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BOMBAY DISTRICT MUNICIPAL MANUAL,  
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BOMBAY ACT III OF 1901,

"THE BOMBAY DISTRICT MUNICIPAL ACT, 1901,"

AS AMENDED BY BOMBAY ACTS III OF 1902, III OF 1903, IV OF 1904,  
X OF 1912, VIII OF 1914 AND III OF 1915,

TOGETHER WITH

NUMEROUS APPENDICES

AS ALSO

All Rulings, Orders and Notifications of Government issued from  
time to time connected with District Municipalities  
up to 31st December 1915

AND

DECISION OF ALL LAW COURTS OF INDIA, WITH COPIOUS  
NOTES AND A COMPLETE INDEX

BY

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(Editor of the Bombay Local Board Manual and an annotated edition  
of the Provincial Small Cause Court Act.)

Karachi: (34)

PRINTED BY ALEX. FONSECA, AT THE "UNION" (STEAM) PRESS, LD.,  
ELPHINSTONE STREET, CAMP, AND PUBLISHED BY  
A. E. CUMMING, CAMP, BARODA.

1916. (A2618)

N.B.—Published under the sanction of Government Order No. 1897 of 15 March 1916, G. D.



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## PREFACE TO 2nd EDITION.

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THE edition, published in 1891, of the District Municipal Acts of 1873 and 1884 was so well received that, when the amendment and enlargement of those Acts by the provisions of the new Act of 1901 rendered a new edition necessary, I was encouraged to extend the usefulness of the work by adding very considerably to the notes from every possible source of information. An attempt has also been made to contrast the provisions of the Act with those of similar Acts in force in other parts of India, not only with the view of throwing additional light on the construction of this Act, but as forming the basis of suggestions for a future amendment on such points as the Act may yet be defective. The law references and cases cited will be found nearly exhaustive, as no ruling of any Court in India having any bearing on any point in the Act has been intentionally omitted.

As the object of the Manual is to make it a complete work of reference on all matters affecting Municipalities, the Appendices have been greatly enlarged, though the Model Rules which Government intend publishing under Section 46, the Model Rules for Octroi and Refunds under Section 46 (i), and the new Rules for Elections under Section 11 (c), have not been included, owing to their being still under consideration by Government. The forms of notices have also been omitted, as no new forms have as yet been prescribed.

A number of Acts bearing on Municipal matters have been placed in Part III. Though their inclusion has materially increased the cost of the work, it is hoped this will enhance the value of the Manual as a handy book of reference to all who take an interest in Municipal affairs and in the important questions concerned with Local Self-Government which are every year becoming of greater moment and are exercising the minds of an ever increasing proportion of the best men of this country.

A. E. C.

*Karachi, 1st May 1903.*



## PREFACE TO 3rd EDITION.

MORE than 12 years have elapsed since the publication of the last edition, and during that time not only has the Act of 1901 been amended by a number of enactments, some of which are of considerable importance, but a large number of legal rulings, elucidating the meaning of various sections of the Act, have been passed, and a still larger mass of Government resolutions on numerous points of interest have accumulated, all rendering a 3rd edition of this Manual necessary. In recent years the subject of the Local Self Government has acquired greater interest and all over India Municipal bodies constituted under the various local Acts have manifested a greater desire to perform their functions for the advancement of the constituencies which they represent. A knowledge of the powers given under these Acts is the best preparation for an intelligent discharge of the civic duties imposed, and this Manual is designed to facilitate the acquisition of such knowledge.

Part III of the former edition, giving the Acts connected with Municipalities, has been omitted. The very few alterations which have been made in these Acts are stated in the Addenda page so that the Part may be bodily removed from the old edition and annexed to this Manual for reference if required.

The following important Government of India Resolution \*No. 55-77 of 28 April 1915 Department of Education, Municipalities, contains the latest pronouncement on the Local Self-Government Policy of the Government of India:—

Local self-government as a conscious process of administrative devolution and political

### Historical retrospect.

education dates, outside presidency towns, from the financial reforms of Lord Mayo's government. Consultative committees had indeed been appointed in various towns in 1850, and measures were taken in 1864 and following years to give effect to the recommendations of the report of the Royal Army Sanitary Commission, which was published in 1863, but no comprehensive scheme was introduced until the years following 1870. Legislation affecting several provinces was then undertaken. Lord Ripon's government in 1882 carried still further the principles of local self-government with the object, by measures cautiously but substantially progressive, of inducing the people themselves to undertake, as far as might be and subject to necessary control from without, the management of their own local affairs, and of developing and creating, if need be, a capacity for self help in respect of all matters that had not, for administrative reasons, to be retained in the hands of a representative of Government. Various Acts were passed, by which the elective principle, financial independence and the reduction of official control were given a wide extension. In two resolutions nos. <sup>1</sup>146, 164, dated the 24 October 1896, and nos. 18-37, dated the 20 August 1897, respectively, Lord Egin's government again reviewed the subject and laid down further conditions of progress. Important principles have, from time to time, been considered by the Government of India in connection with the revision of local self-government Acts and otherwise, and recently the whole field of policy has, in their survey of Indian administration, been ably and exhaustively reviewed by the Royal Commission upon Decentralization:

2. The Governor-General in Council is glad to be assured by the report of the Com-

### Substantial progress.

mission and the opinions of local Governments and Administrations upon it, that the results have on the whole justified the policy out of which local self-government arose. The degree of success varies from province to province and from one part of a province to another, but there is definite and satisfactory evidence of the growth of a feeling of good citizenship, particularly in the towns. The spread of education is

\* Published under G. R. 3673 of 4 May 1915 Bombay Government Gazette of 6 May 1915 Pt. I pp. 1228—1240. It also forms an accompaniment to G. R. 6444 of 18 Aug. 1915 G. D.

urgely responsible for the quickening of a sense of responsibility and improvements in the machinery. In certain provinces, beneficial results have followed the elaboration of a system of local audit. On all sides there are signs of vitality and growth.

3. The obstacles in the way of realising completely the ideals which have prompted

Future general policy.

action in the past are still, however, by no means inconsiderable. The smallness and inelasticity of local revenues, the difficulty of devising further forms of taxation, the indifference still prevailing in many places towards all forms of public life, the continued unwillingness of many Indian gentlemen to submit to the troubles, expense and inconveniences of election, the unfitness of some of those whom these obstacles do not deter, the prevalence of sectarian animosities, the varying character of the municipal area, all these are causes which cannot but impede the free and full development of local self-government. The growing demand among the educated classes in towns for greater efficiency, involving more direct expert control, in matters affecting public health and education, is a further influence of a different character. A similar tendency, it may be observed, is discernible in England and in other European countries, the Governments of which have shown a growing disposition to place on central authorities the duty of stimulating and encouraging local bodies in cases of default or deficiency on their part, and to give to the former powers of intervention and, in case of need, of actual supersession of the latter. These and similar considerations indicate the need for caution in delegating powers to non-official bodies, when they are not as yet adapted nor prepared for them. But on the whole the Government of India declare unhesitatingly in favour of a general policy of further progress, limited only by such conditions as local circumstances may dictate. Uniformity, even were it attainable, would be undesirable as tending to monotony, lifelessness and discouragement of new experiments. But, in fact, any attempt to exact uniformity in local administration would be foredoomed to failure. In each province, sometimes in each part of a province, the administrative system has grown up on lines of its own with reference to local needs and the wishes and abilities of the people. On a review of all the circumstances, the Government of India have decided to accept in almost every case the conclusion of the local Government or Administration as to the degree of progress possible at the present time. But in the more backward provinces in particular, it is their conviction that there is room for advance, and that the aim to be steadily pursued is abstention from interference in detail and increased reliance on the non-official element in local bodies.

4. Local Government and Administrations in general are prepared to advance in the

Reforms accepted by local Governments.

direction of the main recommendations of the Commission. They propose in varying degrees to expand the electoral element in the constitution of local bodies, to extend the employment of non-official chairman in municipalities, to allow local bodies more ample control over budgets and freer powers of reappropriation, to concede increased authority to local bodies over establishments and to relax existing restrictions in regard to outside sanction for expenditure on works of importance. These changes will mark a real and immediate extension of the principles of local self-government.

5. The Government of India now propose to state the principle conclusions that have been reached after full discussion in the public press, in debates of the Legislative Councils, and in consultation with local Governments and, in certain matters, with His Majesty's Secretary of State, on the questions that arise respecting (1) towns, (2) districts, (3) villages or other small local areas; in other words, in relation to (1) municipal boards, (2) district and sub-district boards and (3) panchayats or other unions. In each case they will consider the constitution of the local body, its ability to tax and its powers in regard to its budget and its establishment. Finally, they will deal with the recommendations of the Commission in connection with presidency towns and Rangoon.

#### MUNICIPAL BOARDS.

6. The Commission recommended that municipal boards should ordinarily be constituted

Elective majority.

on the basis of a substantial elective majority, and that nominated members should be limited to a number sufficient to provide for the due representation of minorities and official experience. This recommendation has already been adopted in several provinces and is generally accepted by local Governments and the Government of India, subject to the proviso that the principle should in places, where its success is doubtful, be introduced gradually, and after experiment in selected municipalities.

7. The Commission also proposed that the Municipal Chairman should usually be

Chairman.

an elected non-official, that Government officers should not be allowed to stand for election, and that where a nominated chairman

might still be required he should be an official. The following statistics show how in the different provinces chairmen of municipalities are at present secured:—

*Number of chairmen of municipalities, elected and nominated, officials and non-officials.*

Province.	Elected non-officials.	Elected officials.	Nominated non-officials.	Nominated officials.	TOTAL.
Madras ... ..	38	2	15	8	63
Bombay ... ..	53	37	3	50	153
Bengal ... ..	74	10	8	19	111
United Provinces ... ..	20	34	19	11	84
Punjab ... ..	15	77	1	11	104
Burma ... ..	...	41	...	4	45
Bihar and Orissa ... ..	7	7	5	36	55
Central Provinces and Berar ... ..	12	36	...	8	56
Assam ... ..	3	4	...	8	15
North-West Frontier Province ... ..	...	...	...	6	6
Coorg ... ..	...	...	...	2	2
Delhi ... ..	...	...	...	1	1
Total ... ..	222	248	51	174	695

8. The majority of local Governments are in favour of substituting, so far as possible,

Non-official chairmen.

non-official for official chairmen, and the Government of India are in full sympathy with the proposal. The increasing burden of administration, apart from other considerations, renders it desirable that the district officer should be relieved of the executive control of municipal bodies. The Governor-General in Council recognises, however, that the change must be made gradually, and that in the absence of suitable candidates, it may not be possible to make it finally and once for all in particular places. He agrees with the opinion expressed in several quarters that discretion should be reserved to a local Government to nominate a non-official as chairman. Many gentlemen of influence, well fitted to be chairmen of boards, are not prepared to offer themselves for election, and insistence on election as the only alternative to the nomination of an official would unnecessarily narrow the field of choice. Nor does it appear necessary to prohibit boards under any circumstances from electing an official as their chairman. It may be desirable, however, to require the election of an official as chairman to be confirmed by the Commissioner, or even higher authority.

9. The Commission suggested that some of the largest cities should adopt the system in force in Bombay city, where there is an elected chairman, who is the official mouthpiece of the corporation as a whole, the executive administration, however, vesting in a full-time nominated official subject to the control of the corporation and of a standing committee thereof. After referring to the provisions of the Bombay District Municipal Act as to the powers of a Chief Officer and a Municipal Commissioner resolution goes on to say. The system works well in Bombay. The Government of India do not desire to press for its adoption in provinces where it may not be suited to the local conditions. They are, however, of opinion that it has the advantages of ensuring a continuous and strong executive administration by an efficient paid staff, while maintaining the corporate control and activity of the municipal board. It is in fact not dissimilar to the system in force in England. They commend it to local Governments as a means of overcoming, at any rate in large cities, the difficulties inherent in the introduction of the important changes contemplated, especially when non-official chairmen are busy professional men. In smaller towns they suggest that the object aimed at might be attained

by the wider delegation of executive functions to responsible secretaries, engineers and health officers and that power to enforce such delegation might be secured by legislation.

10. The aggregate income of 701 municipalities in existence at the close of 1912-1913 (excluding the presidency towns and Rangoon) amounted to £3,282,845. (R 4,92,42,675) apart from loans, sales of securities and other extraordinary receipts, or an average of about £4,683 (R 70,245) a year. This income was distributed as follows:—

	£
Madras ... ..	454,908
Bombay ... ..	586,054
Bengal ... ..	339,979
United Provinces ... ..	592,391
Punjab ... ..	435,039
Burma ... ..	292,524
Bihar and Orissa ... ..	145,270
Central Provinces ... ..	177,496
Berar ... ..	37,594
Assam ... ..	34,764
North West Frontier Province ... ..	72,560
Coorg ... ..	3,700
Delhi ... ..	110,566*
	<u>£3,282,845 (R4,92,42,675)</u>

The following further statements show the proportions under various heads of municipal income and expenditure respectively in the different provinces for the year 1912-1913.

#### INCOME.

Province.	PERCENTAGE OF TOTAL INCOME FROM MUNICIPAL RATES AND TAXES DERIVED FROM								PERCENTAGE OF TOTAL INCOME EXCLUDING LOANS AND ADVANCES DERIVED FROM				
	Octroi.	Tax on houses and lands.	Tax on animals and vehicles.	Tax on professions and trades.	Tolls.	Water rate.	Conservancy tax.	Other taxes.	Taxation.	Under special Acts.	Municipal property.	Grants from Government and other sources.	Miscellaneous.
Madras ... ..	...	45.0	10.2	8.6	19.0	16.8	...	0.4	44.0	0.8	15.1	36.4	4.2
Bombay ... ..	46.9	16.3	3.2	0.3	4.5	16.9	8.0	3.9	62.6	0.5	16.4	17.1	3.4
Bengal ... ..	...	37.2	5.5	1.8	2.1	13.9	25.1	14.4	75.8	2.1	8.4	11.5	2.2
United Provinces ... ..	69.2	5.4	1.0	3.8	2.8	6.6	1.1	10.1	62.8	1.6	19.7	13.6	2.3
Punjab ... ..	89.7	6.8	0.8	...	...	1.3	1.2	0.2	63.1	0.8	19.3	10.7	3.1
Burma ... ..	...	42.5	3.7	...	14.0	9.2	20.6	10.0	38.1	1.1	42.3	17.2	1.3
Bihar and Orissa ... ..	1.7	40.7	9.5	1.8	5.6	3.5	21.6	15.6	62.5	1.1	9.9	25.1	1.1
Central Provinces ... ..	61.6	3.3	4.3	0.1	1.2	15.3	10.9	3.3	60.3	2.7	16.3	16.4	4.3
Berar ... ..	...	20.7	4.3	26.8	10.4	4.6	20.5	12.7	47.9	8.2	13.5	29.5	0.9
Assam ... ..	...	40.5	7.6	...	9.9	11.6	22.1	8.3	36.8	4.0	10.8	47.3	1.1
North West Frontier Province ... ..	98.0	0.6	0.1	...	...	1.2	0.1	...	42.1	0.2	15.9	41.1	0.7
Coorg ... ..	...	62.7	3.9	18.9	7.1	7.4	...	...	28.7	2.6	11.9	56.8	...
Delhi ... ..	80.2	13.1	4.8	...	11.9	...	...	...	38.5	0.3	19.8	39.5	1.9

\* NOTE.—The figures are abnormal on account of large grants from Government during the year.



## EXPENDITURE.

Province.	PERCENTAGE OF MUNICIPAL EXPENDITURE ON							
	General admini- stration.	Public safety.	Water-supply and drainage.	Conservancy.	Public works.	Other measures for public health and convenience.	Public instruction.	Miscellaneous.
Madras ... ..	6.9	4.2	10.5	20.3	27.6	13.2	10.2	7.1
Bombay ... ..	8.5	5.2	25.1	14.1	14.3	10.5	15.2	7.1
Bengal ... ..	7.2	6.9	24.7	26.8	16.4	7.5	3.3	7.2
United Provinces ... ..	10.2	6.0	27.7	17.2	13.9	6.2	4.5	14.3
Punjab ... ..	12.0	6.1	16.8	13.8	15.5	15.9	10.6	9.3
Burma ... ..	10.1	6.6	10.7	19.3	18.3	25.5	4.3	5.2
Bihar and Orissa ... ..	8.2	5.5	12.7	28.3	15.7	2.9	3.0	4.7
Central Provinces ... ..	11.1	3.2	30.4	15.9	10.3	11.9	10.2	7.0
Berar ... ..	9.4	4.6	24.4	21.6	8.9	10.5	18.3	2.3
Assam ... ..	5.7	3.8	32.6	23.3	19.4	7.9	4.2	3.1
North-West Frontier Province ... ..	10.8	7.4	11.1	16.5	13.7	21.3	14.3	4.9
Cooch ... ..	10.8	3.4	1.6	19.2	9.6	8.4	16.5	39.4
Delhi ... ..	7.4	4.0	33.5	18.0	10.9	11.0	1.8	13.4

11. The taxes, tolls and fees which may ordinarily be levied by municipalities are provided for in the municipal enactments in force in the different provinces. They are imposed in most cases with the previous sanction of the local Government concerned and within the limits laid down in the Acts. They usually take one or other of the following forms:—

## Taxation.

- (1) Tax on arts, professions, trades, callings, offices and appointments.
- (2) Tax on buildings, lands and holdings.
- (3) Water, drainage, sewage, conservancy, scavenging and lighting tax.
- (4) Tax on vehicles, boats, palanquins and animals kept for use or used within municipal limits.
- (5) Tax on circumstances and property.
- (6) Tax on private menials and domestic servants.
- (7) Tax on private markets.
- (8) Octroi on animals or goods or both, brought within municipal limits for consumption or use.
- (9) Tolls on vehicles and animals entering municipal limits, and tolls on ferries, bridges and metalled roads.
- (10) Fees on the registration of cattle sold within municipal limits and of carts and other vehicles.

The taxes provided for in the Acts vary, however, in the different provinces, and not all these taxes are actually levied in any one province. Any tax other than those specified in the Acts, which is proposed to be levied, ordinarily requires and should continue to require the sanction of the Governor-General in Council.

12. The most important taxes now in force are octroi duties, levied principally in Bombay, the United Provinces, the Punjab, the Central Provinces and the North-West Frontier Province, and the tax on houses and lands which holds the chief place in the other provinces as well as in Bombay city.

### 13. The octroi system in the existing circumstances of the country has certain obvious advantages. As a tax octroi is productive and grows with the prosperity of the town. Its imposition is sanctioned by immemorial usage, and the people are

#### Octroi and the terminal tax.

habituated to the system by long custom. The tax is usually paid in small amounts and the effect of the payment is not generally felt as a burden. On the other hand, there is no doubt that it provides constant opportunities for fraud, delay and oppression owing to the necessity of entrusting large discretionary powers to a subordinate agency, that it is expensive to collect and wasteful and, finally, that in many places it constitutes a serious burden on trade in general, and in particular on through trade, notwithstanding the provision made for refunds. On the recommendation of a strong representative committee and the local Government, the Government of India have sanctioned an experiment in the United Provinces, which involves (a) the substitution of direct taxation for octroi in the smaller towns, and (b) the application to a large number of other towns in which conditions are suitable of the system of a terminal tax or light transit dues on imports or exports, subjects to no refunds. The Government of the United Provinces considers that some of the main benefits of such a system, and in particular a reduction of the high cost of collection, can only be secured if the tax is collected through the agency of the railway companies, who should be adequately remunerated for their services. The Government of India are prepared to facilitate negotiation to this end. The Government of Bombay have assented to the tentative replacement of octroi by a terminal tax in a few municipalities selected from those desirous of making the experiment. The question is under consideration or experiment in other provinces also. The Government of India while adhering to the principle that municipal taxation should not operate, so far as can be avoided, as a transit duty on through trade, are prepared to concede that a light terminal tax with no refunds may in practice prove less burdensome to through trade than the octroi system as heretofore administered, provided that the following conditions are observed—viz., (1) that the terminal tax, wherever imposed, should be substantially lower in its rates than the octroi which it replaces, (2) that it should be limited to places where there are special grounds for applying it, which must be adequately demonstrated, (3) that it should be regarded as facilitating the transition to a system in which direct taxation will form an increasingly important factor, and not as an elastic means of progressively increasing the resources of municipalities apart from normal development due to increase of traffic and (4) that it should not be adjusted with the primary object of compensating municipalities for the loss of octroi.

### 14. The house and land tax is the chief source of municipal income in Madras, Bengal, Burma, Bihar and Orissa, and Assam and it has been imposed with some success in portions of Northern India. This tax, however, is difficult of assessment,

#### House and land tax.

in many places, where it is the custom to own rather than to rent dwelling houses, because in such cases the house affords no indication of the financial status of the owner. Many aristocratic but impoverished families live in large buildings which are merely relics of vanished prosperity, while the rich trader often remains content with the humble dwelling in which he was born. There is, however, a growing tendency on the part of the professional and trading classes to spend a larger proportion of their incomes on securing sanitary accommodation, so that it is reasonable to anticipate that the house tax revenue will gradually expand, and will generally be contributed by those best able to pay. The technical and administrative difficulties of assessment have in places been overcome by entrusting the preparation and periodic revision of registers to outside agency.

### 15. A tax on professions and trades yields a considerable revenue in certain provinces,

#### Tax on professions and trades.

e.g., £17,239 (Rs. 2,58,591) in Madras, £4,697 (Rs. 70,465) in Bengal, £14,106 (Rs. 2,11,599) in the United Provinces and £4,869 (Rs. 73,036) in the Central Provinces. It has also been imposed in some towns in Northern India. But neither it nor the tax on circumstances and property is likely to yield a large revenue, and there is always danger lest local taxation of this kind encroach on the field of Imperial taxation.

### 16. In Benares there is a form of terminal tax which is imposed, with certain exceptions,

#### Tax on pilgrims.

on passengers coming to or leaving that station by rail. There is a radius of exemption beyond which the tax is levied and it is collected by the railway companies as a surcharge on railway fares. Similar tax is also in force in Calcutta which is levied by the Calcutta Improvement Trust and is collected from passengers entering or leaving that city by rail or steamer. In Hardwar, Ajudhia and Thaneswar, there is a tax on pilgrims and other persons who enter the limits of those municipalities. The tax at Hardwar is levied on railway passengers throughout the year, while that at the other two municipalities is imposed only on the occasion of certain special fairs. In Bombay a pilgrim tax may be levied under section 59 (b) (x) of the District Municipal Act, III of 1901.



# 17. The Commission were of opinion that municipalities should have full liberty to

## Powers of taxation.

impose or alter taxation within the limits laid down by the municipal laws but that the sanction of an outside authority to any increase in taxation should be required where the law did not prescribe a maximum rate. Subject to the general control of the Government of India over the principles to be followed, the sanction of the local Government is at present necessary to every proposal for the imposition of taxation. A maximum rate is prescribed in the Madras, Bengal, and Burma Acts, and in the Punjab, United Provinces and Central Provinces, so far as regards the tax on buildings and lands; but none is laid down in Bombay. The recommendations of the Commission do not command general assent. It is pointed out, for instance, that a municipality might reduce its taxation without due consideration to the needs of the administration and the security of loans. The Government of India, while recognizing the force of such objections, are, on the whole, in general sympathy with the Commission's recommendations. They think, however, that power to vary any tax might be reserved by such local Governments as are unable to accept in full the recommendations of the Commission and that in the case of indebted municipalities the previous sanction of higher authority should be required to any alteration of taxation.

# 18. Municipal finance has shown a marked expansion during the last decade. The total

## Subventions by Government.

income of 701 municipalities in 1912-1913 was £3,282,845 (Rs. 4,92,42,675) as compared with £1,844,081 (Rs. 2,76,61,215) for 753 municipalities in 1902-1903. Contributions from Government have materially assisted this expansion. Since 1911, the Government of India have made grants amounting to £3,076,466 (Rs. 4,61,47,000), of which £368,000 (Rs. 55,23,000) are recurring, for urban sanitation. Municipalities have also received their share—the exact figure is not easily ascertainable—of the large educational grants made by the Government of India since 1911, amounting to about £3,987,800 (Rs. 5,98,17,000), of which £826,666 (Rs. 1,24,00,000) are recurring. Municipal boards have been relieved of all charges for the maintenance of police within municipal limits. In almost every province the recommendation that municipalities should be relieved from financial responsibility for famine relief and should receive assistance from Government in the case of severe epidemics, has been already given effect to, or the principle has been accepted.

There is a growing demand on every side for improvements and it is not possible for all municipalities to finance large schemes of water-supply and drainage without substantial aid. Such aid has been freely given by the Imperial and local Governments. The power of the Government to make grants is, however, limited and financial assistance of this nature cannot be expected unless the rate-payers are prepared to bear a reasonable proportion of the burden. Where, however, further taxation is not possible the Government of India trust that municipalities will bear in mind the possibility of supplementing taxation by development of municipal property, so as to ensure the best possible returns and by maintaining the principle that special services such as the supply of water, electric lighting, etc., should, as far as possible, pay for themselves.

The Government of India have also accepted a further recommendation of the Commission, namely, that assistance may legitimately be given by Government to poorer municipalities which, without it, would be unable to carry on the normal standard of administration required from them. In such cases, the Government of India agree with the Commission that assistance can best be given, when it is given, by a general recurring grant-in-aid, which should be at the discretion of the local Government and met from its own resources.

# 19. The Commission proposed that if a municipal or rural board has to pay for a service

## Payment and control of services.

it should control it, and that where it is expedient that the control should be largely in the hands of Government, the service should be a provisional one. The Government of India while not prepared to accept the proposal in full have approved it in a somewhat modified form. They consider that charges should be remitted in cases where a local body contributes to Government for services inherent in the duty of supervision and control by Government officers, or for services which cannot expediently be performed except by Government agency. For example, Government may properly cease to charge for clerical establishments in the offices of supervision and control, or for the collection of District cesses which it is clearly expedient to realise along with the Government revenue. On this principle they have made assignments which will relieve both municipalities and rural boards of payments amounting to £40,000 (Rs. 6,00,000) a year approximately.

# 20. It was suggested by the Commission that municipalities should be empowered to

## Tramway cess.

levy a special rate for the construction or promotion of tramways. Local Governments generally are doubtful as to the value of the proposal. The Government of India will, however, be prepared to consider any practical proposal to this end, which they may receive.

## 21. Commenting on the minute control exercised in some provinces over municipal

## Budgets and financial control.

finance, the Commission recommended that municipalities should have a free hand with regard to their budgets; the only check required should, they thought, be the maintenance of a minimum standing balance to be prescribed by the local Government. They acknowledged that relaxed control might lead to mistakes and mismanagement, but they were of opinion that municipal bodies could attain adequate financial responsibility only by the exercise of such powers and by having to bear the consequences of their errors. Further checks would be provided by the control which local Governments would exercise over loans, and by the power which should be reserved to compel a municipality to discharge its duties in case of default. The system proposed is stated to be in force in the Bombay Presidency where, however, no minimum balance is required by law. The Government of the United Provinces accept the recommendations subject to the condition that Commissioners should pass and that Government should see the budgets of indebted municipalities. The Punjab Government also agrees subject to the proviso that the budget of an indebted municipality should be forwarded to the Government for information. The Government of Bengal are prepared to introduce the change experimentally in certain selected municipalities. They intend also to issue general instructions to Commissioners in this province to abstain from interference in details and to restrict their supervision to securing (1) a minimum closing balance, (2) provision for the service of loans, (3) the observance of the provisions of the Act or statutory rules and of any standing orders of Government. Other Governments concede certain relaxations of existing rules. The Government of India accept these opinions for the present, but they nevertheless regard the recommendations of the Commission as expressing a policy to be steadily kept in view and gradually realised.

## 22. The Commission proposed that the existing restrictions on municipalities, which

## Estimates for public works.

require outside sanction for works estimated to cost more than a certain amount, should be removed but that Government should scrutinize and sanction estimates of projects to be carried out from loan funds. The majority of the local Governments are prepared to relax the existing rules in the direction of giving more freedom to municipal boards. The Government of India are in favour of extended freedom subject, where necessary, to proper precautions against extravagant and ill-considered projects. They are content, however, to leave the precise extent of relaxation to be determined by local Governments. One important factor in this connection will be the quality of the professional agency available in the various boards. In their resolution no. 1019-A., dated the 10th November 1914, promulgating rules relating to the grant of loans to local bodies under the Local Authorities Loans Act, 1914, the Government of India have emphasised the necessity for a proper scrutiny of projects financed with borrowed money and they trust that the rules in question will be carefully observed.

## 23. It was recommended by the Commission that the degree of outside control over

## Establishments

municipal establishments should be relaxed, that the appointment of municipal secretaries or other chief executive officers, of engineers and health officers, where these exist, should require the sanction of the local Government in the case of cities, and of the Commissioner elsewhere, and that the same sanction should be required for any alteration in the emoluments of these posts, and for the appointment and dismissal of the occupants. As regards other appointments, they proposed that the local Governments should lay down for municipal boards general rules in respect to such matters as leave, acting and travelling allowances, pensions or provident funds and maximum salaries, and that their sanction should be required for any deviation therefrom. Almost all local Governments have expressed their willingness to relax outside control over the appointment of the staff employed by local bodies. In Bombay, the system is generally that recommended by the Commission. In some other provinces, the existing rules give a free hand to municipalities, subject to outside control in the case of certain appointments. The Government of India, while considering that Government control over other posts might reasonably be relaxed, accept the view that outside sanction should be required to the appointment or dismissal of secretaries, engineers and health officers, and they have already advised local Governments to take powers where these do not exist, to require a municipality to appoint a health officer and to veto the appointment of an unfit person. Such powers already exist in the Bombay Presidency and have recently been taken by legislation in Bengal. The Imperial and Provincial Governments have given liberal grants to selected municipalities in order to establish a trained service of health officers and sanitary inspectors, the conditions of these grants being, as in England, such as will ensure the appointment of qualified men and reasonable security of tenure.

## 24. The Commission thought that the Collector should retain certain powers, given

## Special outside control.

under the existing Acts, *e.g.*, the power to suspend in certain cases the operation of municipal resolutions and that the Commissioner should be able to require

a municipality which had neglected a particular service to take such action as he may consider necessary. The local Governments generally and the Government of India are of opinion that special powers of outside control are necessary and should continue.

25. The question of extending the powers of selected municipalities to enable them to relieve the pressure of population in congested areas, and to undertake schemes of orderly town-planning in order to provide for future needs, has been dealt with by the Government of India in paragraphs 43 and 44 of their Sanitary Resolution nos. 888-908, dated the 23rd May 1914. A Town Planning Bill, combining many original features with others derived from the latest English and Continental legislation, has now been passed into law in the Bombay Presidency, and the Government of India will watch with deep interest the results of this experiment, which will, they trust, pioneer a fruitful expansion of municipal activities in India.

[Paragraphs 26 to 36 relate to Rural Boards (District and sub-District).]

#### VILLAGE ORGANISATION—PANCHAYATS OR OTHER COMMITTEES.

37. The Commission recommended the constitution and development of village panchayats possessed with certain administrative powers, with jurisdiction in petty civil and criminal cases, and financed by a portion of the land cess, special grants, receipts from village cattle pounds and markets, and small fees on civil suits. This proposal, favourably commended by the Government of India, who expressed their readiness to acquiesce in some form of permissive taxation, if need be, has in general been sympathetically received. The practical difficulties are, however, felt to be very great in many parts of India. The Government of Burma and the Chief Commissioner of the Central Provinces deprecate the introduction of a system which, in their judgment, is alien to the customs of the people and will not command public confidence. Other Governments are willing to experiment, but on different lines. The Panjab Government has already established panchayats for civil cases only and of a voluntary character. Sir Leslie Porter, when officiating as Lieutenant-Governor of the United Provinces, expressed his willingness to entrust selected panchayats with criminal as well as civil jurisdiction. The Madras Government are desirous of experimenting in the establishment of panchayats but consider that action should be confined for the present to the encouragement of voluntary self-contained organisms independent of statutory sanction and consisting of village elders conferring together for common village purposes. So far as judicial functions are concerned they are content to rely on the provisions of the Madras Village Panchayats Regulation, 1816, and the Madras Village Courts Act, 1888, which authorise the assembling of panchayats and the convening of village bench courts for the settlement of particular civil suits on the application of the parties and to encourage the operation of these enactments wherever practicable. The Governments of Bengal and of Bihar and Orissa are of opinion that their existing laws sufficiently provide for the establishment of panchayats with administrative duties, while powers to dispose of criminal cases could be given under the existing Acts dealing with these matters. The Chief Commissioner of Assam has expressed his readiness to develop village government, and the Local Self-Government Bill which has recently passed the Legislative Council of that province permits the constitution of village authorities, the grant of funds by local boards and from other sources, and the delegation of minor powers of local control. The whole question has now been raised again in the discussions contained in the report of the Bengal District Administration Committee, 1913-1914.

38 The Commission recognised that any policy of establishing panchayats would be the work of many years, would require great care and discretion, and much patience and judicious discrimination between the circumstances of different villages. The Government of India desire that where any practical scheme can be worked out in co-operation with the people concerned, full experiment should be made on lines approved by the local Government or Administration concerned. Throughout the greater part of India the word "panchayat" is familiar. The lower castes commonly have voluntarily constituted panchayats, to whom they allow quasi-judicial authority in social matters. The more artificial administrative committees such as *chaukidari* panchayats, local fund unions, and village sanitation and education committees, and, in places even village panchayats, already exist. The spread of co-operative societies and the distribution of Government advances in times of famine and scarcity on joint security are educative influences. Village tribunals for the disposal of petty civil suits have got beyond the experimental stage in some places and are in the experimental stage in others. There is, therefore, some material with which to build. The Government of India agree, however, with the view prominently brought forward by the Bengal District Administration Committee that much will depend on the local knowledge and personality of the officers who may be selected to introduce any scheme.



39 With this general commendation, the Government of India are content to leave the matter in the hands of local Governments and Administrations. They are disposed to consider that the following general principles indicate the lines on

which advance is most likely to be successful:—

- (1) The experiments should be made in selected villages or areas larger than a village, where the people in general agree.
- (2) Legislation, where necessary, should be permissive and general. The powers and duties of panchayats, whether administrative or judicial, need not and, indeed, should not be identical in every village.
- (3) In areas where it is considered desirable to confer judicial as well as administrative functions upon panchayats the same body should exercise both functions.
- (4) Existing village administrative committees, such as village sanitation and education committees, should be merged in the village panchayats where these are established.
- (5) The jurisdiction of panchayats in judicial cases should ordinarily be permissive, but in order to provide inducement to litigants reasonable facilities might be allowed to persons wishing to have their cases decided by panchayats. For instance, court fees, if levied, should be small, technicalities in procedure should be avoided and possibly a speedier execution of decrees permitted.
- (6) Powers of permissive taxation may be conferred on panchayats, where desired, subject to the control of the local Government or Administration, but the development of the panchayat system should not be prejudiced by an excessive association with taxation.
- (7) The relations of panchayats on the administrative side with other administrative bodies should be clearly defined. If they are financed by district or sub-district boards, there can be no objection to some supervision by such boards.

[The remaining paragraphs relate to Presidency Corporations and Rangoon.]

G. R. 6444 of 18 August 1915 G. D. in commenting on the above resolution says:—

"2. With reference to paragraph 6 of the Resolution, the propriety of dispensing with the condition to which the increase of the proportion of elective councillors to two-thirds has, in the case of municipalities other than City Municipalities, hitherto been subject, namely, the selection of a Government servant to be chief executive officer, is now under consideration.

"3. With regard to paragraph 7 of the Resolution the Governor in Council has already been pleased to direct, under section 23 (2) (c) of the District Municipal Act, that in future the President of any Municipality for which a Municipal Commissioner has been appointed shall be elected by such Municipality. In accordance with this decision the Municipalities of Ahmedabad and Surat will, in future, elect their Presidents. The question of extending the concession to all other City Municipalities is under consideration.

"4. The recommendation conveyed at the conclusion of paragraph 9 of the Resolution should be commended to the attention of the municipalities of the class referred to. For the present there is no evidence of any special need to resort to legislation of the character indicated, but the Governor in Council will be prepared to take action in this direction in the event of any tendency manifesting itself on the part of municipalities to withhold from their executive officers functions and responsibilities with which, in the interests of good municipal government, it is desirable that they should be invested.

"5. In paragraph 23 of the Resolution the Government of India suggest that the Government control in respect to the creation of minor posts on municipal establishments might be relaxed. Under section 46 of the District Municipal Act all appointments made or allowances granted by a municipality require the sanction either of Government or of the Commissioner as the case may be. The Governor in Council is disposed to think that this degree of control is excessive and that, so far as the creation of posts or the grant of allowances which involve a charge on municipal funds not exceeding Rs. 50 per mensem is concerned, municipalities might be given a free hand. Before coming to a final decision in the matter, he desires to be favoured with the views and recommendations of the Commissioners."

A. E. C.

## ADDENDA AND CORRIGENDA.

Page 2 marginal note sec. 3 for 'Interpretation clause' read 'Definitions,' and make a similar alteration in the 'Contents' at page .

Page 9 between lines 17 and 18 from bottom insert—

Drains and gutters are part of the street. This point is fully discussed in para. 5 of the Legal Remembrancer's opinion set out in G. R. 3076 of 16 April 1908, Gen. Dep.

Page 14 between lines 13 and 14 insert "See also section 50-A (3) (a)."

Page 14 at end of note 5 add "See also sec. 50-A (3)."

Page 21 sub-section (2) the marginal note should be "Failure to elect."

Page 21 After line 4 of note 1 insert—

See note 2, pages 429—430. G. R. 854 of 15 Feb. 1909, Gen. Dep., publishes statements showing the number of seats held by Mahomedans on Municipal and Local Boards by election and by nomination, and the proportion of Mahomedan representation in relation to their population."

Page 23 in marginal note to sec. 11 for 'first' read 'fix.'

Page 24 to the figure (2) of the sub-section 11 add the note figures "12," and at page 28 delete note 12 and alter the figure of note 13 to "12" and after line 3 insert "The marginal note should be "Delegation to Commissioners."

Page 26 in last line after "Appendix" put "O."

Page 32 in line 15 from bottom after "Cal. 501," add "15 C. W. N. 586; 10 Ind. Cas. 43,"

Page 33 after note 13 insert—

*Residents of Native States.*—"Persons otherwise qualified to vote or stand as candidates are not disqualified under the Bombay District Municipal Act, 1901, by the fact that they are inhabitants of Native States. But if it is desired to disqualify such persons the requisite provision could be made by rule under section 11 (c) (ii)." (G. R. 7943 of 12 October 1915, Gen. Dep.)

Page 36 for the first 8 lines of note 2 substitute the following—

*Representative of Association &c.*—The whole of this section was introduced here by the Select Committee in order "to remove a doubt which had arisen in the construction of sec. 12." The proviso is taken from sec. 14 (2) of the Bom. City Act which however applies only to a company other than a joint stock company or a firm.

The object of the proviso no doubt is to lay down clearly the person who is to be considered qualified to be elected in the case of an enrolled company, association &c., as it is the company &c., that is entered in the Roll and not the representative. Sec. 11 (1) (iii) provides for a declaration by Government of "the manner in which the right of the family &c." to vote is to be recorded and exercised. This is usually done as shown by rule 5 proviso of the Election Rules (*vide* Part II Appendix O). Such entry is only for the purpose of voting as the representative and does not operate to give a personal right to vote or to be qualified as a candidate for election. The rule says "the person duly authorised in this behalf" that is, to vote for the company &c. This proviso to sec. 13-A says it is this representative who "shall be deemed to be qualified to be elected a councillor." This expression is too wide and should have been qualified by some such words as "unless he is disqualified under any of the provisions of this Act or rules," for otherwise it would seem not only that the residential qualification which is requisite under sec. 12 (2) and rule 5 (g) in all such candidates, is unnecessary in such cases, but he is also exempt from the general disqualifications under sec. 15 (1). It will be observed that rule 5 (g) is careful to provide that the representative as a voter is subject to the age disqualification.

It would seem that in incorporating the provisions of sec. 14 (2) of the Bom. City Act, the fact was lost sight of that the City Act defers from this Act in that the former does not make residence a *sine qua non* for a qualified candidate for a ward election.

*"Undivided family"*.—These words, which were in the proviso originally, were omitted when the clause was under consideration in Council in consequence of the following remarks then made:—

"In the case of an undivided family, generally if there be a property qualification, the property is entered in the name of some one individual who will be entered on the roll as a voter with reference to that property qualification and if any other members have personal

qualifications each individual is entitled to come in on the ground of his personal qualification, and so the case of an undivided family would not naturally come under the other cases which are referred to in this clause. If they have one property it stands in the name of one person. If two or more they may stand in the names of two or more members of the undivided family. If there are three or four members in a family one may be a pleader, another may be a fellow of the University, and so on. In such cases if we allow only one vote to the undivided family we unnecessarily reduce the number of votes to which that family would be legally entitled. An undivided family should therefore, I think, be excluded from the clause."

These remarks are not *apropo* to this section which has nothing to do with the right to vote. The right claimed by the speaker that every member of an undivided family, who has a personal qualification to be enrolled, should be entered in the Roll and so have the right to vote even though one of its members as the representative of the family is also so enrolled, is not affected by the proviso even if the words "undivided family" were not omitted from here, and the rules under sec. 11 (1) (iii) as shown in Appendix O concedes this right. See further comments on rules 5.

Page 43 at end of note 6 for "21 May" read "19 May."

Page 49 line 11 of note 29 read "note "

Page 51 between lines 7 and 8 from below insert—

N. B.—A re-consideration of this subject leads to the conclusion that however applicable these arguments may be to the Bombay City and English Acts, the conditions in the Mofussil are so different that *notwithstanding* that the provisions of the Act mainly support the very liberal construction here placed on this sub-section, the Legislature purposely left it open to H. E. in Council to unseat a councillor for any of the disqualifications stated in sec. 15 (1).

This power will doubtless not be exercised except in very glaring cases of unfitness of a councillor to continue in office.

Page 59 above line 10 from bottom insert—

"G. R. 1740 of 3 March 1913, G. D. calls for a report required by the Government of India as to the area in which females exercise the municipal franchise."

Page 63 at bottom add—

"At any time within 10 days":—An elector on the roll of a municipality filed a petition under the rules against a successful candidate in a municipal election alleging various instances of personation of voters for which the opposite party was said to be legally responsible. Four instances of impersonation were set forth and it was stated that others would be given. The petition was filed within the time allowed, but, before the petition was heard, the petitioner being in a position to give the further cases of personation, applied to amend the petition by adding the new cases. *Held* that this was permissible. (*Nawab Khan v. Muhammad Zamin*, I. L. R. 34 All. 649.)

Page 74 after line 9 of note 5 insert—

G. R. 5801 of 23 July 1915 directs that in future the President of any municipality for which a Municipal Commissioner has been appointed shall be elected by such municipality. (See para. 3 of G. R. 6444 of 18 August 1915, at page to Preface to this edition.)

Page 82 at end of note 5 insert—

*Appointment, punishment etc., proposal to vest power with President etc.*—Under section 184 the Chief Officer is authorized to appoint, without the previous sanction of the municipality to any post the monthly salary for which as fixed by rules made under section 46 (b) does not exceed Rs. 15. The municipality or, with their sanction, the sub-committee concerned make all other appointments. It was represented that this procedure not infrequently involved considerable delay and the appointment become at times a party question.

2. Again section 24 (c) of the Act imposes on the President of a municipality the duty of exercising supervision and control over the acts and proceedings of all officers and servants of the municipality in matters concerning the executive administration and the municipal accounts and records. It was contended that he could not effectively exercise such supervision and control unless he was empowered to deal with cases of dereliction of duty on the part of municipal servants.

3. It was suggested that a clause should be added to section 24 of the Act empowering the President of a municipality (i) to appoint, in consultation with and subject to the approval of the Vice-President and the Chairman of the Managing Committee, to any post other than those of Chief Officer, Health Officer, Engineer and Chief Accountant, the



monthly salary for which as fixed by rules made under clause (b) of section 46 exceeds Rs. 15, and (ii) to fire, reduce, suspend or dismiss any such municipal servant, provided that, in respect of any punishment other than a fine not exceeding a week's salary or of suspension for a period not exceeding a week, any order passed in the exercise of such power shall be subject to an appeal to the municipality.

4. It was claimed that while that proposal ensured a much more efficient mode of selection to posts in municipal service than the present system of selection by the general body of councillors, who are liable to be swayed in their choice by faction feeling or by other considerations not directly connected with the efficiency of the municipal administration, a sufficient safe-guard against any misuse of powers on the part of the President was provided in the case of patronage by the association with him of two other important office-bearers on the municipality, and in the case of punishments by the provision for an appeal to the general body of councillors.

5. One serious practical objection to this proposal, however, was that an embarrassing dead lock might often arise in the event of the persons associated with the President withholding their assent from any proposal made by him. Besides it was not by any means certain that in cases where party feeling ran high a President and his associates would be appreciably more immune from the influence of that feeling than the general body of councillors. In any case neither of the suggestions could be applied to a municipality to which a Municipal Commissioner was appointed.

6. In regard to other municipalities there was nothing in the Act which prevents the adoption of the proposals by any individual municipality on its own initiative, for it is open to any municipality under sec. 37, subject to Government sanction, to delegate to its president powers of appointment or punishment beyond the limit of those which may have been delegated to its Chief Officer. (G. R. 6892 of 25 September 1913, Gen. Dep.)

Page 84, sub-section (7) line 3, delete the figures "12."

Page 90 at end of note 11 add—

"No new business can be brought up. See 21 All. 348, noted page 225."

Page 101 line 9 from top for "1800" read "1000."

„ line 15 from top for "noted" read "note 8."

Page 106 after line 12 insert—

*Financial control and sanction.*—See the observations in paras. 21 and 22 of the Government of India Resolution set out in the preface to this edition."

Page 108 line 23 from bottom after "27 All. 592 insert—

Section 47 requires the contract to be in writing and signed by the Chairman or Vice-Chairman and Secretary. In this case there was no writing, the municipality having only passed a resolution.

This case is also reported in (1905) 2 A. L. J. 321.

Page 109 after line 22 from bottom insert—

As to disposal of lands see Compilation of Standing Orders, Rev. Dep., page 955."

Page 113 in last line for "10 Ind." read "10 Ind." "

Page 116 in section 46 delete the whole of the para. beginning "provided that," and ending "sanction of Government," and insert it in page 118 between provisoes (a) and (b).

Page 119 at end of note 1 after "Press" add "on payment, vide G. R. 3091 of 21 April 1908, 7149 of 8 September 1914 and 2258 of 15 March 1915, Gen. Dep."

Page 120 line 4 for "8262" read "8202."

„ „ at end of page insert—

Para. 5 of the Accountant-General's Annual Report on the working of the Local Audit Department (vide G. R. 5077 of 1 September 1908, Gen. Dep.) contained certain suggestions for the improvement of the prospects of municipal employes.

Page 120 in line 15 from bottom for 'irrespection' read "irrespective."

Page 120 in line 3 of note 7 after "clause (c)" add "and note 5 page 82."

Page 120 at bottom add—

*Temporary establishments.*—The section makes no distinction between permanent and temporary establishments, both classes must be relegated by rules made with due sanction. The following rule providing for the entertainment of temporary establishment in anticipation of sanction has been approved by the Commissioner-in-Sind. Vide Circular No. 1148 of 19 Aug. 1913.

1. The municipality may entertain such temporary staff of officers and servants on such salaries as they may from time to time deem necessary, subject to the Commissioner's sanction: provided that—

(i) temporary establishments may be entertained by the municipality in anticipation of the Commissioner's sanction in the following cases, such action being reported to the Commissioner without delay :—

(a) in cases of urgency, *e. g.*, on the occurrence of an outbreak of plague or cholera :

(b) in case of urgent public works not provided for in the budget the execution of which is not likely to require a period exceeding 3 months, within the current official year; where the works are entered in the budget the cost of the establishment required for the works should be also shown in the budget.

(ii) daily paid labour will not require the Commissioner's sanction, but the work so paid for will ordinarily be of a mechanical, artisan or labouring nature, and will not include clerical or supervising staff.

(iii) in no case shall an establishment entertained in anticipation of the Commissioner's sanction be continued for more than 6 months unless sanction has in the meanwhile be obtained.

All proposals for the appointment of establishments, whether permanent (involving a modification of the sanctioned strength or scale of pay) or temporary (requiring the Commissioner's sanction under the rule above proposed), shall be accompanied by a statement in the following form instead of the customary proposition statement :—

Designation.	PAY PER MENSEM.		DIFFERENCE PER MENSEM.		TEMPORARY ESTABLISHMENT.		
	Present.	Proposed	Increase	Decrease	No. and date of Commissioner's sanction to present establishment.	Date up to which sanctioned.	Date up to which establishment required.

Section Office—

(a) Permanent

(b) Temporary

TOTAL

Octroi Collections—

(a) Permanent

(b) Temporary

TOTAL

etc., etc.

GRAND TOTAL.

The Commissioner in Sind empowers municipalities in Sind to award increments to school masters in accordance with the scale prescribed by Government in the Educational Department provided that the maximum pay sanctioned for the appointment is not exceeded and that increments are not granted in advance of the due date. (Circular No. 1091 of 3 Sep. 1914.)

The above statement should show details only for the sections affected, totals being given for the remaining section.

Page 122 after 5th line of note 9 insert—

G. R. 1971 of 31 July 1912 Educ. Dep. decided that there was no need to take security from head masters of municipal schools."

Page 124 after line 23 insert—

"The limitation in sec. 167 applies to a suit against a municipality for wrongful dismissal. See I. E. F. 39 Bom. 600 noted page 413."

Page 135 line 8 for "All. 349" read "All. 439."

Page 136 after 1st line of note 3 insert—

"G. R. 5048 of 27 June 1914 G. D. refers to a pamphlet issued by the Royal Society for the Prevention of Cruelty to Animals on the subject of humaner killing appliances in connection with the slaughter of animals for food."

Page 140 end of note 10 add—

"Milk-supply—a sanitary matter.—See G. R. 7706 of 25 Oct. 1913, G. D. Part II Appx. N. Also G. R. 8263 of 2 Aug. 1915 Rev. Dep., which publishes a note regarding the improvement of milk supply in large towns and appointing a committee to report on the subject.

Page 146. After line 4 add "See note 4 p. 323."

Page 150 after line 17 to note 2 insert—

"As to part of a public street encroached upon, by adverse possession for 30 years losing its character as such and reverting to the original owner of the land, or to Government after 60 years, see note 8 sec. 113 I. L. R. 25 Mad. 635."

Page 152 after line 16 of note 7 insert—

*Nor to sites thereof.*—Municipalities are required to spend their funds in maintaining all public buildings (s. 56 (b)) and in securing or removing dangerous buildings or places (s. 54 (1) (g)) but when so removed the site would not vest in the municipality. This section omits all mention of these sites, and the specific mention of lands which do vest in a municipality, excludes by implication all not specifically mentioned. (G. R. 1890 of 13 March 1891, G. D.)

Page 152 line 8 note "school buildings" for "2233" read "2223."

Page 153 after note 8 insert—

By English law the property in the beds of all navigable rivers where the tide flows and reflows, as in the sea-shore and the bottom of the sea is reckoned amongst the *jura regalia* of the Crown. Cf. 8 Bom. 4-C. R. 87 Cr. Ca. (G. R. 1804 of 10 March 1877.)

Page 156 at end of line 4 add "See I. L. R. 25 Mad. 639 p. 309."

Page 161 line 13 for '1815' put '1888.'

Page 161 line 17 from bottom for '(1816)' put '(1865).'

Page 162 line 25 for '144' put '1454' and in last line for '188' put '1880.'

Page 163 note 5 insert the following under head 'Loans'—

*Loans—cost of works debitable to loan funds.*—Whenever it is proposed to carry out any work, of which the cost in whole or in part is debitable to loan funds;

"(1) An estimate of the cost of the entire scheme should be prepared and submitted for such sanction as required by law.

(2) A programme of construction should be drawn up, showing the sums which will probably be required year by year until the work has been carried to completion.

(3) The application for the loan should cover the entire cost of the project (or so much of the cost as it is proposed to meet from borrowed funds), and it should show the year in which each instalment is to be raised.

(4) No expenditure should be incurred on the work until the loan for the entire project has been duly sanctioned, and the approval of the authority competent to sanction the plans of estimates has been obtained." (Govt. of I. No. 2934-A, of 12 May 1904, Fin. and Com. Dep., G. R. 2011 of 8 June 1904, Fin. Dep.)

Page 165 in line 12 of notes for '142' put '132.'

Page 176 in line 3 of note 2 for '565' read '656.'

Page 176 at end of note 1 insert—

*Municipal agency in London.*—G. R. 2109 of 6 April 1911, G. D., refers to a proposal made to the Government of India for the establishment of an Indian municipal agency in London for obtaining materials, stores and higher special labour.

Page 178 line 21 for 'N' put 'P.'

Page 178 at end of note 6 insert—

*Special annual report by Collector on all town improvement schemes.*—Since the year 1908 Government have made free grants to a number of municipalities in the Presidency for the execution of schemes of town improvement, including the opening out of congested and insanitary areas and the provision and laying out on sanitary principles of building sites.

In sanctioning these grants it was directed in certain cases that an account of the manner in which they had been utilized should in due course be submitted to Government by the Commissioner concerned, while in cases in which allotments were made to municipalities from the special Imperial grants for expenditure on urban sanitary works, the Sanitary Commissioner was requested, as desired by the Government of India, to include a similar account in his annual administration report. The reports so far received by Government from the Collectors and Commissioners and the accounts given in the annual reports of the Sanitary Commissioner for the years 1911—1914 in regard to town improvement schemes are confined in most cases to a mere statement of the amount of expenditure incurred in carrying out the schemes. The Governor in Council is pleased to direct that, in regard to every scheme of town improvement which has recently been undertaken with the assistance of a Government grant and which is actually completed, the Collector concerned should now cause to be prepared and forward to the Sanitary Commissioner for the Government of Bombay, through the Revenue Commissioner, a special report describing fully the manner in which the scheme was carried out, the procedure adopted in the valuation of the properties involved, the sanitary improvements effected, the results which have been actually attained and the general experience derived from the carrying out of the operations. The Sanitary Commissioner should collate these reports as they are received and should submit them to Government, by the end of March, 1916, with a review of them containing such observations and suggestions as he may have to offer in connection with the operations and their results. For the future, a review on similar lines regarding all town improvement schemes completed during the preceding financial year should be submitted annually to Government by the end of June. (Govt. Or. 9275 of 1 Dec. 1915, G. D.)

Page 182 in last line of note 17 for '2600' read '2612.'

Page 185 in last line of note 20 for 'Nov.' read 'Sep.'

Page 185 at end of note 21 insert—

*Primary school teachers: improvement of pay*—See the Press Note on the subject Part II, Appendix Q.

Page 186 in 3rd line of note 23 for 'July' read 'Aug.'

Page 186 after line 15 of note 23 insert—

In 1907, the Government of India decided (No. 166 of 16 September 1907) that the time had come to discontinue contributions of any kind from District Municipalities on account of Police Establishment or buildings and called for detailed proposals for relieving District Municipalities in Bombay of all the liabilities imposed on account of such establishment and buildings, other than charges for special Police supplied to them in the same way as they may be supplied to a Bank or Public company. They also requested detailed information, re the nature of charges recovered from District Municipalities on account of Police.

"2. In 1881, the Government of India formulated the principle that when Municipal bodies are relieved of such charges a corresponding amount of expenditure on education and other objects should be transferred to them from provincial accounts with as full control over the details of such expenditure as might be practically expedient. They no longer think it necessary to enforce this condition and they are willing to leave it to the Municipal authorities under the guidance of the Local Government, to decide in what manner the additional resources set free by relief from Police charges can best be devoted to developing and improving the existing Municipal services. (G. R. 6074 of 9 October 1907, Gen. Dep.)

In line 16 of note 23 for the words "G. R. 3739 of 23 May 1908, G. D. publishes" substitute—

"This information was supplied as set out in G. R. 3739 of 23 May 1908, Gen. Dep. which publishes."

Page 187 in line 24 from bottom for '5090' read '5490.'

Page 188 in line 4 for "402 of 29 Jan." read "408 of 21 Jan."

Page 192 in clause (m) after 'concurrence' insert the figures '16' for a note.

Page 193 below note 4 insert—

G. R. 6979 of 29 Nov. 1911 sanctioned a grant by a municipality to local sanscrit school.

Page 194 at end of note 10 insert—

*Construction of lethal chambers for the destruction of dogs*:—G. R. 8168 of 5 Nov. 1914 Judl. Dep. publishes correspondence with the Director-General of Stores, London on this subject and the method adopted in Madras Town. It was suggested that the use of lethal



chambers at least in the larger municipalities as a more humane method of destruction and the Government of India asked for the views of the Government of Bombay on the suggestion.

G. R. 5228 of 22 July 1915, Judl. Dep. asked District Magistrates to whom G. O. No. 8168 of 5 Nov. 1914, was addressed to report on the desirability of constructing lethal chambers in the large municipalities in their districts.

It was stated that an estimate had been drawn up for the Madras Government for the construction of a small lethal chamber at a cost of Rs. 300. The working expenses would depend upon the number of dogs destroyed. The construction of a large lethal chamber in the City of Bombay had recently been sanctioned, and the Bombay Municipality has agreed to contribute half of the initial and annual cost, subject to a certain maximum. The District Magistrates were asked to report whether similar contributions might be expected from the large municipalities.

*Hydrophobia: "Rabies and ante-rabies treatment in India."*—G. R. 6716 of 30 Aug. 1915, Gen. Dep. publishes correspondence regarding a pamphlet with the above title, copies of which were distributed, and translations directed to be made for wide circulation.

Page 195 in line 6 "Veterinary Hospitals" delete one 'Aug.'

Page 202 in line 21 for 'L. R.' read 'L. J.'.

Page 202 in last line note 1 for '855' read '555'.

Page 203 in last line note 4 for 'Mad. 4. J.' read 'Mad. L. J.'.

Page 205 at end of line 4 after 'ultra vires' add 'See 9 Ind. Cas. 218 note p. 228.'

Page 208 in line 23 from bottom for '1803' read '1083'.

Page 211 end of line 3 add "See note 5, page 219."

Page 215 in line 8 of note 10 for '54' read '51'.

Page 218 after second line of note 2 insert—

*Payment of taxes by Government officers.*—The Government of India have been pleased to decide (G. of I. No. 404-A of 25 January 1908, Fin. Dep.) that for the future, the sanction of the Government is not required to the payment of Municipal or Cantonment taxes, whatever be their amount, when such taxes have been assessed by competent authority, and the assessments certified to as required by Article 98 (o) of the Civil Account Code. If, in any case, the Head of a Department or Office considers that the assessment is excessive, the matter should be represented by him to higher authorities. G. R. 997 of 21 February 1908, Gen. Dep.)

Page 225 in line 13 for 'R. J.' read 'P. J.'.

Page 225 in line 26 after 'Hughes' insert 'I. L. R.'.

Page 237 line 19 from bottom for "1892" put "1895".

Page 238 in last 2 lines of note 2 for 'M. L. T.' read 'M. L. J.', and for '2 other W. N.' read '2 Mad. W. N.'.

Page 248 in line 16 for 'M. 4 J.' read 'M. L. J.'.

Page 248 in line 25 for 'M. 4. T.' in both places read 'M. L. J.'.

Page 256 in line 17 from bottom after note insert—

Page 256 in line 4 for "75" read "15."

Page 261 after line 2 of note 4 add "See notes page 322."

Page 262 in line 9 of note 5 after "Purchase" read "and sale."

Page 262 after note 7 insert—

*Apportionment of municipal expenses incurred.*—G. R. 6007 of 2 Aug. 1915, G. D. states that it is intended to amend this section by the introduction of the following sub-sec. (3-A) after sub-sec. (3).

"(3-A). Provided that if such notice is not complied with and such work is executed

by the municipality, as provided in section 156, the expenses thereby incurred shall be apportioned by the municipality in such manner as they may think fit, regard being had, if they deem it necessary, to the amount and value of any work already done by the owners or occupiers of any such lands or buildings."

*The statement of objects and reasons says.*—The object of this provision is to enable the municipality to apportion the expenses incurred by them in improving any street, not being a public street, among the respective owners of the lands or buildings fronting, adjoining or abutting upon such street, in such proportions as the municipality may think fit. Under section 156 (1) of the Bombay District Municipal Act, 1901, when default is made in the execution of any work required by the municipality to be done the municipality are entitled to cause such work to be executed and to recover the expenses from the persons by whom such work ought to have been executed. This provision does not enable the municipality to recover the expenses from the owners concerned in varying proportions, for instance, according to the frontage of their respective buildings or lands, or according to such other considerations as may appear to be just. It is very desirable that the municipality should have the power of apportioning the expenses incurred in such manner as they may think fit. There are analogous provisions in certain Acts of Parliament and municipal enactments in India, for instance:—The Public Health Act, 1875, (38 and 39 Vict., c. 55), s. 150; The Private Street Works Act, 1892, (55 and 56 Vict., c. 57), s. 10; The Bengal Act, 1884 s. 181; The Calcutta Act, 1899, s. 361; The Madras City Act, 1904, s. 245; and The Punjab Act, 1911, s. 171.

Page 266 at end of note 1 insert—

*May prescribe a fresh line.*—Held that under sec. 297 (as amended) of the Bom. City Act the Commissioner has power to prescribe a fresh line in substitution of any line previously prescribed or for any part thereof even though its effect be to widen the street. This power has for its object very often the widening of the street. (*Municipal Commissioner v. Manchherji* (1911) 13 Bom. L. R. 1130.)

“This disposes of the ruling in *Issa Jacob v. Municipal Commissioner of Bombay*, I. L. R. 25 Bom. 107 in which it was held that a new line could not be made.

Page 267 at end of note 1 insert—

*Verandahs or steps on surface of drains or streets*—On this subject G. R. 7119 of 22 Dec. 1905 quotes the following remarks of the Legal Remembrancer.

“2. The municipality has power to remove a building or part of a building, such as a verandah or step, which is on the surface of a public street (Section 92) or on the surface of a drain. (Section 110 (2)) and such encroachments are penal under section 122 (1).

“3. The municipality has power to allow a building to be erected on the surface of a drain (Section 110 (2)) presumably when such building would not interfere with the use of the drain. It has no power to allow a permanent building on the surface of a public street, for such building would necessarily obstruct the use of the street. The grant of such permission would be an infringement of the duty imposed by section 54 (1) to maintain the street and of the trust declared in section 50 (2) (f).

“4. The municipality has power to remove projections over the surface i.e., aerial projections over a public street or drain—Section 113 (3). Permission to put up such projections may be granted when they do not interfere with the use of the street or drain (section 113 (1)). The putting up of such projections without permission is penal (Section 113 (2)).

“5. The temporary occupation of a public street or open space may be permitted:—

(a) for ceremonial mandaps and for stacking fuel—Section 122 (1).

(b) for erecting hoardings—Section 123; and

(c) for digging holes and depositing timber—Section 125 (1).

This temporary occupation is merely by license and does not import a transfer of a right in immovable property (section 52 Indian Easements Act, 1882).

See also note 26 page 144 and note 4 page 323.

Page 268 in line 11 for “427” read “227.”

Page 269 in line 11 for “905” read “950.”

Page 269 after note 4 insert—

*Land acquired—seller not disclosing defect of title.*—The municipality acquired a strip of land for widening a street from the accused under sec. 92 of the Bombay District Municipal Act and paid him the value thereof on his executing a regular deed of conveyance containing the usual covenants of title and indemnity. The accused did not disclose the existence of a prior registered mortgage or the fact that the property belonged to a Hindu Joint Family of which he was only a member: Held that the accused was not guilty of cheating.

*Held*, though defects in title to the property, such as the existence of the mortgage and the claims of co-partners, are material defects within the meaning of section 55 cl. 1 (a) yet they are such defects which could, with ordinary care, have been discovered. The accused was, therefore, under no obligation to disclose such defects, and his failure to do so was therefore not a dishonest concealment. *Emperor vs. Bishandas* (1905) I. L. R. 27 All. 561 approved. *Haji E-sa vs. Dayabhai* (1896) I. L. R. 20 Bom. 522 referred to.

*Held*, further, that, the municipality having acquired the land under section 92, the agreement was complete before the sale-deed was signed and the representation contained in the express covenants for title could not, therefore, have induced the municipality to agree to the sale.



A concealment of facts cannot be said to be dishonest within the meaning of sec. 415 of the Indian Penal Code unless the accused was under an obligation to disclose the facts concealed. (*The Karachi Municipality vs. Bhojraj* IX S. L. R. 97.)

Page 282 at end of note 15 insert—

*Erection of building other than the one permitted—municipal discretion.*—Accused applied under sec. 96 for permission to build a “meda” over his “ota”, the municipality granted permission only for a “dakhate”, but accused built a “meda”, and was prosecuted under sec. 96 (5). The Magistrate acquitted him on the ground that the municipality ought not to have refused permission for the “meda”. Held that the Magistrate could not question the discretion of the municipality in such a matter. He could only enquire whether the action was *ultra vires* or not, (*Ahmedabad Municipality vs. Maganlal Khushaldas*, (1906) 9 Bombay L. R. 156.)

Page 294 at bottom insert :—

2 **Entry**.—See sec. 159 and notes.

Page 304 at end of notes to section 110 insert—

*Steps or Covers over drains in streets.*—The question was raised whether steps leading into houses abutting on public streets should not be allowed to be built over the gutters or drains as a convenience for getting into the houses, it being the duty of the municipality to allow access from the street into the houses. It was suggested that the only way out of the difficulty raised by G. R. 4364 of 24 July 1906 (vide p. 145) was for the municipality itself to build the steps and make a charge. To this end it was said that sec. 90 should be amended and provision be made for by-laws on the subject and for fees being taken for such erections. G. R. 4815 of 7 August 1907, G. D. invited opinions and called attention to G. R. 1080 of 15 February 1907 (vide p. 145). G. R. 2649 of 24 May 1909, G. D. in publishing all the correspondence agrees with the view expressed by the Commissioner-in-Sind that no alteration of the law was necessary. “If covers are required over public drains to provide access to the houses, it is the business of the municipality to construct them.” The Commissioner-in-Sind says :—Gutters over public streets should be bridged by municipalities wherever necessary. Steps and varandahs should be constructed by the house owners only within the limits of their property. Even if these erections are allowed the municipality should certainly not be permitted to charge fees for them.”

Page 304 at end of notes insert—

The following by-laws under section 48 (i) (r) and (u) regulating the grant of permission to erect buildings over drains, etc., in the Municipal District of Ahmednagar were accordingly approved.

1. Where permission is granted under sub-section (2) of section 110 of the Act to erect or rebuild any building over any sewer, drain, culvert or gutter which is vested in the municipality and constructed on private land, or on land not forming part of a public street, a fee shall be charged at the following rates :—

(a) where the building does not exceed 5 feet in length :—

at the rate of 1 anna for each foot or any portion of a foot by which the building extends in a direction at right angles to the sewer, drain, etc.;

(b) where the building exceeds 5 feet in length :—

at the like rate for each unit or any portion of a unit of 5 feet of length.

2. A fee at one-fourth the rate prescribed in rule 1 shall be charged for any existing ota built with the written permission of the municipality in accordance with the terms of such permission.

3. The minimum fee chargeable under these rules shall be 4 annas.

4. These fees shall be payable to the Municipal Secretary in advance before the written permit is given and thereafter at the beginning of each year of renewal, each payment covering only the municipal year (April 1st to March 31st) in regard to which it is made.”

Page 306 at end of note 1 insert—

*Rules for projections over public street.*—The following rules under section 46 (i) prescribing the fees to be charged for projections over public streets in the Municipal District of Ahmednagar were approved of by G. R. 3076 of 16 April 1908, G. D.

1. Fees shall be charged annually for projections over public streets for which permission is granted under sub-section (1) of section 113 of the Act at the following rates :—

(1) for any weather-board, sunshade, shop-board or the like—

(a) in any street in class I in the schedule hereto

(i) where the structure does not exceed 5 feet in length :

at the rate of 2 annas for each foot or any portion of a foot by which the structure extends across the street;

(ii) where the structure exceeds 5 feet in length:

at the like rate for each several unit or any portion of a unit of 5 feet of length;

(b) in streets in the following classes:

Class 2: at double the rate prescribed for class 1;

Class 3: at three times the rate prescribed for class 1;

Class 4: at four times the rate prescribed for class 1;

(2) for projections other than weather-boards, sunshades, shopboards and the like. at half the rate prescribed for weather-boards, sun-shades, shop-boards and the like.

2. The minimum fees chargeable under these rules shall be as follows:—

In street in class 1: 4 annas;

„ „ 2: 6 annas;

„ „ classes 3 and 4: 8 annas.

3. When a fee has been paid for any projection, it shall be held to cover all other duly authorized projections from the same storey over the same ground, but a separate fee at half the rate of the original fee shall be paid for any projection from any other storey.

4. These fees shall be payable to the Municipal Secretary in advance before the written permit is given and thereafter at the beginning of each year of renewal, each payment covering only the municipal year (April 1st to March 31st) in regard to which it is made."

[Here follows the Schedule.]

Page 321 after line 11 to note 1 insert—

*Marginal note.*—This is incorrect. For sub-section (1) it should be "Penalty for obstructions and encroachments in public streets and on drains, &c."

Page 323 in note 3 delete lines 2 and 3.

Page 325 after note 9 insert—

*Marginal note* should be "Exception in cases of authorised projections."

Page 338 after note 1 insert—

*Measures for dealing with mosquito breeding.*—G. R. 8591 of 27 Nov. 1913, Gen. Dep. publishes a letter from the Government of India forwarding copies of the proceedings of the 2nd All-India Sanitary Conference held in Madras in November 1912, the Resolutions then passed, and other correspondence setting out the orders of Government on the subject and calling for reports. On receipt of these G. R. 6007 of 2 August 1915, Gen. Dep. while circulating a draft Bill with a proposed new section 90 (3-A) (*vide* note 7, page 262) and section 135 says:—

**ORDER.**—In resolution I (iii) passed at the General Malaria Conference held at Madras in November 1912, the attention of Government was drawn to the possibility of danger arising from the presence of borrow pits in proximity to human habitations, especially when such excavations result in the prolonged stagnation of water therein. So far as the City of Bombay is concerned the Municipal Act has been amended on the lines suggested by Dr. Bentley so as to invest the Municipal Commissioner with enhanced powers for dealing with mosquito-breeding grounds, which are now a statutory nuisance under the Act. With regard to mofussil municipalities, the Commissioners were requested in G. R. 8591 of 27 Nov. 1913, to report whether a provision similar to the one recently inserted in the City of Bombay Municipal Act and enabling these authorities to deal with mosquito-breeding grounds should be inserted in the District Municipal Act. They were also requested to furnish Government with their opinion as to the feasibility of prohibiting, with a view to checking the creation of fresh breeding grounds, the excavation of borrow pits within half a mile of the boundary of an inhabited area. After a consideration of the reports submitted by these officers, Government propose to amend the Bombay District Municipal Act, 1901, on lines similar to sections 381 and 381-A of the City of Bombay Municipal Act, 1888, with a view to empowering district municipalities to deal with mosquito-breeding grounds, and a Bill further to amend the Act has been prepared accordingly. Commissioners and Collectors will report, after consulting the municipalities in their respective districts, whether any modification of its provisions is desirable.

2. With regard to the question of the prohibition of the excavation of borrow pits, it has to be borne in mind that these excavations are comparatively rarely the work of private individuals, but are generally the result of the operations of public authorities such as the Public Works Department, Local Boards, and Railway Companies. It has also to be considered

that the excavation of borrow pits is generally unavoidable or virtually unavoidable, while the remedy against the insanitary conditions to which their presence gives rise is not necessarily the total prohibition or abolition of such excavations but the general adoption of measures which will ensure that rain and subsoil water shall not stagnate in them but shall be rapidly drained off. Having regard to these considerations, Government do not think that resort should be had to legislation of a prohibitory character, which, as is evident from the reports received, would be open to many objections and practical difficulties. They consider that it will be sufficient if the attention of the authorities concerned is drawn to the danger to the health of the people arising from the presence of undrained borrow pits in the vicinity of human habitations and the consequent necessity of arranging for their proper drainage. Executive Engineers should be directed to take action accordingly with regard both to existing and to future excavations, and the Railway Companies should be addressed with a view to the issue of similar instructions to their engineering officers.

Page 338 end of note 1 sec. 135 for "4 Mad." put "11 Mad."

Page 356 for the figures "12(3)" read "13(3)."

Page 359 after note 11 insert—

"<sup>12</sup> *Destruction of insanitary huts.*—This clause is adapted from section 426 (2) of the Bombay City Act."

Page 359 for the head note figure "<sup>12</sup>" read "<sup>13</sup>" and for the 5th line from top substitute "This sub-section is adapted from section 427 (4) Bombay City."

Page 362 in line 15 for (4) read "(4)" and in line 23 for "(5)" read "(5)."

Page 363 in line 4 change the head note to "<sup>3</sup> *Who owner of building when sub-let*" and add "This should be the marginal note."

Page 363 after line 5 insert—

"<sup>4</sup> *Sub-section (4).*—The marginal note should be "Owner to give notice to lodgers," and in line 6 for "<sup>4</sup> *Penalty*" read "<sup>5</sup> *Penalty*."

Page 378 last line note 6 for "I. L. R." put "P. L. R."

Page 381 note 6 after "1889" insert "P. J. 279."

Page 387 at end of note 1 sec. 159 insert:—

"Under the Bom. City Act the corporation has the right, for the purpose of supplying the City with water, to enter upon land belonging to other owners, to make connections between mains, and to lay the pipes forming the connections through or under such lands without the owners' permission, though not without giving reasonable notice in writing. Held that sec. 12 of the Railways Act (IX of 1890) does not exclude the above right to use land belonging to the G. I. P. Railway Company for the said purpose. (*G. I. P. Railway Co. v. Municipal Corporation of Bombay*, I. L. R. 23 Bom. 358.)"

Though there is not a similar provision in this Act, yet as it is a duty of a municipality to make provision for a water supply, the entry would be lawful under this section.

Page 391 after line 14 insert the whole of the note beginning "**Sub-section (2)**" and affix the figure <sup>2</sup> to it. Then follows the next note "Sub-section (3)" to which affix the figure <sup>3</sup>. Delete the words "<sup>6</sup> *Decision by District Court*," and "<sup>7</sup> *in the circumstances of the case*."

Page 421 after line 17 of note 1 insert—

"<sup>6</sup> *Budgets and financial control.*—See paragraphs 21 and 22 of the Government of India Resolution set out in the Preface to this edition."

Page 423 line 13 for "1919" put "1912".

Page 423 between lines 8 and 9 from bottom insert—

G. R. 7504 of 28 September 1915 refused sanction to a proposal to appoint a Government Treasury clerk in addition to his duties to audit the accounts of a municipality.

Page 434 at end of note to section 181 insert—

G. R. 5037 of 27 June 1914, Gen. Dep., publishes a Press Note with statements showing the figures of population of different communities and the proportion of Councillors of each of the communities in City Municipalities in the Presidency including Sind, the number of councillors and voters of each community and the proportion of councillors of each community in relation to both the population and the number of voters of that community.

Page 441 at end of note insert—

Government of India No. 145 of 10 July 1915, Edu. Dep. (Municipal) grants this exemption in the cases of the Municipalities of Ahmedabad and Surat in respect of the Government officers appointed to be Municipal Commissioners, but declines to grant a general sanction in view of the terms of this section. G. R. 6187 of 10 August 1915, Gen. Dep., with reference to Orders No. 2015 and 3924 of 9 March and 11 May 1915, respectively.



### Abbreviations made use of in this Manual.

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"The old Act of 84"	means	Bombay Act II of 1884.
"The old Act of 73"	" "	VI of 1873.
"The Panjab Act"	"	The Panjab Municipal Act, 1891 (Act XX of 1891).
"The Bom. City Act"	"	The City of Bombay Municipal Act, 1888 (Bombay Act III of 1888).
"The Mad. City Act"	"	The City of Madras Municipal Act, 1884 (Madras Act I of 1884.)
"The Madras Act"	"	The Madras District Municipal Act, 1884 (Madras Act IV of 1884.)
"The N. W. P. Act"	"	The North-West Provinces and Oudh Municipalities Acts, 1873 and 1884 (Act XV of 1873 and 1883).
"The Burma Act"	"	The Lower Burma Municipal Act, 1884 (Act XVII of 1884).
"The C. P. Act"	"	The Central Provinces Municipal Act, 1889 (Act XVIII of 1889.)
"The Bengal Act"	"	The Bengal Provinces Municipal Act, 1884 (Ben. Act III of 1884.)
"The Cal. Act"	"	The Calcutta Municipal Act, 1899 (Bombay Act III of 1899.)



**LIST OF GOVERNMENT RESOLUTIONS HEREIN REFERRED TO.—  
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THE BOMBAY DISTRICT MUNICIPAL ACT, 1901.

*An Act for the better management of Municipal affairs in  
Mofussil Towns and Cities.*

(The assent of the Governor-General of India to this Act was published  
by the Governor of Bombay on the 1st April 1901.)

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\*Added by the Bombay Act X of 1912.

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## Act No. III of 1901.

### *An Act for the better management of Municipal affairs in Mofussil Towns and Cities.*

Whereas it is expedient to consolidate and amend the law relating to the management of municipal affairs in cities and towns in the Bombay Presidency other than the City of Bombay: It is enacted as follows:—

#### CHAPTER I.—PRELIMINARY.

1. (1) This Act may be cited as the Bombay District  
Short title. Municipal Act, 1901.

(2) It extends to the whole of the<sup>1</sup> Presidency of Bombay,  
Local extent. except the<sup>2</sup> City of Bombay.

(3) It shall come into force on the first day  
Commencement. of April 1901.

1 'Presidency of Bombay.'—By the Bombay General Clauses Act, 1904, sec. 3, (7), "this means the territories within British India for the time being under the administration of the Governor of Bombay in Council."

2 'City of Bombay.'—By Section 3, (10) of the same Act these words mean "the area within the local limits for the time being of the ordinary original civil jurisdiction of the Bombay High Court of Judicature."

The Municipal law in force in the City of Bombay is to be found in Bombay Act III of 1888 ("the City of Bombay Municipal Act, 1888") as amended by subsequent Acts.

2. (1) The Bombay District Municipal Acts of 1873 and  
Repeal. 1884 are hereby repealed: Provided that

(a) the said repeal shall not affect the validity or in-  
Saving Clause.<sup>1</sup> validity of anything already done  
under either of the said enactments;

<sup>2</sup>(b) all Municipalities constituted, municipal commis-  
sioners appointed or elected, committees esta-  
blished, limits defined, appointments, rules,  
orders and by-laws made, notifications and  
notices issued, taxes and rates imposed, contracts  
entered into, and suits and other proceedings  
instituted, under the said Acts or under any  
enactments thereby repealed, shall,<sup>3</sup> so far as  
may be, be deemed to have been respectively  
constituted, appointed, elected, established,  
defined, made, issued, imposed, entered into and  
instituted under this Act; and

(c) any enactment of the Governor of Bombay in  
Council, or document referring to any such



repealed enactment, shall,<sup>3</sup> so far as may be, be construed to refer to this Act or to the corresponding portion thereof.

<sup>4</sup>(2) Of the Bombay Prevention of Adulteration Act, 1899, in section 5, the whole of sub-section (2), and clause (b) of sub-section (3), and in section 6, the whole of sub-section (2) are hereby repealed.

**1 Saving clause.**—This is a re-enactment of the first proviso to section 3 of Bom. II of 1884 and follows the Central Provinces Municipal Act, 1889, section 2 (2).

The Bombay General Clauses Act, 1904, section 7 provides for the effect of a repeal.

*Contract under Old Act*, if *ultra vires* of that Act, cannot bar the rights of a Municipality under the present Act. See. 3 S. L. R. 49.

**2 Validity of existing Municipalities** :—*Clause (b)* is similar to section 2 (2) of the Panjab Municipal Act, 1891. (Act No. 20 of 1891.) Section 35 of the old Act of 1884 provided expressly for continuance in force of existing rules and by-laws.

**3 So far as may be** :—“A Municipality instituted proceedings under the Bombay District Municipal Act (Bom. Act VI of 1873). During the pendency of the proceedings the Act was repealed and replaced by Bom. Act III of 1901. The Magistrate therefore acquitted the accused on the ground that under the new Act he had no jurisdiction to dispose of the complaint :—*Held* reversing the order and ordering the Magistrate to re-hear the complaint. (1) that in the absence of the expression of any contrary intention in the new Act, the repeal of the old Act could not be deemed to affect any proceedings commenced before the new Act came into force. (2) That the Magistrate was bound to conclude the proceedings which had already been instituted before him under the old Act, and that he could not disclaim jurisdiction, because the procedure laid down for proceedings instituted under the new Act was entirely different. It is open to the Municipality to take steps under Chapter VIII of the new Act for the recovery of the cess alleged in this case to be due; but as the Municipality wishes that these proceedings which are still valid should be continued, the only procedure for their continuance is that laid down in the old Act. (*Mukand v. Ladu*, 3 Bom. L. R. 584.)

**4 Prevention of Adulteration Act.**—These sections added a section 68-A to the old Act of 1873 and amended section 68. These are now repealed and their provisions are re-enacted in section 142, which see.

**3.** In this Act and in the schedules, unless there be something repugnant in the subject or context—  
Interpretation section.

(1) “City Municipality” shall mean any Municipality which

(a) is one of those specified in Schedule E, or

(b) has been declared under sub-section (1) of section 181 a City Municipality,

and which has not ceased, under sub-section (2) of section 181, to be a City Municipality.

**City Municipality** :—This marks the principal constitutional change in the law and revises the old distinction between City and other municipalities. Bom. VI of 1873 recognised that the enlightenment and public spirit that were available in large cities like Ahmedabad, Poona, &c., could not be looked for in outlying places. Hence it divided municipalities into City and Town municipalities, placing the executive power in the former in the hands of the Councillors as a body and in the latter entirely in the hands of the President, Vice-President and Chairman, and Collectors were in all case *ex-officio* Presidents, and the Assistant or Deputy Collector, Vice-President in most. In 1882, consequent on the promulgation of Lord Ripon's policy for the extension of local self government, elections were held in some municipalities, and the care of elementary education entrusted to Municipalities, Government taking sole charge of the Police expenditure. Later on in 1884 was passed Bom.

II of 1884 by which a great popular advance was made in the constitution of municipalities and the distinction of City and Town municipalities abolished. The Act made election absolute except in specially backward places, to the extent of half the councillors, reduced the number of Government servants to one-fourth of the total, and abolished *ex-officio* presidents and their power of suspending the orders of the municipality. It has, however, since been found by experience that large cities, in which scientific systems of sewerage and water-supply have been, or are in course of being, introduced, necessarily require a more elaborate municipal organisation than towns with small populations and resources, and therefore the executive has been found to require special powers. The alterations made in the law will be noted in their proper places.

The Act does not define "Municipality" as in the Panjab Act (20 of 1891) where it "means any local area declared by or under this Act to be a Municipality." But under section 4 certain local areas are declared Municipal districts; and by section 9, in every "Municipal district there shall be a Municipality."

In England a City has been said to be "a borough incorporate which hath or hath had a bishop," but the existence (present or past) of a bishopric is not essential to the existence of a Municipal City.

The title of City is a rank or dignity which is almost invariably created by the exercise of the Royal prerogative by letters patent.

(2) "Councillor" shall mean any person legally a member of a Municipality constituted under this Act.

This was the definition of a Municipal "Commissioner" under the former Act (section 3, Bom. VI of 1873). The nomenclature has now been changed to avoid clashing with the "Commissioner," the Government officer.

(3) "Commissioner" shall mean the commissioner of a division appointed under the Bombay Land Revenue Code, 1879, and in Sind, the Commissioner in Sind; provided that nothing in this Act shall affect the powers of the Governor in Council, under the provisions of Act V of 1868, to delegate any of the powers of the Governor in Council under this Act to the Commissioner in Sind.

**Commissioner:**—The definition is not new, but was used of the "Commissioner of the division," the term "Commissioner" being used for a Municipal Commissioner, or as now, a "Councillor."

By the Bombay General Clauses Act, 1904 (Bom. Act I of 1904, section 3, (13) "Commissioner" means in Sind, "the Commissioner in Sind, and elsewhere the Commissioner of a Division appointed under the Bombay Land Revenue Code, 1879, or any other law for the time being in force in this behalf."

By section 4 of the Bombay Land Revenue Code the Commissioner, *i. e.*, Commissioner of the Division as here expressed is the chief controlling authority in all matters connected with the revenue. The territories under each Commissioner form and are called a division. The limits of each division are defined under various notifications of Government from time to time.

The proviso is taken partly from section 47, Bom. II of 1884.

**Commissioner in Sind.**—G. R. No. 3736, of 1st July, 1901, Gen. Dep.—In exercise of the powers conferred by section I of Act V of 1868 His Excellency the Governor in Council is pleased to delegate to the Commissioner in Sind as the Local Government of the Province of Sind all the powers conferred on the Governor in Council by the undermentioned provisions of the Bombay District Municipal Act 1901:—

Sub-sections (1) and (4) of sections 4; sub-sections (1) and (3) of section 8; sections 11 and 12, save in respect of City Municipalities and save in contravention of any general rules issued by the Governor in Council under the provisions of the same section; sections 15, 16 and 23; sub-section (1) of section 27; sub-section (5) of section 35; Provisos (a) and (c) to section 46; sub-sections (1) and (3) of section 48; section 52; clause (b) of section 59, in respect of the taxes specified in clauses (i) to (x); clause (c) of section 60; sections 61 and 74; sub-section (2) of section 76; sections 86, 88, 144, 145, 146, 149, 150, 153, 177, 178, 182, 187, 188, 190 and 191.