of the Secretary to circulate

¹ For further details, see the Legislative Assembly Standing Order 7A and 7B and also the Council of State Standing Order 6.

² *Ibid.*

³ Legislative Assembly Standing Order 8 and Council of State Standing Order 7.

⁴ *Ibid.*

⁵ Council of State Standing Order 8. ⁶ L. A. S. O. 9.

⁷ Legislative Assembly Standing Order 11 and Council of State Standing Order 10.

to each member of the House a copy of every notice or other paper which is required to be made available for the use of members.¹

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

The first hour of every meeting of either Chamber is available for the asking and answering of Questions. questions.² Any member may address a question to any Member of the Government for the purpose of obtaining information on a matter of public concern within the special cognizance of the latter.³ The question must relate to the public affairs with which the latter is officially connected, or to a matter of administration for which he is responsible.⁴ A question addressed to a non-official member must relate to some Bill, resolution or other matter connected with the business of the Chamber, for which he is responsible.⁵ The right of asking questions was first conceded by the Indian Councils Act of 1892. This right was enlarged by the Indian Councils Act of 1909, by allowing the member who put the original question to ask a supplementary one. Under the existing Rules, unless the President, with the consent of the Government Member whose department is concerned, otherwise directs, not less

¹ Legislative Assembly Standing Order 12 and Council of State Standing Order 11.

² *Ibid.*, 10 and *ibid.*, 9.

³ Indian Legislative Rule 8.

⁴ Legislative Assembly Standing Order 14 and Council of State Standing Order 13.

⁵ *Ibid.*

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

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

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

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

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

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

Form and contents of questions. In matters which are or have been the subject of controversy between the Governor-General in Council and the Secretary of State or a local Government, no question can be asked except as to matters of fact⁵, and the answer must be

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

² Ilbert, *Parliament*, p. 112.

³ Indian Legislative Rule 7.

⁴ *Ibid.*, 8.

⁵ A question is a demand for information. It may sometimes be used for a purpose beyond that simple request ; but, if it is so used, it must be with care : for, it is obvious that a point soon arrives where the cross-examination of a minister becomes a debate and thus

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

If a question, the notice of which has been given, is not put or the member in whose name it stands is absent, the President, at the request of any member, may direct that the answer to it be given, presumably on the ground of public interest.⁹ On the same ground an answer to a question may be declined. Questions must be

passes beyond the bounds of order'.—Statement by the President of the Assembly on September 1, 1921.—*India's Parliament*, vol. ii, p. 5.

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

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

³ *Ibid.* A question cannot insinuate that members of Government often act in bad faith in the answers which they give.—*India's Parliament*, vol. ii, p. 6.

⁴ *Ibid.*

⁵ *Ibid.*

⁶ Legislative Assembly Standing Order 15 and Council of State Standing Order 14.

⁷ *Ibid.*, 16 and *ibid.*, 15.

⁸ *Ibid.*

⁹ L. A. S. O. 19 and C. S. S. O. 18.

put and answers given in such manner as the President may determine.¹

Any member may put a supplementary question for the purpose of further elucidating any matter of fact regarding which an answer has been given,² but the President may disallow any supplementary question if, in his opinion, it infringes the Rules relating to the subject-matter of questions.³ In the case of a supplementary question, the member to whom it is addressed may demand previous notice 'that a proper answer may be given.' No discussion is permitted in respect of any question or of any answer given to a question,⁴ and in this respect the Indian practice differs from the French custom of 'interpellations'.

As Mr. Lowell⁵ points out in another connection, questions may be asked from various motives: sometimes they are asked by a member simply to obtain information; sometimes to draw public attention to a grievance; sometimes to embarrass the Government; and sometimes with a view to showing 'to his constituents the attention which he

¹ Legislative Assembly Standing Order 18 and Council of State Standing Order 17.

The procedure in the Assembly is as follows:—

Any member who desires an oral answer must place a star against his question when he gives notice of it. If any question is not so marked with a star, it is not answered orally, but is printed, with its answer, in the official report of the business of the day. 'Supplementary questions, therefore, cannot arise out of the answers to unstarred questions'.—Statement by the President of the Assembly on the 'procedure in regard to question and answer'; *vide India's Parliament*, vol. ii, p. 7.

(In the Bengal Legislative Council also, questions marked with asterisks are answered orally. Answers to unstarred questions are printed and laid on the table, and copies thereof are furnished to the questioners. A supplementary question can be put there in the case of an unstarred question).

² Indian Legislative Rule 10: see also the foot-note above.

³ *Ibid.* See pages 241–42 *ante*.

⁴ Legislative Assembly Standing Order 20 and Council of State Standing Order 19.

⁵ Lowell, *Government of England*, vol. i, p. 332.

devotes to public affairs and to their special interests.' Though the right to ask questions is liable to abuse and its exercise may sometimes cause unnecessary waste of time, the usefulness of this right, however, cannot be questioned. What Sir Courtenay Ilbert¹ says in connection with the English custom of questioning, is no less applicable to the Indian practice. According to him, 'there is no more valuable safeguard against maladministration, no more effective method of bringing the searchlight of criticism to bear on the action or inaction of the executive government and its subordinates. A minister has to be constantly asking himself, not merely whether his proceedings and the proceedings of those for whom he is responsible are legally or technically defensible, but what kind of answer he can give if questioned about them in the house (of commons or lords), and how that answer will be received'.

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

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

Motions for adjournment for purposes of debate.

¹ Ilbert, *Parliament*, p. 113.

² Indian Legislative Rule 11.

³ Legislative Assembly Standing Order 21 and Council of State Standing Order 20.

with the Secretary of the House a written statement of the matter he proposes to discuss.¹

This right to move an adjournment of either House is subject, however, to the following restrictions,² namely :—

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

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

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

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

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

In the British House of Commons the Speaker may decline to submit a motion for adjournment to the House if, in his opinion, the subject to be brought forward is not definite, urgent, or of public importance.³ Such power is also vested in the President of either Chamber of the Indian Legislature. He too must first be satisfied about the definiteness,⁴ urgency⁵ and public importance of the subject to be discussed on a motion for an adjournment before he will agree to submit the motion to the Chamber.⁶

¹ Legislative Assembly Standing Order 22 and Council of State Standing Order 21.

² Indian Legislative Rule 12.

³ May, *Parliamentary Practice*, p. 227.

⁴ See the President's Ruling in the Assembly, January 10, 1922 ; *Legislative Assembly Debates*, vol. ii, No. 13, p. 1453.

⁵ *Legislative Assembly Debates*, March 14, 1922 ; pp. 3016 and 3017.

⁶ On September 4, 1928, the President of the Assembly gave a further ruling regarding the admissibility of a motion for adjournment :—

‘ Generally speaking, motions for adjournment . . . must have some relation, directly or indirectly, to the conduct or default on the part of Government and must be in the nature of criticism of the

If, however, he is of opinion that the matter proposed to be discussed is in order, he reads the statement previously supplied to the Secretary to the Chamber and asks if the member desiring the adjournment has the leave of the Chamber to move the adjournment. If the leave is given unanimously, or if, when the President, in the case of an objection, requests those members who are in favour of leave being granted to rise in their places, not less than twenty-five members in the case of the Assembly and not less than fifteen in the case of the Council of State rise accordingly, the President declares that leave is granted and that the motion will be taken up at 4 p.m. or, if the President, with the consent of the Member of Government concerned so directs, at an earlier hour at which the business of the day may terminate.¹ If however, less than the minimum number in each case rise, the President informs the member that leave has not been granted.² On a motion to adjourn for the purpose of discussing a definite matter of urgent public importance the only question that may be put is 'That the Assembly, or the Council, do now adjourn.'³ If this motion is carried, it amounts, according to constitutional practice, to a vote of censure⁴ upon the Government. If, however, the debate is not concluded by 6 p.m. in the case of the Assembly and within two hours in the case of the Council of State, it must automatically terminate and no question can be put.⁵ No

action of Government. I am quite clear about that, and I am supported by the Parliamentary precedents in that respect.'—*Vide Legislative Assembly Debates*, September 4, 1928, pp. 152-54.

¹ *Legislative Assembly Proceedings*, pp. 3791-92. Also *Legislative Assembly Standing Order 23* and *Council of State Standing Order 22*.

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

³ *Ibid.*, 24 and *ibid.*, 23.

⁴ Generally speaking, it is so. (See foot-note 6 on page 245). This is also the case in the British House of Commons.

⁵ *Legislative Assembly Standing Order 24* and *Council of State Standing Order 23*.

member can speak during the debate for more than fifteen minutes.

The Governor-General may disallow any such motion for adjournment as has just been described, on the ground that it cannot be moved without detriment to the public interest or on the ground that it relates to a matter which is not primarily the concern of the Governor-General in Council.¹

As the procedure to be followed in the case of a motion for adjournment is rather difficult of clear comprehension, we propose to describe below, by way of illustration, a typical case taken from the proceedings² of the Legislative Assembly, dated March 28, 1922 :—

Mr. K. B. L. Agnihotri (Central Provinces Hindi Division: non-Muhammadan) : Sir, I rise to ask for your leave for moving an adjournment of the business of the Assembly to-day for the purpose of discussing a definite matter of urgent public importance, namely, the conduct of the Deputy Commissioner of Delhi in prohibiting a public open air meeting which was to have been held on the 23rd of March, 1922, to consider the Khilafat question, etc. . . .

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

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

The motion was ultimately set down by the President for four o'clock unless the Home Member found himself in a

¹ Indian Legislative Rule 22 (2).

² *Legislative Assembly Debates*, March 28, 1922, pp. 3790-91 and 3834-39.

position to take it earlier, if the business of the Assembly had terminated at an earlier hour. This incident took place just after questions had been disposed of and before the list of business for the 28th of March, 1922, was entered upon. Later :

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

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

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

Mr. President: The question is :

'That this House do now adjourn.'

The Assembly then divided as follows :

Ayes—29 and Noes—34.

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

Besides motions for adjournment, resolutions¹ afford opportunities to members of criticizing the acts or omissions of the Government. Sometimes a resolution is moved by a member in order to

Resolu-
tions.

¹ There were as many as 122 resolutions moved in the first Council of State, of which 101 were private and 21 official; and the total number of resolutions moved in the first Legislative Assembly was 137, of which 114 were private and 23 official.—*Work of the Indian*

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

Rules and Standing Orders any member of either Chamber of the Indian Legislature may move a resolution relating to a matter of general public interest.¹ It must be clearly and precisely expressed and must raise substantially one definite issue.²

Besides, it must not contain arguments, inferences, ironical expressions or defamatory statements,³ nor should it refer to the conduct or character of persons except in their official or public capacity.⁴ There are the same restrictions imposed regarding the subject-matter of a resolution as we have seen in the case of a question.⁵ The Governor-General is to decide as to whether a particular resolution does or does not come within the scope of those restrictions, and his decision thereon is final.⁶ Every resolution must be in the form of a specific recommendation to the Governor-General in Council.⁷ The President of either House is to decide on the admissibility of a resolution.⁸

A member desiring to move a resolution must, unless the President, with the consent of the Member of the Government to whose department the resolution relates,

Legislatures, compiled under the order of the National Conference, pp. 12 and 24.

These resolutions related to various subjects.

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

² *Ibid.*

³ *Ibid.*

⁴ *Ibid.*

⁵ See p. 241 *ante*.

⁶ Indian Legislative Rule 23.

⁷ *Ibid.*

⁸ Legislative Assembly Standing Order 60 and Council of State Standing Order 59.

shortens the period, give fifteen clear days' notice of his intention to do so, and submit, along with the notice, a copy of the resolution he wishes to move.¹ The Governor-General, however, may, within the period of notice, disallow any resolution or any part of it, on the ground that it cannot be moved without detriment to the public interest, or on the ground that it relates to a matter which is not primarily the concern of the Governor-General in Council.² A member in whose name a resolution stands on the list of business must, when called on, either withdraw it or move it; in the latter case, he must begin his speech by a formal motion.³ If, however, he is found absent, the resolution standing in his name will be deemed to have been withdrawn, except when, in the case of the Assembly *only*, any other member, duly authorized by him in writing, moves the resolution with the permission of the President.⁴ Except with the permission of the President, no member can speak on a resolution for more than fifteen minutes. But there are two exceptions to this rule: The mover of a resolution, when moving it, and the Member of the Government to whose department the resolution relates, when speaking for the first time, may speak for thirty minutes.⁵ If a resolution, or an amendment to a resolution, has been moved in either Chamber, it cannot be withdrawn except with the leave of the Chamber.⁶ No discussion is allowed on a motion for leave to withdraw a resolution except with the permission of the President of the Chamber.⁷ After a resolution has been moved, any member may, subject to the Rules and Standing Orders relating to

¹ Legislative Assembly Standing Order 58 and Council of State Standing Order 57.

² Indian Legislative Rule 22 (1).

³ Legislative Assembly Standing Order 61 and Council of State Standing Order 60.

⁴ *Ibid.*

⁵ Or, in the case of the Assembly only, for such longer time as the President may permit.

⁶ L. A. S. O. 66 and C. S. S. O. 65.

⁷ *Ibid.*

resolutions, move an amendment to the same.¹ The discussion of a resolution must be strictly confined to its subject-matter. If a resolution which has been admitted is not discussed during a session, it will be supposed to have been withdrawn.² If a resolution has been moved, no resolution or amendment raising substantially the same question can be moved within one year.³ Similarly, if a resolution is disallowed or withdrawn, no other resolution raising substantially the same issue can be moved during the same session.⁴ A copy of every resolution passed by

Effect of
resolutions.

either House is forwarded to the Governor-General in Council; but any such resolution will be regarded as a mere recommendation to him.⁵ He will deal with it 'as carefully, or as carelessly as he thinks fit'. A resolution, unlike a law, is not binding upon the executive Government.

Discussion
of matters
of general
public
interest
otherwise
than on a
resolution.

Save in so far as is otherwise provided by the Act or Rules made thereunder, no discussion of a matter of general public interest can take place by means of a motion otherwise than on a resolution duly moved except with the consent of the President and of the Member of the Government to whose department the motion relates. All such motions are subject to the same restrictions as resolutions. The Governor-General may disallow any motion or part of a motion on the ground that it cannot be moved without detriment to the public interest or on the ground that it relates to a matter which is not primarily the concern of the Governor-General in Council.⁶

¹ Legislative Assembly Standing Order 64 and Council of State Standing Order 63.

² *Ibid.*, 69 and *ibid.*, 68.

³ *Ibid.*, 70 and *ibid.*, 69.

⁴ *Ibid.*, 70 and *ibid.*, 69.

⁵ Indian Legislative Rule 24.

⁶ *Ibid.*, 24A.

CHAPTER XVI

PROCEDURE IN THE INDIAN LEGISLATURE—(*Continued*)

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

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

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

¹ *Government of England*, p. 264.

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

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

The composition of Select Committees is not based upon any uniform principle ; they are differently constituted to serve different purposes. In the case of a Select Committee¹ appointed by either House to consider a Bill, the Member of the Government² to whose department the Bill relates, the member who has introduced it and the Law Member of the Governor-General's Executive Council, if he is a member of the House, must be members thereof. The other members of the Committee are appointed by the House. But if the Law Member is not a member of the House, then the Deputy President or one of the Chairmen in the case of the Assembly and one of the Chairmen in the case of the Council must be appointed a member of the Committee.

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

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

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

² "Member of the Government" means here a Member of the Governor-General's Executive Council, and includes any member to whom such Member may delegate any function assigned to him under the Rules or Standing Orders of the House.

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

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

At the time of the appointment of a Select Committee by either House, the number of persons whose presence will be necessary to constitute a quorum of the Committee is fixed by the House.

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

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

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

who must be seven in number, are selected by the House by means of the single transferable vote in accordance with the regulations made in this behalf by the President.

A Bill may be committed to a Joint Committee¹ of both Houses. Such a Committee is composed of an equal number of members of each House. The Chairman of the Committee is elected by the Committee. He has only a single vote, and, if the votes are equally divided on a matter, the question is decided in the negative. The time and place of the meeting of the Committee are fixed by the President of the Council of State.

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

The Committee² on Public Accounts is a Committee of the Assembly only. As soon as possible after the commencement of the first session of each Assembly, such a Committee is, subject to what follows, constituted for the duration of the Assembly to deal with the audit and appropriation accounts of the Governor-General in Council and such other matters as the Finance Department of the Government of India may refer to it. It is composed of not more than twelve members including the Chairman, of whom not less than two-thirds are elected by the non-official members of the Assembly according to the principle of proportional representation by

¹ Indian Legislative Rule 42.

² Indian Legislative Rule 51 as subsequently amended.

means of the single transferable vote. The remaining members are nominated by the Governor-General. Casual vacancies in the Committee are filled by election or nomination in the aforesaid manner according as the member who has vacated his seat was an elected or nominated member, and any person so elected or nominated holds office for the unexpired period of membership of the person in whose place he is elected or nominated. Of the members elected at the time of the constitution of the Committee not less than one half, who are to be selected by lot, must retire on the expiry of one year from the date of their election and the remainder must retire on the expiry of the second year from that date. The vacancies thus created in each year must be filled as they arise, by elections held in the aforesaid manner. Retiring members are eligible for re-election.

The Finance Member is the Chairman of such a Committee, and has, in the case of an equality of votes on any matter, a second or casting vote. We shall discuss the functions of the Committee on Public Accounts elsewhere.

Each House has its Committee on Petitions. In the Assembly, the Committee is constituted at the commencement of each session, and consists of its Deputy President who is the Chairman of the Committee, and four members nominated by its President, of whom one must be a Chairman of the Assembly. In the absence of the Deputy President, the Chairman of the Assembly presides. In the Council of State, the Committee consists of a Chairman and four members nominated, at the beginning of each session, by its President. The President of either House can fill any vacancies occurring in the Committee of the House during a session.

We shall now describe how laws are made by the Indian Legislature. The stages through which a Bill, i.e. a

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

**Procedure
for legisla-
tion.**

**Introduction
of a Bill.**

A Bill may originate in either House. Any member thereof, other than a Member of the Government, desiring to move for leave to introduce a Bill, must give, unless the Governor-General otherwise directs, one month's¹ notice of his intention to do so, and must, along with the notice, submit a copy of the Bill and a full statement of its objects and reasons.² If, under the Act, the Bill requires for its introduction the previous sanction of the Governor-General, a copy of such sanction must be annexed to the notice.³ If a motion for leave to introduce a Bill is opposed, the President after allowing, if he thinks fit, the mover and the opposer of the motion to make each a brief explanatory statement in support of his contention, may, without further debate, put the question.⁴ After a Bill has been introduced, it must, as soon as possible, be published in the Gazette of India, if it has not already been so published.⁵

The Governor-General, however, may direct the publication of any Bill, together with a statement of its objects and reasons, in the Gazette, even if no motion has been previously made for leave to introduce it.⁶ In such a case it is not necessary to move for leave to introduce the Bill; nor, if the Bill is afterwards introduced, is it required to

¹ Or, if the Governor-General so directs, a further period not exceeding in all two months.

² Indian Legislative Rule 19.

³ *Ibid.*

⁴ Legislative Assembly Standing Order 37 and Council of State Standing Order 36.

⁵ Indian Legislative Rule 20.

⁶ *Ibid.*, 18.

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

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

Motions
after intro-
duction.

¹ Indian Legislative Rule 18.

² Section 67 (2a) and I.L.R., 21.

³ But no such motion can be made until after copies of the Bill have been made available for the use of members, and any member may object to any such motion being made unless copies of the Bill have been so made available for three days before the day on which the motion is made, and 'such objection shall prevail, unless the President, in the exercise of his power to suspend this standing order, allows the motion to be made.' Legislative Assembly Standing Order 38 and Council of State Standing Order 37.

⁴ *Ibid.*

⁵ Legislative Assembly Standing Order 39 and Council of State Standing Order 38.

⁶ *Ibid.*

A may move an amendment for its reference to a Select Committee or for its circulation for the purpose of eliciting public opinion on it by a date to be specified in the motion.¹ And if he moves for the reference of his Bill to a Select Committee, any member may move an amendment for its circulation for the purpose of eliciting public opinion on it.²

Where a motion for the circulation of a Bill is carried and the Bill is accordingly circulated and opinions are received thereon, the member in charge, if he wants to proceed with his Bill thereafter, must move for its reference to a Select Committee, unless the President of the House to which the member belongs, allows, by exercising³ his special power, a motion that the Bill be taken into consideration.

No motion that a Bill be taken into consideration or be passed can be made by any member other than the member in charge⁴ of the Bill and no motion that a Bill be referred to a Select Committee or be circulated or recirculated for the purpose of eliciting public opinion thereon can be made by any member other than the member in charge except by way of amendment to a motion made by the member in charge.

When a Bill is referred to a Select Committee, the Committee goes through the Bill clause by clause and may amend it if it so thinks fit. The
 Reference to a Select Committee. Committee may, as has been seen before, hear expert evidence and representatives of special interests affected by the measure before it. It then

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

² By a date to be specified in the motion. *Ibid.*

³ *Ibid.* The President may thus suspend in this connection the relevant Standing Order.

⁴ Here the expression 'member in charge' means, in the case of a Government Bill, any member acting on behalf of the Government, and, in any other case, the member who has introduced the Bill, or, where the Bill has been laid on the table in the other Chamber, the member who has given notice of his intention to move that the Bill be taken into consideration.—Indian Legislative Rule 20A.

submits a report on the Bill. The report, which may be either preliminary or final, must be made not sooner than three months from the date of the first publication of the Bill in the Gazette, unless the House orders it to be submitted earlier.¹ This time limit does not apply to a Bill imposing any tax. The Select Committee has to state in its report whether the Bill has been so altered as to require republication.² Any member of the Committee is at liberty to record a minute of dissent on any point.

The report is presented to the originating House by the member in charge of the Bill. **Procedure after the presentation of Report.** No debate is allowed at this stage, but the member in charge may, in presenting the report, make any remarks, provided that he confines himself to a brief statement of fact.³ The report with the amended Bill must be published in the Gazette, and a printed copy of the report must be made available for the use of every member of the House to which it has been presented. If any member is unacquainted with English, the Secretary of the House must, if requested, get the report translated for his use into such vernacular language as the President may direct.⁴ After the Bill has been finally reported to the House by the Select Committee, the member in charge may move (i) for the consideration by the House of the Bill as reported by the Committee⁵, or (ii) for its recirculation

¹ Legislative Assembly Standing Order 41 and Council of State Standing Order 40.

² *Ibid.* This would probably involve the renewal of the second stage (p. 258) of the Bill.

³ Legislative Assembly Standing Order 42 and Council of State Standing Order 41.

⁴ Legislative Assembly Standing Order 43 and Council of State Standing Order 42.

⁵ * Provided that any member may object to its being so taken into consideration if a copy of the report has not been made available for the use of members for seven days, and such objection shall prevail, unless the President, in the exercise of his power to suspend this Standing Order, allows the report to be taken into consideration.'—

for the purpose of obtaining further opinion thereon, or (iii) for its recommittal either without limitation, or with respect to particular clauses or amendments only, or with instructions to the Committee to make some particular or additional provision in the Bill.¹ If the member in charge moves for the consideration of the Bill, any other member may move an amendment for its recommittal or for its 'recirculation'². If carried, such an amendment 'adds a step to the journey of the Bill.'

When a motion that a Bill be taken into consideration has been adopted, any member may propose an amendment of the Bill.³ If notice of a proposed amendment has not been given two clear days before the day on which the Bill is to be considered, any member may object to the moving of the amendment.⁴ Such objection will prevail unless the President, in the exercise of his special power,⁵ permits the amendment to be moved. If a number of amendments have been proposed, they are considered in the order of the clauses to which they respectively relate; and in respect of any such clause a motion is deemed to have been made, 'that this clause stand part of the Bill.'⁶ The President of each House, may, however, submit the Bill, or any part of the Bill, clause by clause. If this procedure is adopted, he calls each clause separately, and, when the amendments relating to it have been dealt with, puts the question 'that this clause (or, as the case may be, that this clause as amended) stand part of the Bill.'

Legislative Assembly Standing Order 44 and Council of State Standing Order 43.

¹ *Ibid.*

² *Ibid.*

³ Legislative Assembly Standing Order 45 and Council of State Standing Order 44.

⁴ *Ibid.*, 46 and *ibid.*, 45. The Secretary must, if time permits, send a printed copy of each proposed amendment to every member.—*Ibid.*

⁵ He is empowered to suspend the relevant Standing Order.—*Ibid.*

⁶ Legislative Assembly Standing Order 47 and Council of State Standing Order 46.

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

The member who has brought in a Bill may at any stage of the Bill move for leave to withdraw it; and, if such leave is given, no further motion can be made with reference to the Bill.⁵

**Withdrawal
of a Bill.**

We have seen before that the Governor-General may, where a Bill has been passed by both Houses, return the Bill for reconsideration by either House. When a Bill is sent back for reconsideration, the point or points referred for reconsideration must be put before the House and must be discussed and voted upon in the same way as amendments to a Bill, or in such other way as the President may consider most convenient for their consideration.⁶

**Reconsideration of
a Bill.**

It has been stated before that, except as otherwise⁷ provided by the Act, a Bill is not considered to have been

¹ L.A.S.O. 49 and C.S.S.O. 48.

² *Ibid.*

³ *Ibid.*

⁴ The Secretary of the Council of State must submit a copy of every Bill passed by both Houses to the Governor-General.

⁵ Legislative Assembly Standing Order 50 and Council of State Standing Order 49.

⁶ L.A.S.O. 53 and C.S.S.O. 52. Thereafter the Bill will presumably pass through the same stages as an amended Bill.

⁷ For instance, a Bill may become an Act on 'certification' by the Governor-General though it has been assented to only by one Chamber, or even though it has not been assented to by either Chamber.

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

Procedure
regarding
legislation
in both
Chambers.

These stages practically correspond to those in the originating House. At any time after copies of the Bill have been laid on the table of the other House, any member acting on behalf of the Government in the case of a Government Bill or, in any other case, any member may give notice of his intention to move that the Bill be taken into consideration. But there is one thing to be noted here. If the Bill has already been referred to a Select Committee of the originating House or to a Joint Committee of both Houses, it cannot be again committed to a Select Committee in the other House.¹ Nor is there any provision for further circulation of the Bill at this stage. If the Bill is passed by the other House without amendment, a message is sent to the originating House to the effect that the other House has agreed to the Bill without any amendment.² If, however, the Bill is amended by the other House, it is sent back with a message requesting the concurrence of the originating House in the amendments.³ The originating House may refuse to take them into consideration, or may move further amendments to their subject-matter, or may agree to them.⁴ But no further amendment can be moved to the Bill at this stage, unless it is consequential on, or an alternative to, an amendment made by the other House.⁵

If, however, the originating House disagrees with the amendments made by the other House or with any of them, the Bill is sent to that House with a message intimating its disagreement.⁶ Or if it agrees to the amendments or any

¹ Indian Legislative Rule 29.

³ *Ibid.*, 32.

⁴ *Ibid.*, 35.

⁵ *Ibid.*, 35.

² *Ibid.*, 31.

⁶ *Ibid.*, 36.

of them with further amendments, or if it proposes further amendments in the place of the amendments made by the other House, the Bill as further amended is sent to the other House with a message to that effect.¹ The other House may either agree to the Bill as originally passed by the originating House or as further amended by it, as the case may be, or may send it back with a message that it insists on its own amendments.² If the Bill is sent back with the message that the other House insists on its amendments which the originating House is unable to accept, the latter may either allow the Bill to lapse or may report the fact of disagreement to the Governor-General³ who may,⁴ if the two Houses fail to come to an agreement with regard to the Bill within six months of its passage by the originating House, refer the matter for decision to a joint sitting of both Houses convened by him. The President of the Council of State will preside at a joint sitting and the procedure of the Council will, so far as possible, be followed. The members present at a joint sitting will deliberate and vote upon the Bill as last proposed by the originating House and upon the amendments, if any, which have been made therein by one House and rejected by the other. If any such amendments are affirmed by a majority of the total members of the two Houses present at such sitting, they will be deemed to have been carried; and if the Bill with the amendments, if any, is affirmed by a similar majority, it will be taken to have been duly passed by both Houses.

Besides the provision for a joint sitting of both Houses, there is another provision for bringing about agreement between the two Houses in case of difference of opinion between them on any matter.

¹ Indian Legislative Rule 36.

³ *Ibid.*

² *Ibid.*, 36.

⁴ *Vide* Section 67 (3) of the Act.

If both Houses agree to a meeting of members for the purpose of discussing a difference of opinion which has arisen between them, a conference¹ will be held. At such a conference each Chamber will be represented by an equal number of members. The conference² will determine its own procedure. The time and place of the conference will be appointed by the President of the Council.

Messages between one House and the other are conveyed by the Secretary of the one House to the Secretary of the other, or in such other manner as the Houses may decide.³

After a Bill has been duly passed by the Indian Legislature, it is submitted to the Governor-General to go through its final stage. It cannot have the force and effect of law until it has received, as required by the Act, the assent of the Governor-General or of His Majesty in Council, as the case may be. As we have discussed this matter in a previous chapter,⁴ we need not repeat it here.

If—

- (i) a dilatory motion⁵ is carried in either House in respect of a Government Bill, or
- (ii) either House refuses to take into consideration or to refer to a Select Committee or to pass any Government Bill,

and if thereafter the Governor-General recommends that the Bill be passed in a particular form, a motion may be made in either House for leave to introduce the Bill in that form, and, if such recommendation is made in the case referred to

¹ Indian Legislative Rule 40.

² Obviously, it will make necessary recommendations to both the Houses.

³ Indian Legislative Rule 41.

⁴ See chapter 13.

⁵ A "dilatory motion" means a motion that a Bill be referred to a Select Committee or that it be circulated for the purpose of eliciting (public) opinion thereon or any other motion the effect of the carrying of which will be to delay the passage of a Bill.—Indian Legislative Rule 36A.

in clause (i), the Bill¹ in respect of which the dilatory motion has been made, will be considered as withdrawn.²

A recommendation or certification in respect of any Bill by the Governor-General under Section 67B³ of the Act may be made by message and must be communicated to either House by the President.⁴ No dilatory motion can be made in connexion with a Bill, in respect of which a recommendation has been made, without the consent of the member in charge of the Bill.⁵ And if during the passage of a Bill in either House the Governor-General makes a recommendation in respect of it, and if any clause of the Bill has been agreed to, or any amendment has been made, in a form inconsistent with the form recommended, the member in charge of the Bill may move any amendment which, if accepted, would bring the Bill into the form recommended.⁶

Petitions relating to a Bill pending in either House may be presented to the House by a member, or be forwarded to the Secretary. In the latter case the fact must be reported by the Secretary to the House. In presenting a petition⁷ a member must confine himself to a statement in the following form :—

‘ I present a petition signed by petitioners regarding Bill now pending in this Chamber.’

No debate will be in order on this statement.

Every petition must, after presentation by a member or report by the Secretary, as the case may be, be referred to the Committee on Petitions in the House. The Committee must examine every petition that is referred to

¹ Here the original Bill is meant and not the Bill in the recommended form.

² Indian Legislative Rule 36A. ³ See pages 202–203.

⁴ Indian Legislative Rule 36B. ⁵ *Ibid.*

⁶ *Ibid.*


⁷ For ‘ Form of Petition ’ see App. W.

it, and must report to the House stating the subject-matter of the petition, the number of persons by whom it is signed and whether it is in conformity with the Standing Orders of the House. If the petition is in conformity with the Standing Orders, the Committee may direct that it be circulated as a paper to the Bill to which it relates.

Every petition must (i) either be in English and in print, or, if not in English, be accompanied by an accurate English translation in print; (ii) if presented by a member, be countersigned by him; and (iii) be couched in respectful and temperate language.

The full name and address of every signatory to a petition must be set out in it and must be authenticated by the signatory, if literate, by his signature, and, if illiterate, by his thumb impression. Every petition must be addressed to the Council of State, or the Legislative Assembly, as the case may be, and must conclude with a definite prayer in regard to the Bill to which it relates.¹

In a preceding chapter we² have stated the law relating to the granting of supplies for the use of the Government of India and, in that connexion, discussed the nature of the control which the Indian Legislature exercises over the expenditure of public money by the Government. We shall now proceed to describe how the supplies are actually voted.

 The estimates of the probable receipts and expenditure of the Governor-General in Council during the ensuing financial year (April to March) are prepared in the cold weather of each year. It may be remembered that these estimates³ are

How
supplies are
granted.

¹ See App. W.

² See ch. xiii *ante*.

³ Under the Indian Legislative Rule 48A, the Budget may be presented to each House in two or more parts; and when such presentation takes place, each part must be dealt with as if it were the Budget; i.e., the Rules and Standing Orders of the House relating to the Budget must apply to each part of the Budget. As has been

every year presented to each House of the Indian Legislature in the form of a statement (known as the 'Budget') on such day or days¹ as the Governor-General may appoint. There cannot be any discussion of the Budget on the day on which it is presented to either House. As has been pointed out before, though, by a modification of the original relevant Standing Order, authority has been given to the Council of State to discuss the Budget, the Council has no power under the Act to vote money. The Assembly deals with the Budget in two stages, namely (a) a general discussion, and (b) the voting of demands for grants.² On a day to be fixed by the Governor-General subsequent to the day of the presentation of the Budget and for such time as he allots for this purpose, the Assembly discusses the Budget as a whole or any question of principle involved therein.³ But no motion is in order at this stage, nor can the Budget be submitted to the vote of the Assembly.⁴ The Finance Member has a general right of reply at the end of the discussion. The President may prescribe a time-limit for speeches.⁵

The next stage is the voting of grants. A separate demand is ordinarily made in respect of the grant proposed for each department of the Government. But the Finance Member may include in one demand grants for two or more departments, or make a demand in respect of expenditure which cannot be brought under particular departments.⁶

pointed out before (page 205 foot-note 2), owing to the separation of Railway Finance from General Finance, the Budget of the Government of India is presented in two parts. They are known as the Railway Budget and the General Budget. The General Budget relates to subjects other than Railways. The same procedure applies to both the Budgets.

¹ As a matter of fact, the General Budget is presented to the two Houses of the Indian Legislature simultaneously. This is also the case with the Railway Budget.—See page 205, foot-note 2.

² Indian Legislative Rule 45.

³ *Ibid.*, 46.

⁴ *Ibid.*

⁵ *Ibid.*

⁶ I.L.R., 44.

Each demand contains, first, an estimate of the total grant proposed, and then a statement of the detailed expenditure under each grant, divided into items.¹

Not more than fifteen days can be allotted by the Governor-General for the discussion of the demands for grants.² Of the days so allotted, not more than two days can be devoted to the discussion of any one demand. As soon as the maximum limit of time is reached, the President forthwith puts every question necessary to dispose of the demand under discussion.³ At 5 p.m. on the last day of the days allotted, the President must put every question necessary to dispose of all the outstanding matters in connection with the demands for grants.

It may be remembered that a motion for appropriation can be made only on the recommendation of the Governor-General communicated to the Assembly.⁴ When such a motion is made, amendments may be moved to omit or reduce any grant, but not to increase or alter the destination of a grant.⁵ When there are several motions relating to the same demand, they are discussed in the order in which the heads to which they relate appear in the Budget.⁶ Notice of a motion to omit or reduce any grant should be given two clear days before the day appointed for the consideration of the grant; otherwise any member may object to the moving of the motion, and such objection will prevail, unless the President allows the motion to be made.⁷

¹ Indian Legislative Rule 46.

² *Ibid.*, 47. Before the separation of Railways Finance the number of days actually allotted was six in 1921, five in 1922, six in 1923 and six in 1924. More days are allotted nowadays.—Wattal, *Financial Administration in British India*, p. 53 n; also *Legislative Assembly Debates*, February 20, 1925.

³ I.L.R., 47.

⁴ Indian Legislative Rule 48.

⁵ *Ibid.*

⁶ *Ibid.*

⁷ Legislative Assembly Standing Order 72.

Motions for the reduction or omission of grants are made not merely for the purpose of securing economy in administration; they are very often moved with the object of criticizing executive acts of the Government or its policy in respect of certain matters. Sometimes a motion for reduction is brought forward by way of censure upon the Government.

If, during any financial year, money has been spent on any service, for which the vote of the Assembly is necessary, in excess of the amount voted for that service and for that year, a demand for the excess must be submitted to the Assembly by the Finance Member, and must be dealt with by the Assembly in the same way as if it were a demand for a grant.¹ It is obvious that a demand for an excess grant can only be submitted after the expiry of the financial year in which the excess expenditure occurred.

A supplementary estimate² must be presented either when the amount voted in respect of a grant is found to be insufficient for the current financial year, or when a need arises during the year for expenditure, for which the vote of the Assembly is necessary, upon some new service not contemplated in the Budget for the year. And under another provision³ an estimate may also be presented for an additional or supplementary grant in respect of any demand to which the Assembly has

¹ Indian Legislative Rule 49.

² *Ibid.*, 50.

³ See *ibid.*; also Notification No. F-76-1/24A, Legislative Department in *The Gazette of India* (Extra.), July 21, 1924.

In view of the power of restoration of grants which the Governor-General in Council possesses under Section 67A (7) of the Act, this additional provision relating to supplementary grants has no meaning so far as those demands are concerned which are essential to the discharge of his responsibilities. It is probably meant for those demands which are not so essential and which have been refused or reduced by the Assembly. See pp. 278-83 in this connection.

previously refused its assent, or the amount of which it has reduced. Supplementary or additional estimates are dealt with by the Assembly in the same way as if they were demands for grants.

If the Governor-General in Council restores, under Section 67A (7)¹ of the Act, any grant which has been refused or reduced by the Assembly, or if the Governor-General authorizes, in case of emergency, any expenditure under Section 67A (8)² of the Act, the Finance Member is required to place, as soon as possible, on the table of the Assembly a statement showing the action taken by the Governor-General in Council or the Governor-General, as the case may be; but no motion is in order in regard to that action, nor can the statement be discussed.³

We have previously stated the composition of the Committee on Public Accounts, which is constituted to deal with the audit and appropriation accounts of the Governor-General in Council and such other matters as the Finance Department may refer to it. In examining those accounts the Committee must satisfy itself that the money *voted* by the Assembly has been spent within the scope of the demand *granted* by the Assembly. Besides, the Committee must bring to the notice of the Assembly—

(1) every reappropriation from one grant to another grant;

(2) every reappropriation within a grant which is not authorized by rules prescribed by the Finance Department; and

(3) any expenditure which the Finance Department has requested should be brought to the notice of the Assembly.⁴

¹ See chapter xiii *ante*.

² See *ibid*.

³ Legislative Assembly Standing Order 73.

⁴ Indian Legislative Rule 52. Only the accounts of the voted

The scrutiny made by this Committee is a very valuable safeguard against any irregularity or laxity in the administration of the finances of the Government.

The last thing that we should like to touch on in connection with the question of the conduct of business in the Indian Legislature is the subject of communications between the Governor-General and either House of the Legislature. The Governor-General communicates with either House by a speech from the throne where he has required its members to attend,¹ or by a written message delivered to the President of the House by a Member of the Government and read to the House by the President, or informally through a Member of the Government.

On the other hand, communications from each House to the Governor-General are made by (1) a formal address after a motion made and carried in the House, and (2) through the President.²

expenditure of the Government of India are brought to the scrutiny of the Committee.

¹ Sections 63A (3) and 63B (3) of the Act.

² Legislative Assembly Standing Order 74 and Council of State Standing Order 71.

CHAPTER XVII

PROCEDURE IN A GOVERNOR'S LEGISLATIVE COUNCIL

Provincial Legislative Rules and Standing Orders identical in respect of many matters with the Indian Legislative Rules and Standing Orders—Sitting of a provincial Legislative Council—Prorogation—Language of the Council—Quorum—How supplies are granted—Voting of grants—Excess grants—Supplementary grants—Additional Sub-rule relating to Supplementary Budget—Comparison with the English practice—Possible harmful consequences of the additional Sub-rule—Committee on Public Accounts and its duties—Provincial Legislative procedure—A brief statement of the procedure for legislation in a Governor's Legislative Council—Procedure for legislation in the Bengal Legislative Council.

As the Rules and Standing Orders providing for the conduct of business and the procedure to be followed in a Governor's Legislative Council are, except in respect of a few subjects like legislation or the granting of supplies, essentially identical *mutatis mutandis* with the Rules and Standing Orders of the Indian Legislature, they need not be repeated here. If any reader is interested to know how, and under what conditions, questions¹ may be asked, or a resolution, or a motion for adjournment² for the purpose of discussing a definite matter

Provincial
Legislative
Rules
identical
in respect
of many
subjects
with the
Indian
Legislative
Rules.

¹ *Ordinarily* in Bengal, fifteen days' notice is required for questions and no member can send in notice of more than 12 questions during one session of the Council, exclusive of any question that may have been carried over for reply from a previous session.

² Not less than thirty members in the case of the Bengal Legislative Council and not less than twenty in the case of the Madras or the United Provinces Legislative Council must rise in their places before a member desiring to move a motion for adjournment can have the leave of the Council.

of urgent public importance, or the closure¹ may be moved, or how business is arranged, time is allotted for non-official business, and points of order are decided in a local legislature, he has only to refer to the procedure in either Chamber of the Indian Legislature relating to the identical matters as described in Chapter XV. We propose to discuss in this chapter, mainly, how laws are passed by a Governor's Legislative Council and how money is voted by it for the use of the local Government. Even in respect of these matters, the difference in procedure between the Indian Legislature and a local Legislature is, as we shall see, very slight, and whatever difference there exists, it is due to either the unicameral form of the latter or to the division of the provincial subjects into Transferred and Reserved.

The Governor of a province appoints the time and place for holding a session of his Legislative Council.² He can also prorogue the Council by notification or otherwise. A prorogation terminates a session of the Council and its effects on the unfinished business of the Council are substantially the same³ as those in the case of a prorogation of either House of the Indian Legislature.

Sitting of a Provincial Legislative Council.

Prorogation.

The business of a provincial Legislative Council is

¹ In the Bengal Legislative Council a motion for closure must be carried by the votes of at least two-thirds of the members present and voting. This is not the case in the Bombay, Madras, or the United Provinces Legislative Council.—*Vide* the relevant Standing Orders in the cases of Bombay, Madras, Bengal and the United Provinces Legislative Councils.

² Section 72B (2).

³ On the termination of a session in Bengal all pending notices lapse and fresh notice must be given for the next session except in the case of a question which has not been answered or a resolution on which a member has indicated his first priority and which remains undisposed of at the end of a session.—*Vide The Bengal Legislative Council Manual*, 1927, p. 281.

On the termination of a session in the United Provinces, all pending notices lapse, except notices of questions to which final replies

transacted in English, but any member who is not 'fluent in English' may address the Council in any recognized vernacular of the province, provided that the President may ask a member to speak in any language in which he is known to be proficient.

Language of
the Council.

The minimum number of members required to constitute a quorum in the case of each of the Legislative Councils mentioned below is as follows¹ :—

Quorum.

Madras, 30 ; Bengal, Bombay, the United Provinces and Bihar and Orissa, 25 ; the Central Provinces, 20 ; the Punjab, 15 ; and Assam, 12.

The estimates of the annual expenditure and revenue of a Governor's province are submitted in the form of a statement to the local Legislative Council on such day as may be appointed by the Governor for the purpose.² This statement is referred to as the provincial Budget. The estimates are prepared beforehand by the Finance Department of the province and are based on the materials supplied to it by the spending departments of the local Government. No discussion of the Budget is allowed on the day of its presentation.

Provincial
Budget :
How
Supplies
are granted.

A separate demand must ordinarily be made in respect of the grant proposed for each department of the Government.³ But it is open to the Finance Member to include

had not been given.—*Vide Manual of Business and Procedure in the United Provinces Legislative Council*, p. 3.

On the prorogation of a session in Bombay, all pending notices lapse and fresh notice must be given for the next session : provided that no further notice will be required of a question to which an *ad interim* reply has been given or of a statutory motion.—*Vide Rules and Standing Orders of the Bombay Legislative Council*, p. 11.

But the effect of a prorogation on unfinished Bills is the same in a Governor's Legislative Council as in the case of either Chamber of the Indian Legislature.

¹ See the Provincial Legislative Rule 13, relating to the relevant provinces.

² Provincial Legislative Rule 25.

³ *Ibid.*, 26.

in one demand proposals for appropriation for two or more departments, or to make a demand in respect of expenditure, such as Famine Relief and Insurance and Interest, which cannot easily be brought under particular departments.¹ As far as possible, demands relating to the Reserved and Transferred subjects are to be kept distinct. Each demand must contain, first, a statement of the total grant proposed, and then a statement of the detailed estimate under each grant, divided into items.² Subject to these rules, the Finance Member presents the Budget in such a form as he considers most fitted for its consideration by the Council.³

The Council then deals with the Budget in two stages, namely, (i) a general discussion, and (ii) the voting of demands for grants.⁴ On a day appointed by the Governor subsequent to the day of the presentation of the Budget and for such time as is allotted by him, the Council discusses the Budget as a whole or any question of principle involved therein; but no motion can be moved at this stage, nor can the Budget be submitted to the vote of the Council.⁵ The Finance Member has a general right of reply⁶ at the end of the discussion. The President may, if he thinks fit, prescribe a time-limit for speeches.

Not more than twelve days can be allotted by the Governor for the discussion of the demands for grants. Of the days so allotted, not more than two days can be allotted by him for the discussion of any one demand. As soon as the maximum limit of time for discussion is reached, the

¹ Provincial Legislative Rule 26.

² *Ibid.*

⁴ *P.L.R.*, 27.

³ *Ibid.*

⁵ *Ibid.*, 28.

⁶ 'The procedure (in Bengal) is for non-official members to speak first and then for the various official members to reply to the debate so far as their departments are affected. When once the official members have commenced their replies, no further speeches by non-official members are permitted'.—*The Bengal Legislative Council Manual*, 1927, p. 306.

President must forthwith put every question to dispose of the demand under discussion. At five o'clock on the last day of the allotted days the President must put every question necessary to dispose of all the outstanding matters in connexion with the demands for grants.¹

As has been seen before, no motion for appropriation can be made except on the recommendation of the Governor communicated to the Council.² When a demand for a grant is made, motions may be moved to reduce the grant or to omit or reduce³ any item in the grant, but not to increase or alter the destination of the grant.⁴ When there are several motions relating to the same demand, they are discussed in the order in which the heads to which they relate appear in the Budget.⁵ No motion can be made for the reduction of a grant as a whole until all motions for the omission or reduction of definite items within the grant have been discussed.⁶

If, during any financial year, money has been spent on a service, for which the vote of the Council is necessary, in excess of the amount granted to that service and for that year, a demand for the excess must be presented to the Council by the Finance Member,⁷ and must be dealt with by the Council in the same way as a demand for a grant.⁸ The Council ought not to be very generous in its attitude towards demands for excess grants

Excess
Grants.

¹ Provincial Legislative Rule 29.

² *Ibid.*, 30.

³ The procedure in Bengal is as follows :—

'A motion to reduce a demand, to be in order, must specify a definite sum for reduction.

The proper form is as follows :—

"That the demand of Rs. 10,000 in respect of . . . be reduced by the sum of Rs. 4,000."

It is out of order to move "That the demand of Rs. 10,000 be reduced to Rs. 6,000".—*The Bengal Legislative Council Manual*, 1927, p. 307.

⁴ Provincial Legislative Rule 30.

⁵ *Ibid.*

⁶ *Ibid.*

⁷ *P.L.R.*, 31. A demand for an excess grant can be presented after the expiry of the financial year in which the excess expenditure occurred.

⁸ *Ibid.*

otherwise, an encouragement will be given to departmental extravagance. Its attitude towards departmental extravagance should be the same as that of the English House of Commons. In order to place on record a permanent disapproval of departmental 'excesses', says Sir Erskine May,¹ 'the Commons resolved, 30th March, 1849, that "when a certain amount of expenditure for a particular service has been determined upon by Parliament, it is the bounden duty of the department which has that service under its charge and control, to take care that the expenditure does not exceed the amount placed at its disposal for that purpose."' "

Rule 32 of the provincial Legislative Councils Rules originally laid down :—

Supplement-
ary or
additional
grants.

(1) 'An estimate shall be presented to (a Governor's Legislative) Council for a supplementary or additional grant when—

- (a) the amount voted in the Budget of a grant is found to be insufficient for the purposes of the current year, or
- (b) a need arises during the current year for expenditure, for which the vote of the Council is necessary, upon some new service not contemplated in the Budget for that year.

(2) Supplementary or additional estimates shall be dealt with in the same way by the Council as if they were demands for grants.'

This original Rule relating to supplementary estimates

Additional
Sub-rule
relating to
Supplement-
ary Budget.

has been amended:² after Sub-rule (1) above, the following Sub-rule has been inserted, namely :—

(2) 'An estimate may be presented to the Council for an additional or supplementary

¹ *Parliamentary Practice*, p. 453 (twelfth edition).

² See *The Gazette of India* (Extra.), July 21, 1924.

grant in respect of any demand to which the Council has previously refused its assent, or the amount of which the Council has reduced either by a reduction of the whole grant or by the omission or reduction of any of the items of expenditure of which the grant is composed.'

The original Sub-rule (2) has accordingly been re-numbered (3).

The original Rule was based on the practice of the British Parliament relating to supplementary grants. In England 'a supplementary estimate may be presented', according to Sir Erskine May,¹ 'either for a further grant to a service already sanctioned by Parliament, in addition to the sum already demanded for the current financial year, or for a grant caused by a fresh occasion for expenditure that has arisen since the presentation of the sessional estimates, such as expenditure newly imposed upon the executive Government by statute, or to meet the cost created by an unexpected emergency, such as an immediate addition to an existing service, or the purchase of land, or of a work of art.' Another distinguished writer² on the procedure of the British House of Commons says that a supplementary grant is required when an estimate already granted for some service or for some special purposes is found to be

Comparison
with the
English
practice.

¹ *Parliamentary Practice*, p. 452.

² Joseph Redlich, *The Procedure of the House of Commons*, vol. iii, p. 131.

We may also note the following views :—

'With the utmost effort at accuracy in the estimates they will always prove to be insufficient in some branch of the service, or an unexpected need for expenditure will arise ; and to provide funds in such cases supplementary estimates must be presented and voted before the close of the financial year'.—Lowell, *The Government of England*, vol. i, p. 285.

A supplementary estimate 'is needed either when the amount granted in accordance with the original estimate for a service is found to be insufficient for it, or when a need arises for expenditure on some new service not contemplated in the original estimates'.—*The System of National Finance* by Mr. Hilton Young, p. 87.

inadequate, or where a sum has been granted and is found to be too small for the object in view; or again, where some unforeseen call for expenditure arises during the course of the session. The last contingency is most commonly caused by military expeditions, naval mobilization and like events; in short, by the demands of foreign policy.

It is evident from these quotations that, according to the English practice, if the demand for a grant is refused at the time of the consideration of the annual estimates, no supplementary estimate is presented in respect of the same demand during the current financial year. But the amendment,¹ which has been made by way of addition to the original

Possible
harmful
consequences of
the additional
Sub-rule.

¹ The amendment was obviously made in order to meet the situation created by the injunction granted by Mr. Justice C. C. Ghosh of the Calcutta High Court, restraining the President of the Bengal Legislative Council from allowing a certain motion, being item No. 6 in the printed list of business, in the Council at its session which was to have commenced at 3 p. m. on July 7, 1924. The said item No. 6 ran as follows:—'Supplementary demand for grant 22—General Administration (Transferred). The Hon'ble Mr. J. Donald to move that a sum of Rs. 1,71,000 be granted for expenditure under the head 22—General Administration (Transferred) on account of the salaries of the Ministers.' The injunction was prayed for in connection with the suit brought by Messrs. Kumar Sankar Roy Chaudhury and Kiron Sankar Roy Chaudhury against the Hon'ble Mr. H. E. A. Cotton, the then President of the Bengal Legislative Council, and the two Bengal Ministers at the time. It may be stated here that the demand for a grant for the Ministers' salaries had been rejected on March 24, 1924, by a majority of one at the time of the consideration of the annual estimates.

In reply to a question of Dr. Sir Deva Prasad Sarvadhikary, the Home Secretary to the Government of India stated, in the Council of State, the following among other things on September 3, 1924:—'The Government of India and the Secretary of State agreed in thinking that the rules (regarding supplementary grants) referred to did not in fact preclude such a motion as was proposed to be moved by the Government of Bengal. In view, however, of the opinion expressed by the learned Judge of the Calcutta High Court and of the fact that the Government of India understood that a similar motion was proposed to be moved in the Bombay Legislative Council which was due to meet on the 21st July, 1924, the Government of India considered that it was desirable *ex majore cautela* to amend the rules. They accordingly made the necessary recommendations in regard to Indian

Rule, is a departure in principle from the English practice as stated above. It empowers a local Government to present a supplementary estimate in respect of a demand, assent to which has previously been refused by the local Legislative Council. Besides, it enables a local Government to bring forward, by exercising the power of prorogation, as many times as it likes during the same financial year, the same motions for appropriation which have been previously rejected by the local Council. The underlying principle of the amendment, therefore, is a negation of the principle of supplementary estimates as illustrated by the English system. 'Public control of public expenditure', says Mr. Hilton Young,¹ 'depends for its efficiency in a large measure on the financial scheme for the year being presented to the House (of Commons) and considered and approved once and for all and as a whole. To allow the scheme, once approved, to be treated as something still fluid and liable to extensive modifications must infinitely weaken effective control, and Supplementary Estimates are the most harmful way of doing so. To make anything but the most restricted use of them must deprive the whole system of Supply of its meaning and utility.' The amendment, it may be argued, is not of much constitutional

Legislative Rules and the Legislative Council Rules of each province. Their recommendations were sanctioned by the Secretary of State in Council, and amendments to remove all doubts as to the meaning of the rules were made on the 19th July and published on the 21st July'.

'I would merely add that Mr. Justice Ghosh, in directing the issue of the injunction, concluded his order by expressing the opinion that the rules required revision in the light of the events in the case before him. The Reforms Enquiry Committee was not sitting at the time, and the proposals for the amendment and the reasons therefor were accordingly not laid before that Committee. The Government of India do not know whether the Law Officers of the Crown were consulted in England at the time. They did not themselves consult the Advocate-General of Bengal.'—*The Council of State Debates*, 3rd September, 1924.

¹ *The System of National Finance*, p. 89.

importance so far as the demands for grants relating to the Reserved subjects are concerned, as those demands, if refused, may be restored,¹ if the Governor of the province concerned certifies that the expenditure provided for by them is essential to the discharge of his responsibility for those subjects. But it is undoubtedly of great political significance so far as the demands for grants for the Transferred subjects are concerned. The enforcement of the amendment in connection with refused demands for grants relating to those subjects is bound to produce consequences subversive of the principle of ministerial responsibility which has been introduced into our constitution so far as the administration of the Transferred departments is concerned. That is to say, the responsiveness of Ministers to the declared wishes of the Legislative Council will diminish, if not altogether disappear, and the control of the Legislative Council over them will be correspondingly weakened. Another harmful consequence that is very likely to follow the enforcement of the additional Sub-rule² under consideration, is that occasions of friction between the legislature and the executive Government will multiply, engendering bitterness between them. Nor can we ignore here the effect of this Sub-rule upon the members of a provincial Legislative Council. It is very likely to make many of them less conscientious in their attitude towards demands for the Transferred subjects. Their votes in respect of those demands would not always be given under that heavy sense of responsibility which would otherwise attach to their votes if they had in their minds, when voting, that their decision,

¹ It is true, however, that the amendment will enable a local Government to re-submit a refused demand relating to a Reserved subject, which cannot be reasonably certified by the Governor as 'essential' to the discharge of his responsibility for the subject.

² I.e., the additional Sub-rule mentioned on pages 278-79.

so far as those demands were concerned, was final and might bring about the resignation of the Ministers concerned. Thus the additional Sub-rule is open to objection on various grounds¹.

As soon after the commencement of the first session of each Legislative Council as possible, a Committee on Public Accounts is constituted for the duration of the Council to deal with the audit and appropriation accounts of the province concerned and such other matters as the Finance Department of the local Government may refer to it. The Committee consists of such number of members as the Governor may direct. Of the members constituting the Committee not less than two-thirds are elected by the non-official members of the Legislative Council according to the principle of proportionate representation by means of the single transferable vote and the rest are nominated by the Governor. Casual vacancies in the Committee are filled in the same way as in the cases of such vacancies occurring in the Committee on Public Accounts of the Legislative Assembly.² Of the members elected at the time of the constitution of the Committee not less than one-third in the case of Bengal, and not less than one-half in the case of the United Provinces and Assam, who are to be selected by lot, must retire on the expiry of one year. The remainder in the case of the United Provinces and Assam, and not less than one-half of the remaining members, to be selected by lot, in the case of Bengal, must retire on

¹ Although the Joint Select Committee was of opinion that in cases where the Legislative Council would alter the provision for a Transferred subject, the Governor would be justified, if so advised by his Ministers, in re-submitting the provision to the Council for a review of its former decision, yet we believe that the possible disadvantages of the additional Sub-rule do more than outweigh its advantages.—See the remarks of the Joint Select Committee on clause 11 of the Government of India Bill, 1919.

² See pp. 255–56 *ante*.

the expiry of the second year¹. The vacancies thus created are to be filled in the manner previously stated. Retiring members are eligible for re-election. The Finance Member of the local Government must be Chairman of the Committee, and, in the case of an equality of votes on any matter, has a second or casting vote².

In examining the audit and appropriation accounts of the province, the Committee must satisfy itself that the money *voted* by the Council has been spent within the scope of the demand granted by the Council³. Besides, it must bring to the notice of the Council⁴—

(1) every case of reappropriation from one grant to another ;

(2) every reappropriation within a grant which is not made in accordance with the Rules regulating the functions of the Finance Department or which has the effect of increasing the expenditure on an item the provision for which has been specifically reduced by a vote of the Council; and

(3) any expenditure which the Finance Department has desired should be brought to the notice of the Council.

The procedure for legislation is not uniform in the provincial Legislative Councils, as the Standing Orders relating thereto vary from province to province. It is not therefore possible for us to describe in this volume how laws are made by each provincial legislature. What we propose to do, however, is (i) to state the procedure of provincial legislation

¹ See *The Gazette of India*, February 19, 1927. The principle of retirement as stated on pages 283-84, is peculiar to Bengal, Assam and the United Provinces.

² Provincial Legislative Rule 33.

³ Thus only the accounts of the voted expenditure of the Government are brought to the scrutiny of the Committee.—Provincial Legislative Rule 34.

⁴ *Ibid.*

in a general way without going into details, and (ii) to describe briefly, more or less by way of illustration, as no province presents an exactly typical case, how Bills are passed by the Bengal Legislative Council.

Any member, other than a Member of the Government, desiring to move for leave to introduce a Bill into a Legislative Council must give notice of his intention, and must submit, together with the notice, a copy of the Bill and a full statement of its objects and reasons¹. If the Bill is one which requires, under the Government of India Act, previous sanction for its introduction, a copy of such sanction must be annexed to the notice. If any question arises whether a Bill is or is not one which requires sanction under the Act, the question must be referred to the authority which would have power to grant the sanction if it were necessary, and the decision of the authority on the question will be final². The period of notice of a motion for leave to introduce a Bill is as follows³ :—

(1) fifteen days, if the Bill relates to a Transferred subject ;

(2) one month or, if the Governor so directs, a further period not exceeding two months in all, if the Bill relates to a Reserved subject.

If, however, the Governor of a province orders the publication of a Bill (together with a statement of its objects and reasons) in the local Gazette, it is not necessary to move for leave to introduce the Bill⁴ ; nor is it necessary in that case to publish the Bill again, if it is afterwards introduced.

As soon as possible after a Bill has been introduced into a provincial Legislative Council, it must, unless it has

¹ *P. L. R.*, 19. Every notice must be addressed to the Secretary of the Council.

² *Ibid.*

³ *Ibid.*

⁴ *P. L. R.*, 18.

already been published, be published¹ in the local Gazette.

If a motion for leave to introduce a Bill is opposed, the President may permit a brief explanatory statement from the mover and the opposer, and may then put the question without further debate. If such a motion is carried, the Bill will be deemed to be introduced.

After a Bill has passed through its introductory stage, it is generally referred to a Select Committee. When this Committee submits its final report, the Bill, as reported by the Committee, is taken into consideration, unless it is re-committed. Amendments may be moved to the Bill at this stage. After the amendments have been disposed of, the Bill, as amended, or as it has emerged from the Select Committee, or in its original form, as the case may be, is passed by the Council.

As has been seen before, the Bill cannot have the force and effect of law until it has received, ordinarily, the assent of the Governor of the province concerned as well as of the Governor-General.

If the Governor of a province certifies that a Bill or any clause of a Bill or any amendment to a Bill affects the safety or tranquillity of the province or any part thereof, and directs that no proceedings, or no further proceedings, are to be taken thereon, all notices of motions relating to the subject-matter of the certificate must lapse, and if any such motion has not already been set down on the list of business, it cannot be so set down after the direction.¹

As the provincial Legislative Rules in regard to any dilatory motion in respect of any official Bill and the power to re-introduce an official Bill, as also in regard to the procedure to be adopted on the recommendation and certification of any Bill by the Governor under section 72E of the Act,

¹ Provincial Legislative Rule 21.

are identical *mutatis mutandis* with the relevant Indian Legislative Rules,¹ they need not be stated here.

When a Bill is introduced in to the Bengal Legislative Council, or on some subsequent occasion, a motion is made by the member in charge² either (i) for the consideration of the Bill by the Council at once or at some future time to be then mentioned, or (ii) for its reference to a Select Committee, or (iii) for its circulation for the purpose of eliciting public opinion thereon³. The principle of the Bill and its general provisions may be discussed at this stage, but no discussion of its details further than is necessary to explain its principle is in order⁴. Nor can any amendments be moved to the Bill at this stage. But if the member in charge moves for the consideration of his Bill, any member may move an amendment for its reference to a Select Committee or for its circulation⁵. If, on the other hand, he moves for the reference of the Bill to a Select Committee, an amendment may be moved for its circulation for the purpose of eliciting public opinion thereon. Where a Bill has been so circulated and opinions have been received thereon within the appointed time, the member in charge, if he wants to proceed with his Bill, must move for its reference to a Select Committee unless the President allows, in the exercise of his special power, a motion to be made that the Bill be taken into consideration⁶.

¹ Provincial Legislative Rules 20B and 20C; also see pp. 265-66 *ante*.

² The expression 'member in charge' means, in the case of a Government Bill, any member acting on behalf of the Government and, in any other case, the member who has introduced the Bill.—Provincial Legislative Rule 20A.

³ But no such motion can be made until after copies of the Bill have been made available for the use of members, and any member may object to any such motion being made, unless copies of the Bill have been so available for seven days before the motion is made. Such objection will prevail unless the President allows the motion to be made.—Bengal Legislative Council Standing Order 43.

⁴ *Ibid.*, 44.

⁵ *Ibid.*

⁶ *Ibid.*

The Member of the Government to whose department the Bill relates and the member who introduced the Bill must be members of every Select Committee. The other members of the Committee are named in the motion proposing the appointment of the Committee¹. The Member of the Government to whose department the Bill relates must ordinarily be Chairman of the Committee. The Chairman has a second or casting vote in the case of an equality of votes. The Committee may hear expert evidence and the representatives of special interests affected by the measure before it. Any person residing within the jurisdiction of the Government of Bengal, whose evidence is, in the judgment of the Committee, material with reference to any Bill then under its consideration, may be compelled, under the Bengal Legislative Council (Witnesses) Act, 1866, to appear as a witness before the Committee and, further, to produce before it all such books, deeds and writings as are likely to be necessary for obtaining information regarding the matter under consideration².

When a Bill has been referred to a Select Committee, the Committee must submit a report thereon. The report may be either preliminary or final. Every report by a Select Committee on a Bill must be presented to the Council by the Chairman of the Committee. Any member of the Committee may record a minute of dissent if he so desires. After the presentation of the final report, the member in charge may move for the consideration of the Bill as reported by the Select Committee or for its re-committal³ to the Committee. If he moves for its consideration, any member may move an amendment for its recommittal.

¹ Bengal Legislative Council Standing Order 40

² *Vide The Bengal Legislative Council Manual*, 1927, p. 294, Note (2), and also pp. 113-115.

³ Bengal Legislative Council Standing Order 47.

When the motion that the Bill be taken into consideration has been accepted by the Council, amendments may be moved to the Bill¹. The amendments are ordinarily considered in the order of the clauses to which they respectively relate². If, however, no amendment is made when the motion for taking the Bill into consideration has been adopted, the Bill may be passed at once. If, on the other hand, an amendment is made, any member may object to the passing of the Bill at the same meeting. If such objection is allowed by the President to prevail, the Bill is passed at a future meeting either with or without further amendment.

When the Bill as passed by the Council has been signed by the President, it is submitted to the Governor for his assent, and, if assented to by him, it is submitted to the Government of India for the assent³ of the Governor-General. If the Governor-General assents to it, it becomes an Act.

If the Governor returns the Bill as passed by the Council for its reconsideration, the point or points referred for reconsideration are put before the Council by the President, and are discussed and voted upon in the same manner as amendments to a Bill⁴.

The member in charge of a Bill may withdraw it at any stage with the permission of the Council⁵.

All communications on matters connected with any Bill must be addressed to the Secretary of the Council who must, if time permits, cause them to be printed and send a copy of them to each member, and must, further, refer them to the Select Committee, if any, on the Bill.⁶

A motion expressing want of confidence in a Minister or

¹ Bengal Legislative Council Standing Order 48.

² *Ibid.*, 50. But also see the Bengal Legislative Council Standing Order 51 in this connexion.

³ *Ibid.*, 54.

⁵ *Ibid.*, 56.

⁴ *Ibid.*, 55.

⁶ *Ibid.*, 57 and 58.

a motion disapproving the policy of the Minister in a particular respect may be made' in a Legislative Council with the consent of its President, and subject to the following restrictions, namely:—

Motion of non-confidence in Ministers. (a) 'leave to make the motion must be asked for after questions and before the list of business for the day is entered upon; (and)

(b) the member asking for leave must, before the commencement of the sitting of the day, leave with the Secretary (of the Council) a written notice of the motion which he proposes to make.'

If the President is of opinion that the motion is in order, he must read the motion to the Council and request those members who are in favour of leave being granted to rise in their places. If not less than a certain minimum number² of members rise accordingly, the President must

¹ P.L.R., 12A. This Rule has been made in accordance with the following recommendations of the Reforms Enquiry Committee, 1924 :

'In order to enable the *responsibility of Ministers to the Councils* to be enforced, provision should be made in the provincial Legislative Council Rules for the following classes of motions:—

(a) a motion of no confidence; (and)

(b) a motion questioning a Minister's policy in a particular matter.'

'The former motion, if carried by the Council, should necessarily involve the resignation of the Minister, or of the whole Ministry if it holds itself to be jointly responsible in regard to the particular question. The carrying of a motion falling within the second class should not necessarily involve the resignation of the Minister. It should depend upon the magnitude of the question in issue and the importance which the Minister attached to his policy in regard to it. We consider that it will further be necessary to provide that such motions are not frivolously moved, but that, when set down on the paper, they should come up for discussion at an early date. . . . For these purposes we would therefore provide . . . that if the person who gives notice of the motion is able to show that he has the support of a prescribed number of the members of the Council who are present, the President shall direct that the motion shall be included in the list of business on a day not more than 10 days after the date of notice. It will be desirable to prescribe the number of members whose support shall be necessary before the President is required to fix a day for the discussion of the motion'.—Majority Report, pp. 68-69, and also p. 111.

² The minimum number in Bengal is 46; in Madras, 42; in

declare that leave is granted and that the motion will be taken on such day, not being more than ten days from the day on which leave is asked for, as he may appoint. If, however, less than the minimum number rise, the President must inform the member asking for leave that he has not obtained the leave of the Council.¹ It may be stated here that no such preliminary approval of a motion of want of confidence in a Minister or in the Ministry is required in the English House of Commons, and that, therefore, the Indian law in this respect is a departure from the English practice.

A member who has resigned the office of Minister may, with the consent of the President of the Legislative Council concerned, make a personal statement in explanation of his resignation. Such statement must be made after questions have been disposed of and before the list of business for the day is taken up. No debate will be in order on such statement, but a member of the Government concerned will be entitled to make a statement pertaining to it².

In regard to communications between the Governor and his Legislative Council, the practice, generally speaking, is as follows :—

Communications from the Council to the Governor are to be made through the President 'by formal address after motion made and carried in the Council.'³ And communications from the Governor to the Council may be made (i) by a speech, and (ii) by a written message read to the Council by the President.

the United Provinces, 40 ; in Bombay, 36 ; in Burma, 34 ; in Bihar and Orissa, 34 ; in the Punjab, 30 ; in the Central Provinces, 22 ; and in Assam, 16.—*The Gazette of India*, October 30, 1926, Part 1.

¹ Provincial Legislative Rule 12A.

² *Ibid.*, 10A.

³ In Bengal communications from the Council to the Governor must be made—

(i) by formal address, after motion made and carried in the Council ; and

(ii) through the President.

CHAPTER XVIII

THE 'HOME' GOVERNMENT¹

The Home administration of Indian affairs before 1858—Changes introduced by the Act of 1858—The Secretary of State for India—The Council of India—Functions of the Council—Procedure at meetings of the Council—Correspondence between the Secretary of State and India—Information to Parliament as to orders for commencing hostilities—Utility of the Council of India—The Crewe Committee on the Council—Prof. Keith's views about the Council—Mr. B. N. Basu's views about the Council—The Joint Select Committee and the Council—The Council, an anachronism—The India Office and its organization—Audit of Indian accounts in the United Kingdom—High Commissioner for India—His appointment—His duties—Cost of the Home administration: original arrangement—The Joint Report on the question of cost—The Crewe Committee's views on the same—The present arrangement—Its defect.

The Home administration of Indian affairs before 1858. Down to 1784 the affairs of the East India Company were managed in England by the Court of Directors and the General Court of Proprietors of the Company. The East India Company Act of 1784, better known as Pitt's Act of 1784, established what might be regarded as the dual system of Government which lasted till the year 1858. It created a Board of six Commissioners for the affairs of India, popularly known as the Board of Control, 'with full power and authority to direct all operations and concerns relating to the civil and military government and revenues of India.'² The Board was to consist of one of the Secretaries of State for the time being, the Chancellor of

¹ See in this connection Seton's *India Office*.

² *The Imperial Gazetteer of India*, vol. iv, p. 34

the Exchequer and four other Privy Councillors. The members of the Board were to have 'access to all papers and muniments' of the Company and to be 'furnished with such extracts or copies thereof' as they might require.¹ The Directors were required to pay due obedience to, and to be bound by, such orders and directions as they would receive from the Board, touching the civil and military government and revenues of the British territorial possessions in the East Indies.² The system of Government created by this Act is thus described by the Committee on the Home Administration of Indian Affairs³:— 'The executive management of the Company's affairs was in the hands of a Court of Directors, who were placed in direct and permanent subordination to a body representing the British Government and known as the Board of Control. The functions of the Board were in practice exercised by the President, who occupied in the Government a position corresponding to some extent to that of a modern Secretary of State for India. The Board of Control were empowered "to superintend, direct and control all acts, operations, and concerns which in anywise relate to the civil or military government or revenues of the British territorial possessions in the East Indies." Subject to the superintendence of the Board of Control, the Directors conducted the correspondence with the Company's officers in India, and exercised the rights of patronage in regard to appointments.' According to Sir George Chesney⁴, the President of the Board⁵ of Control was always a member of the Cabinet.

¹ The East India Company Act, 1784, Section 11. ² *Ibid.*

³ *Vide* para. 8 of the Report (1919) of the Committee.—'The Committee was appointed to enquire into the organization of the India Office and the relations between the Secretary of State in Council and the Government of India'.—Para. 1 of the Report.

⁴ *Indian Policy*, p. 360. ⁵ Its members used to lose office on change of Ministry.—Seton, *India Office*, p. 13.

Changes introduced by the Act of 1858. The Government of India Act of 1858 abolished the dual system of Government prevailing from the year 1784, by transferring the administration of India from the Company to the Crown and, among other things, authorized the appointment of an additional Secretary of State who was empowered to exercise, except where otherwise provided, the powers formerly exercised by the Court of Directors, the Court of Proprietors, or by the Board of Control in relation to the government and revenues of India.¹ Besides, it created a Council to assist the Secretary of State in the performance of his duties. This Council was formally styled 'The Council of India.' Thus came into existence the Secretary of State for India and his Council. Describing the change effected by the Act of 1858 in the Home administration of Indian affairs, the Committee, to which reference has been made before, stated² that in general, the dual functions of the Board of Control and the Court of Directors were vested in the corporate body known as the Secretary of State for India in Council. The substitution of administrative responsibility on the part of the Government for the superintendence it had formerly exercised caused a redistribution of functions in which the lines of inheritance became to some extent obscured; but the persistence of the dual principle could still be traced in the corporate activities of the Secretary of State in Council.

The territories for the time being vested in His Majesty in India are, in the words of the Government of India Act, governed by and in the name of His Majesty the King-Emperor. The authority of the Crown over India

¹ Section 3 of the Act.

² Report of the Committee on the Home Administration of Indian Affairs, para. 9. This Committee was presided over by the Marquess of Crewe. We shall in future refer to this Committee as the Crewe Committee

is exercised through the Secretary of State¹ for India who
 The Secretary of State for India. 'is appointed, like other Secretaries of State, by the delivery to him of the seals of office.' He is a member of Parliament and is responsible to it 'in accordance with constitutional practice for his official acts'. As a Cabinet Minister and member of the Privy Council, he is the constitutional adviser of the Crown in matters relating to India. He appoints² two Under-Secretaries, one permanent, who is recruited from the Civil Service, the other Parliamentary, who changes with the Ministry and who usually represents him in that House of Parliament of which he does not happen to be a member³. Ordinarily he remains in office so long as the Cabinet of which he is a member remains in power. He may, however, be forced to resign his office on account of his personal errors in the conduct of his department. Appointments by the Crown to offices in India are made on his advice.⁴

The Council of India, as originally constituted under the Act of 1858, consisted of fifteen members, eight
 The Council of India. of whom were appointed by the Crown and seven elected by the Court of Directors⁵ of the East India Company. The constitution of the Council has been altered from time to time. Under the existing Act⁶ the Council is to consist of such number of persons, not less

¹ 'The office of Secretary of State is constitutionally a unit, though there are five (now six practically) officers. Hence any Secretary of State is capable of performing the functions of any other, and consequently it is usual and proper to confer statutory powers in general terms on "a (or "the") Secretary of State", an expression which is defined by the Interpretation Act, 1889, as meaning one of Her Majesty's principal Secretaries of State.'—Ilbert, *The Govt. of India*, 1916, p. 172. *Vide* also Marriott's *English Political Institutions*, pp. 108-9.

² Ilbert, *The Government of India*, p. 172.

³ The case of Dr. Drummond Shiels (Lab.), Parl. Under-Secretary, is an exception.

⁴ It is said that only the Viceroy is appointed on the recommendation of the Prime Minister. See note 2 on page 348.

⁵ Either from among its own members or from the ex-Directors of the Company.

⁶ Section 3 (1) of the Act.

than eight and not more than twelve, as the Secretary of State may determine. At least one-half of the members of the Council must have served or resided in India for not less than ten years and must not have last left India more than five years before their appointment to the Council.¹ The right of filling any vacancy in the Council is vested in the Secretary of State.² The ordinary term of office of a member is five years, but he may be reappointed by the Secretary of State for a further term of five years 'for special reasons of public advantage.'³ In any such case, however, the reasons for the reappointment must be laid before both Houses of Parliament in the form of a minute. It is open to a member of the Council to resign his office and any member of the Council may be removed from his office by the Crown on an address of both Houses of Parliament. Every member receives an annual salary of twelve hundred pounds. But if any member was, at the time of his appointment, domiciled in India, he is entitled, in addition to his salary, to an annual subsistence allowance of six hundred pounds.⁴ No member of the Council is capable of sitting or voting in Parliament.⁵

The Council of India conducts under the direction of the

¹ Section 3 (3) of the Act.

² Section 3 (2) of the Act.

³ Section 3 (5) of the Act.

⁴ There are now three Indian members on the Council, each of whom receives, in addition to his salary, an annual subsistence allowance of six hundred pounds. Mr. Montagu regarded it 'as equitable to extend to Indians holding office in England the system of "overseas allowance" just established for Englishmen in India.'—Seton, *The India Office*, p. 27.

⁵ Speaking on this clause in the (first) Bill for the Better Government of India, 1858, Viscount Palmerston said: 'We do not propose that the Councillors shall be capable of sitting in Parliament. We think there would be great inconvenience in such an arrangement; that they would become party-men; that they would necessarily associate with one side or the other in this House, and that, with changes of Administration, the relations between the President and the Councillors might then become exceedingly embarrassing.' *Vide* P. Mukherji's *Constitutional Documents*, vol. i, p. 156.

Secretary of State the business transacted in the United Kingdom in relation to the government of India and the correspondence with India.¹ The powers which are vested in the Secretary of State in Council and in the Council of India are exercised at meetings of the Council 'at which such number of members are present as may be prescribed by general directions of the Secretary of State.'² The Council may act in spite of any vacancy therein. It must meet as and when the Secretary of State directs, but there must be held at least one meeting of the Council in every month.³ The Secretary of State is the President of the Council with power to vote. Any member of the Council may be appointed Vice-President thereof by the Secretary of State in Council, but any person so appointed may be removed from his office at any time by the Secretary of State.⁴

At every meeting of the Council the Secretary of State, or, in his absence, the Vice-President, if present, or, in the absence of both of them, one of the members of the Council, elected by the members present at the meeting, presides. In case of an equality of votes at any meeting, the person presiding has a second or casting vote. Any act done at a meeting of the Council in the absence of the Secretary of State requires his written approval for its validity.

If there is a difference of opinion on any question at any meeting of the Council at which the Secretary of State is present, his decision is final except in those cases where the concurrence of a majority of votes is expressly required

¹ Section 5 of the Act.

² Section 6 of the Act. 'No one but the Secretary of State and the Members has a right to take part in the discussion, but the Under-Secretaries of State attend the meetings, and may be invited to make remarks.'—Seton, *The India Office*, 31 n.

³ Section 8 of the Act. 'In practice regular weekly meetings have continued'.—Seton, *The India Office*, p. 26.

⁴ Section 7 of the Act.

by the Act.¹ In case of such difference of opinion the Secretary of State may require his opinion and his reasons for it to be recorded in the minutes of the proceedings, and any member of the Council, who has been present at the meeting, may also require his opinion and his reasons for it to be similarly recorded.²

For the more convenient transaction of business the Secretary of State is empowered to constitute Committees of the Council of India, and to direct what departments of business are to be under those Committees and how the business of the Secretary of State in Council or of the Council of India is to be transacted. Any order made or any act done in accordance with such direction is to be treated as being an order of the Secretary of State in Council.³ To these Committees matters connected with the various branches of administration are referred before being finally placed before the Secretary of State in Council.⁴

The Secretary of State in Council prescribes the procedure for correspondence between the Secretary of State and the Governor-General in Council or any local Government in India.⁵ Before the Reforms every order or communication proposed to be sent to India had to be submitted to a meeting of the Council, or to be placed on the Table of the Council Room for seven days prior to its issue for the perusal of the members of the Council, unless it dealt with a 'secret' matter or the action

¹ Section 9 of the Act. 'No business can be brought before the Council of India except by the Secretary of State.'—Seton, *The India Office*, p. 35.

² Section 9 of the Act.

³ Section 10 of the Act.

⁴ *The Fifth Decennial Report*, pp. 51-52. 'The Committees of the Council correspond to, and work in close touch with, the several departments of the Office, but no Member is in charge of any department.'—Seton, *The India Office*, p. 35.

⁵ Section 11 of the Act.

proposed to be taken was, in the opinion of the Secretary of State, 'urgently' required. The present simpler mode of conduct of correspondence with India was recommended by the Crewe Committee.¹ The reasons for the change suggested were thus stated by the Committee:—'Our second suggestion is that the Secretary of State should regulate by executive orders the mode of conduct of correspondence between the India Office and the Government of India and Local Governments. The issue of orders and communications has hitherto been regulated by the somewhat meticulous procedure prescribed by the Act of 1858; and we do not think we need justify our proposal to liberate the India Office from the restrictions imposed by a bygone age and to place it on the same footing as other Government Departments in this respect.'²

If any order is sent to India directing the actual commencement of hostilities by His Majesty's forces in India, the fact must be, unless the order has in the meantime been revoked or suspended, brought to the notice of both Houses of Parliament within three months of the issue of the order, or, if Parliament is not sitting at the expiration of those three months, then within one month after the next meeting of Parliament.³ This provision enables Parliament to have an 'early opportunity of calling upon the Government for explanation of the causes which had led to such orders.'⁴

Information
to Parlia-
ment as to
orders for
commencing
hostilities.

¹ See para. 27 of the Committee's Report.

² 'Correspondence with India has been accelerated by an arrangement for the exchange of "official" letters between the Secretaries of India Office Departments and Secretaries to the Government of India on matters which could not be treated "demi-officially" and used to require a formal despatch on each side.'—Seton, *The India Office*, p. 38.

³ Section 15 of the Act.

⁴ See Viscount Palmerston's speech on the Government of India Bill, 1858—P. Mukherji's *Constitutional Documents*, vol. i, p. 157.

In the course of his speech on the (third) Government of India Bill, 1858, the Earl of Derby stated¹ that, although it was expedient that the business (of the government of India) should be conducted by a high Ministerial officer . . . who should, like the holders of other offices in the Government, be appointed by the Crown and be responsible to Parliament, yet, inasmuch as it was impossible to conceive that any person so appointed would have sufficient knowledge and experience to discharge duties so various and so complicated as those connected with the administration of all the different provinces of India, it was necessary for the good government of India to associate with the Minister a Council, more or less numerous, by whom he might be assisted and advised. Thus the Council of India was created not to be, to quote the Earl of Derby again,² a screen between the Minister and Parliament as the Court of Directors might have been, but to give the Minister advice which, on his own responsibility, he would be at liberty either to accept or reject. In order to achieve this object, it was provided by the Act of 1858 that the major part both of the appointed and of the elected members of the Council must be persons who had served or resided in India for not less than ten years, and, with certain exceptions, who had not last left India more than ten years before the date of their appointment.³ And it was further provided by the same Act that future appointments or elections to the Council should be so made that nine at least of its members must possess those qualifications.⁴ Although the Council was established primarily with the object of 'providing a Minister of the Crown, usually without personal knowledge

Utility of
the Council
of India.

¹ See P. Mukherji's *Constitutional Documents*, vol. i, p. 167.

² *Ibid.*, p. 168.

³ Section 10 of the Act of 1858.—Mukherji's *Constitutional Documents*, vol. i, p. 137.

⁴ *Ibid.* Future elections were to be made by the Council itself.

of India, with experienced advice upon Indian questions', yet it was given a special function, which was presumably intended, according to the Crewe Committee,¹ 'to act as a counterpoise to the centralization of powers in the hands of the Secretary of State.' For instance, 'no grant or appropriation of any part of the revenues of India' could² be made under the Act of 1858 'without the concurrence of a majority of votes at a meeting of the Council'. Similarly, a few other specified matters could not be decided without the vote of a majority in Council. This is the case even now, subject, of course, to the provisions of the Government of India Act and the Rules made thereunder. But still the Council has been in the main an influential consultative body since its creation. It has had no power of initiative. ✓

The majority of the members of the Crewe Committee recommended in their Report the abolition of the Council of India and the creation in its place of a statutory Advisory Committee to which the Secretary of State might refer such matters as he might determine for its advice and assistance.³ They were of opinion that there was no constitutional function of the Secretary of State in Council which, under the new conditions, could not equally well be discharged by the Secretary of State.⁴ Professor A. Berriedale Keith, who was a member of the Committee, stated in his Minority Report⁵ that he was opposed both to the continued existence of the Council of India and to the substitution for it of a statutory Advisory

The Crewe
Committee
on the
Council.

Professor
Keith's
views about
the Council.

¹ Para. 11 of its Report.

² This is the case even now, subject, of course, to the provisions of the Government of India Act and the Rules made thereunder.

³ Paras. 20 and 23 of the Majority Report.

⁴ Para. 21, *ibid.*

⁵ Minority Report by Professor A. B. Keith on the terms of reference to the Committee on the Home Administration of Indian Affairs.

Committee as recommended by the majority of his colleagues. In regard to the Council of India, he held that the composition of the Council as representing Indian official experience at once qualified and tempted it to improve in detail, and in a sense to do over again, work already done in India.¹ Though fully conscious of the useful service rendered by the Council in the past, he was, however, of opinion that the conservatism natural to retired officials had acted sometimes as a barrier in the way of useful reform.² Besides, the natural tendency to delay in the action of the Government of India had been injuriously fostered by the delays of the India Office under the Council system of procedure.³ And lastly, he pointed out from the evidence of Mr. Austen Chamberlain the tendency of the Council to move the Secretary of State to overrule the Government of India in minor matters.⁴ In the absence of a permanent body anxious naturally to prove its utility by suggesting improvements on the proposals of the Government of India, it would, he hoped, become the rule for the Secretary of State to refrain from interference save when he was satisfied that some real principle was involved, in which event his intervention would carry all the more weight because his

¹ Para. 31 of the Report by Professor Keith.

² *Ibid.*

³ Para. 31 of the Report by Professor Keith.

⁴ Para. 34 of Prof. Keith's Report.

* The Council, says Mr. Ramsay MacDonald, 'has not only to be consulted, it has to agree. The awkwardness of the situation which would be created if the Secretary (of State) forced his desires in the teeth of the opposition of his Council, even when he has constitutional authority for doing so, limits his authority in practice more than it is limited by law. . . . His action is limited by a Council which is more of the nature of a body of civil servants, but which has the power in the most essential matters of government to hamper the Secretary of State in doing what he thinks he ought to do. And this Council is non-representative; it acts of its own untrammelled will; it is not directly responsible to Parliament. This constitutional anomaly could not have existed for a generation if Parliament had taken an active interest in Indian affairs'.—*The Government of India*, pp. 47 and 48.

authority was not frittered away by interference in lesser matters.¹ As the Montagu-Chelmsford Scheme imposed on the Secretary of State a process of progressive abnegation of his power of superintendence, direction and control of the Government of India, the abolition of the instrument by which in the past a close and detailed control and revision had been exercised in respect of Indian affairs was in his opinion requisite as a necessary preliminary to, and a conclusive manifestation of the purpose of His Majesty's ministers to secure, the gradual realization of responsible government in British India.²

With regard to the advisory Committee, he said that the arguments adduced by the majority of his colleagues in favour of its creation did not appear to him capable of carrying conviction.³ Under the reform scheme he had no hesitation in holding⁴ that in the performance of his diminishing duties the Secretary of State should be able to obtain all the aid he would require primarily from the permanent staff of his department and from expert sources such as the brokers of the India Office and the Bank of England. In matters in which further advice was deemed necessary, e.g., currency questions or other issues involving special knowledge, he would have recourse to Committees appointed *ad hoc*.

Mr. Bhupendranath Basu, another member of the Crewe Committee, was also in favour of the abolition of the Council of India. He expressed himself in a separate note appended to the Majority Report as follows⁵ :— 'As regards the abolition of the Council of the Secretary of State, I agree with the Majority Report though not quite

Mr. Bhupendra-nath Basu's views about the Council.

¹ Para. 34 of Professor Keith's Report.

² Para. 31, *ibid*.

³ Para. 34 of Professor Keith's Report.

⁴ Para. 33, *ibid*.

⁵ Note by Mr. B. N. Basu on the Report of the Committee on the Home Administration of Indian Affairs, para. 8. He has since died.

for the same reasons. My reasons are, firstly, that the abolition of the Council will naturally result in the Secretary of State leaving things more and more to the Government of India, and interfering only in matters of Imperial concern, and, secondly, it will thus throw a much greater responsibility on the Government of India, which in its own interests will have to share it with the representatives of the people, apart from any question of statutory obligation. We shall thus bring about greater co-operation and responsible association between the Government and the people, and greater reliance upon their conjoint action, and pave the way to the attainment of self-government in India without much dislocation of machinery.' He too was 'opposed to an Advisory Committee with no responsibility and no statutory functions.' Such a Committee would retain, according to him, the demerits of the present system, and would lose some, if not most, of its merits.¹

'A habit,' says Mr. Ramsay MacDonald,² 'has more influence upon an Englishman than a reason.' In spite of these weighty opinions³ in favour of the abolition of the Council of India, the Joint Select Committee recommended its continued existence. 'The Committee are not in favour of the abolition of the Council of India. They think that, at any rate for some time to come, it will be absolutely necessary that the Secretary of State should be advised by persons of Indian experience, and they are convinced that, if no such Council existed, the Secretary of State would have to form an informal one if not a formal one. Therefore, they think it much better to continue a body which

✓ The Joint
Select
Committee
and the
Council.

¹ Paras. 9-13 of Mr. Basu's Note.

² *The Government of India*, p. 45.

³ Both the Indian National Congress and the All-India Muslim League demanded the abolition of the Council of India in their Joint Scheme of Indian Reforms adopted in their respective sessions held at Lucknow in 1916.

has all the advantages behind it of tradition and authority, although they would not debar the readjustment of its work so as to make it possible to introduce what is known as the portfolio system. They think, also, that its constitution may advantageously be modified by the introduction of more Indians into it and by shortening of the period of the service upon it, in order to ensure a continuous flow of fresh experience from India and to relieve Indian members from the necessity of spending so long a period as seven years in England.¹

Whatever justification there might have been for the creation of the Council of India in 1858, and whatever justification there may be for its retention even under the Reforms Scheme, its indefinite continuance cannot be supported. It has stood in the way of useful reform in the past. It has not always exercised with scrupulous care and attention its so-called power of financial veto with regard to the expenditure of Indian revenues. As Professor Keith says in his Minority Report,² 'it is admitted that the evidence shows that, in matters decided by the British Cabinet, the Council of India in the past has felt bound to defer to the superior moral authority of that body, and has *pro tanto* abnegated the unfettered use of the powers conferred by the Government of India Act, 1915 (section 21); minor instances such as the charging to India of the cost of

The Council
and the
expenditure
of Indian
Revenues.

¹ The Joint Select Committee's Report on Clause 31 of the Government of India Bill.

² Para. 36. In the Majority Report also we find :—

'The Council (of India) are by law in a position to obstruct his (i.e. the Secretary of State's) policy, or indeed the policy of His Majesty's Government, by interposing their financial veto if Indian revenues are affected; but in practice they have acknowledged the supremacy of the Imperial Executive by accepting proposals communicated to them as decisions of the Ministry, in so far as those proposals raise issues on which they are legally competent to decide.'—para. 12.

a ball in honour of the Sultan of Turkey suggest that, even in matters not of Cabinet importance, the scrutiny of the Council has fallen short of any high standard of care for Indian interests.' Sir Malcolm Seton, Deputy Under-Secretary of State in the India Office, also writes :¹ Lord George Hamilton² has recorded that the House of Commons has on occasion objected to expenditure being thrown on India which the Secretary of State in Council had accepted as equitable.' Besides, the position of the Council has sometimes made it difficult for it to exercise effective control over the expenditure of Indian revenues. As Sir John Strachey, himself a member of the Council for ten years, says, 'the powers . . . given to the Council in controlling expenditure are, however, far from being as great as at first sight they seem to be, for they can only be exercised in regard to the ordinary business of the administration. Orders involving large expenditure may be given by the Secretary of State without either the consent or the knowledge of the Council.'⁴ Whatever may have been the real character of the control which the Council has hitherto

¹ *The India Office*, p. 69.

² Secretary of State for India from 1895 to 1903.

³ See his *India* (3rd ed.), p. 68.

⁴ 'But this (financial) check,' wrote Sir George Chesney, 'is practically rendered nugatory by the power given to the Secretary of State to deal with business alone in the Secret Department. . . . And thus while the sanction of the majority of that body is required to the granting of a gratuity or a pension of a few shillings a year recommended by the Government of India on behalf of some humble applicant, a Secretary of State may order, and has ordered, military operations to be undertaken by the Government of India, involving an expenditure of millions of money, not only without the sanction, but without even the cognizance of his Council.'—*Indian Polity*, pp. 371–72.

'When the Capital of India was moved from Calcutta to Delhi, a decision which has burdened the Indian finances with a still untermi-nated charge of many millions, the Council at the India Office were not informed, until the matter had already been decided by the Cabinet, when either advice or protest on their part was useless.'—Curzon, *British Government in India*, vol. ii, p. 119.

exercised, or has been allowed to exercise, over the expenditure of the revenues of India, we believe that we are correct in stating that, now since increased financial powers have been conferred upon the Indian legislative bodies and since those powers will be further increased in the immediate future, the usefulness of the Council as a body keeping Indian expenditure within legitimate limits must be of rapidly diminishing importance. The duty of safeguarding Indian interests in financial matters should

The Council, an anachronism.

rest with the Government of India and the Indian Legislature. The Council seems to us to be an anachronism at present, the sooner got rid of, the better for the government of India.¹ Now

that Dominion status has been promised to India, it should be abolished as soon as possible. Let us hope that the day is not far distant when the office of Secretary of State for India will be merged in that of Secretary of State for Dominion Affairs.

The India Office and its organization.

The establishment of the Secretary of State in Council is commonly known as the India Office. It was originally created by the Act of 1858. The officers on the Home establishment both of the East India Company and of the Board of Control formed the

establishment of the first Secretary of State in Council.² He was authorized by the Act to submit, within six months of its commencement, a scheme for his permanent establishment.³ As has been stated before, the Secretary of State

¹ The Council, according to Mr. Ramsay MacDonald, 'is a cumbersome machine of check and counter-check if it has any use at all. It destroys real Parliamentary interest without giving Indian control or expert political advice. . . . It is not government or advice by the expert, but by the official. It is an adjunct to bureaucracy, not to Indian opinion. It is a Civil Service imposed as a check upon a Legislature, and it becomes more and more anomalous as representative institutions in India are established and broadened.'—*The Government of India*, p. 50.

² Section 15 of the Act of 1858.—*Vide The Indian Constitution* by A. R. Iyengar, Appendix III.

³ *Ibid.*

has two Under-Secretaries, one of whom is permanent and the other Parliamentary. Some of his minor duties are delegated to these officers. There are, besides, one Deputy Under-Secretary, and two Assistant Under-Secretaries, one of whom is also the Clerk of the Council.¹ There are in the India Office now several departments: (1) Finance, (2) Military, (3) Political and Secret, (4) Public and Judicial, (5) Economic and Overseas, (6) Services and General, and (7) Public Works.² Some of its previous functions have been transferred to the High Commissioner for India. For each department in the office there are a Secretary and an Assistant Secretary, with a staff of clerks.³ All appointments to the India Office are made by the Secretary of State in Council; but 'junior situations' in it must be filled in accordance with rules relating to appointments to similar situations in the Home Civil Service.⁴ No addition may be made to the establishment of the Secretary of State in Council, or to the salaries of the persons on it, except by an order of the Crown in Council, to be laid before both Houses of Parliament within fourteen days of its issue, or if Parliament is not sitting at that time, then within fourteen days after the next meeting of Parliament.⁵ The Secretary of State in Council may remove, however, any officer or servant belonging to his establishment. The Crown may, by warrant under the Royal Sign Manual, countersigned by the Chancellor of the Exchequer, grant to any officer in the India Office such compensation, superannuation or retiring allowance, or to his legal personal representative such gratuity, as may respectively be granted lawfully to

¹ *Whitaker's Almanack*, 1926, p. 196.

² Besides, there are Accounts and Records departments. Seton, *The India Office*, p. 273; also *Whitaker's Almanack*, 1926.

³ *The Imperial Gazetteer of India*, vol. iv, p. 39.

⁴ Section 17 of the Act.

⁵ *Ibid.*

persons on the establishment of a Secretary of State, or to the personal representatives of such persons.¹

Audit of Indian Accounts in the United Kingdom. Mention may be made in this connection of another officer who does not exactly belong to the establishment of the Secretary of State in Council, but whose functions are too important to be ignored—we mean the auditor of the accounts of the Secretary of State in Council. He is appointed by the Crown by warrant under the Royal Sign Manual, countersigned by the Chancellor of the Exchequer, and holds office during good behaviour.² He is empowered to appoint and remove his assistants. He examines and audits 'the accounts of the receipt, expenditure and disposal in the United Kingdom of all money, stores and property applicable for the purposes of the Government of India Act.'³ The Secretary of State in Council must,⁴ by the officers of his establishment, produce and lay before him all such accounts, accompanied by proper vouchers, and submit to his inspection all books, papers and writings having relation thereto. He may examine any such officer, being in the United Kingdom, in relation to such accounts, and may for that purpose require his presence before him. He must report to the Secretary of State in Council his approval or disapproval of those accounts with such remarks in relation thereto as he thinks fit; and he must specially note in his reports if any money arising out of the revenues of India has been appropriated to purposes other than those to which they are applicable.⁵ Moreover, he must specify therein any defects, inaccuracies or irregularities which may appear in those accounts, or in the authorities, vouchers or documents relating thereto.⁶ Finally, he must lay all his

¹ Section 18 of the Act.

³ *Ibid.*

⁵ *Ibid.*

² Section 27 of *ibid.*

⁴ *Ibid.*

⁶ *Ibid.*

reports before both Houses of Parliament, with the accounts of the year to which they relate.¹

The auditor and his assistants are paid such salaries out of the revenues of India or out of moneys provided by Parliament as the Crown, by warrant countersigned by the Chancellor of the Exchequer, may direct. Besides, they are, in respect of superannuation or retiring allowance or gratuity, in the same position as if they were on the establishment of the Secretary of State in Council.²

Another important functionary closely connected with the Government of India in England is the High Commissioner for India. The appointment of a High Commissioner for India was provided for in the Act of 1919 in pursuance of a recommendation made by the Committee on the Home Administration of Indian Affairs. The Committee stated :³ ' We are satisfied that the time has come for a demarcation between the agency work of the India Office and its political and administrative functions, and that the step would commend itself to all classes of opinion in India as marking a stage towards full Dominion status. Accordingly, we recommend that preliminary action should be taken with a view to the transfer of all agency work to a High Commissioner for India or some similar Indian Governmental representative in London. We suggest that, in the first instance, communications should be entered into with the Government of India with the object of transferring to the direct control of that Government the Stores Department and also the Accountant-General's Department (subject to any necessary reservations, including the retention of work connected with higher finance), and that the Government of India should at the same time be invited to make suggestions for

¹ Section 27 of the Act.

³ Para. 29 of the Majority Report.

² *Ibid*

the transfer to their control of any other agency business, such as that transacted by the Indian Students Department.' It has accordingly been provided by Section 29A of the Government of India Act that the Crown may by Order in Council make provision for the appointment of a High Commissioner for India in the United Kingdom, and for the pay, pension, powers, duties and conditions of employment of the High Commissioner and of his assistants; and that the Order may further provide for delegating to the High Commissioner any of the powers previously exercised by the Secretary of State or the Secretary of State in Council in relation to making contracts, and may prescribe the conditions under which he must act on behalf of the Governor-General in Council or any local Government.

His appoint-
ment. An Order of the Crown in Council, dated August 13th, 1920, has since been published.¹ Under it the Governor-General in Council may from time to time appoint, with the approval of the Secretary of State in Council, some person to be High Commissioner for India in the United Kingdom, and may with the like sanction remove or suspend any such person and appoint another in his place. The High Commissioner is to hold office for five years and is eligible for reappointment. The Governor-General in Council may grant him leave of absence at any time and appoint some person to act in his place during his absence. He is to receive a salary of three thousand pounds a year payable out of the revenues of India. He is not to be entitled to any pension in respect of his services as High Commissioner. But if a person in the Civil Service of the Crown in India is appointed High Commissioner, he may reckon his period of service as High Commissioner for the purpose of earning any

¹ See *The Gazette of India*, October 2, 1920, pp. 1881-82.

pension to which he is ordinarily entitled as a member of the Civil Service. He 'enjoys¹ the same status as his Dominion colleagues.' In the exercise of his powers and performance of his duties he will be subject to the direction and control of the Governor-General in Council.

Subject to the provisions of the Government of India Act, the High Commissioner must—
His duties.

(1) act as agent of the Governor-General in Council in the United Kingdom ;

(2) act on behalf of local Governments in India for such purposes and in such cases as the Governor-General in Council may prescribe ; and

(3) conduct such business relating to the government of India hitherto conducted in the office of the Secretary of State in Council, as may be assigned to him by the Secretary of State in Council.

He is empowered to make and sign, and if necessary seal, contracts in the name and on behalf of the Secretary of State in Council. He can appoint his own assistants. He must lay before the auditor of the accounts of the Secretary of State in Council accounts of the receipt, expenditure and disposal in the United Kingdom of all money, stores and property by him, accompanied by proper vouchers, and submit to the auditor all necessary papers having relation thereto ; and he must, as soon as may be, transmit to the Governor-General in Council a copy of the report of the auditor on those accounts.

Action was taken under the Order shortly after its publication. On October 1st, 1920, the Stores Department, the Indian Students Department and certain minor matters were transferred from the India Office to the High Commissioner.² Further transfers of work were made on

¹ Seton, *The India Office*, p. 258.

² Report of the Indian Retrenchment Committee, 1922-23, p. 211.

April 1st, 1921, and on April 1st, 1922.¹ But the whole of the agency work of the India Office has not yet been transferred to the High Commissioner.² The Indian Trade Commissioner in London belongs to his staff. We may mention here that Sir William Meyer was appointed the first High Commissioner for India with effect from October 1st, 1920. He³ was succeeded by Sir Dadiba Dalal of Bombay. On the latter's resignation in 1924, Sir Atul Chandra Chatterjee, K.C.I.E., I.C.S., was appointed High Commissioner.⁴ *and was succeeded by Sir C.N. Mitter*

Ever since 1858 till the Reforms Scheme came into operation, the salaries of the Secretary of State for India, of his Under-Secretaries and of the members of his Council had been paid out of the revenues of India.⁵ Similarly, the cost of the India Office had been paid out of Indian revenues with this difference only that, in pursuance of a recommendation of the Welby Commission (1895-1900),

Cost of the
Home
Administra-
tion: original
arrangement.

¹ Report of the Indian Retrenchment Committee, 1922-23, p. 211.

The High Commissioner arranges for the probationary training of the officers of the All-India Services and 'their passage to India, and to his Office has been transferred all the work connected with the payment of civil leave allowances and pensions, as well as the arrangements for civil officers sent to Europe for courses of special study. . . . Amongst the functions that he has taken over comes the general supervision of India's participation in Imperial and International Exhibitions'.—Seton, *The India Office*, p. 259.

² *Ibid.*, pp. 257-59; also Rep., Ind. Ret. Com., p. 225.

³ After his death in 1922 Mr. J. W. Bhole, I.C.S., acted as High Commissioner for six months.—Seton, p. 258.

⁴ He was a member of the Viceroy's Executive Council at the time of his appointment to the office.

⁵ The salaries of the Secretary of State, the Parliamentary Under-Secretary and the permanent Under-Secretary are, and have been in the past, £5,000, £1,500 and £2,000 a year respectively. In addition to his salary, the Secretary of State occupies, free of rent, the India Office building which has been built and maintained out of the revenues of India and for the repairs of which the Government of India has to pay. . . . (*Vide* Mr. (now Sir) Purshotamdas Thakurdas's 'Supplementary Note on India Office Expenditure,' para. 13, *Report of the Indian Retrenchment Committee*, p. 230.)

the British Treasury had latterly contributed £40,000¹ a year towards it. The inequity of this arrangement becomes obvious when we remember that the salary of the Colonial Secretary and the cost of his establishment have all along been paid by England. The authors of the Joint Report recommended that the Secretary of State's salary, like that of all other Ministers of the Crown, should be defrayed from Home revenues and voted annually by Parliament.² 'This will enable,' they stated,³ 'any live

The Joint
Report on
the question
of cost.

questions of Indian administration to be discussed by the House of Commons in Committee of Supply. On previous occasions when this proposal has been made it has encountered the objection that it would result in matters of Indian administration being treated as party questions. Without entering into speculations as to the future of parties in Parliament we do not see why this result would follow from such a debate more than from the existing debate on the budget' 'It might be thought to follow,' they continued,⁴ 'that the whole charges of the India Office establishment should similarly be transferred to the Home Exchequer; but this matter is complicated by a series of past transactions, and by the amount of agency work which the India Office does on behalf of the Government of India; and we advise that our proposed committee upon the India Office organization should examine it and, taking these factors into consideration, determine which of the various India Office charges should be so transferred, and which can legitimately be retained as a burden on Indian revenues.'

In accordance with this recommendation the Crewe

¹ This contribution used to be made indirectly through some adjustments between the India Office and the Treasury in respect of certain divisible charges.—See *Legislative Assembly Debates*, January 16, 1923, pp. 1078-79; also the Inchcape Committee's Report, p. 239. For the Welby Commission, see page 316.

² *Montagu-Chelmsford Report*, para. 294.

³ *Ibid.*

⁴ *Ibid.*