the highest importance to the principle that, when once opinions have been freely exchanged and the last word has been said, there ought then to be no doubt whatever as to where the responsibility for the decision lies. Therefore, in the opinion of the Committee, after such consultation, and when it is clear that the decision lies within the jurisdiction of one or other half of the Government, that decision in respect of a reserved subject should be recorded separately by the executive council, and in respect of a transferred subject by the ministers, and all acts and proceedings of the Government should state in definite terms on whom the responsibility for the decision rests. It will not always, however, be clear, otherwise than in a purely departmental and technical fashion, with whom the jurisdiction lies in the case of questions of common interest. In such cases it will be inevitable for the Governor to occupy the position of informal arbitrator between the two parts of his administration; and it will equally be his duty to see that a decision arrived at on one side of his Government is followed by such consequential action on the other side as may be necessary to make the policy effective and homogeneous.

'In the debates of the legislative council members of the executive council should act together and ministers should act together, but members of the executive council and ministers should not oppose each other by speech or vote; members of the executive council should not be required to support either by speech or vote proposals of ministers of which they do not approve, nor should ministers be required to support by speech or vote proposals of the executive council of which they do not approve; they should be free to speak and vote for each other's proposals when they are in agreement with them. All other official members of the legislative council should be free to speak and vote as they choose.'

Again :—

'. . . . They (i.e., the Committee) wish to place in the forefront of the Report their opinion that they see no reason why the relations (between the two parts of the provincial government) should not be harmonious and mutually advantageous. They regard it as of the highest importance that the Governor should foster the habit of free consultation between both halves of his government, and indeed that he should insist upon it in all important matters of common interest. He will thus ensure that ministers will contribute their knowledge of the people's wishes and susceptibilities, and the members of his Executive Council their administrative experience, to the joint wisdom of the government. But while the Committee anticipate much advantage from amicable and, as far as possible, spontaneous association for purposes of deliberation, they would not allow it to confuse the duties or obscure the separate responsibility which will rest on the two parts of the administration. Each side of the government will advise and assist the other; neither will control or impede the other. The responsibility for administrative and legislative action in their own field will be fixed beyond possibility of doubt on ministers and on the majorities of the provincial legislatures which support them; and they will be given adequate power to fulfil their charge. Similarly, within that field for which he remains accountable to Parliament, the responsibility for action must be fixed on the Governor in Council, and he must possess unfailing means for the discharge of his duties. Finally, behind the provincial authorities stands the Government of India.[1]'

We may also note here the observations of the

[1] The Joint Select Committee's Report, para. 5.

Committee[1] on the position of the Governor in the Government of his province :—

Position of the Governor in the Government of his province.

'The position of the Governor will . . . be one of great responsibility and difficulty, and also of great opportunity and honour. He may have to hold the balance between divergent policies and different ideals, and to prevent discord and friction. It will also be for him to help with sympathy and courage the popular side of his Government in their new responsibilities. He should never hesitate to point out to ministers what he thinks is the right course or to warn them if he thinks they are taking the wrong course. But if, after hearing all the arguments, ministers should decide not to adopt his advice, then in the opinion of the Committee, the Governor should ordinarily allow ministers to have their way, fixing the responsibility upon them, even if it may subsequently be necessary for him to veto any particular piece of legislation. It is not possible but that in India, as in all other countries, mistakes will be made by ministers, acting with the approval of a majority of the legislative council, but there is no way of learning except through experience and by the realization of responsibility.'

Again, the Royal Instructions[2] to the Governor lay down :—

'Inasmuch as certain matters have been reserved for the administration according to law of the Governor in Council in respect of which the authority of our Governor-General in Council shall remain unimpaired, while certain other matters have been transferred to the administration of the Governor acting with a Minister, it will be for you so to regulate the business of the Government of the province that, so far as may be possible, the responsibility

[1] The Joint Select Committee's Report on Clause 6, G. I. Bill, 1919.
[2] See Appendix M.

for each of these respective classes of matters may be kept clear and distinct.

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

Matters affecting both Reserved and Transferred subjects.

Finally, in order as it were to give to some of the proposals quoted above the force of law, it has been laid down in Devolution Rule 9[1] that, if a matter appears to the Governor to affect substantially the administration both of a Reserved and of a Transferred subject, and there is disagreement between the member of the Executive Council and the Minister concerned as to the action to be taken, it shall be the duty of the Governor, after due consideration of the advice tendered to him, to direct in which department the decision as to such action is to be given. If, however, there is such a difference of opinion on an important matter, it must, in so far as circumstances admit, be considered by the Governor with his Executive Council and his Ministers together, before any such direction is given. Further, in giving his direction, the Governor may, if he thinks fit, indicate the nature of the action which should in his judgment be taken. But the final decision must be arrived at by the Governor in Council or by the Governor and Minister or [2]

[1] See Appendix B.

[2] Commenting on this Rule, the Joint Select Committee stated :—

'The rule (9) as drafted by the Government of India correctly recognizes the corporate responsibility of Ministers and of the Executive Councillors for the purposes of discussion, but the Committee think it important that when the decision is left to the Ministerial portion of the Government the corporate responsibility of Ministers should not be obscured. They do not intend to imply that, in their opinion, in every case in which an order is passed in a transferred department the order should receive the approval of all the ministers ; such a

Ministers, according as the department to which it has been committed is a department dealing with Reserved or a department dealing with Transferred subjects.

Allocation of revenues for the administration of Transferred subjects.

On the more difficult question of the distribution of the provincial revenues and balances between the two sides of the provincial Governments, the Joint Select Committee made the following instructive observations [1] :—

'They are confident that the problem can readily be solved by the simple process of common sense and reasonable give-and-take, but they are aware that this question might, in certain circumstances, become the cause of much friction in the provincial government, and they are of opinion that the rules governing the allocation of these revenues and balances should be framed so as to make the existence of such friction impossible. They advise that, if the Governor, in the course of preparing either his first or any subsequent budget, finds that there is likely to be a serious or protracted difference of opinion between the executive council and his ministers on this subject, he should be empowered at once to make an allocation of revenue and balances between the reserved and transferred subjects, which should continue for at least the whole life of the existing legislative council. The Committee do not endorse the suggestion that certain sources of revenue should be allocated to reserved, and certain sources to transferred subjects, but they recommend that the Governor should allocate a definite proportion of the revenue, say, by

procedure would obviously militate against the expeditious disposal of business, and against the accepted canons of departmental responsibility. But in cases which are of sufficient importance to have called for discussion by the whole Government, they are clearly of opinion that the final decision should be that of one or other portion of the Government as a whole.'—Second Report on the Government of India Act, 1919 (Draft Rules).

[1] The Joint Select Committee's Report on Clause 1 of the Government of India Bill, 1919.

way of illustration, two-thirds to reserved and one-third to transferred subjects, and similarly a proportion, though not necessarily the same fraction, of the balances. If the Governor desires assistance in making the allocation, he should be allowed at his discretion to refer the question to be decided to such authority as the Governor-General shall appoint. Further, the Committee are of opinion that it should be laid down from the first that, until an agreement which both sides of the Government will equally support, has been reached, or until an allocation has been made by the Governor, the total provisions of the different expenditure heads in the budget of the province for the preceding financial year shall hold good.

'The Committee desire that the relation of the two sides of the Government in this matter, as in all others, should be of such mutual sympathy that each will be able to assist and influence for the common good the work of the other, but not to exercise control over it. The budget should not be capable of being used as a means for enabling ministers or a majority of the legislative council to direct the policy of reserved subjects; but on the other hand the executive council should be helpful to ministers in their desire to develop the departments entrusted to their care. On the Governor personally will devolve the task of holding the balance between the legitimate needs of both sets of his advisers.'

In accordance with these proposals of the Joint Select Committee, it has been laid down in the Devolution Rules [1] (31–35) that the expenditure for the administration of both Reserved and Transferred subjects must, in the first instance, be a charge on the general revenues and balances of each province, and the framing of proposals for the apportionment of funds between Transferred and Reserved

[1] See Appendix B.

departments, respectively, whether at the time of the preparation of the Budget or at any other time, will be a matter for agreement between the two sides of the provincial Government. If, however, at the time of any such apportionment of funds the Governor is satisfied that there is no hope of agreement between them within a reasonable time, 'he may, by order in writing, allocate the revenues and balances of the province between Reserved and Transferred subjects, by specifying the fractional proportions of the revenues and balances which shall be assigned to each class of subjects.'

Any such order of allocation 'may be made by the Governor, either in accordance with his own discretion, or in accordance with the report of an authority to be appointed by the Governor-General in this behalf on the application of the Governor.'

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

'Provided that the Governor may at any time, if his Executive Council and ministers so desire, revoke an order of allocation or make such other allocation as has been agreed upon by them:

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

Every such order of allocation must provide that, 'if any increase of revenue accrues during the period of the order on account of the imposition of fresh taxation, that increase, unless the Legislature otherwise directs, must be allocated in aid of that part of the Government by which the taxation is initiated.'

Finally, if at the time of the preparation of any budget no agreement or allocation 'has been arrived at, the budget shall be prepared on the basis of the aggregate grants, respectively provided for the Reserved and Transferred subjects in the budget of the year about to expire.'

Regulation of the exercise of authority over the members of the public services.

The authority vested in the local Government over officers of the public services employed in a Governor's province is exercised, in the case of officers serving in a department dealing with Reserved subjects, by the Governor in Council, and, in the case of officers serving in a department dealing with Transferred subjects, by the Governor acting with the Minister in charge of the department.[1] But no order affecting emoluments or pensions, no order of formal censure, and no order on a memorial can be passed to the disadvantage of an officer of an all-India or provincial service without the personal concurrence of the Governor; nor can an order for the posting of an officer of an all-India service be made without the personal concurrence of the Governor.[2] Though these privileges are equally enjoyed by the members of the public services serving under both the sides of the provincial Government, their existence has made the position of Ministers specially difficult. The latter, unlike the members of the Executive Council, are held accountable to the Legislative Council for the administration of the subjects committed to their charge; but their powers over

[1] Devolution Rule 10; see Appendix B.

[2] *Ibid.*

This Rule has been made obviously on the advice of the Joint Select Committee which stated in its Report as follows:—

'In the provinces, officers serving in a reserved department will be controlled by the Governor in Council, and in a transferred department by the Governor acting with ministers, but in both cases alike the personal concurrence of the Governor should be regarded as essential in the case of all orders of any importance prejudicially affecting the position or prospects of officers appointed by the Secretary of State.'—Report on Clause 36, G. I. Bill, 1919.

officers acting under them are so circumscribed that they cannot, of their own authority, take even the most ordinary disciplinary action against any of them, if ever they consider it necessary. They have to seek the aid of the Governor before an undesirable subordinate can be simply transferred from one place to another. This limitation on the powers of Ministers in relation to their subordinates has largely contributed in some provinces to the unpopularity of the dyarchical [1] system of Government.

If an officer performs duties both in relation to Reserved and Transferred subjects, the Governor will decide in which department he is to be deemed to be serving.

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

The Governor-General in Council may declare that any road or other means of communication is of military importance, and prescibe in respect of it the conditions subject to which it should be constructed or maintained, including the amount of expenditure to be incurred from time to time upon such construction and maintenance by the Governor-General in Council and by the local Government respectively.[2]

Provincial Finance Department and its functions.

There is in each Governor's province a Finance Department controlled by a member of the Executive Council.[3] Immediately subordinate to the member there is a Financial Secretary.

If the Ministers so desire, the Governor must, after consultation with them, appoint a Financial Adviser whose duty will be to assist them in the preparation of proposals for expenditure, and generally to advise them

[1] See chap. xxv *post.* [2] Devolution Rule 12a.
[3] *Ibid.*, 36 (1).

in regard to matters relating to finance.[1] The Finance Department may delegate to the Financial Adviser all or any of its functions.[2]

The functions of the Finance Department are as follows[3] :—

(1) It is in charge of the account relating to loans granted by the local Government, and advises on the financial aspect of all transactions relating to such loans ;

(2) it is responsible for the safety and proper employment of the famine relief fund;

(3) it examines and reports on all proposals for the increase or reduction of taxation ;

(4) it examines and reports on all proposals for borrowing by the local Government, takes all necessary steps for raising such loans as have been duly authorized and is in charge of all matters relating to the service of loans ;

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

(6) it prepares an estimate of the total receipts and disbursements of the province in each year, and is responsible during the year for watching the state of the balances of the local Government;

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

(*a*) it prepares the statement of estimated revenue and expenditure which is placed before the Legislative Council every year and any supplementary estimates or demands for excess grants which may be submitted to the vote of the Council;

[1] Devolution Rule 36 (2). [2] *Ibid.*, 36 (3).
[3] *Ibid.*, 37.

(*b*) it obtains, for the purpose of such preparation, materials from the different departments of the Government on which its estimates are to be based, and is responsible for the correctness of those estimates;

(*c*) it examines and advises on all schemes of new expenditure for which it is proposed to make provision in the estimates, and must refuse to provide in the estimates for any scheme which has not been so examined;

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

(9) it lays the audit and appropriation reports before the Committee on Public Accounts and brings to its notice 'all expenditure which has not been duly authorized and any financial irregularities'; and

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

Besides, after grants[1] have been voted by the Legislative Council, the Finance Department has power to sanction any reappropriation within a grant from one major, minor or subordinate head to another. The Member or Minister in charge of a department, on the other hand, can authorize reappropriation only within very narrow limits. It must be within a grant between heads subordinate to a minor head and must not 'involve undertaking a recurring liability.'

No expenditure[2] on any of the non-votable heads of provincial expenditure, in excess of the estimate

[1] Devolution Rule 38. [2] *Ibid.*, 39.

for that head shown in the budget of the year, can be incurred without previous consultation with the Finance Department. No office[1] may be added to, or withdrawn from, the public service in the province, and the emoluments of no post may be varied, except after consultation with the Finance Department. Nor can any allowance or special or personal pay be sanctioned for any post or class of posts or any Government servant without such previous consultation.[2]

Again, the department[3] must be consulted before any grant of land or assignment of land revenue can be made. But it need not be consulted when the grant is made under the ordinary revenue rules of the province. It must also be consulted before any concession, grant or lease of mineral or forest rights, or right to water power can be given to anybody. No proposal involving an abandonment of revenue for which credit has been taken in the budget, or involving expenditure for which no provision has been made in the budget, can be submitted[4] to the local Government or to the Legislative Council without a previous reference to the Finance Department.

It has been laid down, however, that wherever previous consultation with the Finance Department is required, it is open to that department to prescribe, by general or special orders, cases in which its assent may be presumed to have been given.[5]

It may no doubt surprise many that the Finance Department should have so much power and that the other departments of the Government should be so helplessly dependent on it. But it must be borne in mind that it is this department which is primarily responsible for finding money for them and also for the protection of public revenues against that

[1] Devolution Rule 40. [2] *Ibid.*, 41.
[3] *Ibid.*, 42. [4] *Ibid.*, 43. [5] *Ibid.*, 45.

extravagance to which most of the spending departments of every Government are more or less prone. The powers of the Finance Department will be very little affected when complete provincial autonomy will be granted. Because of the peculiar nature of its duties, this department is seldom popular in any country. Speaking of the Treasury in England, President Lowell [1] says, 'There is indeed one department which is continually brought into contact—one might almost say conflict—with all the others; that is the Treasury. Any vigorous branch of the public service always sees excellent reasons for increasing its expenditure, and proposes to do so without much regard for the needs of the other branches; while the Chancellor of the Exchequer, who is obliged to find the money, must strive to restrict the aggregate outlay. If he did not, the expenditure of the government would certainly be extravagant. . . . Being placed in such a relation to his colleagues, it is not unnatural that the Chancellor of the Exchequer should often differ with them. As Gladstone notes in his diary in 1864, "Estimates always settled at the dagger's point."'

We propose to deal in a subsequent chapter with the complaint that is often made that the Finance Department, being under an Executive Councillor, favours the Reserved departments of the provincial Government at the cost of the Transferred departments.

Agency employment of local Governments.

Under Devolution Rule 46, the Governor-General in Council may use the agency of the Governor in Council of any province in the administration of central subjects in so far as such agency may be found convenient. The cost of an establishment exclusively employed on the business of agency must be borne by the central Government. If, however, a joint establishment is employed upon the administration of

[1] *The Government of England*, vol. i, pp. 75–76.

central and provincial subjects, the cost of such establishment may be distributed in such manner as the Governor-General in Council and the Governor in Council concerned may agree, or, in the case of disagreement, in such manner as may be prescribed by the Secretary of State in Council. If, in respect of a central subject, powers have been conferred by or under any law upon a Local Government, such powers must be exercised by the Governor in Council.[1]

Classification of the functions of Government, how made.

One of the chief merits of the Government of India Act of 1919 is its elasticity. The Act has simply outlined the main features of the constitutional changes introduced by it, but has left those changes to be worked out in detail in the form of Rules.[2] Considerable alteration in the existing structure of our Government may be effected, if necessary, by Rules framed under the Act, without necessitating any Parliamentary enactment. The Rules can be made, except where otherwise stated in the Act, by the Governor-General in Council with the sanction of the Secretary of State in Council; but they must be approved by both Houses of Parliament.[3] The classification of the functions of Government into 'central' and 'provincial', and the division, again, of the provincial subjects into 'Reserved' and 'Transferred', have been made by such Rules under Section 45A of the Government of India Act (i.e., Section 1 of the Act of 1919).[4] And further transfers to the list of Transferred subjects of subjects which now belong to the Reserved list in any province can be made by similar Rules.[5]

How further transfers can take place.

[1] Devolution Rule 46A.

[2] See Memo. by Mr. Montagu about the Government of India Bill 1919; Cmd., 175, p. 1.

[3] See pp. 1-2 *ante*.

[4] See Devolution Rules 3 and 6.—App. B.

[5] We may draw in this connection the attention of the reader to a very interesting debate in the Bengal Legislative Council on a resolution moved by Dr. Pramathanath Banerji, for the amendment

Revocation or suspension of transfer.

On the other hand, the Governor-General in Council may, by notification in *The Gazette of India*, with the previous sanction of the Secretary of State in Council, revoke or suspend for such period as he may think necessary the transfer of all or any provincial subjects in any province, and upon such revocation or during such suspension the subjects must cease to be Transferred subjects.[1]

Constitution of a new Governor's province.

A new Governor's province may be constituted under the Government of India Act, if necessary. Under Section 52A (1) of the Act, the Governor-General in Council may, after obtaining an expression of opinion from the local Government and the local legislature affected, by notification, with the approval of the Crown previously signified by the Secretary of State in Council, constitute[2] a new Governor's province, or place part of a Governor's province under a Deputy-Governor to be appointed by the Governor-General, and may in such case apply, with such modifications as appear necessary or desirable, all or any of the provisions of the Act 'relating to Governors' provinces, or provinces under a Lieutenant-Governor or Chief Commissioner, to any such new province or part of a province'.

Provision as to backward tracts.

The Governor-General in Council may also declare, under Section 52A (2) of the Act, any territory in British India to be a 'backward tract', and may, by notification, with such sanction as in the preceding case, direct that the Act will apply to that territory, subject to such exceptions and modifications

of Rule 6 and Schedule II of the Devolution Rules. The debate took place on February 19, 1924.—See *Bengal Legislative Council Proceedings*, February 18 to 20, 1924, vol. xiv, No. 2, pp. 96–125.

[1] Devolution Rule 6.

[2] The Province of Burma was constituted a Governor's province under this Section. See page 54*n*.—*Vide The Government of India Act* (published by the Government of India), pp. 251–52.

as may be prescribed in the notification. He may further direct that any Act of the Indian Legislature will not apply to that territory or any part thereof, or will apply to it or to any part of it, subject to such exceptions or modifications as the Governor-General thinks fit, or may authorize the Governor in Council concerned to give similar directions as regards any Act of the local legislature.

It may be noted here that, so far as Bengal is concerned, this Section has been applied to the Hill Tracts of Chittagong and the Darjeeling District.[1]

Lieutenant-Governorships.

Before we conclude this chapter we may say a word or two about Lieutenant-Governorships and other provinces. The Governor-General in Council may, with the sanction of the Crown previously signified by the Secretary of State in Council, constitute a new province under a Lieutenant-Governor.[2] He may also, with the approval of the Secretary of State in Council, create a Council in any province under a Lieutenant-Governor, for the purpose of assisting the latter in the executive government of the province.[3] He is to determine the exact number of the members of such a Council within the maximum of four and the qualifications to be required of them.[4] He is also empowered to make provision for the procedure to be adopted at a meeting of a Lieutenant-Governor's Executive Council.[5]

As has been seen before, the power of appointing Lieutenant-Governors or the members of their Executive Councils is vested in the Governor-General, subject to the approval of the Crown. At present there is no province in British India under a Lieutenant-Governor.

[1] See Notification No. 2-G, Delhi, January 3, 1921. *Vide The Bengal Legislative Council Manual*, 1921, p. 222.
[2] Section 53 (2) of the Act.
[3] Section 55 (1) of the Act. The action of the Governor-General in Council in this respect has to be later on approved by both Houses of Parliament. [4] *Ibid.* [5] *Ibid.*

Chief Commissionerships

The Governor-General in Council is also empowered to take, with the sanction of the Secretary of State, any part of British India under his immediate authority and management, and thereupon to give all necessary orders and directions respecting its administration, by placing it under a Chief Commissioner or by otherwise providing for its administration.[1]

The following provinces[2] are now administered by Chief Commissioners, who are appointed by the Governor-General in Council, namely :—

The North-West Frontier Province, British Baluchistan, Delhi, Ajmer-Merwara, Coorg, the Andaman and Nicobar Islands and the Pargana of Manpur.[3]

The Chief Commissionerships are 'under the immediate authority and management of the Governor-General in Council, who is competent to give all necessary orders and directions' respecting their administration.[4] The Chief Commissioners of British Baluchistan and the North-West Frontier Province are at the same time Agents to the Governor-General 'for dealing with tribes and territories outside British India.'[5] The Agent to the Governor-General in Rajputana and the Resident in Mysore are *ex officio* the Chief Commissioners of Ajmer-Merwara and Coorg respectively, and the Superintendent of the Penal Settlement of Port Blair is the Chief Commissioner of the Andaman and Nicober Islands.[6] The Agent to the Governor-General in Central India is the Chief Commissioner of the Pargana of Manpur. Coorg, Delhi and the Andamans are under the Home Department of the Government of India,[7] while the other Chief Commissionerships,

[1] Section 59 of the Act. [2] Section 58 of the Act.
[3] See page 55 *ante* ; also *The Government of India Act* (published by the Government of India), p. 253.
[4] *Imperial Gazetteer of India*, vol. iv, p. 32.
[5] *The Fifth Decennial Report*, p. 56. [6] *Ibid.*
[7] The Joint Report, para. 44.

as has been seen before, are administered through its Foreign and Political Department.

Legislative Councils in Lieutenant-Governors' and Chief Commissioners' provinces, how constituted.

Under the Act, a Legislative Council may be constituted in any Lieutenant-Governorship or Chief Commissionership by the Governor-General in Council with the sanction of the Crown previously signified by the Secretary of State in Council,[1] and also Rules may be made in the usual way,[2] subject to the final approval of Parliament, providing for the constitution of such a Council.[3] But it is distinctly laid down[4] in the Act that the number of members nominated or elected to the Legislative Council of a Lieutenant-Governor must not exceed one hundred, and that at least one-third of the persons nominated or elected to the Legislative Council of a Lieutenant-Governor or Chief Commissioner must be non-officials.

Their functions.

The functions[5] of the Legislative Council of a Lieutenant-Governor's or Chief Commissioner's province must ordinarily be restricted to legislation and to the alteration of the Rules for the conduct of business in the Council. But the local Government may, with the sanction of the Governor-General in Council, make Rules providing for the discussion by the Council of the annual financial statement of the Government and of any matter of general public interest, and for the asking of questions, under such conditions and restrictions as may be prescribed in the Rules. Such Rules must be laid before both Houses of Parliament as soon as may be after they are made, and must not be subject to repeal or alteration by the Indian Legislature or by the local Legislature.

Except Coorg none of the Chief Commissionerships have any Legislative Council at present.

[1] Sec. 77 of the Act. [2] See page 2 *ante*. [3] Sec. 76 of the Act.
[4] *Ibid*. [5] Sec. 80 of the Act.

CHAPTER XXII

THE PUBLIC SERVICES [1] IN INDIA

The Joint Report and the civil services in India—The civil services and their rights and privileges—The Joint Select Committee on the civil services—Public Service Commission—The Lee Commission on the Public Service Commission—Financial Control—The Indian Civil Service—Rules for admission to the Indian Civil Service—Indians in the Indian Civil Service—Provincial and Subordinate Services.

The Joint Report and the civil services in India.

We propose to deal in this chapter with the present constitutional position of the civil services in India. Before the Reforms the regulation of the services was 'to a great extent uncodified or codified only by executive orders. The duty of obedience by the subordinate officer and of protection by the superior officer was unwritten law.' [2] The authors of the Joint Report proposed [3] that any public servant, whatever the Government under which he might be employed, should be properly supported and protected in the legitimate exercise of his functions; and that any rights and privileges guaranteed or implied in the conditions of his appointment should be secured to him. No changes that would occur should be allowed to impair the power of the Government of India or of the Governor in Council to secure these essential requirements. In pursuance of these proposals, the Government of India recommended that the main rights and duties of the services in India should be reduced to statutory form, in so far as they were

[1] See in this connection paras. 313–27 of the Joint Report.

[2] Para. 44 of the Government of India's *First Despatch on Indian Constitutional Reforms*, dated March 5th, 1919.

[3] Para. 325 of the Joint Report.

not already prescribed by law or rule.[1] Section 96B of the Government of India Act has made provision to this effect.

The civil services and their rights and privileges.

The Secretary of State in Council has been empowered by this Section to make, with the concurrence of the majority of votes at a meeting of his Council, Rules[2] 'for regulating the classification of the civil services in India, the methods of their recruitment, their conditions of service, pay and allowances, and discipline and conduct.'[3] He may by such Rules delegate, to such extent and in respect of such matters as he may prescribe, the power of making Rules to the Government of India or to local Governments, or authorize the Indian Legislature or local Legislatures

[1] See para. 44 of the *First Despatch on Indian Constitutional Reforms*; also Mr. Montagu's Memorandum, Part iv.

[2] See for such Rules pp. 85–90 of *Report of the Royal Commission on the Superior Civil Services in India*, 1924.

[3] For instance, under the existing Rules, 'a local Government may, for good and sufficient reasons—

(1) censure,
(2) reduce to a lower post,
(3) withhold promotion from, or
(4) suspend from his office,

any officer of an all-India Service:

Provided that no head of a department appointed with the approval of the Governor-General in Council shall be reduced to any lower post without the sanction of the Governor-General in Council'.—See *ibid.*, p. 86.

Similarly, subject to the provisions of any law for the time being in force, 'a local Government may, for good and sufficient reasons—

(1) censure,
(2) withhold promotion from,
(3) reduce to a lower post,
(4) suspend,
(5) remove, or
(6) dismiss,

any officer holding a post in a provincial or subordinate service or a special appointment.' *Ibid.*, p. 87. (*See also App.* T, *Part III*).

It is provided, however, that every order of dismissal, removal or reduction must, except when it is based on facts or conclusions established at a judicial trial, or when the officer concerned has absconded, be preceded by a properly recorded departmental enquiry. For further details, see *ibid.*, page 87; also *The Government of India Act* (published by the Government of India), pp. 229–41.

to make laws regulating the public services. But a person appointed by him to the civil service of the Crown in India before the Act of 1919 came into operation will retain under it all his pre-existing or 'accruing [1] rights.'[2]

The right to pensions and the scale and conditions of pensions of all persons appointed by the Secretary of State in Council to the civil service of the Crown in India are to be regulated in accordance with the Rules which were in force

[1] The expression 'accruing rights' has given rise to a considerable amount of controversy. According to the Law Officers of the Crown, the expression means 'all rights to which members of the Civil Services are entitled, whether by statute, or by rule having statutory force, or by regulation in force at the time of their entry into service. They do not, however, include prospects of promotion, except in cases where the promotion is no more than advancement by seniority to increased pay, as in the case of the various appointments borne upon the ordinary lists of time-scales of pay. In particular, they do not apply to general expectations of possible appointment to offices, such as those of Commissioner of a Division, which are not included in the ordinary time-scale lists, and the filling of which involves selection by merit . . . The abolition of such appointments would give rise to no claims to compensation except to persons who were actually holding them at the time of their abolition . . . No method of filling such appointments which is not inconsistent with the Statute, even though it reduced the expectations of members of a particular service, would give rise to any claim to compensation on the part of any person whose actual tenure of an appointment was not thereby affected. . . .'—*The Despatch of the Secretary of State*, dated April 26, 1923; see para 81 of the Lee Commission's Report.

The civil services, on the other hand, 'claim that whatever may be the legal interpretation of the words "existing or accruing rights", the intention of the proviso was to secure to them their prospects of promotion to all higher posts existing at the time the Act was passed, or alternatively to secure for them compensation for the loss of such prospects through the abolition of these appointments'.—Para. 82 of the Lee Commission's Report.

Commenting on this attitude of the services, Sir Tej Bahadur Sapru rightly says, '. . . . The claim of the services seems to be hardly reasonable. For, if that were well-founded, no single higher post existing at the time the Act was passed could be abolished however strong the justification for such abolition might be; and that would be scarcely consistent with an intention to give real Responsible Government'.—*The Indian Constitution, A Note on its Working*, p. 116; published at Adyar, Madras.

See in this connection also Section 144 of South Africa Act, 1909.

[2] Or he will receive such compensation for the loss of any of them as the Secretary of State in Council may consider just and equitable.

at the time of the passing of the Act of 1919. Any such Rules may be amended by the Secretary of State in Council with the concurrence of the majority of votes at a meeting of his Council; but no such amendment can adversely affect the pension of any member of the service appointed before the date of the amendment[1]. For the removal of all doubts, it has further been provided in the Government of India Act that all Rules or other provisions relating to the civil service of the Crown in India, which were in force at the time of the passing of the Act of 1919, will continue to remain in force under the Reforms until they are revoked or amended by Rules or laws made under the Act.

Subject to the provisions of the Government of India Act and of the Rules made thereunder, every person in the civil service of the Crown in India holds office during the pleasure[2] of the Crown, and may be employed in any manner by any proper authority within the scope of his duty. But no person in that service may be dismissed by any authority subordinate to that by which he was appointed.[3] The Secretary of State in Council may, except in so far as he has otherwise provided by Rules, reinstate in that service any person who has been dismissed. Again, it is provided in the Act[4] that 'if any person appointed by the Secretary of State in Council thinks himself wronged by an order of an official superior in a Governor's province, and on due application made to that superior does not receive the redress to which he may consider himself entitled, he may, without prejudice to any other right of redress, complain to the Governor of the province in order to obtain justice.' And the Governor is directed by the Act 'to examine such complaint and require such action to be taken thereon as may appear to him to be just

[1] Section 96B (3) of the Act.
[2] But in practice, during good behaviour.
[3] Section 96B (1) of the Act.
[4] *Ibid*

and equitable.' As has been stated before, the Royal Instructions to the Governor also require him to safeguard all members of the public services employed in his province in the legitimate exercise of their functions, and in the enjoyment of all recognized rights and privileges, and to see that his Government orders all things justly and reasonably in their regard.

The Joint Select Committee on the civil services.

All these safeguards have been provided for on the advice of the Joint Select Committee. Discussing the 'position of the public services in working the new constitutions in the provinces', the Committee stated[1]:—

'They are of opinion that these services have deserved the admiration and gratitude of the whole Empire. They know that some members of the services regard the wisdom of the proposed changes with grave misgiving, and that some fear that those changes will not tend to the welfare of the Indian masses. They are convinced, however, that the services will accept the changing conditions and the inevitable alteration in their own position, and devote themselves in all loyalty to making a success, so far as in them lies, of the new constitution.

'In the provinces, officers serving in a reserved department will be controlled by the Governor in Council, and in a transferred department by the Governor acting with ministers, but in both cases alike the personal concurrence of the Governor should be regarded as essential in the case of all orders of any importance prejudicially affecting the position or prospects of officers appointed by the Secretary of State.

'The Committee think that every precaution should be taken to secure to the public servants the career in life to

[1] Part IV of the Joint Select Committee's Report. See in this connection para. 325 of the Joint Report; also paras. 43–54 of the Government of India's *First Despatch on Indian Constitutional Reforms*.

which they looked forward when they were recruited, and they have introduced fresh provisions into this clause to that end. If friction occurs, a readjustment of persons and places may often get over the difficulty, and the Governor must always regard it as one of his most important duties to establish a complete understanding between his ministers and the officers through whom they will have to work. But if there are members of the service whose doubts as to the changes to be made are so deeply-rooted that they feel they cannot usefully endeavour to take part in them, then the Committee think it would only be fair to those officers that they should be offered an equivalent career elsewhere, if it is in the power of His Majesty's Government to do so, or, in the last resort, that they should be allowed to retire on such pension as the Secretary of State in Council may consider suitable to their period of service.'

Public Service Commission.

Provision[1] has been made in the Act for the establishment of a Public Service Commission in India. The Commission is to be appointed[2] by the Secretary of State in Council and is to consist of not more than five members, of whom one must be Chairman.[3] Each member will hold office for five years, and may be reappointed. No member can be removed before the expiry of his term of office, except by an order

[1] 96 C. of the Act.

[2] An officiating appointment may be made in the place of any member absent on leave or special duty.—Government of India, Home Department Notification No. F.—254/25, dated Simla, May 27, 1926.

[3] The first Public Service Commission, consisting of the following members, was appointed in 1926:—

Mr. W. R. Barker, C. B. (Chairman).
Mr. A. H. Ley, C.S.I., C.I.E., C.B.E., I.C.S.
Sayed Raza Ali, C. B. E.
Sir Philip Joseph Hartog, C.I.E., D.L.
Diwan Bahadur Sir T. Vijayaraghava Acharya, K. B. E. *Vide* Government of India, Home Department Notification No. F.—178/14/1/24, dated May 27, 1926. The last four members have been appointed with effect from the 1st of October, 1926. *Ibid.*

Mr. J.H. Wise, I.C.S., was appointed Secretary of the Commission.

of the Secretary of State in Council. The qualifications[1] for appointment, and the pay and pension (if any) attaching to the offices of Chairman and member are to be prescribed by rules [2] made by the Secretary of State in Council with the concurrence of the majority of votes at a meeting of his Council. The Commission will discharge, in regard to recruitment and control of the public services in India, such functions [3] as may be assigned to it by rules made by the Secretary of State in Council in the same way as in the preceding cases.

This provision for the appointment of a Public Service Commission has been made on the advice of the Government of India. It stated in its first Despatch [4] on Indian Constitutional Reforms as follows:—

'In most of the Dominions [5] where responsible govern-

[1] At least two of the members must be persons who have been for at least ten years in the service of the Crown in India.—*Ibid.*

[2] Under the rules now in force the Chairman must receive a pay of five thousand rupees per month, and each of the other members a pay of three thousand five hundred rupees per month. The Chairman cannot, on vacating his office, hold any other post under the Crown in India. No pension attaches to the office of member (including the Chairman) as such, but in the case of a member who at the time of his appointment was in the service of the Crown in India, his service as member must count for pension under the rules applicable to the service to which such member belongs.

A sum of £500 is 'payable for the expenses of equipment and voyage to a member who at the time of his first appointment is domiciled and permanently resident elsewhere than in Asia and is not in the service of the Crown in India. Again, a member who is, and was at the time of his first appointment, domiciled elsewhere than in Asia, may, on re-appointment for a further term of office as a member, be granted such passage allowances for himself and his family as the Secretary of State for India in Council may prescribe'.—*Vide* the Government of India, Home Department Notification No. F.—254/25, dated May 27, 1926.

For the leave and travelling allowances of members see *ibid.*

[3] For the present functions of the Commission, see the Public Service Commission (Functions) Rules, 1926, in Appendix T, pages 601–609 *post.*

[4] Para. 55 of the Despatch.

[5] See in this connection Prof. Keith's *Responsible Government in the Dominions*, vol. i, pp. 344–53; see also Sections 141 and 142 of South Africa Act, 1909.

ment has been established, the need has been felt of protecting the public service from political influences by the establishment of some permanent office peculiarly charged with the regulation of service matters. We are not prepared at present to develop the case fully for the establishment in India of a public service commission: but we feel that the prospect that the services may come more and more under ministerial control does afford strong grounds for instituting such a body. Accordingly, we think that provision should be made for its institution in the new Bill. The Commission should be appointed by the Secretary of State, and its powers and duties regulated by statutory rules to be framed by the same authority. . . .'

The Lee Commission on the Public Service Commission.

We may note in this connection the following interesting observations [1] made by the Royal Commission on the Superior Civil Services in India, popularly known as the Lee [2] Commission, on the question of the Public Service Commission :—

'Wherever democratic institutions exist, experience has shown that to secure an efficient Civil Service it is essential to protect it so far as possible from political or personal influences and to give it that position of stability and security which is vital to its successful working as the impartial and efficient instrument by which Governments, of whatever political complexion, may give effect to their policies. In countries where this principle has been neglected, and where the 'spoils system' has taken its place, an inefficient and disorganized Civil Service has been the inevitable result and corruption has been rampant. In America a Civil Service Commission has been constituted to control recruitment of the Services, but, for the purposes of India, it is from the Dominions of the

[1] See para. 24 of the Report of the Commission.
[2] Because Viscount Lee of Fareham was the President of the Commission.

British Empire that more relevant and useful lessons can perhaps be drawn. Canada, Australia and South Africa now possess Public or Civil Services Acts regulating the position and control of the public services, and a common feature of them all is the constitution of a Public Service Commission, to which the duty of administering the Act is entrusted. It was this need which the framers of the Government of India Act had in mind when they made provision in Section 96C for the establishment of a Public Service Commission . . . .'

Continuing, the Royal Commission recommended[1] that, at the outset, the following functions[2] should be assigned to the Public Service Commission :—

1. 'The recruitment of personnel for the Public Services and the establishment and maintenance of proper standards of qualification for admission to them ; and

2. Quasi-judicial functions connected with the disciplinary control and protection of the Services.'

Under the first head the Commission made the following proposals[3] :—

1. 'The Public Service Commission should be charged with the duty of recruitment for the all-India Services as the agent of the Secretary of State so far as it is carried out in India.

2. In respect of recruitment for the Central Services, and if a Local Government should so desire for Provincial Services (including Services provincialized), it should act as agent of the Secretary of State, the Government of India or the Local Governments, as the case may be.

3. The Public Service Commission should be the final authority, so far as recruitment in India is concerned, for

[1] Para. 27 of its Report.
[2] See in this connection the Public Service Commission (Functions) Rules, 1926, in Appendix T, pp. 601-609 *post*.
[3] Para. 27 of its Report.

determining, in consultation with the Secretary of State, the Government of India or the Local Governments, as the case may be, the standards of qualification and the methods of examination for the Civil Services, whether the channel of entry be by examination or nomination.'

Under the second head it suggested [1] essentially as follows:—

1. Subject, in certain cases,[2] to the final right of appeal to the Secretary of State, 'appeals to the Governor-General in Council against such orders of Local Governments, as are declared by the Governor-General in Council to be appealable, should be referred to the Public Service Commission; the Public Service Commission should report to the Governor-General in Council its judgment on the facts and its recommendation as to the action to be taken. . . .'

2. 'Appeals from the Government of India which now lie to the Secretary of State should hereafter be referred to the Public Service Commission in the same manner as in the case of appeals to the Government of India' (and the Commission will report to the Secretary of State its decisions).

The Royal Commission gave its special attention to the question of the composition of the Public Service Commission. It stated[3]:—

'We would venture . . . to emphasize the paramount importance of securing as members of the Commission, men of the highest public standing, who will appreciate the vital and intimate relationship which should exist between the State and its servants. These Commissioners should be detached so far as practicable from all political associations and should possess, in the case of two of their number at least, high judicial or other legal qualifications. They

[1] Para. 27 of its Report. [2] For details see *ibid.*
[3] Para. 25 of its Report. See also in this connection W. H. Moore's *Constitution of the Commonwealth of Australia* (1910), pp. 194-96.

should, we suggest, be whole-time officers and their emoluments should not be less than those of High Court Judges. The Public Service Commission . . . will be an All-India body. . . .'

Presumably, these suggestions must have been taken into consideration by the authorities concerned at the time of the appointment of the first Public Service Commission in 1926.[1]

Financial Control.

Subject to any Rules which may be made by the Secretary of State in Council with the concurrence of the majority of votes at a meeting of the Council, no office may be added to or withdrawn from the public service, and the emoluments of no post may be varied, except after consultation with such 'finance authority' as may be mentioned in the Rules.[2]

The Indian Civil Service.

By far the most important of the public services in India is the Indian Civil Service.[3] The general work of administration and, for the most part, the administration of justice have been entrusted to it for over a century. In the past its functions have been not merely to execute but, to a great extent, to shape the policy of the Government. 'It has been in effect,' to quote the authors of the Joint Report, 'much more of a government corporation than of a purely civil service in the English sense.'[4] With a few exceptions practically all the important offices under the Government which involve superior control, have been held by its members. This description of the Service is to a large extent true even now. Until 1853, the appointments to the Covenanted Civil Service, as the Service was then designated, were made by the Court

[1] See p. 448 *ante*, foot-note 3.

[2] 96D (2) of the Act. Also see p. 436 *ante*.

[3] Read in this connection Strachey's *India*, ch. vi; also Ramsay MacDonald's *Government of India*, ch. viii; also *The Imperial Gazetteer of India*, vol. iv, pp. 40–44.

[4] See para. 126 of the Joint Report.

of Directors by nomination.[1] This system of appointment was abolished in that year by an Act of Parliament, and the Service was then thrown open to general competition. The first competitive examination was held in 1855.[2] Till very recently, the greater proportion of the appointments to the Indian Civil Service was thus made by competitive examination held in England. The position under the Reforms is somewhat different as will be shown below.

Rules for admission to the Indian Civil Service.

The Secretary of State in Council is empowered by the Act[3] to make, with the advice and assistance of the Civil Service Commissioners, Rules 'for the examination, under the superintendence of those Commissioners, of British subjects and of persons in respect of whom a declaration has been made under Section 96A[4] of the Act, who are desirous of becoming candidates for appointment to the Indian Civil Service.' The Rules are to prescribe the age and qualifications of the candidates, and the subjects of examination. They must be laid before Parliament within fourteen days after they are made, or, if Parliament is not

[1] See Strachey's *India* (1903 ed.), p. 75.

'The meaning of the term "Covenanted,"' says Sir John Strachey, 'is as follows:—The superior servants of the East India Company were obliged to enter into covenants, under which they bound themselves not to engage in trade, not to receive presents, to subscribe for pensions for themselves and their families, and other matters. This custom has been maintained. Successful candidates, after passing their final examinations, enter into covenants with the Secretary of State before receiving their appointments'.—*India* (3rd ed.), p. 75.

[2] *Imperial Gazetteer of India*, vol. iv, p. 41.

[3] Section 97 (1) of the Act.

[4] Under this Section 'the Governor-General in Council, with the approval of the Secretary of State in Council, may, by notification, declare that, subject to any conditions or restrictions prescribed in the notification, any named ruler or subject of any state in India shall be eligible for appointment to any civil or military office under the Crown to which a native of British India may be appointed, or any named subject of any state or any named member of any independent race or tribe, in territory adjacent to India, shall be eligible for appointment to any such military office.'

then sitting, then within fourteen days after the next meeting of Parliament. The candidates, who are certified to be entitled under the Rules, must be recommended for appointment in the order of their proficiency as shown by their examination.[1] Subject to what follows later, only such persons as are so certified may be appointed to the Indian Civil Service by the Secretary of State in Council.

Under the existing Regulations,[2] appointments to the Indian Civil Service are made mainly by competitive examinations held both in India and London. The examination held in London is open to all qualified persons. But in the case of the examination[3] held in India, the Governor-General in Council may at his discretion limit the maximum number of candidates to be admitted to the examination to such number not being less than 200 as he may decide.[4] If a limit is imposed and the number of candidates exceeds that limit, the Public Service Commission must select from among the applicants those who are to be admitted to the examination.[5] In making the selection, however, the Commission must have regard 'to the suitability of the applicants for the Indian Civil Service and to the adequate representation of the various provinces of India.' A candidate must be a male and either a British subject of Indian domicile, or a ruler or a subject of a State in India in respect of whom the Governor-General in Council has made a declaration under section 96A[6] of the Government of India Act. Besides, he must have attained the age of twenty-one and must not have attained the age of twenty-three on the first day of January in the year in

[1] Section 97 (4) of the Act.
[2] These regulations are liable to alteration from time to time.
[3] This examination is held at such time and place as the Governor-General in Council may direct.
[4] See the Government of India's Home Department Notification No. F.-433-27, dated July 20, 1928.
[5] *Ibid.*
[6] See page 454, foot-note 4.

which the examination is held.[1] Further, no candidate can be admitted to the examination unless he has been declared physically fit, and unless he holds a certificate of admission from the Public Service Commission. The candidates who are selected at the open competition held in London are required to remain in the United Kingdom on probation for one or two years, as may be decided by the Secretary of State in Council; while those who are selected at the competitive examination held in India as well as those who are selected in India otherwise than by competitive examination, have to proceed to the United Kingdom and to remain there on probation for a period of two years. The one-year probationers have, at or about the end of the year of probation, to undergo an examination called the Final Examination. The two-year probationers, on the other hand, have, during their period of probation, to undergo two examinations—the Intermediate Examination at the end of the first year and the Final Examination at or about the end of the second year. The subjects of these examinations are such as are specially connected with the future duties of the probationers. 'On arrival in India,' says the *Fifth Decennial Report*, 'the young civilian is posted to the head-quarters of a district to learn his work, and is given the powers of a magistrate of the lowest (third class.) After passing the prescribed examinations—mainly in law, languages, and revenue procedure—he becomes a first class magistrate, and is eligible for promotion to higher grades.'

The Act[2] has also empowered the Secretary of State in Council to make Rules for appointment to the Indian

[1] See the Home Department Notification No. F.-433-27, dated the 20th July, 1928.

The minimum and the maximum age in the case of the examination held in London are 21 and 24 respectively. Vide the *Gazette of India*, November 24, 1928.

[2] Section 97 (6) of the Act.

Civil Service by nomination of persons domiciled in India. Such Rules must be made by him with the concurrence of the majority of votes at a meeting of his Council and cannot have force until they have been laid for thirty days before both Houses of Parliament. Appointments are to be made by the Secretary of State in Council in accordance with those Rules. Under the existing Rules,[1] every candidate for appointment by nomination, must, in addition to being domiciled in India, be either a British subject, or a ruler or subject of a State in India in respect of whom the Governor-General in Council has made a declaration under Section 96A of the Act.[2] Further, he must not suffer from any physical disability, and must possess requisite academic qualifications and satisfy the Governor-General in Council that his character is such as to qualify him for employment in the Indian Civil Service.[3] Besides, he must have, subject to what follows later, attained the age of 21 and must not have attained the age of 23 on the 1st day of January in the year in which the selection for nomination is made by the Public Service Commission.[4]

The Governor-General in Council is required to call upon 'the Public Service Commission to recommend such number of candidates as he may direct, selected with regard to the community to which they belong or to such other considerations as he may prescribe.'[5] The Public Service Commission must make[6] their recommendations under this

[1] See the Indian Civil Service (Nomination) Rules.—Notification No. F.-399-27, dated Simla, the 25th April, 1928. *Vide* also *The Calcutta Gazette*, May 10, 1928.

[2] See p. 454, foot-note 4.

'If the candidate (being a British subject) or his father or mother was not born within His Majesty's Dominion of allegiance, the father must, at the time of the candidate's birth, have been a British subject or the subject of a State in India: and, if alive, must be, or, if dead, must have continued to be until his death, a British subject or a subject of such State.'—The Indian Civil Service (Nomination) Rules (1928).

[3] *Ibid.* [4] *Ibid.* [5] *Ibid.* [6] *Ibid.*

provision primarily from the list of candidates who sat at the annual competitive examination held in India for the Indian Civil Service in the year in which the selection is made. The Commission may include among the persons to be primarily considered any candidate who sat at the annual competitive examination held in London for the Indian Civil Service in the year preceding that in which the selection is made, and who, in its opinion, is exceptionally suitable.[1] For any such candidate the age restriction mentioned before will not apply. The Commission may also, if it considers necessary, call for fresh names in such numbers and from such local Governments as the Governor-General in Council may direct.[2] It must then recommend[3] from the candidates whom it considers suitable, the number, fixed by the Governor-General in Council, arranging the names in order of preference. The Governor-General in Council, in his turn, must forward to the Secretary of State for India in Council the recommendations made by the Commission and propose candidates for appointment. Candidates selected for appointment must 'proceed to, and remain in, the United Kingdom on probation for such period and in such manner as is prescribed by the regulations made by the Secretary of State for India in Council for the probation in the United Kingdom and the further examination of selected candidates for the Indian Civil Service.'[4]

Certain important civil offices in India are reserved to members of the Indian Civil Service.[5] But it is also provided[6] against this that 'the authorities in India, by whom appointments are made to offices in the Indian Civil Service, may appoint to any such (reserved) office any

[1] *Vide* the Indian Civil Service (Nomination) Rules (1928).
[2] *Ibid.*
[3] *Ibid.*
[4] The Indian Civil Service (Nomination) Rules (1928). In this connection see page 456 *ante*.
[5] Section 98 of the Act; see Appendix K.
[6] Section 99 of the Act.

person of proved merit and ability,' who is 'domiciled in British India and born of parents habitually resident in India, and not established there for temporary purposes only, although the person so appointed has not been admitted to that Service' in accordance with the Rules stated in the few preceding paragraphs. Every such appointment must be made subject to such Rules as may be made by the Governor-General in Council and sanctioned by the Secretary of State in Council with the concurrence of the majority of votes at a meeting of his Council. The Governor-General in Council 'may, by resolution, define, and limit the qualification of persons who may be appointed' under the above provision. Every such resolution is subject, however, to the sanction of the Secretary of State in Council, and cannot have force until it has been laid for thirty days before both Houses of Parliament.

This provision for appointment to reserved offices was first made by Section 6 of the Government of India Act of 1870, which declared it to be 'expedient that additional facilities should be given for the employment of natives of India, of proved merit and ability, in the Civil Service of Her Majesty in India.'[1] No action was taken, however, under this Section until 1879, 'when rules were laid down by Lord Lytton with the approval of the Secretary of State.'[2] These Rules 'established what was called the Statutory Civil Service'.[3] The reason for the insertion of the Section in the Act of 1870 was that, 'owing to the religious and other difficulties attendant on a voyage to England,' the number of Indians who had been able to enter the Indian Civil Service through competitive examination was, till 1870, very small.[4]

[1] 33 and 34 Vict. C. 3. *Vide* P. Mukherji's *Constitutional Documents*, vol. i pp. 225-26.
[2] Strachey, *India*, p. 79.
[3] *Imperial Gazetteer*, vol. iv, p. 43. [4] *Ibid*

Under the existing Rules prescribed by the Governor-General in Council and sanctioned by the Secretary of State in Council, a local Government may, with the previous approval of the Governor-General in Council and of the Secretary of State in Council, declare the number of superior executive and judicial offices, ordinarily reserved to members of the Indian Civil Service, to which persons not being members of that Service may be appointed.[1] And it has been further laid down by those Rules that the local Government may appoint—

(1) to a superior executive office a member of the Provincial Civil Service subordinate to the local Government; and

(2) to a superior judicial office a member of the Provincial Civil Service subordinate to the local Government, or a person who at the time of his appointment is—

(*a*) a barrister of England or Ireland, or a member of the Faculty of Advocates of Scotland; or

(*b*) a vakil, pleader, advocate, or an attorney of a High Court in India; or

(*c*) a pleader or an advocate of a Chief Court[2]; or

(*d*) a pleader[3] of a District Court.

Finally, there is one more way[4] of recruitment to the Indian Civil Service. If it appears to the authority in India by whom an appointment is to be made to an office reserved to members of the Indian Civil Service, that a person who is not a member of that Service should, in the special circumstances of the case, be appointed thereto, the authority may appoint thereto any person who has resided for at least seven years in India and who has, before his appointment, fulfilled all the tests (if any) which

[1] The Government of India Notification No. F-438, dated March 30, 1922.

[2] Or of a Judicial Commissioner's Court.

[3] Of not less than five years' standing.

[4] Sec. 100 of the Act.

would be imposed in the like case on a member of that Service.'

Every such appointment is provisional only, and must be reported forthwith to the Secretary of State, with the special reasons for it; and, unless the Secretary of State in Council approves the appointment with the concurrence of a majority of votes at a meeting of his Council, and within twelve months from the date of the appointment intimates his approval to the authority by whom the appointment was made, the appointment must be cancelled.

Indians in the Indian Civil Service.

The proportion of Indians in the Indian Civil Service was only 13 per cent. in 1921.[1] The percentage of recruitment of Indians for the Service 'was fixed in 1920 at 33 per cent., commencing in the year 1920, and rising by 1½ per cent. to 48 per cent. to be attained in the year 1930, including listed posts.'[2] The Lee Commission recommended[3] that it was desirable, in order not only to carry out the spirit of the Declaration of August, 1917, but to promote an increased feeling of camaraderie and equal sense of responsibility between British and Indian members of the Service, that a proportion of 50–50 in the cadre of the Indian Civil Service should be attained without undue delay and that the present rate of Indian recruitment should be accelerated with this object.

It was accordingly announced in an official communique[4] that His Majesty's Government had decided to accept generally the recommendations of the Lee Commission in regard to the rates at which the recruitment of Indians for the Indian Civil Service (as well as for certain other all-India Services) should be carried out.

[1] *Vide* the statement made by Sir William Vincent showing the percentage of Indians in certain public services.—*India's Parliament*, vol ii.

[2] See para. 35 of the *Report of the Lee Commission*.

[3] *Ibid.*

[4] *Vide The Statesman* (Dak edition), December 7, 1924.

It is worthy of note in this connection that, while the ultimate executive authority with regard to all questions relating to the civil services in India has hitherto been, and still is, as we have stated before, the Secretary of State in Council, 'the appointment and removal of all officers of the public service of the Union' (of South Africa) are vested in the Governor-General in Council thereof.[1] The power of appointment may be delegated, however, by the Governor-General in Council, or by a law of the Union, to some other authority. The position with regard to the appointment and removal of civil servants is practically the same also in the Commonwealth of Australia.[2]

It may, however, be stated here that on the advice of the Lee Commission, His Majesty's Government decided in 1924 to transfer[3]—

(1) to the Government of India the power of making appointments to certain 'Central[4] Services'; and

(2) to local Governments that of making appointments to services[5] 'operating only in Transferred departments.'

The present position has been stated by Sir Malcolm Seton,[6] Deputy Under-Secretary of State in the India Office, as follows:—

'No further appointments will be made to the All-India Services employed in the Transferred field. The provincial governments, i.e., the Governor acting with his Ministers, will recruit the personnel required for the work hitherto done by the Educational and other services. But existing

[1] Section 15 of the South Africa Act, 1909.

[2] Section 67 of the Commonwealth of Australia Constitution Act, 1900.

[3] See *The Statesman* (Dak edition), December 7, 1924.

[4] These are directly under the Government of India. See paras. 12, 18 and 19 of the *Report of the Lee Commission*.

[5] E.g., the Indian Educational Service, the Indian Agricultural Service, the Indian Veterinary Service.—See para. 14 of the *Lee Commission's Report*.

[6] *The India Office* (1926), pp. 148–49.

members retain the position they have held since 1920, serving under Ministers but enjoying all the safeguards provided by the Act, and the rules made under it for officers appointed by the Secretary of State in Council.

'For services employed on the Reserved side recruits will be appointed as hitherto by the Secretary of State in Council with all the rights[1] implied in such appointment. The principal services of this class are the Indian Civil Service and the Police. But the proportion of Indian to European recruits in these services is to be increased so as to secure that the composition of the services, as a whole, will be half European and half Indian in fifteen years for the Indian Civil Service, and in twenty-five years for the Police.'

Provincial and Subordinate Services.

The Civil Services in India are divided into five branches —All-India,[2] Central, Provincial, Subordinate and Special.[3] The Central Services again are divided[4] into Class I and Class II. Appointments to the Provincial and Subordinate Services are made either by competitive examination, or by direct nomination, or by promotion.

There is in India an Auditor-General[5] who is appointed by

[1] See pp. 444–48.

[2] The All-India Services are, generally speaking, 'recruited by the Secretary of State, for work in any part of India, and . . . each, though scattered through the Provinces, forms one Service with one basis of remuneration. Though an officer of an All-India Service is assigned to and as a rule remains in one Province throughout his career, he may be transferred to another Province; while a certain number of officers are taken by the Government of India from the Provinces to assist in the discharge of its central functions. Services of this nature differ essentially from the Provincial Services which are recruited in a Province solely for provincial work, and it is to mark this distinction that these Services have been given the title of "All-India"'. The Report of the Lee Commission, para 6. See also *The Government of India Act* (published by the Government of India), pp. 229–30.

[3] I.e., consisting of officers holding special posts.

[4] See the Public Service Commission (Functions) Rules, 1926, in Appendix T.

[5] See rules re: the Auditor-General in India made by the Secretary of State in Council under Section 96D(1) of the Act.

the Secretary of State in Council and who holds office during His Majesty's pleasure. The Secretary of State in Council is required by the Act to make, by Rules, provision for his pay, powers, duties and conditions of employment, or for the discharge of his duties in the case of a temporary vacancy or absence from duty. Such rules must be made with the concurrence of the majority of votes at a meeting of the Council of India.

Under the existing Rules regarding the Auditor-General, the pay of the Auditor-General is Rs. 5,000 per month. On vacating his office, he is not eligible[1] for any other post under the Crown in India. He is entitled to such pension as may previously have been, or may in a particular case be, fixed by the Secretary of State in Council. If a temporary vacancy occurs in the office of Auditor-General or if the Auditor-General happens to be absent from duty, the Governor-General in Council may appoint an officiating Auditor-General.

Subject to any general or special orders of the Secretary of State in Council, the Auditor-General is the final audit authority in India and responsible for the efficiency of the audit of expenditure in India from the revenues of India. He is, to the extent authorized by the rules regarding his duties and powers, the administrative head of the Indian Audit and Accounts service. He can inspect, either personally or through any audit officer, any Government office of accounts in India. He may frame rules in all matters pertaining to audit.[2] He should bring to the notice of the Governor-General in Council or the local Government, as the case may be, any breach of canons regarding audit.[3] He must, on such dates as he may prescribe, obtain from each

[1] This is necessary for ensuring independence in him.
[2] *Vide* Rules re : the Auditor-General in India under Section 96D (1) of the Act.—*The Gaz. of India*, Aug. 21, 1926, Part 1, pp. 917–20.
[3] *Ibid.*

principal auditor[1], and from any officers of the Indian Audit Department to whom he may entrust this duty, Audit and Appropriation Reports reviewing the results of the audit conducted by and under such officer or officers during the past official year.[2] He must forward[3] to the Secretary of State through the Governor-General in Council the several reports dealing with the total expenditure in India in each year with his detailed comments on each report, and may also offer such further comments of a general nature on all of them as he may think fit. Besides, he has[4] various other duties and powers regarding audit and accounts, and has also certain disciplinary powers over officers of the Indian Audit Department of any class lower than Class 1. He may even dismiss from service any officer of the Indian Audit Department other than an officer appointed thereto by the Secretary of State in Council or the Governor-General in Council.[5]

[1] E. g., the head of an office of accounts or of audit who is immediately subordinate to the Auditor-General.
[2] *Ibid.* [3] *Ibid.*
[4] *Ibid.* Rules re. the Auditor-General in India made under Section 96D(1) of the Government of India Act.
[5] *Ibid.*

CHAPTER XXIII

FINANCE

The revenues of India and their application—Accounts of the Secretary of State with the Bank of England—Financial arrangements between the Government of India and the provincial Governments—Introduction of financial decentralization—Evolution of the system of 'divided heads'—The Joint Report on the post-Reforms financial arrangements—Appointment of a Committee on financial relations—The existing financial arrangements: Allocation of revenue—Allocation of share in the Income-Tax—Provincial contributions to the Government of India—Excess contributions in case of emergency—Payment of Government revenues into the public account—Advances by the Government of India—Capital expenditure on irrigation works—Famine Relief Fund—Provincial borrowing—Provincial Taxation—Conclusion.

The revenues of India and their application.

The revenues of India are received for and in the name of the Crown, and must, subject to the provisions of the Government of India Act, be applied for the purposes of the government of India alone.[1] They 'include[2] all the territorial and other revenues of or arising in British India,' and, in particular, tributes and other payments from Indian States, fines and penalties imposed by any court of law in British India, and all property, movable or immovable, in British India 'escheating for want of an heir or successor, or devolving as *bona vacantia*[3] for want of a rightful owner.'

[1] Section 20 of the Government of India Act.
[2] *Ibid.*
[3] *Bona vacantia* means 'those things in which nobody claims a property, and which belong to the Crown by virtue of its prerogative.' —Wharton's *Law-Lexicon.*

There are to be charged[1] on these revenues alone—

(1) all the debts and other liabilities of the East India Company;

(2) 'all expenses, debts and liabilities lawfully contracted and incurred on account of the Government of India;' and

(3) all payments under the Government of India Act, except so far as is otherwise provided by it.

But, 'except for preventing or repelling actual invasion of His Majesty's Indian possessions, or under other sudden and urgent necessity,' the revenues of India cannot, without the consent of Parliament, be used[2] for defraying the expenses of any military operations carried on beyond the external frontiers of those possessions by His Majesty's forces maintained out of those revenues. This safeguard was originally provided in the Government of India Act of 1858 that it might serve, it was said, 'as a pecuniary check on the prerogative of the Crown in regard to the army of India.'[3] If there were no such provision in the Act, it was feared[4] that the Crown might employ the Indian troops 'in wars wholly and entirely unsanctioned by Parliament,' and that 'the whole force of India might be carried to any portion of the world.' The real intention of the framers of the Act in making the provision appears, however, to have been not so much to limit the prerogative of the Crown (of making war or peace) as to protect the revenues of India.[5]

[1] Section 20 of the Government of India Act.

[2] And if any naval forces and vessels raised and provided by the Governor-General in Council are in accordance with the provisions of the Act placed at the disposal of the Admiralty, the revenues of India must not, without the consent of both Houses of Parliament, be applicable to defraying the expenses of any such vessels or forces if and so long as they are not employed on Indian naval defence.—Section 22 of the Act.

[3] See the Earl of Derby's speech on the Government of India Bill, 1858.—P. Mukherji's *Constitutional Documents*, vol. i, pp. 172-73.

[4] *Ibid.* [5] *Ibid.*

But the phrase 'or under other sudden and urgent necessity' above is very significant. Under it the revenues of India may, without the consent of Parliament, be applied to defraying the expenses of any military operations carried on by the Indian forces beyond the frontiers of India and in any part of the world. So long as that phrase is there, the safeguard provided against the improper expenditure of Indian revenues appears to be inadequate.

Accounts of the Secretary of State with the Bank of England.

The portion of the revenue of India which is remitted to the United Kingdom and 'all money arising or accruing in the United Kingdom from any property or rights' vested in the Crown for the purposes of the government of India, or from the sale or disposal thereof, are to be paid to the Secretary of State in Council, to be applied for the purposes of the Government of India Act.[1] All such revenue and money have, except as is otherwise provided in the Act, to be deposited in the Bank of England to the credit of an account entitled 'The Account of the Secretary of State in Council of India.' The Secretary of State in Council is empowered by the Act to authorize[2] 'all or any of the cashiers of the Bank of England—

(1) to sell and transfer all or any part of any stock standing in the books of the Bank to the account of the Secretary of State in Council;

(2) to purchase and accept stock for any such account; and

(3) to receive dividends on any stock standing to any such account';

and to direct 'the application of the money to be received in respect of any such sale or dividend.'

[1] Section 23 (1) of the Act.
[2] For details see section 24 of *ibid.*

Financial arrangements between the Government of India and the provincial Governments: introduction of financial decentralization.

Before the Viceroyalty of Lord Mayo the provincial Governments in India had little liberty in respect of their expenditure of the public revenue. 'Towards the end of every year,' writes[1] Sir William Hunter, 'each Local Government presented to the Governor-General in Council its estimates of expenditure during the coming twelve months. The Governor-General in Council, after comparing these aggregate estimates with the expected revenue from all India, granted to each Local Government such sums as could be spared for its local services.' The provincial Governments, says another distinguished authority,[2] 'could order, without the approval of the Supreme Government, and without its knowledge, the adoption of measures vitally affecting the interests of millions of people; they could make changes in the system of administration that might involve serious consequences to the State; they could, for instance . . . , alter the basis on which the assessment of the land revenue had been made, but they could carry out no improvements, great or small, for which the actual expenditure of money was required. If it became necessary to spend £20 on a road between two local markets, to rebuild a stable that had tumbled down, or to entertain a menial servant on wages of 10*s.* a month, the matter had to be formally reported for the orders of the Government of India.' This system was devised undoubtedly to ensure economy in public expenditure, but in practice it acted in a way most unfavourable to economy. As Sir William Hunter has remarked,[3] 'The Local Governments were under no compulsion to adjust

[1] *The Earl of Mayo*, p. 150.
[2] See Strachey, *India: Its Administration and Progress* (third edition), pp. 112–13.
[3] *The Earl of Mayo*, pp. 150–51.

their expenditure to any limited scale of income, and several of them fell into the habit of framing their demands upon the Imperial Treasury, with an eye rather to what they would like to spend than what was absolutely required. "Practically," writes one who had the official control of the system, "the more a Government asked, the more it got; the relative requirements of the Local Governments being measured by their relative demands. Accordingly they asked freely and increasingly. Again, knowing that any money saved at the end of the year was lost to the provincial administration, a Local Government was little anxious to save." In such circumstances, the distribution of the public income, as Sir Richard Strachey[1] wrote at the time, 'degenerated into something like a scramble, in which the most violent had the advantage, with very little attention to reason; as local economy brought no local advantage, the stimulus to avoid waste was reduced to a minimum, and as no local growth of the income led to local means of improvement, the interest in developing the public revenues was also brought down to the lowest level.' Other unhappy consequences of this system were frequent conflicts of opinion between the Government of India and the provincial Governments, and 'interference by the former not only in financial but in administrative details with which the local authorities were alone competent to deal.'[2]

A scheme to remedy this state of affairs and also to secure a more economical and efficient financial administration was devised by Sir Richard Strachey in 1867. The underlying principle of the scheme was that 'each provincial Government must be made responsible for the management of its own local finances.'[3] The scheme was adopted by Lord Mayo's Government, which issued on December 14, 1870, a

[1] See p. 113 of Sir John Strachey's *India: Its Administration and Progress.*

[2] *Ibid*

[3] *Ibid.*

Resolution embodying it. Under this Resolution, which was in due course approved by the Secretary of State in Council, 'certain heads of expenditure were handed over to the more unfettered[1] control of Local Governments, together with the means of providing for them, consisting partly of the receipts under the same heads, and partly of a fixed consolidated allotment from the Imperial revenue. The Governments were to use as they pleased any surplus, but to make good (by the exercise of economy and, if necessary, by raising local taxes) any deficit, resulting from their administration.'[2] This is popularly known as Lord Mayo's Decentralization Scheme of 1870.

The system of financial decentralization thus initiated by the Government of Lord Mayo was extended in 1877 during the Viceroyalty of Lord Lytton, and was further developed during the administration of later Viceroys by quinquennial, and other kinds of settlements. The objects which the authors of these settlements aimed at 'were[3] to give the Local Governments a strong inducement to develop their revenues and practise economy in their expenditure, to obviate the need for interference on the part of the Supreme Government in the details of Provincial administration, and at the same time to maintain the unity of the finances in such a manner that all parts of the administration should receive a due share of growing revenues required to meet growing needs, and should bear in due proportion the burden of financial difficulties which must be encountered from time to time.' The system which was finally evolved and which was in force before the Reforms is known as the

[1] I.e., each local Government was empowered, subject to certain restrictions, to allocate the resources placed at its disposal as seemed best.

[2] See para. 2 of the Resolution by the Government of India on the extension of Provincial Finance' dated September 30, 1881.—*Vide* P. Mukherji's *Constitutional Documents*, vol. i p. 631.

[3] *Imperial Gazetteer*, vol. iv, 190.

system of 'divided heads.' Under it the proceeds of certain heads of revenue were taken by the central Government; those of certain others were made over to the provincial Governments to enable them to meet their expenditure on the ordinary provincial services; and those of the remaining heads were divided between the central and the provincial Governments. Similarly, the heads of expenditure were classified as wholly central, wholly provincial, and partly central and partly provincial.[1] The receipts and expenditure in England were classed as central.[2] The central Government received[3] the whole of the revenue under the heads Opium, Salt, Customs, Tributes from Indian States, Post Office, Telegraph, Railways (with the exception of one small line), Mint, and Military Receipts, and were 'responsible for the expenditure under the corresponding heads, as well as for Home charges and the bulk of the expenditure under the head Interest on Debt.' The two most important heads of revenue which were divided, were Land Revenue and Income-tax.[4] Excise was a divided head in some provinces and a provincial head in others.[5]

Evolution of the system of 'divided heads.'

But, though the provincial Governments had to a large extent a free hand in administering their share of the revenue, they had 'no inherent legal right' to it. Their financial administration was subject to the general supervision of the Government of India, and they were bound by a number of restrictions on expenditure.[6] 'For any large and costly innovations' they had to depend 'on doles out of the Indian surplus.'[7] They had no borrowing powers, nor could they impose any tax without the sanction of the Government of India. In respect of financial matters, as in

[1] See p. 147 of *The Fifth Decennial Report*. [2] *Ibid.* [3] *Ibid.*
[4] Joint Report, para. 203. [5] *Ibid.*
[6] *The Fifth Decennial Report*, p. 147.
[7] Joint Report, para. 201.

respect of all others, the provincial Governments had, and exercised, only delegated authority.

The Joint Report on post-Reforms financial arrangements.

Such was the character of the financial arrangements between the central and the provincial Governments just before the introduction of the Reforms. The authors of the Joint Report were of opinion[1] that, though these arrangements were undoubtedly an advance upon the earlier centralized system, they constituted no more than a half-way stage. They held, further, that, if the popular principle was to have fair play at all in the provincial Governments, it was imperative that some means should be found of securing to the provinces entirely separate revenue resources. Accordingly, they recommended the abolition of the system of divided heads, the entire separation of the resources of the central and the provincial Governments, and also 'a complete separation of the central and provincial budgets'. To these ends they outlined a scheme[2] in their Report. As it was found that, as a result of this re-arrangement, there would be a large deficit in the Government of India's budget, they proposed a plan for meeting the deficit by means of contributions from the provinces. Their suggestion was that each province should contribute to the Government of India 87 per cent. of the difference between its gross revenue under the allocation of resources proposed in their Report and its gross expenditure.[3] As this would impose a very much heavier burden upon some provinces than upon others, they also advised[4] that it should be one of the duties of the periodic commission which they proposed should be

[1] Joint Report, para. 109.
[2] See Joint Report, paras. 200–11.
[3] The power to levy contributions from the provinces was taken in Section 45A (2) of the Act.
[4] See Joint Report, paras. 206 and 207.

appointed to examine the development of constitutional changes after ten years' experience of their working, to reinvestigate the question of the provincial contributions to the Government of India. But the Government of India pressed, in its first Despatch [1] on Indian Constitutional Reforms, for an earlier treatment of the matter, and urged that a Committee on Financial Relations should be appointed to advise fully upon the subject, so that each province might know exactly how it stood when the new regime started. The Joint Select Committee accepted and endorsed this recommendation of the Government of India.[2] A Committee consisting of three members, was accordingly appointed by the Secretary of State with the following terms of reference[3] :—

Appointment of a Committee on Financial Relations.

'To advise on—

(1) the contributions to be paid by the various provinces to the central Government for the financial year 1921–22;

(2) the modifications to be made in the provincial contributions thereafter with a view to their equitable distribution until there ceases to be an all-India deficit;

(3) the future financing of the provincial loan accounts; and

(4) whether the Government of Bombay should retain any share of the revenue derived from income-tax.'

The Committee was presided over by Lord Meston and is, therefore, popularly known as the Meston Committee. It recommended a scheme of contribution which was different in certain material respects from the scheme proposed by the authors of the Joint Report. Further, its scheme differed from the latter also on the question of the heads of revenue

[1] *Vide* para. 61 of the Despatch of March 5, 1919.
[2] The Joint Select Committee's Report on Clause 41, G. I. Bill, 1919.
[3] *Vide* para. 3 of the Report of the Financial Relations Committee.

to be allocated to the provinces. The authors[1] had proposed that the central Exchequer should receive the whole of the Income-tax and the revenue from General Stamps; and that the provinces should retain the entire receipts from Land revenue, Irrigation, Excise and Judicial Stamps, while they (i.e., the provinces) should be wholly responsible for the corresponding charges and for all expenditure in connection with famine relief. The Meston Committee agreed with them that the whole of the Income-tax proceeds should be credited to the central Government, but differed from them in that it advised that General Stamps should be made a provincial head throughout.[2] The recommendations of this Committee as modified by the Parliamentary Joint Select Committee,[3] and as further modified[4] subsequently, constitute the basis of the existing financial arrangements between the Government of India and the provincial Governments.

The existing financial arrangements: allocation of revenue.

Under the existing financial arrangements[5] the provincial Governments[6] derive their revenue from the following sources, namely:—

(1) balances (if any) still standing at the credit of the provinces;

[1] See the Meston Committee's Report, para. 5, and the Joint Report, para. 203.

[2] The Meston Committee's Report, para. 8.

[3] See the 'Second Report from the Joint Select Committee on the Government of India Act, 1919 (Draft Rules)', Part I.

[4] See App. U.

[5] See Devolution Rule 14.—App. B.

The revenues of Berar have been allocated to the Government of the Central Provinces. This allocation is subject to the following conditions, namely:—

(1) the Government of the Central Provinces is to be responsible for the due administration of Berar; and

(2) if in the opinion of the Governor-General in Council provision has not been made for the expenditure necessary for the safety and tranquillity of Berar, the allocation is to be terminated by order of the Governor-General in Council, or to be diminished by such amount as the Governor-General in Council may direct.—*Devolution Rule 14.* Also see Appendix U.

[6] Of Governors' provinces.

(2) receipts accruing in respect of provincial subjects ;[1]

(3) recoveries of loans and advances given by the provincial Governments and of interest paid on such loans ;

(4) payments made to the provincial Governments by the Government of India or by one another for services rendered or otherwise ;

(5) the proceeds of any taxes which may be lawfully imposed for provincial purposes ;

(6) the proceeds of any loans which may be lawfully raised for provincial purposes ;

(7) a share (determined in the way described below) 'in the growth of revenue derived from Income-tax collected in the provinces, so far as that growth is attributable to an increase in the amount of income assessed' ; and

(8) any other sources which the Government of India may declare to be sources of provincial revenue ; (for instance, fees charged in respect of the grant or renewal of licences under the Indian Arms Rules, 1920, have been declared to be a source of provincial revenue).

Allocation of share in the Income-tax.

Though the authors of the Joint Report urged the importance of the entire separation of central from provincial finance, the separation has not, however, been completely effected. As the recommendations of the Meston Committee, and specially those which related to the allocation of the heads of revenue, aroused strong dissatisfaction in some provinces, particularly the three presidencies, the Joint Select Committee suggested, on grounds of policy, that there should be granted to all provinces some share in the growth of revenue from taxation on income so far as the growth would be due to an increase in the amount of income assessed.[2] Thus Income-tax continues to be a

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

[2] The Joint Select Committee's Second Report on Draft Rules, Part I.

divided head even under the Reforms. The manner in which the provincial share of the tax is determined is as follows :—If the assessed income of any year[1] subsequent to the year 1920–21 exceeds in a Governor's province the assessed income of the year 1920–21, the province is entitled to receive 'an amount calculated at the rate of three pies in each rupee of the amount of such excess.'[2] As regards the cost of the Income-tax establishments in the provinces, the central Government has been bearing it entirely since April 1, 1922.[3]

It may also be noted here that 'it is not permissible[4] to incur expenditure from central revenues on provincial subjects or to make assignment from central to provincial revenues for expenditure on a provincial subject, except in so far as such expenditure may be necessary in connection with matters pertaining to a central subject, in respect of which powers have been conferred by or under any law upon a local Government.'[5]

Provincial contributions to the Government of India.

The provincial Governments, with the exception of the Government of Bihar and Orissa, were required to make annually a total contribution of 983 lakhs of rupees, or such smaller sum as might be determined by the Governor-General in Council, to the Government of India.[6] In the financial year 1921–22 the contributions paid to the

[1] The assessed income of any year subsequent to the year 1920-21 means 'the amount of income brought under assessment under the Indian Income-tax Act, 1918, in that year in respect of which income tax is collected, whether in that year or thereafter.'—(Revised) Devolution Rule 15. See *ibid.* for further details.

[2] See *Ibid.* For further details see App. B.

[3] Vide *Bengal Legislative Council Proceedings*, vol. vii, No. 1, 1922, p. 182.

[4] Note to Resolution No. 1448-E.A.—*The Gazette of India*, October 7, 1922, Part I, p. 1214.

[5] Or for payment for services rendered by a local Government.

[6] See Devolution Rule 18.—Appendix B.

Government of India by the local Governments mentioned below were as follows [1] :—

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

This scale of contributions for the year 1921–22 had been determined on the advice of the Meston Committee. The province of Bihar and Orissa had been exempted from the payment of any contribution on account of its inability to pay anything. The apparently favoured treatment of some provinces, Bengal and Bombay for instance, was, as the Meston Committee had pointed out,[2] due to two reasons. First, they had been light gainers in the distribution of revenues under the Reforms. Secondly, their indirect contributions to the central Government through Customs and Income-tax were considerable. The Joint Select Committee recommended that in no case the initial contribution payable by any province should be increased.

If, however, for any financial year the Government of India determined as the total amount of the (provincial) contribution a sum smaller than that payable in the preceding year, a reduction was to be 'made in the contributions of those local Governments only whose last previous annual contribution exceeded the proportion specified (hereinafter) of the smaller sum so determined as the total contribution';

[1] See Devolution Rule 17 in Appendix B.
[2] See para. 22 of the Meston Committee's Report.

and any reduction so made was to be proportionate to such excess [1] :—

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

The Select Committee appointed by Parliament to revise the draft Rules made under the Government of India Act, recognized the peculiar financial difficulties of the presidency of Bengal under the new scheme of provincial finance. It therefore commended the case of Bengal to the special consideration of the Government of India.[2] In view of this special recommendation of the Committee and also in view of the strong and persistent protest of the Government of Bengal against the whole basis of the post-Reforms Financial Settlement, the Government of India exempted Bengal from the payment of any contribution for six years with effect from the year 1922–23.[3]

The Select Committee had also urged that the Government of India and the Secretary of State in Council should, in regulating their financial policy, make it their constant endeavour to render the central Government independent of provincial assistance at the earliest possible date.[4] The Government of India announced in 1922 its intention of shaping its financial policy towards the reduction, and

[1] Devolution Rule 18. See Appendix B.
[2] The Joint Select Committee's Second Report on Draft Rules, Part 1.
[3] *Vide* the Bengal Legislative Council Proceedings, Feb. 20th, 1928
[4] The Joint Select Committee's Second Report on Draft Rules, Part 1.

ultimate extinction, of the provincial contributions; but at the same time it declared its inability to give any undertaking as to the definite period within which the contributions would be abolished or as to the pace of their reduction.[1] The Secretary of State also expressed his concurrence with the Government of India in this policy.[2] We are glad to note here that effect has since been given to this policy. The Government of India's Budgets for 1925–26 and 1926–27 'effected a reduction in the provincial contributions amounting to 3·75 crores or, if the Bengal contribution be included, a reduction from 9·83 crores by 4·38 crores to 5·45 crores;'[3] and the Budget for the year 1927–28 provided for the complete remission, temporarily for that year, of the provincial contributions.[4] Further, they have been completely and finally remitted by the Government of India with effect from the year 1928–29.[5] It need not perhaps be pointed out that this final and complete abolition of the provincial contributions is undoubtedly one of the most important financial measures adopted by the Government in recent years.[6] Its beneficial effect will be far-reaching. As some of the provinces,[7] however,

[1] *Vide* the Despatch of the Government of India to the Secretary of State, dated July 13, 1922, on financial contributions, etc.

[2] *Vide* the Reply of the Secretary of State to *ibid.*

[3] *Budget for 1927–28* (Government of India), pp. 136–39. [4] *Ibid.*

[5] Sir Basil Blackett's Budget speech on Feb. 29, 1928. [6] See App. U.

[7] For instance, Bengal. 'When the Government of Bengal put their case before the (Simon) Commission, one of the most important points that they will urge is that the Financial Settlement was wrong *ab initio* and treated Bengal most unfairly, and that it was largely owing to the shortness of funds that the working of the reformed constitution in Bengal has been so hampered and that Ministers have found it so difficult to carry on. The Government of Bengal will put in the forefront of their case a claim for a complete revision of the Financial Settlement, at any rate so far as Bengal is concerned, and unless that is done, I am convinced that all parties will be unanimous in thinking that the successful working of the new constitution will be impossible in Bengal, however good that constitution may be in other ways.'—From the Budget speech of the Finance Member, Bengal, on Feb. 20, 1928.

are still in financial difficulty, what is necessary now is such a new re-allocation of revenues between the central and provincial Governments as will enable them each to incur all necessary expenditure and, at the same time, to balance their Budgets. While we are writing these pages, the question is engaging the attention of the Simon [1] Commission.

In cases of emergency any provincial Government may be required by the Government of India, with the sanction of, and subject to the conditions approved by, the Secretary of State, to make a contribution to the central Government.[2] Any such contribution payable by a provincial Government must be the first charge on its revenues, and must be paid 'in such instalments, in such manner, and on such dates, as the Governor-General in Council may prescribe.' [3]

Payment of Government revenues into the public account.

The revenues of the Government of a province are required to be paid into the public account, of which the Governor-General in Council is the custodian, and to be credited to the Government of the province.* The Governor-General in Council may prescribe by order, with the previous sanction of the Secretary of State in Council, the procedure to be followed 'in the payment of moneys into, and in the withdrawal, transfer and disbursement of moneys from the public account, and for the custody of moneys standing in the account.'[4] He may, by such order, delegate power in these respects to the Auditor-General, the Controller of the Currency and to local Governments.

If a local Government is not permitted by the Government of India to draw any portion of its balance with the latter, the latter must pay interest to the former in respect of the same. The Government of India may also pay to a

[1] See ch. xxv. [2] Devolution Rule 19. [3] *Ibid.* 20. [4] *Ibid.* 16.

local Government interest on its surplus balances on such conditions as it may, with the approval of the Secretary of State, prescribe.[1]

Advances by the Government of India.

The Government of India may at any time make[2] to a local Government an advance from its revenues on such terms as to interest and repayment as it may think fit. If a local Goverment has not yet paid off its debts to the Government of India, which it owed to the latter on April 1, 1921, on account of advances made from its provincial loan account,[3] it is required to pay interest thereon on such dates as may be fixed by the Governor-General in Council, and, in addition, to repay, by annual instalments, the principal of the debt by March 31, 1933, unless the Government of India otherwise directs.[4]

Capital expenditure on irrigation works.

The capital sums spent by the Government of India 'on the construction in the various provinces of productive and protective irrigation works and of such other works financed from loan funds as may be handed over to the management of local Governments' are to be treated as advances made to the local Governments by the Government of India.[5] Such advances will carry interest payable on such dates as may be fixed by the Governor-General in Council.

The payment of interest on loans and advances made to provinces and the repayment by the latter of the principal

[1] Devolution Rule 22.
[2] *Ibid.*, 25.
[3] The provincial loan account is the name of the account of loans and advances given by each provincial Government to local bodies, agriculturists, landlords, etc. Before the Reforms these loans and advances were financed by the central Government, but now each province finances its own loan transactions.—See Wattal's *Financial Administration in British India*, p. 324; see also the Meston Committee's Report, Chap. V.
[4] Devolution Rule 23.
[5] *Ibid.*, 24.

of the debt which they owed to the central Government on April 1, 1921, are to have priority over all other charges on their revenues, except any contributions payable to the Government of India.[1]

Famine Relief Fund.

Shortly before the Reforms, expenditure on famine relief was made a divided head, the cost being borne by the central and the provincial Governments in the proportion of three to one.[2] The authors of the Joint Report stated that, as land revenue would be made a provincial head when the redistribution of resources as proposed in their Report would be effected, the provinces should take over the very heavy liability for famine relief and protective works.[3] Accordingly, it has been laid down in Devolution Rule 29 and Schedule IV[4] to the Devolution Rules, as subsequently amended, that the local Governments mentioned below must, save as otherwise provided, 'make in every year beginning with the financial year 1929–30 provision in their budgets for expenditure upon the relief of famine of such amounts respectively (hereinafter referred to as the annual assignments), as are stated against each':—

	Rs.
Madras	3,00,000
Bombay	12,00,000
Bengal	2,00,000
United Provinces ...	16,00,000
Punjab	2,00,000
Bihar and Orissa ...	3,00,000
Central Provinces ...	4,00,000

[1] Devolution Rule 26.
[2] Joint Report, para. 108.
[3] *Ibid.*, para. 203.
[4] Schedule IV, as it originally was, has been amended with effect from 1929–30. The amended schedule is given in the text.—*Vide* the Government of India's Home Department No. F.—174–II–28, dated September 27, 1928. See also App. B, Sch. IV, pp. 559–62 *post*.

It is provided, however, that no annual assignment need be greater than is necessary to bring the accumulated total of the famine relief fund up to the amount specified below. The annual assignment provided for in the budget of a province must not be spent except upon the relief of famine. But if any portion of the assignment is not so spent, it is to be transferred to the famine relief fund of the province. The local Government, in making provision in its budget for the annual assignment, must include in demands for grant such portion of the assignment as is proposed to be spent on the relief of famine. The balance required to make up the total of the annual assignment must be transferred to the famine relief fund. The famine relief fund will consist of (*a*) the amount outstanding at the credit of the famine insurance fund [1] maintained till 1928–29, and (*b*) the unspent balances of the annual assignments for each year transferred to the fund, together with any interest which may accrue on these balances and any recoveries of interest and principal in respect of loans granted to cultivators under this Schedule. The local Government may in any year suspend temporarily the provision of the annual assignment 'when the accumulated total of the famine relief fund of the province is not less than the amount specified below':—

	Rs.
Madras	40,00,000
Bombay	75,00,000
Bengal	12,00,000
United Provinces ...	55,00,000
Punjab	20,00,000
Bihar and Orissa ...	15,00,000
Central Provinces ...	45,00,000

[1] Till the end of the financial year 1928–29 the fund was known as the famine insurance fund. See foot-note 4 on page 483.

The famine relief fund must form part of the general balances of the Government of India which 'must pay at the end of each year interest on the average of the balances held in the fund on the last day of each quarter.' Such interest must be credited to the fund. The local Government may at any time spend the balance at its credit in the fund upon the relief of famine. *Under certain conditions*[1] the excess balance [2] in the famine relief fund may be spent for other purposes; e.g., protective irrigation works, the grant of loans to cultivators, etc. . . . If any doubt arises as to whether the purpose for which it is proposed to spend any portion of the annual assignment or the famine relief fund or the excess balance thereof is one of the purposes specified in this Schedule, the decision of the Governor thereon will be final.

Provincial borrowing.

As has already been stated, the provincial Governments in India had no power of borrowing before the Reforms, because they 'possessed no separate resources on the security of which they could borrow.' The authors of the Joint Report felt, however, that, if the provincial Governments were to enjoy such real measure of independence as would enable them to pursue their own development policy, they must be given some powers, however limited, of raising loans.[3] Section 30(1*a*) of the Government of India Act has made provision to this effect. It empowers a local Government to raise, on behalf and in the name of the Secretary of State in Council, money on the security of the revenues allocated to it, and to make proper assurances for that purpose, and provides for the framing of Rules relating to the conditions under which this power of borrowing may be exercised.

Under the existing Local Government (Borrowing) Rules,[4] a local Government may raise loans on the

[1] See App. B, Schedule IV, cl. 8.
[2] See *Ibid.*
[3] Joint Report, para. 111.
[4] See Appendix C.

security of its revenues for certain purposes.[1] But it cannot raise any such loan 'without the sanction (in the case of a loan to be raised in India) of the Governor-General in Council, or (in the case of a loan to be raised outside India) of the Secretary of State in Council.' The Governor-General in Council or the Secretary of State in Council, as the case may be, may, in sanctioning the raising of a loan, specify the amount of the issue and the conditions under which it can be raised. Every application for the sanction of the Secretary of State in Council must be forwarded through the Governor-General in Council.

Every loan raised by a local Government is a charge on the whole of its revenues, and all payments in connection with it have priority over all other charges of the local Government except—

(1) its contribution (if any)[2] to the Government of India,

(2) the interest payable by it on advances made to it by the Government of India, and

(3) the interest due on all loans previously raised by it.

Provincial taxation.

Before the introduction of the Reforms, the provincial Governments could not impose any tax without the sanction of the Government of India. The authors of the Joint Report proposed that some means of enlarging the taxing powers of the local Governments must, if possible, be found.[3] They advised that the best means of freeing the provincial Governments in this respect would be to schedule certain subjects of taxation as reserved for the provinces, and to retain the residuary powers in the hands of the Government of India, with whom

[1] See Appendix C.

[2] The provincial contributions have been abolished with effect from 1928–29. See page 480 *ante*.

[3] The Joint Report, para. 110

would rest the ultimate responsibility for the security of the country.[1] Accordingly, it has been provided by Rules[2] made under the Government of India Act as follows :—

The Legislative Council of a province may, without the previous sanction of the Governor-General, make and take into consideration any law imposing, for the purposes of the local Government, any tax included in Schedule I below. It may also, without the previous sanction of the Governor-General, make and take into consideration any law imposing, or authorizing any local authority to impose, for the purposes of such local authority, any tax included in Schedule II below. It is open to the Government of India to make, at any time, any addition to the taxes enumerated in Schedules I and II referred to above.

SCHEDULE I

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

SCHEDULE II

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

1. A toll.
2. A tax on land or land values.

[1] The Joint Report, para. 210.

[2] See Appendix E for the Scheduled Taxes Rules. See also Section 80A (3) of the Act.

3. A tax on buildings.
4. A tax on vehicles or boats.
5. A tax on animals.
6. A tax on menials and domestic servants.
7. An octroi.
8. A terminal tax on goods imported into, or exported from, a local area in which an octroi was levied on or before July 6, 1917.
9. A tax on trades, professions and callings.
10. A tax on private markets.
11. A tax imposed in return for services rendered, such as—

(*a*) a water rate ;
(*b*) a lighting rate ;
(*c*) a scavenging, sanitary or sewage rate ;
(*d*) a drainage tax ;
(*e*) fees for the use of markets and other public conveniences.

It may be noted in this connection that action has already been taken by several provincial Governments under the powers conferred on them by the Scheduled Taxes Rules.[1]

Conclusion.

In conclusion, we may state here that the financial position of the provincial Governments should be further improved and their solvency secured, if necessary, by a redistribution[2] of the heads of revenue and expenditure between them and the central Government ; and that the provincial Governments should be vested with far more extensive powers of taxation and with a more unfettered authority to borrow money on the security of their revenues. The existing restrictions on their borrowing powers have been imposed in order, it is said, to prevent harmful competition with the Government of India in the

[1] See Appendix E for the Scheduled Taxes Rules. See also Section 80A (3) of the Act. [2] See Appendix U in this connexion.

loan market. But such restrictions are incompatible with provincial autonomy. In Canada, the legislature of each province can make laws 'in relation to the borrowing of money on the sole credit of the province.'[1] If it is argued, however, that such provincial laws may be disallowed by the Governor-General of Canada in Council and, therefore, the borrowing powers of the provinces in Canada are really limited and subject to the control of the central Government, it may be said in reply that, since the Governor-General of India can veto any provincial Act, the provincial legislatures here should be allowed to make laws empowering the local Governments to borrow money on the security of their revenues, and that the existing restrictions on their borrowing powers should be removed. In the United States also, the central Government cannot exercise any control over the borrowing powers of the State Governments. There are, however, some restrictions on the borrowing powers of the State legislatures, but they have been imposed by the State Constitutions, and not by the central Government.[2]

[1] See Section 92 of the British North America Act, 1867.
[2] Bryce, *American Commonwealth*, vol. i, p. 530.

CHAPTER XXIV

THE JUDICIARY[1] AND THE ECCLESIASTICAL ESTABLISHMENT

The High Courts in India and the Privy Council—Constitution of the Judicial Committee of the Privy Council—Constitution of High Courts—Provision for vacancy in the office of Chief Justice or any other Judge—Salaries, etc. of Judges of High Courts—Jurisdiction of High Courts—Exemption from jurisdiction of High Courts—Certain acts to be misdemeanours—Judicial Commissioners—Subordinate Judiciary: Inferior Criminal Courts—Inferior Civil Courts—Juries and Assessors—Advocate-General—Ecclesiastical Establishment—Salaries and allowances of Bishops, etc.

The High Courts in India and the Privy Council.

In a previous chapter we have dealt with the functions of the High Courts in India as interpreters of our Constitution and shown how they guard against legislation inconsistent with it. But they are not the final interpreters of the Constitution like the Supreme Court of the United States in America. An appeal from the decision of a High Court on a matter which concerns the interpretation of the Constitution may be made to the Judicial Committee of the Privy Council. The Privy Council is also the Supreme Court of Appeal in respect of certain other classes of Indian cases. According to *The Imperial Gazetteer of India*,[2] 'in civil matters an appeal at present lies (*a*) from a final decree passed on appeal by a High Court or other court of final appellate jurisdiction; (*b*) from a final decree passed by a High Court in the exercise of its original jurisdiction; and (*c*) from any other decree, if the case is certified by the

[1] For a short history of the Judiciary in India see *The Imperial Gazetteer of India*, vol. iv, pp. 142-46; see also Ilbert's *Government of India* (1916), pp. 268-73.

[2] Vol. iv, p. 152.

High Court to be fit for appeal to the Privy Council. In the first two cases the value of the subject-matter of the suit in the court of the first instance must be Rs. 10,000 or upwards . . . and, when the decree (of a High Court) appealed from affirms the decision of the court immediately below, the appeal must also involve some substantial question of law. In criminal cases a right of appeal is given—subject to the opinion of the High Court that the case is a fit one for appeal—from any judgment, order, or sentence of a High Court made in the exercise of original jurisdiction, or in any criminal case where a point of law has been reserved for the opinion of the High Court.' Apart from these conditions, the Crown has the prerogative 'to give special leave to appeal.'[1] The Judicial Committee of the Privy Council now consists[2] of the Lords of Appeal in Ordinary; of such members of the Privy Council as hold, or have held, high Judicial office;[3] of two other Privy Councillors if appointed by the Crown; and 'of one or two former Indian or colonial judges appointed for the purpose.' Though the number of the members of the Committee is thus large, only four of its members need be actually present when a case is heard.[4] Every decision of the Committee is submitted in the form of 'advice to the Crown' and 'must bear the appearance at least, of unanimity.'[5]

Constitution of the Judicial Committee of the Privy Council.

It may be mentioned here that, suggestions have been made by many Indian statesmen that, since India is 'marching towards Responsible Government,' it should have, before long, a Supreme Court of Appeal of its own.[6]

[1] *The Imperial Gazetteer*, vol. iv, p. 152.
[2] Lowell, *Government of England*, vol. ii, pp. 466-67.
[3] In the United Kingdom, or (not exceeding seven in number) in the Dominions.
[4] See Ogg's *Governments of Europe*, p. 175.
[5] See *Ibid.*
[6] See Sir Tej Bahadur Sapru, *The Indian Constitution*, pp. 145-51. The Nehru Committee has also recommended the establishment of a Supreme Court in India.

The establishment of such a Court will not be, it is held, incompatible with the continuance of India's connection with Britain.[1] Nor will it in any way affect the Crown's prerogative to grant leave to appeal to the Privy Council. What is really contemplated is that the right of appeal to the Privy Council will be limited, in the event of the establishment of a Supreme Court, only to certain special classes of cases.

Constitution of High Courts.

There are at present High Courts in Bengal, Madras, Bombay, the United Provinces,[2] Bihar and Orissa, Burma and the Punjab. They have been established by Letters Patent issued by the Crown under the authority of Parliamentary enactments. The Crown is also empowered to establish by Letters Patent additional High Courts, if necessary, and confer on them 'any such jurisdiction, powers and authority as are vested in or may be conferred' on any of the existing High Courts.[3] The Indian Legislature has power, with the previous approval of the Secretary of State in Council, to make a law abolishing[4] any High Court.

Each High Court is to consist[5] of a Chief Justice and as many other Judges as the Crown may, subject to what follows, think fit to appoint. The maximum number of Judges of a High Court, including the Chief Justice and the additional Judges, if any, who may be appointed by the Governor-General in Council for a temporary period not exceeding two years, is fixed at twenty.[6] A Judge of a High Court must be[7] (*a*) a barrister of England or Ireland,

[1] See in this connection Section 73 of the Commonwealth of Australia Constitution Act, 1900, and also Section 106 of South Africa Act, 1909.

[2] The High Court in the United Provinces is styled the High Court of Judicature at Allahabad.

[3] Section 113 of the Act.

[4] Section 65 (3) of *ibid.*

[5] Section 101 (2) of *ibid.*

[6] Section 101 (2) of *ibid.*

[7] Section 101 (3) of *ibid.*

or a member of the Faculty of Advocates of Scotland, of not less than five years' standing; or (*b*) a member of the Indian Civil Service of not less than ten years' standing, and having for at least three years served as, or exercised the powers of, a District Judge; or (*c*) a person having held judicial office, not inferior to that of a Subordinate Judge or a Judge of a Small Cause Court, for a period of not less than five years; or (*d*) a person who has been a pleader of a chartered High Court, or of any Court[1] which is a High Court within the meaning of Section 3 (24) of the General Clauses Act, 1897, for an aggregate period of not less than ten years. At least one-third of the Judges of a High Court, including the Chief Justice,[2] but excluding additional Judges, must be 'such barristers or advocates as aforesaid,' and at least one-third must be members of the Indian Civil Service. The Chief Justice of a High Court has rank and precedence before the other Judges of the same Court. All the other Judges have rank and precedence 'according to the seniority of their appointments, unless otherwise provided in their patents.' Every Judge of a High Court holds his office during the pleasure of the

[1] I.e., a Chief Court or the Court of a Judicial Commissioner.

[2] Section 101 (4) of the Act. Under this Section the Chief Justice of a High Court, according to one interpretation, must be a barrister. 'The position is,' to quote Sir Tej Bahadur Sapru, 'that an Indian Vakil Judge may officiate as Chief Justice, but he cannot be confirmed. Some of the most eminent Indian Judges like the late Sir Ashutosh Mukherjee, Sir Subramania Aiyar, Sir Narayan Chandavarkar, Sir Pramada Charan Banerjee have officiated as Chief Justices, but . . . they could not be confirmed'.—*The Indian Constitution*, p. 142. But according to another interpretation, the Chief Justice need not be a barrister. Under it, 'one-third of the judges of a High Court must be barristers. . . . . The words "including the Chief Justice" were intended merely to indicate that, in calculating the one-third, the Chief Justice must be included in the total to be divided by three. By a wresting of the words from their obvious significance, a rule has sprung up that the Chief Justice must always be a barrister and never a mere Civilian or, still less, a Vakil.'—London Correspondent's letter, dated August 16, 1928, to the *Statesman*.

Crown.[1] He may resign his office, in the case of the High Court at Calcutta, to the Government of India, and in other cases to the local Government.[2] In England the Judges of the High Court of Justice and of the Court of Appeal hold office during good behaviour. They can, however, be removed from office by the Crown on an address presented by both Houses of Parliament. 'This means,' says Mr. Maitland,[3] 'that a judge cannot be dismissed except either in consequence of a conviction for some offence, or on the address of both houses.' This restriction on the power of dismissal of Judges is regarded as essential to their independence, and thus it acts as a great constitutional safeguard against executive interference with the administration of justice. In the Dominion of Canada also, the Judges of the Superior Courts hold office during good behaviour, but, as in England, can be removed by the Governor-General 'on address of the Senate and House of Commons.'[4]

Provision for vacancy in the office of Chief Justice or any other Judge.

If a vacancy occurs in the office of Chief Justice of a High Court, and during the absence of such a Chief Justice, the Governor-General in Council in the case of the High Court at Calcutta, and the local Government in other cases, must appoint one of the other Judges of the same High Court to act as Chief Justice, until some person is appointed by the Crown to the office and enters on the duties of that office, or until the Chief Justice returns from his absence, as the case may be.[5] And if a vacancy occurs in the office of any other Judge of a High

[1] Section 102 of the Act.
[2] *Ibid.*
[3] *The Constitutional History of England*, p. 313.
[4] Section 99 of the British North America Act, 1867; see also Section 72 of the Commonwealth of Australia Constitution Act, 1900, and Section 101 of South Africa Act, 1909.
[5] Section 105 (1) of the Act.

Court, and during the absence of any such Judge, or on the appointment of any such Judge to act as Chief Justice, the Governor-General in Council in the case of the High Court at Calcutta, and the local Government in the case of any other High Court, may appoint a duly qualified person to act as a Judge of the Court.[1]

Salaries, etc., of Judges of High Courts.

The Secretary of State in Council is empowered[2] to fix the salaries, allowances, furloughs, retiring pensions and, where necessary, expenses for equipment and voyage of the Chief Justices and other Judges of the several High Courts, and also to alter them. But no such alteration can affect the salary of any Judge who has already been appointed. The remuneration fixed for a Judge cannot be diminished or increased during his continuance in office.[3] If a Judge of a High Court dies during his voyage to India, or within six months of his arrival in India, the Secretary of State is required[4] to pay to his legal personal representatives such a sum of money out of the revenues of India 'as will, with the amount received by or due to him at the time of his death on account of salary, make up the amount of one year's salary.' And if he dies after the expiration of six months from his arrival in India, the Secretary of State must pay, out of the same revenues, to his legal personal representatives a sum equal to six months' salary, in addition to the sum due to him at the time of his death.[5] These provisions are obviously meant for the benefit of the English lawyers who are sent out from England as Judges.

The jurisdiction of every High Court has been defined by Letters Patent. The Letters Patent may be amended from time to time by the Crown by further Letters Patent. Each

[1] For further details see Section 105 (2) of the Act.
[2] Section 104 of *ibid.*
[3] *Ibid.*
[4] *Ibid.*
[5] *Ibid.*

High Court is a court of record and has[1] 'such jurisdiction, original and appellate, including admiralty jurisdiction in respect of offences committed on the high seas, and all such powers and authority, over or in relation to the administration of justice including power to appoint clerks and other ministerial officers of the Court, and power to make rules for regulating the practice of the Court, as are vested in it by Letters Patent.' It cannot, however, exercise any original jurisdiction in any matter 'concerning the revenue, or concerning any act ordered or done in the collection thereof, according to the usage and practice of the country or the law for the time being in force.'[2]

Jurisdiction of High Courts

Each High Court has superintendence over all courts for the time being subject to its appellate jurisdiction, and is empowered to[3]—

Powers of High Courts with respect to subordinate Courts.

(1) call for returns;

(2) direct the transfer of any suit or appeal from any such court to any other court of equal or superior jurisdiction;

(3) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts;

(4) prescribe forms in which books, entries and accounts are to be kept by the officers of any such courts; and

(5) settle tables of fees to be allowed to the sheriff, attorneys, clerks and officers of the courts.

But these rules, forms and tables must not be inconsistent

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

[2] Section 106 (2) of the Act. See Ilbert's *Government of India* (1916), p. 273.

[3] Section 107 of the Government of India Act.

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

with the provisions of any law for the time being in force, and must require the previous approval, in the case of the High Court at Calcutta, of the Governor-General in Council, and, in other cases, of the local Government.[1]

Rules may be made by each High Court providing for the exercise, by one or more Judges, or by Division Courts constituted by two or more Judges, of the Court, of its original and appellate jurisdiction.[2] The Chief Justice of the Court has to determine what Judge in each case is to sit alone, and what Judges of the Court, whether with or without the Chief Justice, are to constitute the several Division Courts.[3]

The Governor-General in Council may,[4] by order, transfer any territory from the jurisdiction of one to that of any other High Court, and empower any High Court to exercise jurisdiction in any part of British India not included within the limits for which it was established, and also to exercise jurisdiction over any British subject for the time being within any part of India outside British India. Such an order may, however, be disallowed by the Crown.[5]

Exemption from jurisdiction of High Courts.

As has been stated before, the highest officials[6] and Ministers in India are exempted from the original jurisdiction of any High Court in respect of anything counselled, ordered or done by any of them in his public capacity; from liability to

[1] Proviso to Section 107 of the Act. [2] Section 108 of the Act.
[3] *Ibid.* [4] Section 109 of the Act.
[5] And the disallowance will take effect only from the day of its notification by the Governor-General.
[6] I.e., the Governor-General, Governors, Lieutenant-Governors, Chief Commissioners and Executive Councillors. It is not clear from the Government of India Act whether or not these officials can be sued in the Court of India for private debts. In the absence of anything to the contrary, we may presume that they can be sued for private debts. The Governor-General of a self-governing Dominion can be sued in the Courts of the Dominion for such debts as if he were not Governor-General. (See Prof. Keith's *Responsible Government in the Dominions*, 1909, p. 33.)

arrest or imprisonment in any suit or proceeding in any High Court acting in the exercise of its original jurisdiction ; and from the original criminal jurisdiction of any High Court in respect of any offence other than treason or felony.[1] This exemption from liability to arrest and imprisonment extends also to the Chief Justices and other Judges of the several High Courts. The written order of the Governor-General in Council for any act is, in any proceeding, civil or criminal, in any High Court acting in the exercise of its original jurisdiction, a full justification[2] of the act, except in so far as the order extends to any European British subject. But 'the Governor-General, or any member of his Executive Council, or any person acting under their orders', is not exempted from any proceedings in respect of any such act before any competent court in England. Again, if any person holding office under the Crown in India does any of the following things, he will be guilty[3] of a misdemeanour :—

Certain Acts to be misdemeanours

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

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

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

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

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

But if any member of the central Executive Council or any member of any local Government was concerned or engaged in any trade or business at the time of his

[1] See Section 110 of the Act. See p. 349, footnote 1.
[2] Section 111 of *ibid.*
[3] Section 124 of the Act.

appointment, he may, during the term of his office, with the sanction of the Governor-General or, in the case of Ministers, of the Governor, and in any case subject to such general conditions as the Governor-General in Council may prescribe, retain his concern or interest in the trade or business, but cannot, during that term, take part in its direction or management.[1]

If any European British subject, without the sanction of the Secretary of State in Council or of the Governor-General in Council, or of a local Government, is concerned in any loan to a Prince or Chief in India, he will be guilty of a misdemeanour.[2] The carrying on by any person of any illicit correspondence, dangerous to the peace or safety of any part of British India, with any Prince or with any other person having authority in India, is also a misdemeanour.[3] Any person suspected of carrying on any such correspondence may be secured and detained in custody under a warrant issued by the Governor-General or a Governor.

Any of the aforesaid offences may, without prejudice to any other jurisdiction, be tried and 'determined' before His Majesty's High Court of Justice in England.[4] Every prosecution before a High Court in British India in respect of any of those offences must be commenced within six months of its commission.[5]

Judicial Commissioners.

Judicial Commissioners are appointed by the Government of India for those parts of British India which are outside the jurisdiction of the chartered High Courts or Chief Courts.[6] They exercise in respect of all courts subject to their appellate jurisdiction the same powers of revision and supervision

[1] See Section 124 of the Act.
[2] See Section 125 of the Act.
[3] See Section 126 of the Act.
[4] Section 127 of *ibid.*
[5] Section 128 of *ibid.*
[6] See *The Imperial Gazetteer*, vol. iv, p. 147; also Ilbert's *Government of India* (1916), p. 163. At present only Oudh has a Chief Court.

as the High Courts do with respect to the courts subordinate to them.[1] They derive their authority from various Indian enactments. There are Judicial Commissioners[2] in the Central Provinces, North-West Frontier Province, Coorg, Sind and Baluchistan. The province of Assam is under the jurisdiction of the Calcutta High Court.

Subordinate Judiciary: Inferior Criminal Courts.

Every province—outside a presidency town[3]—is divided into a number of sessions divisions, each comprising one or more districts.[4] For every sessional division the local Government is required to establish a court of sessions, and to appoint a Sessions Judge and also, if necessary, Additional and Assistant Sessions Judges. A court of sessions is competent to try all persons who have been duly committed to it and to inflict any punishment that may be allowed by law. But every sentence of death passed by it must be confirmed by 'the highest court of criminal appeal in the province.' Below the court of sessions there are the courts of magistrates, which are divided again into three classes,[5] first, second, and third.

Inferior Civil Courts.

The constitution, jurisdiction and procedure of the inferior civil courts in each province are as provided by special Acts or Regulations.[6] The subordinate civil courts, as constituted in the different provinces, are essentially identical, though they differ in respect

[1] See *The Imperial Gazetteer*, vol. iv, p. 147; also Ilbert's *Government of India* (1916), p. 163.

[2] *The Fifth Decennial Report*, p. 75; also *The Indian Year Book, 1927, and Whitaker's Almanack, 1928.*

[3] *The Imperial Gazetteer*, vol. iv, p. 147.

[4] See *The Imperial Gazetteer*, vol. iv, pp. 147–48.

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

[6] *The Imperial Gazetteer*, vol. iv, p. 149.

of certain details.[1] The usual arrangement is that for each district or group of districts there is a District Judge who also generally exercises criminal jurisdiction as a Sessions Judge.[2] Next to the District Judge there are Subordinate Judges; and below them come Munsifs, who preside over the lowest courts.

Juries and assessors.

Criminal cases are tried in the High Courts with the aid of jurors. Trials before courts of sessions are conducted with the help either of jurors or of assessors, as the local Government concerned may direct.[3] The assessors 'assist, but do not bind, the Judge by their opinions.' In the case of a trial by a jury before a court of sessions, the Sessions Judge is required by law, if he considers that the jury has returned a 'manifestly wrong verdict,' to submit the case to the High Court, which can set aside or modify the finding of the jury.[4]

Advocate-General.

An Advocate-General for each of the presidencies of Bengal, Madras and Bombay is appointed by the Crown.[5] He is empowered to take on behalf of the Crown such proceedings as are taken by the Attorney-General in England.[6] The Advocate-General of Bengal is also the principal Law Officer of the Government of India. If a vacancy occurs in the office of Advocate-General, or during the absence of an Advocate-General, the Governor-General in Council in the case of Bengal, and the local Government in other cases, may appoint a person to act as Advocate-General until some person is appointed by the Crown to the office, or until the Advocate-General returns from his absence, as the case may be.[7]

[1] *The Imperial Gazetteer*, vol. iv, p. 149.
[2] See Ilbert, *Government of India* (1916), p. 163.
[3] *The Imperial Gazetteer*, vol. iv, pp. 148–149.
[4] *Ibid.*
[5] Section 114 of the Act.
[6] *Ibid.*
[7] *Ibid.*

Ecclesiastical establishment.

The ecclesiastical establishment is maintained primarily for the purpose of providing 'the ministration of religion for British-born European servants of the Crown, and specially for soldiers and their families.'[1] The total amount spent on this establishment in the year 1926–1927 was about 32·5 lakhs of rupees.[2] The entire expenditure on the ecclesiastical department is non-votable. The Bishops of Calcutta, Madras and Bombay are appointed by the Crown by Letters Patent.[3] They are paid out[4] of the revenues of India such salaries and allowances as may be fixed by the Secretary of State in Council. Besides, they are paid, out of the same revenues, such 'expenses of visitations' as may be allowed by the Secretary of State in Council.

Salaries and allowances of Bishops, etc.

If the Bishop of Calcutta dies during his voyage to India, or if the Bishop of Calcutta, Madras or Bombay dies within six months of his arrival in India, the Secretary of State is required to pay to his legal personal representatives such a sum of money out of the revenues of India 'as will, with the amount received by or due to him at the time of his death on account of salary, make up the amount of one year's salary.'[5] And if he dies after the expiration of six months from his arrival in India, the Secretary of State must pay to his legal personal representatives a sum equal to six months' salary out of the same revenues, in addition to the amount due to him at the time of his death.[6] The Government of India Act has also provided for the payment of

[1] *Vide Report of the Indian Retrenchment Committee*, 1922–23, p. 269.

[2] This amount was exclusive of the amount of Rs. 6·7 lakhs spent on the ecclesiastical establishment in the Army Department.—*Finance and Revenue Accounts of the Government of India for the year 1926–27*, pp. 344 and 510.

The legitimacy of this item of expenditure is open to question.

[3] Section 118 of the Act.

[4] *Ibid.*

[5] Section 119 of the Act.

[6] *Ibid.*

pensions to the retired Bishops.[1] The expenditure [2] on the three Bishops and their establishments excluding the Chaplains and Archdeacons under them, was about Rs. 1,50,000 in 1922–23.[3]

There were in 1922–23 as many as 161 Chaplains of the Church of England, maintained by the Government of India.[4] Besides, the Government maintained eighteen Chaplains of the Church of Scotland.[5]

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

The Governor-General in Council may[8], with the sanction of the Secretary of State in Council, grant 'to any sect, persuasion or community[9] of Christians, not being of the Church of England or Church of Scotland, such sums of money as may be expedient for the purpose of instruction or for the maintenance of places of worship'.

[1] Section 120 of the Act.
[2] *Report of the Indian Retrenchment Committee*, p. 272.
[3] In 1926–1927 this expenditure was about Rs. 1·716 lakhs.—*Finance and Revenue Accounts of the Government of India for the year 1926–27*, p. 344.
[4] See *Report of the Indian Retrenchment Committee, 1922–23*, p. 271 and also p. 268.
[5] Also allowances were granted to Roman Catholic priests.
[6] Sec. 115 of the Act. [7] *Ibid.*
[8] Section 123 of the Act.
[9] E.g., To Roman Catholic and Wesleyan priests.

CHAPTER XXV [1]

THE REFORMS SCHEME IN OPERATION

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

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

Lord Chelmsford on the Reforms.

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

[1] The earlier portion of this chapter was originally written in January, 1925. As the criticisms of the Reforms Scheme made therein are still mostly applicable, it has been retained in this edition only with minor alterations. This will explain its manner of treatment.

be to assist the steps of India along the road that in the fulness of time would lead to complete self-government within the Empire.' These were the words in which Lord Chelmsford stated in 1921, in the course of his inaugural address to the first reformed Legislature of India, the underlying principles of the Reforms. How one would wish that these principles, so beautifully expressed by the ex-Viceroy, had been uniformly followed in practice in the succeeding years! Although it is really difficult to deny that there have been provocations, sometimes of the gravest character, given by the people and their representatives, yet one could have certainly expected a little more forbearance in those on whom devolved the task of giving effect to those underlying principles as explained by Lord Chelmsford. But, at the same time, we must say that we cannot agree with his Lordship that the Constitution, at the inauguration of which he made the statement quoted above, and in the framing of which he played so prominent a part, has definitely abandoned the principle of autocracy. The powers of 'certification,' of 'restoration,' of 'authorization,' as well as the power of making 'Ordinances,' vested in the different ruling authorities by the Government of India Act, are undeniable proofs of the existence of the elements of autocracy in the Constitution. Nor, again, can it be said that the mechanism of the central Government has been constructed according to the principles of democracy. Face to face with a Legislature consisting of two Houses, each having an elected majority, has been set up an irremovable and irresponsible Executive Government invested, subject, of course, to the ultimate control and direction of the Home Government, with a decisive power in respect of every question of Indian administration. The result has been, as should have been anticipated by the authors of the Constitution in such

Working of the Reforms: in the sphere of the central Government.

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

In the sphere of the provincial Government.

The 'dualized form of Government' which, as we have seen before, has been established in the major provinces of India is popularly known as 'dyarchy.' According to Mr. Curtis,[1] the word 'dyarchy' was first applied to this form of Government by Sir William Meyer, when the latter was the Finance Member of the Government of India. We propose in this chapter to say a few words about its working during the last eight years. It is not, however, our intention here to pronounce our judgment on dyarchy ; we shall only attempt to describe how it has been worked during the eight years it has been in operation.

At the very beginning, we must point out that it is extremely difficult to form any definite and correct conclusions as to how it has been worked in the various provinces.

[1] See *Dyarchy*, Introduction, p. xxxii. See also Appendix R *post*. The word 'dyarchy' is compounded of two Greek words signifying 'two' and 'government'.—See *ibid.*, p. 105. It means, according to the *Oxford English Dictionary*, Government by two rulers.

The data, that are available to the public regarding its working, are mostly unreliable. The mass of evidence that was placed before the Reforms Enquiry Committee[1] (1924) by the various witnesses who appeared before it was, for the greater part, hopelessly conflicting. For instance, what Mr. Harkishan Lal, an ex-Minister of the Punjab Government, had said about the working of dyarchy in his province when he had been a Minister, was contradicted [2] by Sir John Maynard, the then (1924–25) Finance Member of the Punjab Government, who had been a member of that Government since the introduction of the Reforms. Similarly, what Sir Chimanlal Setalvad, an ex-Executive Councillor of the Government of Bombay, had stated about the working of dyarchy in his province when he had been a member of the Government, was contradicted, [3] first, by Sir George (now Lord) Lloyd who had been, till 1923, Governor of Bombay, and, secondly, by Sir Maurice Hayward, the then (1924–25) Home Member to the Government of Bombay. But, in spite of the conflicting, and sometimes misleading, character of the statements made by some of the witnesses before the Reforms Enquiry Committee, certain conclusions in regard to the working of dyarchy in some of the provinces at least, are irresistible to those who have carefully studied the published evidence given by other witnesses and who have impartially followed the political history of India during the last eight years.

[1] The Committee was appointed by the Government of India and is popularly known as the Muddiman Committee after its President.

[2] See for the evidence of Mr. Harkishan Lal and Sir John Maynard, *The Statesman* (Dak edition) of August 16 and of October 22, 1924, respectively ; also App. No. 6 to the Report of the Reforms Enquiry Committee, 1924, vol. i (pp. 215–264) and vol. ii (pp. 284–348) respectively.

[3] See *The Statesman* (Dak edition) of October 23, of November 8, of December 4, of December 23, and of December 27, 1924. Sir George Lloyd's reply to Sir C. Setalvad was first published in *The Times*. See also App. 6 to the Report of the Reforms E[illegible] Committee, 1924, vol. ii, pp. 349–380.

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

First, it is difficult to deny that dyarchy has not had a fair trial since its introduction. The atmosphere created by the non-co-operation movement; the spirit of hostility to the Reforms engendered by it; the open preaching of the boycotting of the first elections held under the Reforms; the emergence of the Swarajist party with the destruction of the Reforms as its creed; the financial difficulties[1] of the provincial Governments; some of the measures, both administrative and legislative, adopted by the Governments, central and provincial; the attitude of some members of the civil services towards the Reforms and Ministers in some provinces; and the policy pursued by some of the Governors,—all these conspired as it were to make the smooth and successful working of the dyarchical system of Government practically impossible.

The principle of joint deliberation, not always observed.

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

[1] See Appendix U in this connexion.

with the work of the Reserved departments, gradually familiarizes them with the needs of those departments and with considerations affecting their administration, and thus prepares the way 'for the assumption by Ministers of further responsibility . . . as additional subjects are transferred until the ultimate goal of complete responsibility' is attained.[1]

The habit of joint deliberation seems to have been encouraged both in Madras and Bengal. It is said that Lord Willingdon, who was till 1924 Governor of Madras, treated his 'entire Government as a unified Government.'[2] In dismissing the first Bengal Legislative Council Lord Lytton[3] is reported to have said as follows :—

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

Both Mr. (now Sir) A. K. Ghuznavi and Mr. A. K. Fazl-ul-Huq, who had been Ministers in Bengal till September 1924, bore testimony, in their evidence[4] given before the Reforms Inquiry Committee, to the continuance of the above 'practice' when they had been Ministers.

In this connection we must point out one of the inherent defects in the dyarchical system of Government. The position[5] of a Minister in it is extremely difficult. Joint

[1] See Mr. Montagu's Memorandum on the Government of India Bill, p. 4.

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

[3] See *The Capital*, August 30, 1923.

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

[5] See on this point Dr. Pramatha Nath Banerjee's speech in the

deliberation between the two halves of the provincial Government is essential, as has been shown before, for more than one reason. It is specially necessary for ensuring unity of purpose in provincial administration, as, after all, the Government of a province is one, its different parts being closely inter-related. Now let us suppose that a certain decision is arrived at by a provincial Government after a free consultation between its two halves and that the decision relates to a matter under the Reserved side of the Government. The Transferred side does not approve of the decision. Let us next suppose that the action actually taken or proposed to be taken by the Reserved side on the basis of the decision already so reached, is strongly disapproved in the local Legislative Council. What then should be the attitude of the Ministers in the Council? The Joint Select Committee advised[1] that members of the Executive Council and Ministers should not oppose each other in the Legislative Council by speech or vote: and that they should not be required to support either by speech or vote proposals of each other of which they do not approve. The only course open to the Ministers in our supposed case, next to that of resignation, is to remain silent spectators of the scene that is enacted before them. They cannot conscientiously support the action in question in the Legislative Council; nor can they, without embarrassing their colleagues on the Reserved side, join the Council in its disapproval of the action. Their silence in such circumstances is bound to be misunderstood by the Council or, at least, by a considerable section of it. And this Council, it must be borne in mind, is their real master. Theoretically, they

Side of the inherent defects in dyarchy.

[1] Bengal Legislative Council.—*Bengal Legislative Council Proceedings*, February 18 and 20, 1924, vol. xiv, No. 2.

[2] The Joint Select Committee's Report on Clause 6 of the Government of India Bill.

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

Relations between Ministers and the public services.

Our third conclusion in regard to the working of dyarchy is that in some provinces at least, the relations between Ministers and the officers of the public services working under them—particularly the Secretaries—have not been what they should have been. As a matter of fact, one ex-Minister[1] has gone so far as to say that the position of the Minister in his province 'was one of humiliation and irritation.' Orders passed by the Minister had been challenged by one of his subordinates. This attitude of insubordination on the part of officials working under Ministers may be attributed to two reasons principally. First, as we have shown before, under the Government of India Act and the Rules made thereunder, Ministers have practically no authority[2] over the members of the All-India

[1] Rao Bahadur N. K. Kelkar, ex-Minister of the Central Provinces; see *The Amrita Bazar Patrika* (Dak edition) of Ausust 13, 1924.

See also in this connexion paras. 70–87 of Rao Bahadur N. K. Kelkar's Memorandam to the Reforms Enquiry Committee, 1924; also App. 6 to the Report of the Committee, vol. i, p. 103.

[2] 'My proposals with regard to punishment, withholding of increments, pensions, etc., of Imperial Service officers were generally upset except in one or two cases. . . . Ministers can't enforce any disciplinary measures against such officers nor do the Ministers possess the power of posting such officers to places desired by them (Ministers). In all these matters my decisions or suggestions were on many occasions upset by the Governor either in deference to the wishes of the officers concerned or in deference to the opinions of

Services, from amongst whom the Secretaries, Under-Secretaries, etc., are generally recruited. Under Devolution Rule 10, even no order for the posting of an officer of an All-India Service can be made without the personal concurrence of the Governor. Secondly, under the rules of executive business framed by the Governor in each province, the Secretaries attached to the different departments of the provincial Government have the right of access to the Governor for bringing to his notice any case which they consider to be necessary for him to attend to personally. They have even, as appears from the evidence[1] of Mr. Harkishan Lal, an ex-Minister of the Punjab Government, 'the right of pre-audience with the Governor,' and thus have the opportunity of influencing him before Ministers can present their case. The Secretaries to the Government of India have, as has been seen before, similar right of access to the Governor-General. Whatever may be the advantages of this system, we cannot support its underlying principle. Moreover, the system is particularly indefensible in connection with the administration of the Transferred departments, because it is, as Professor Keith stated in his Minority Report,[2] 'incompatible with

the heads of the departments.'—Rao Bahadur N. K. Kelkar's Memorandum, (paras. 66 and 99)to the Reforms Enquiry Committee, 1924.

'If Ministers cannot be trusted even in the matter of transfers and posting, it would be simpler, more logical and more intelligible to dispense with them altogether.'—Mr. C. Y. Chintamani's Memo. to the Reforms Enquiry Committee, 1924, para. 32.

[1] See *The Statesman* (Dak edition) of August 16, 1924. *Vide* also the Report of the Reforms Enquiry Committee, 1924, App. 6, vol. i, p. 224.

In the Central Provinces, the Secretariat procedure is as follows:

'Any case may, at any stage, if the Secretary in the department to which the case belongs thinks fit, be submitted by him to the Governor:

Provided that when a case is so submitted to the Governor, the member or minister in charge shall be at once informed of the fact by the Secretary.'—Report of the Reforms Enquiry Committee, 1924, App. 5, p. 432.

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

responsible government in any real sense.' Besides, there is another consideration. The members in charge of the Reserved departments in a province or the members of the Executive Council of the Governor-General are, together with the Secretaries working under them, responsible to the same authority, namely, the Secretary of State for India, for the administration of the subjects committed to their charge. They have, therefore, so to speak, a homogeneity of interests. But the case is entirely different with Ministers. The latter are responsible for the administration of the subjects entrusted to their charge not to the Secretary of State, but to the provincial Legislative Council. And it is they who will have to defend before the Council every action relating to those subjects. The final decision in respect of every important question, affecting those subjects should therefore rest with them so long as they would retain the confidence of that Council. It should be the duty of the officers of the public services serving under them to supply them with all necessary materials in order to enable them to arrive at a correct decision on a particular question; but the decision itself should be theirs. When the decision is once reached, it should be the further duty of those officers to give effect to it.

It may be mentioned here that, unlike the other members of Lord Chelmsford's Government, Sir C. Sankaran Nair apprehended the danger to the smooth and successful working of dyarchy, which might arise from the right of access of the Secretaries, working under Ministers, to the Governor. In a minute of dissent appended to the First Despatch of the Government of India on Indian Constitutional Reforms, he expressed his views on the question as follows[1] :—

'According to my colleagues, the permanent heads of departments and the secretaries under a minister should

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

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

The English system.

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

We may note here what President Lowell states[1] to be the theoretical relation between the political chief and his

[1] Lowell, *Government of England* (1919), vol. i, p. 182.

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

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

Relations between Governors and Ministers.

Our fourth conclusion is that in some provinces, the Governors have tried to control their Ministers, to reduce them to the position of their mere advisers, and to concentrate power in themselves even in respect of the administration of the Transferred departments; and that often the Ministers in those provinces have been able to pursue their own policy only 'with the help of the weapon of resignation in the background.' In so acting, those Governors have violated the spirit, if not the letter, of the Constitution. Only in exceptional cases, the Governor is empowered

by the Act to take action otherwise than in accordance with the advice of his Ministers; ordinarily, he must let the Ministers have their way. The advice[1] of the Joint Select Committee on this question is very clear. 'Ministers who enjoy the confidence of a majority in their Legislative Council will be given the fullest opportunity of managing that field of government which is entrusted to their care. In their work they will be assisted and guided by the Governor, who will accept their advice and promote their policy whenever possible. If he finds himself compelled to act against their advice, it will only be in circumstances roughly analogous to those in which he has to override his Executive Council. . . .' The control of Ministers by the Governor and their responsibility to the Legislative Council are incompatible. As Rao Bahadur N. K. Kelkar, ex-Minister, Central Provinces, admitted, he had to please two masters, the Governor and the Legislative Council.[2] If the control by the Legislative Council of Ministers is to be made real and effective, the Governor's control over them must disappear, and he must occupy the position of a purely constitutional Governor like the Governor[3] in a self-governing Dominion. The present position is anomalous. The Governor interferes in the administration of the Transferred subjects, but he enjoys immunity from all criticism by the Legislative Council[4].

[1] The Joint Select Committee's Report on the Government of India Bill, para. 5.

[2] Report of the Reforms Enquiry Committee, 1924, App. 6, vol. i, p. 80; also App. 5, p. 413.

[3] The term 'Governor' has obviously been used here in a wide sense.

[4] As Mr. C. Y. Chintamani, ex-Minister, United Provinces, said: 'They (*i.e.*, the Governors of provinces) are not constitutional Governors as in the dominions and yet the Legislative Councils are forbidden to criticise them and their acts and omissions as if they were such, as if they had no personal responsibility for what their Governments do or fail to do, as if they always acted upon the advice of responsible Ministers. . . .'

'Either the Governor should be a "constitutional Governor" or he

Official *bloc* incompatible with ministerial responsibility.

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

Collective responsibility of Ministers, not much encouraged.

In the sixth place, it does not appear from the evidence placed before the Reforms Enquiry Committee that the principle of the collective responsibility of Ministers was recognized except in one or two provinces.[1] 'It was pointed out to us by a majority of the ex-Ministers whom we examined', say the authors of the Minority Report of the Reforms Enquiry Committee, 'that the Ministers were dealt with by their Governors individually and not collectively. In

should not by Rule be protected from criticism in the Council. At present his position in relation to the Council is one of power unaccompanied by responsibility and untempered by the knowledge that the manner of its exercise can form the subject of Council criticism. It is a position more privileged than that of any dominion Governor and of the King himself in Britain'—Paras. 9 and 23 of his Memo. to the Reforms Enquiry Committee, 1924.

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

other words, the point raised was that there were Ministers but no Ministries.' This may be due to two reasons. First, except in those provinces,[1] there were, till recently, no well-organized parties in the provincial Legislative Councils. Speaking of the English Constitution, President Lowell has remarked that it is inconceivable that government by a responsible ministry should have appeared if Parliament had not been divided into Whigs and Tories. In fact, the whole plan would be senseless if parties did not exist.[2] But it may also be said that, if the principle of the joint responsibility of Ministers were once recognized and acted upon, it would have brought parties into existence and tended to perpetuate them. For 'the parliamentary system', to quote the same writer[3] again, 'like every rational form of government, reacts upon and strengthens the conditions of its own existence. It is based upon party, and by the law of its nature tends to accentuate party'. Secondly, the principle of the collective responsibility of Ministers has not received much encouragement from most of the Governors. It has transpired that in one province at least there was even no joint consultation between its two Ministers during the whole tenure of their office. Following the letter of the law, some Governors directed that each Minister should act on his own individual responsibility. It is true that the Government of India Act has made no clear[4] provision for the joint responsibility of Ministers. But it must be borne in mind that this is a

[1] E.g., in Madras all the first three Ministers were appointed from among the non-Brahmin members of the Legislative Council as the non-Brahmin party commanded a majority in the Council. 'In selecting the Ministers the Governor adopted the plan . . . of calling upon the leader of the party which had been returned to power by the general elections to make recommendations.'

[2] Lowell, *Government of England*, vol. i, p. 456.

[3] *Ibid.*, p. 457.

[4] Sub-section 3 of Section 52 of the Act is not very clear on this point.

matter which rests elsewhere e.g., in England, on mere conventions. Law has no direct concern with such matter there. Such conventions may be usefully built up also in our country. We may note here what the Joint Select Committee suggested[1] on this question :—

'. . . . They think that it should be recognized from the commencement that ministers may be expected to act in concert together. They probably would do so ; and in the opinion of the Committee, it is better that they should. . . . '

Again :

'The Committee think[2] it important that, when the decision is left to the Ministerial portion of the Government, the corporate responsibility of Ministers should not be obscured. They do not intend to imply that, in their opinion, in every case in which an order is passed in a transferred department, the order should receive the approval of all the Ministers ; such a procedure would obviously militate against the expeditious disposal of business, and against accepted canons of departmental responsibility. But in cases which are of sufficient importance to have called for discussion by the whole Government, they are clearly of opinion that the final decision should be that of one or the other portion of the Government as a whole.'

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

Lastly, we may observe that the relations between the Finance Department, which, by the way, is under Devolution Rule 36 (1), controlled by a member of the Executive Council, and Ministers have not been, in most of the

[1] The Joint Select Committee's Report on Clause 4 of the Government of India Bill.

[2] The Joint Select Committee's Second Report, p. 2.

provinces, as happy[1] as they should have been, and that this is partly responsible for the unpopularity of dyarchy. Complaints have been made by several ex-Ministers and other witnesses before the Reforms Enquiry Committee about the attitude of this department towards the Transferred side of the provincial Governments. It is quite possible that some of these complaints are groundless and may be attributed to an inadequate appreciation of the duties and responsibilities of the Finance Department of every Government in relation to its revenues and expenditure. As we have previously shown, this department is seldom popular in any country with the spending departments of the Government thereof because of the peculiar nature of its work. But, on the other hand, there is evidence of an unimpeachable character to prove that in some provinces[2] at least, the Finance Members have often shown a 'conscious bias' against Transferred departments; that the principle of 'charity begins at home'[3] has more influenced their attitude towards the two halves of the provincial Governments than considerations of equity and justice; that, in regard to proposals of new expenditure relating to Transferred subjects, they have been sometimes unduly strict in their interpretation of the rules of the Finance Department; and that they have often betrayed by their actions their inability to appreciate the difficulties of Ministers, who have had to carry a very critical majority with them. Some ex-Ministers have stated in their evidence before the Reforms Enquiry Committee that they had often

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

[1] It should be admitted here that there has been some improvement in the relations between the Finance Department and Ministers since the publication of the Report of the Reforms Enquiry Committee, 1924.

[2] See the Report of the Reforms Enquiry Committee, 1924, pp. 165–168.

[3] *Vide* Mr. C. Y. Chintamani's oral evidence before the Reforms Enquiry Committee, 1924.

had to use threats of resignation in order to have their way in financial matters. Certainly the system of Government under which it is necessary to employ such threats to carry on the administration is anything but sound.

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

Mr. (now Sir) A. K. Ghuznavi, an ex-Minister of the Government of Bengal, is of opinion[2] that on account of the 'minute and meticulous scrutiny by the Finance Department of the smallest technical details of each project, . . . ministers are only too often unable to carry through their schemes in the form approved by them and in which they are put by the heads of departments and other expert officers, who alone are in a position to judge as to the soundness or otherwise of such schemes.' He has suggested that the Rules relating to the Finance Department should be so amended as to limit its powers.

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

[1] See *The Statesman* (Dak edition) of August 20, 1924. Rule 36 (1) 'is a reflection on Ministers and it gives an unfair initial advantage to the Governor in Council and Reserved subjects over the Ministers and Transferred subjects. Nor is the objection only theoretical and sentimental. Experience inside the Government on the Transferred side satisfied me that the rule operated to the disadvantage of Ministers.'—Mr. Chintamani's Memo. to the Reforms Enquiry Committee, 1924, para. 11.

[2] See *The Statesman* (Dak edition) of October 14, 1924. See also Mr. Ghuznavi's Memo. to the Reforms Enquiry Committee, 1924.

existing arrangement, many persons advocate the introduction of the 'separate purse' system. Under it, certain sources of revenue will be allocated to the Reserved, and certain other sources to the Transferred side of the Government. With all the advantages of this system, we feel that it will, if introduced, tend to destroy the unity of provincial administration; and that, secondly, it will involve in practice many difficulties, no less serious than those which it seeks to remedy—arising specially from the fluctuations of receipts from the heads of revenue allocated to the one or the other side of the Government and its consequent deficit budgets in some years. Besides, it should not be overlooked that a joint purse brings 'Ministers into association to some extent with the administration of Reserved subjects through the settlement of allocation of revenues [1].'

System of separate purse, how far desirable.

We may note here that the Government of India had recommended the system of separate purse in its first Despatch [2] on Indian Constitutional Reforms. But the Joint Select Committee did not accept [3] the recommendation. It suggested, on the other hand, the system of joint purse now in vogue.

We have stated above our conclusions in regard to the working of the Reforms since their introduction. We may be justly charged with having presented only the dark side of the picture. We are fully aware, however, of the fact that a good deal of useful work has been and is being done under the Reforms and that they have provided a good training in responsible government to the people of India. Our

[1] Vide '*Reports on the Working of the Reformed Constitution, 1927*', p. 166.

[2] See para. 70 of the Despatch.

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

object in writing this chapter has been to point out some of the inherent defects in our present Constitution and also some of the difficulties[1] that have been experienced in its practical working. These defects and difficulties have in no small degree contributed to the present unpopularity of the Reforms and are partly responsible for the practically universal demand for the abolition of dyarchy, for the establishment of 'provincial autonomy', and for the introduction of the principle of responsible government into the Government of India. We also feel that the dyarchical form of Government, as recommended to be worked, cannot but involve difficulties in its actual working. If, on the other hand, it is worked, as some have suggested, on strictly dyarchical lines, the unity of provincial administration will be seriously affected and its educative value will be lost. Because of these inherent defects in dyarchy, we are also opposed to its introduction into the domain of the central Government.

Parliament and the administration of Transferred subjects.

We may say here a few words about Parliament's attitude towards the administration of the Transferred subjects. The authors of the Joint Report recommended[2] that in respect of all matters in which responsibility would be entrusted to representative bodies in India, Parliament must be prepared to forego the exercise of its own power of control, and that this process must continue *pari passu* with the development of responsible government in the provinces and eventually in the Government of India. This recommendation has been followed in practice by the House of Commons. It is now a well-established convention of the House that it will not interfere in the administration of the Transferred subjects. This convention

[1] For financial difficulties of the provinces see App. U, pp. 609–23.
[2] Joint Report, para. 291.

was established in 1921 by a ruling of the Speaker of the House. The occasion[1] of the ruling was as follows:— On February 23, 1921, a question was addressed to Mr. Montagu, the then Secretary of State for India, in regard to the appointment of Mr. Harkishan Lal[2] as a Minister in the Punjab. The reply given by Mr. Montagu provoked a number of supplementary questions. The Speaker's final ruling[3] on the subject was as follows:—

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

This ruling established the principle of non-interference with the administration of the Transferred subjects by the House of Commons. In the absence of anything to the contrary, we may presume that this principle has been accepted also by the House of Lords.

Statutory Commission.

The authors of the Joint Report had recommended[4] that ten years after the institution of the Reforms, and again at intervals of twelve years thereafter, a Commission approved by Parliament should investigate the working of the changes introduced

[1] *Vide The Indian Annual Register*, 1922–23, vol. ii, pp. 14–22.
[2] Mr. Harkishan Lal was convicted of conspiracy to wage war against the King and was sentenced to transportation for life and forfeiture of property. He was subsequently pardoned.
[3] *See The Indian Annual Register*, 1922–23, vol. ii, pp. 20–21.
[4] The Joint Report, para. 289; also para 264.

into the provinces, and recommend as to their further progress. It should be, they continued, equally the duty of the Commission to examine and report upon the new constitution of the Government of India, with particular reference to the working of the machinery for representation, the procedure by certificate, and the results of joint sessions. The Commission would, doubtless, if it saw fit, have proposals to make for further changes in the light of the experience gained. Elsewhere[1] in their Report they had also stated: 'We regard it as essential, if the terms of the announcement of August 20 are to be made good, that there should from time to time come into being some outside authority charged with the duty of resurveying the political situation in India and of readjusting the machinery to the new requirements. We would provide, therefore, that ten years after the first meeting of the new councils established under the statute, a commission should be appointed to review the position. Criticism has been expressed in the past of the composition of Royal Commissions, and it is our intention that the commission which we suggest should be regarded as authoritative and should derive its authority from Parliament itself. The names of the commissioners therefore should be submitted by the Secretary of State to both Houses of Parliament for approval by resolution. The commissioners' mandate should be to consider whether by the end of the term of the legislature then in existence it would be possible to establish complete responsible government in any province or provinces, or how far it would be possible to approximate to it in others; to advise on the continued reservation of any departments for the transfer of which to popular control it has been proved to their satisfaction that the time had not yet come; to recommend the retransfer of other matters to the control

[1] Paras. 261–62.

of the Governor in Council if serious maladministration were established; and to make any recommendations for the working of responsible government or the improvement of the constitutional machinery which experience of the systems in operation may show to be desirable . . . . . They should investigate the progress made in admitting Indians into the higher ranks of the public service. They should examine the apportionment of the financial burden of India with a view to adjusting it more fairly between the provinces. The commission should also examine the development of education among the people and the progress and working of local self-governing bodies. Lastly, the commission should consider the working of the franchise and the constitution of electorates, including the important matter of the retention of communal representation.'

In accordance with these proposals, it was provided in the original Section 84A of the Government of India Act as follows:—

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

'(2) The persons whose names are so submitted, if approved by His Majesty, shall be a commission for the purpose of inquiring into the working of the system of government, the growth of education, and the development of representative institutions, in British India, and matters connected therewith, and the commission shall report as to whether and to what extent it is desirable to establish the principle of responsible government, or to extend, modify or restrict the degree of responsible government then existing therein, including the question whether the

establishment of second chambers of the local legislatures is or is not desirable.

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

Commenting on this Section the Joint Select Committee remarked[1] as follows :—

'The Committee are of opinion that the Statutory Commission should not be appointed until the expiration of ten years, and that no changes of substance in the constitution, whether in the franchise or in the lists of reserved and transferred subjects or otherwise, should be made in the interval. The Commission will be fully empowered to examine the working of the constitutions in all their details in the provinces, and to advise whether the time has come for full responsible government in each province, or in the alternative whether and to what extent the powers of self-government already granted should be extended, or modified, or restricted. It should be clearly understood, also, that the Commission should be empowered to examine into the working of the Government of India and to advise in respect of the Government of India no less than in respect of the provincial governments.'

Notwithstanding the advice of the Committee, His Majesty's Government rightly decided[2] in 1927, for various reasons,[3] to accelerate the appointment of the Statutory Commission. As, however, it was thought that 'the

[1] The Joint Select Committee's Report on Clause 41 of the Government of India Bill, 1919.

[2] *Vide* the Government of India's Home Department Notification No. 5123—Public, dated November 8, 1927 ; also App. Q.

[3] *Ibid.* Also see the Earl of Birkenhead's Speech in the House of Lords on November 15, 1927.

Vide also *Parliamentary Debates : Amendment of the Government of India Act, Section* 84*A* (published by the Government of India), 1928, in this connexion.

antedating of the Commission involved '[1] an amendment of the Government of India Act, an Act[2] was passed by Parliament in November, 1927, amending ' Section 84A of the Government of India Act with respect to the time for the appointment of a Statutory Commission thereunder.' Among other things, this Act provided that in Section 84 A of the Government of India Act, " for the words ' At the expiration of ten years ' there shall be substituted the words 'within ten years.' " A Commission has since been appointed[3] for the purposes of the aforesaid Section of the Government of India Act, in accordance with the procedure laid down therein. It is composed as follows :—

The Right Hon. Sir John Simon, M.P. (Chairman);
Viscount Burnham;
Lord Strathcona and Mount Royal;
The Hon. E. C. G. Cadogan, M. P.;
The Right Hon. Vernon Hartshorn,[4] M. P.;
Colonel The Right Hon. George Lane-Fox, M. P.; and
Major C. R. Attlee, M. P.

[1] As we pointed out in the first edition of this work, there was nothing in Section 84A of the Government of India Act, as it stood before, to prevent the appointment of a Commission, constituted in the way prescribed therein or otherwise, before the expiry of the ten-year period. But if such a Commission had been appointed before 1929 and the Section in question had remained unaltered, then another Commission, constituted in the manner prescribed in the Section, would have to be appointed ' at the expiration of ten years after the passing of the Government of India Act, 1919.' We believe that the Government of India (Statutory Commission) Act, 1927, was passed by Parliament with a view to meeting this difficulty.

[2] The Government of India (Statutory Commission) Act, 1927. It is dated November 23, 1927.

[3] The appointment was made on November 26, 1927. See *Parliamentary Debates: Amendment of the Government of India Act, Section 84 A*, p. 258.

[4] The Right Hon. Stephen Walsh, M. P., who had been originally appointed a member, having resigned for reasons of ill-health, the Right Hon. Vernon Hartshorn was appointed in his place under a Warrant, dated December 7, 1927.—Vide *Parliamentary Debates: Amendment of the Government of India Act, Section 84-A*, p. 255.

It is a purely Parliamentary Commission in the sense that it consists of members of Parliament only. The cost of the Commission is to be borne by the revenues of India, but His Majesty's Government has decided to make a contribution of £ 20,000 towards it.[1]

The total exclusion[2] of Indians from the personnel of the Commission has naturally been regarded by many persons as an affront to Indian susceptibilities, and, as a result, the Commission has been boycotted by a very considerable and important section of the people of India. No such exclusion was required by the Government of India Act which merely demanded that the members of the Commission must be selected with the concurrence of both Houses of Parliament. In justification of the exclusion of Indians, the

[1] See Earl Winterton's speech in the House of Commons on November 25, 1927. Also see *Parliamentary Debates: Amendment of the Government of India Act, Section 84A*, p. 165.

[2] It should be mentioned here that arrangements have been made for the association of Indians with the work of the Statutory Commission by means of a Central Committee of seven members acting on behalf of the Indian Legislature, and provincial Committees acting on behalf of provincial legislatures. The Central Committee, of which Sir Sankaran Nair is the Chairman, has been partly elected by the Council of State, and partly nominated by the Government of India as the Legislative Assembly refused to co-operate with the Commission by 68 votes to 62. The Central Committee sits along with the Commission wherever evidence is taken in India, but a provincial Committee can sit with the Commission only when evidence is taken in the province concerned. Sir John Simon presides over the joint sittings of the Commission and Committees, styled the 'Joint Free Conference,' and members present at a joint sitting have the same rights in respect of the examination of witnesses. But it must not be forgotten, therefore, that neither the members of the Central Committee nor those of a provincial Committee are members of the Statutory Commission. The Committees are expected to submit separate reports. It has been argued that through the media of the Committees Indians would have ample opportunity of influencing the views of the members of the Statutory Commission.

It may be added here that the Statutory Commission is also being assisted in its task by an Education Committee, and by an economic expert (Mr. Walter T. Layton, Editor of the *Economist*) brought from England. Sir Philip Hartog, a member of the Public Service Commission, is the Chairman of the Education Committee.

Earl of Birkenhead, the then Secretary of State for India, said in the House of Lords[1] :—

'The function of the Commission is a simple one. It is to report to Parliament. When once the Commissioners have reported, they are *functi officio*. The task then belongs to others. What is it that Parliament was entitled to require from these reporters? What could these reporters contribute that would be most helpful to Parliament? I find myself in no doubt as to the answer to both these questions. Parliament could most be helped by the opinions of men of admitted integrity and independence, without any commitments of any kind at all in the past events of history, who went there with one object and one object only—namely, to acquaint themselves with the actualities of the problem and to equip themselves to be the wise advisers of Parliament . . . . . I conceive of them (members of the Commission) as an exceptionally intelligent jury, going to India without any preconceived ideas at all, and with no task except to come to this country and give the honest result of the examination which they make of Indian politics.

'I have no doubt whatever, speaking as a constitutional lawyer, that the framers of the original and determining Act, when they spoke of a Commission, contemplated a Parliamentary Commission.[2] It is true that in terms they did

[1] On November 24th, 1927. *Vide* also *Parliamentary Debates*, etc., pp. 128–29.

[2] The Earl of Birkenhead was corroborated on this point by Viscount Chelmsford who, after quoting a passage from the Report of the Joint Select Committee, said :

'Mr. Montagu was a party to that Report and I think that quotation alone would show what was in his mind—that it was definitely a Parliamentary Commission or Committee, call it which you will, which he had in his mind to examine the constitutional development in India. Therefore, as I said at the beginning, I am deeply committed to the belief that this inquiry by Commission should be through the medium of a Parliamentary Commission.'—*Parliamentary Debates*, etc., . . . p. 159.

The passage quoted by Viscount Chelmsford occurs in that part

not so state it, but I draw the inference that they did not so state it because they thought it so obvious.'

He also argued[1] that the inclusion of Indians would necessarily make the Commission, if it were to be really representative of various interests, too unwieldy and inconvenient a body for the task to be assigned to it.

Although we do not deny that these reasons have some weight, yet we feel that the exclusion of Indians from the Commission has naturally further embittered the not-very-happy relations previously existing between England and India; and that it is possible that any advantages that may be derived from it would be more than counterbalanced by the harm that has been done by it. We only hope that the results of the inquiry now being carried on by the Statutory Commission will have justified the exclusion, and that the consequential changes made by Parliament in the Constitution of India will be of such character as will satisfy the legitimate aspirations of the people of India. The present constitution should be amended as early as possible, because it is not liked by any section of the Indian community.[2] As Lord Olivier rightly said in the House of Lords,[3] the dyarchical system (of Government) has ceased to perform any useful functions and the sooner it is superseded the better, because it is

of the Report of the Joint Select Committee which deals with the Preamble to the Government of India Bill. To our mind it is not very enlightening on the question at issue.

[1] Vide *Parliamentary Debates*, etc., ... pp. 130–133.

[2] In this connexion the attention of the reader is drawn to the Report of the Committee appointed, under the Chairmanship of Pandit Motilal Nehru, by the All Parties Conference in Bombay on May 9th, 1928, 'to consider and determine the principles of the constitution for India.' The Report is a document of great political importance, and should, therefore, receive from those who would frame the future constitution of India, the amount of consideration which it rightly deserves.

[3] On November 15, 1927. Vide *Parliamentary Debates : Amendment of the Government of India Act Section 84A*, pp. 26–27.

doing no good and is creating an atmosphere of misunderstanding and unrest.

Conclusion.

We cannot do better than conclude this chapter with the following quotation from Viscount Bryce's great work,[1] *The American Commonwealth* :—

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

[1] Page 362, new edition, 1922.

APPENDIX A

Preamble to the Government of India Act, 1919.

Whereas it is the declared [1] policy of Parliament to provide for the increasing association of Indians in every branch of Indian administration, and for the gradual development of self-governing institutions, with a view to the progressive realization of responsible government in British India as an integral part of the empire :

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

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

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

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

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

* * *

APPENDIX B

The Devolution Rules [2]

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

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

[1] See in this connexion Appendix R.

[2] *Vide* Notification No. 308-S. in *The Gazette of India* (Extra.), December 16, 1920 ; also *The Bengal Legislative Council Manual*, 1927, pp. 116-151.

Short title and commencement

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

Definitions.

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

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

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

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

PART I.—CLASSIFICATION OF SUBJECTS

Classification of subjects.

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

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

Settlement of doubts.

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

Duty of local Government to supply information.

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

Transfer of subjects and revocation or suspension of transfer.

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