

occasions of fundamental differences, claimed that "the Minister's function in law was merely to advise."

(There were two other important methods by which the Governor's powers were aggrandised. The Instrument of Instructions issued to the Governors charged them "to safeguard all members of Our services employed in the said presidency in the legitimate exercise of their functions, and in the enjoyment of all recognised rights and privileges." This Instruction is only to safeguard their interests, but it has been interpreted to mean that all matters relating to the services should be under the control of the Governor. Nowhere does it give authority for their claim that the appointments, postings and promotions in the Ministers' departments should be under the sole charge of the Governor.) It gives him the right to see that no injustice is done. But the Governors have assumed the sole power of appointment and transfer, claiming to do so by virtue of a dispatch of the Court of Directors in 1844, and the Ministers in their departments are left absolutely powerless. In Bombay, the Governor claimed this right even with regard to the Executive Council. The practice before 1922 was that, on the proposals being sent by the department to the Private Secretary to the Governor, the Governor, if he approved, circulated it to the Members in the following form: "I propose to make, with the concurrence of my Honourable Colleagues, the following appointments." The Members of Council then recorded their opinion and the majority view prevailed. The Governor decided to alter this and the Members were then merely informed that he was making the appointments. On one occasion even the form "the Governor in Council is pleased to appoint" was changed to "the Governor is pleased to appoint."

(By the Rules of Executive Business, in all matters of dispute between the Reserved and the Transferred half, the

final authority lies with the Governor. This was an additional source of power.) In the days before the Reforms, in case of any difference between two departments, the majority view of the Council to which it was referred prevailed. Now the Governor is the final authority, and this also has worked to aggrandise the power of the Governor, at the expense of both the Executive Council and of the Ministry.

As has been noticed, according to the Rules under subsection. 5 of section 72 D, the Legislative Council is powerless to criticise any action of the Governor. He sends messages to the Council to which no reply can be voted. Besides this, he has wide powers reserved under the Act itself, restricting the Legislative and Financial authority of the Council. He can certify Measures rejected by the Council, he can veto, or reserve for the consideration of the Government of India, legislation passed by the Council. He can disallow resolutions, even after the President has accepted them. Of all these, there are many instances in the history of the working of the Reforms in Provinces.

(Sufficient has been said to show that, so far as the Governors are concerned, the opposite of what was intended by the Act has been the result.) Before the Reforms, he was *primus inter pares* among his Members of Council. Now, he is the final authority in cases of difference between the two halves. He has assumed complete control over the services, while his legitimate function was only to see that injustice was not done. While the control of his superior authority has been relaxed and he is no longer responsible in matters relating to the Transferred departments to the Governor-General, and through him to the Secretary of State, he has not surrendered that responsibility to the Ministers to whom the Act intended it to be surrendered. Provincial autonomy has thus meant an increase in the power of the Governor, without a corresponding increase in his responsibility to the Legislature.)

(2) *The Executive Council*

Only less important than the relation of the Governor with Ministers, is the position of the non-parliamentary Executive in charge of the Reserved departments *vis-à-vis* the Ministers in charge of the Transferred half. The Finance department stands in a different position which will be discussed in the next chapter. The Executive Council consists of Members appointed direct by His Majesty, either from among the Civil Service or from the ranks of Indian public men. In Madras, Bombay and Bengal the Executive Councils consist of four Members, two Civil Servants and two Indians. In the other Provinces, the Councils consist of two members, one from the Civil Service and one Indian.

(3) *Ministers and the Executive*

(It was the clear intention of the Joint Parliamentary Committee that the Reserved and Transferred halves should hold joint consultations.) The Committee in fact laid considerable stress on it. The Instructions to the Governors also charged them to this effect "You shall encourage the habit of joint deliberation between yourself, your Councillors and your Ministers, in order that the experience of your official advisers may be at the disposal of your Ministers, and that the knowledge of your Ministers as to the wishes of the people may be at the disposal of your Councillors." The Secretary of State for India also said in the House of Commons that "it is absolutely essential that during the transitional period, there should be opportunities of influence and consultation, between the two halves."*

What the Joint Committee recommended was only that both the Ministers and the Councillors should discuss jointly, while the decision in their respective spheres should be taken separately. This system was ignored for the first two years

* Speech of Mr. Montagu on the 5th of June 1919, on the second reading of the Bill in the House of Commons.

in Madras, by Lord Willingdon, in favour of a unitary Cabinet. But soon the Madras Government also came back to a dyarchical view of consultation. In other Provinces, the unitary system was not tried and joint consultations were informal. In Bombay, the papers relating to the Reserved subjects were not circulated beforehand, and in the United Provinces, on some matters of importance, the opinion of the Ministry was not taken. Neither half, in fact, was anxious for such consultations.)

(More important was the question of their mutual relations in the Council. The close association of Ministers with the policy of the Reserved half, which they did not approve and which their party often condemned, did not strengthen the position of the Ministers in the Legislative Council. Many of the Measures proposed by the Executive are naturally unpopular in the Legislature. The Ministers, more often than otherwise, share the views of their followers. And yet they could neither give a lead to their party, nor openly support their colleagues. On one occasion, the Madras Ministers, who had a solid majority behind them, encouraged their followers to throw out a major legislative proposal of the Government with regard to irrigation. The Executive Councillor concerned resigned immediately. But this is the only occasion on which the Ministers have been able, through parliamentary action, to force their influence on their colleagues on the Executive side.

The equally anomalous spectacle of a Member of the non-parliamentary Executive speaking, canvassing and voting against proposals of his popular colleagues, was seen in the U. P. Council. The Madras Ministers during the Irrigation Bill debate, at least kept constitutional propriety by keeping neutral, though their attitude was well known. They neither spoke nor voted against it. But in the United Provinces Council, in the debate on the District Boards Bill, a Member of the Executive Council spoke strongly against the proposals

of the Minister. On the second day of the debate, the Finance Member openly asked the officials to vote against the Bill.

(The Leadership of the Legislatures is given by the Governor to the senior Member of the non-parliamentary Executive and not to the popular Minister who is supposed to command the majority. In the management of the Council, the Ministers have thus become no more than an appendix of the Executive. They are used merely as cover for executive action and, though leaders of a party possessing power in the House, they are often forced to speak for official proposals to which they are known to be opposed, or at least vote in their favour when their party votes against it.)

It should be noticed that the non-parliamentary Executive in this connection does not mean the Civil Service. Half the Members of the Executive Councils are Indians, and it is these champions of Reserved subjects, who are more anxious for autocratic authority and for the lessening of the Ministers powers than the Members of the Civil Service. It is not, as has been suggested, a rivalry between the Civil Service and the Ministers, an attempt on the part of the former to regain their position lost by the Reforms. The aggressive champions of executive irresponsibility to the Legislature, have as often been Indian public men as senior Civil Servants. Sir C. P. Ramaswamy Iyer, the Law Member in Madras, invented the ingenious theory that, by virtue of a dispatch of the Court of Directors, all appointments, even in the Transferred departments, were made by the Governor. The Law Member of Bengal, Sir Abdur Rahim, distinguished himself equally by his refusal to be influenced by the Council. The Maharajah of Mahmudabad, who was the Home Member of the United Provinces Council, was as strong an advocate of irresponsibility in the Reserved subjects as the most orthodox Civil Servant.

Though the rivalry was not fortunately on a racial basis, there could be no question as to what the principle involved

was. } The Members of the Executive Council while desiring to sail under the cover of the Ministers' influence in the Legislature, were not prepared to take them into confidence or consult them in matters of importance. (The Ministers, on the other hand, chafed at being made tools of by the Executive and at being forced to serve by their influence and their tacit support policies to which they were opposed. This was probably an inherent defect, something which we could not dissociate from a division of functions such as the Act provided. But it should be noted that this continuous rivalry affected the Ministers' relations with the Council and even struck at the root of responsibility to the Legislature.) }

(4) Ministerial Responsibility

{ The whole purpose of the division, in fact the whole purpose of the Act, was to make the Ministers responsible for the administration of the Transferred departments to the Legislature. On this point there can be no doubt. We shall now see how far the Minister was, in fact, made responsible to the Legislature. (The elementary condition of parliamentary responsibility is that the Minister should be removable by the vote of popular representatives whose confidence he is supposed to possess. Secondly, he should have such effective control of his department as to be able to defend the proposals emanating from, the policy pursued by, and the action taken under that department. A third essential condition is that the Legislature should be given every opportunity to review the work of the Ministers and to approve or disapprove of it. Looked at from any of these points of view, the responsibility of Ministers to the Councils has been a myth.) }

{ The Ministers are appointed by the Governor as in all constitutional countries. This does not matter much, because, presumably, the Ministers are chosen from among those who can command a majority of elected votes

in the Legislature. (But the problem of responsibility arises when the composition of the Chamber is concerned. The presence of officials and nominated members, amounting to 30 p. c. of the votes, creates a *bloc* which can maintain the ministers, even if they command the votes of only a minority of elected members. It should be remembered that in the 70, p. c. of elected members, a considerable section comes from special constituencies like European Chambers of Commerce and landholders whose votes, irrespective of the question at issue, are at the disposal of the Government.) In the Madras Council there are 127 Members: of these 29 consist of nominated officials and non-officials and Executive Councillors. Of the 98 who were elected, the Madras Chamber of Commerce and the Madras Trades Association (both Unions of European merchants) elect 3, though the number of electors is altogether less than 200. The planters (Europeans) have another seat. Then there is one European seat for the Madras Presidency and one for the Anglo-Indians. This gives the Government 6 votes as secure as those of their own officials. Besides this, the landholders, who are created into special constituencies, elect another 6, who in times of need, owing to their financial obligation to the Government, could be as much depended upon to vote in favour of officials like the Europeans and the nominated Members. Thus the representatives of the general electorate consisting of Hindus, Mohanmedans and Christians, number only 86, while the Government has, for all occasions a clean unquestioned *bloc* of 41 votes. (If therefore, anyone can carry with him 23 elected votes out of the 86, he can be established in authority as a Minister responsible to the Council. His responsibility clearly is not to the elected representatives, but to the Government *bloc* consisting of special interests, officials and nominated non-officials. It is this retainer vote that props up the Ministers and not the votes of the elected representatives.)

(That this is not merely a theoretical objection can be seen from the analysis of voting on important motions in the Legislative Councils.) In July 1927, the opposition in the Madras Council moved a vote of censure on the Ministers. The motion was "defeated," but the division showed that a clear majority of elected Members was against the Ministry. (The Ministers have not so far resigned, presumably because their responsibility in the Council is towards the majority which maintains them, consisting mainly of the officials and the nominated members. Again in November 1923, when the question was raised of officials voting to keep in power, Sir Charles Todhunter admitted that whips had been issued asking officials and non-officials attached to them to come to the support of the Government.* This identification of the fortunes of the "responsible ministry" with that of the irresponsible half, shows more clearly than anything else, that whatever the intentions of the Act, the Ministry is not responsible to the Legislature and works independently of popular opinion.)

Permanent officials nominated to the Council are permitted to take part in the discussion, and vote even on matters relating to the Transferred subjects. (If Ministers were removable by the Legislature and the opposition could come into power, this anomaly would not have been countenanced; because now a permanent official may have to defend in the Council under a new Minister, a proposal which he vehemently opposed under an old one. The size and unity of the official *bloc* often leads also to the curious position of the non-parliamentary Executive being able to command more

* This problem was recently raised in the U. P. Council (4th Nov. 1927), where a *Swarajist* member moved a resolution on the subject. The reply of the Government was that it was too late to rectify the procedure.

votes than 'the responsible Ministers' who may exist solely on the support of the official janissaries.) This also is not a theoretical proposition, as the position of the present Madras Ministry shows. The Executive in that Province has an official *bloc* of 40 votes and the Ministers command barely 25, with the result that they have become subordinates to the non-parliamentary half in all matters, including those for which they are supposed to be responsible to the Council.

This problem, of course, would not arise if any party could command in the Council an adequate majority. But this is almost impossible under the present conditions. Taking Madras again, there are only 86 seats for open election out of 127. An absolute majority, which would make the Ministers independent of the retainer vote, means the capture of 65 seats out of an available total of 86, which is more than 75 p. c. Unless a party can secure from the general constituencies (Hindu, Mohammedan and Christian) 75 p. c. of all seats, the chance of a Ministry responsible to the Council and removable by the Council does not really arise. Thus, so far as removability by the Legislature is concerned, Ministerial responsibility is clearly a myth.

(Secondly, if the Minister is to be considered responsible to the Council, he must have effective control of the department which he is supposed to administer. The evidence of the Ministers and ex-Ministers clearly shows that this has not been the case. We have noticed, in a previous section, the claim put forward and exercised by the Governor of being the deciding authority in the Transferred subjects. The Ministers, it was said, had only the right of advice which could be rejected for any sufficient reason.) The Bengal ex-Minister, Nawab Ali Chaudary, put the position thus in his evidence. "It came to this: while the Minister was responsible to the Legislative Council for his administration, it was the Governor who had, the final decision on almost all questions, though he was very

little in touch with the Council."* (Parliamentary responsibility of Ministers can only be a sham, when the effective authority of the department rests not with the Ministers, but with a Governor whose actions are declared by rules to be above criticism by the Legislative Council.) It is, perhaps, this consideration which led the Madras Ministers, in replying to the vote of censure in November 1923, to repudiate altogether the doctrine of responsibility to the Council.) The Rajah of Panagal, the Chief Minister of Madras, declared in his speech that as he was appointed by the Governor, he was responsible only to the Governor. This constitutional doctrine that the Minister is responsible not to the Council but to the Governor, though a complete perversion of the declared purpose of the Act of 1919, and amazing from a Minister who held the position, ostensibly because he was the leader of the majority party in the Councils, was no doubt in accordance with the facts. (It was to the Governor and not to the Council that the Minister considered himself to be responsible. From a parliamentary leader, the Dyarchical Minister had sunk to the position of a minor official.

(The third condition of effective Ministerial responsibility is that the Legislatures should have full facilities for expressing their disapproval of the policy of the Ministers. But the legislative procedure in the Provinces, instead of giving importance to what is the charter of its influence and authority, has under official Presidents refused facilities for discussion.) In Madras, when Sir P. Rajagopalachari was President, he admitted a motion of no-confidence in the Ministers. But in Bengal, such a motion was declared *ultra vires* by the President. (The only opportunity afforded by the Act, and by the rules framed thereunder, for removing unpopular Ministers is to

*Written evidence before the Muddiman Committee, p. 218, vol. 5.

reduce their salaries at the time of budget demands.) Even in Provinces where the motions for expressing lack of confidence are permitted, the rule is not established that these should have precedence over private resolutions.

(Thus, from every point of view, Responsible Government even of a partial character, which was the purpose and object of the Reforms, has failed altogether to materialise.) The size and permanence of the official *bloc*, and the special interests which are bound to support the Executive at all times, seriously restrict the value of a majority in the Legislature as an expression of popular confidence. Responsibility to a majority consisting mainly of this *bloc* is not responsibility to popular representatives but to official nominees. This was not and could not have been the purpose of the Act. (As it is, with the Leadership of the House in the Executive Councillor and the Ministers themselves moulding their policy in order to secure the good-will of the official *bloc*, and the Councils unable to enforce their nominal authority, the Ministers have become subordinate administrators, taking their orders from the Governor and depending for their existence on the good graces of their colleagues.) It is clear, in this particular matter, which was the essential part of the Reforms of 1919, that the Act was worked by the Executive in a spirit which travestied its intentions. This is but another instance, of which many can be found in British Indian history, of the local authorities taking away what the Parliament had given.

(It was again the clear intention of Parliament that the Ministers should be jointly responsible for the administration of the Transferred departments.) A true system of parliamentary government involves the collective responsibility of the Ministry and is clearly against separate and departmental responsibility. The Joint Parliamentary Committee was emphatic on the point: "The Committee think it important" they said "that

when the decision is left to the Ministerial portion of the Government, the corporate responsibility of the Ministers should not be obscured . . . In cases which are of sufficient importance to have called for discussion of the whole Government, they are clearly of opinion that the final decision should be that of one or the other portion of the Government as a whole." The Act itself, section 52 (3), lays it down that "in relation to Transferred subjects, the Governor shall be guided by the advice of his Ministers unless he sees sufficient cause to dissent from their opinion." This use of the plural, in conjunction with the Joint Committees' view, leaves no doubt that the principle of joint ministerial responsibility was laid down in the Act. (But the rules of Executive Business were framed in all the Provinces—with the exception of Madras during the first two years—on the assumption that the Governors should act separately and not jointly with the Ministers.) In Madras, Lord Willingdon appointed a Chief Minister and it was understood that the collective responsibility of the Ministers was enforced at least for a time. In the United Provinces, the Ministers who were appointed for the first time protested against the idea of departmental responsibility and Sir Harcourt Butler yielded to their representation. But Sir William Marris, according to the evidence of Mr. Chintamani, considered it a deviation from the spirit of the Act and separate responsibility was enforced after the resignation of Mr. Chintamani and Pandit Jagat Narayan.

It must be recognised that there were many obstacles to this idea of collective responsibility in the Provinces, where no party had a sufficient following as to be able to command a majority. In the Punjab and in Bengal, where the communities were fairly balanced, it was clear that Ministers had to be selected from both the parties. To force identical responsibility on Ministers whose principles were different and whose

supporters were fighting against each other in the Council, would have been troublesome. But with some insistence on the part of the Governor, as in Bengal, such a Cabinet of moderate Hindu, Mohammedan and Sikh Members in the Punjab would not have been altogether impossible. In any case, even in Provinces where such difficulties did not exist, as in Bombay, the Central Provinces and the United Provinces, the principle of collective responsibility was not accepted by the Governors, who dealt with each Minister separately and without reference to his colleagues.

Thus, so far as Ministerial responsibility is concerned, the whole scheme was defeated by the tendencies noticed above. The Ministers never really had authority. They were not directly responsible to the Councils. Their joint responsibility was not enforced. It is these facts that made the Non-co-operators declare that they would not accept office unless there was real responsibility. To accept ministerial office under the dyarchical system was to convert oneself into an instrument of Executive Government, rather than serve the public as its chosen representative. It is not only the Non-co-operators who saw the problem from this prospective. Mr. E. Villiers, who was the representative of the European community in the Bengal Legislative Council, in refusing to offer himself as a candidate for the third time, issued a manifesto in which he stated his point of view with regard to Ministerial responsibility. He said "instead of teaching her (India) responsibility we are teaching her irresponsibility. Until the Reforms are re-cast, until they are applied to the Provinces as separate States, *until such subjects as are Transferred—no matter how small or how unimportant they may be—are transferred lock, stock and barrel, uninterfered with by the Governor and uninfluenced by Government votes in the Council, ...* I see no hope for the success of the Reforms." When it is remembered that the whole system of

Dyarchy was invented to ensure Ministerial responsibility to the Council, and to give the Councils and their agents, the Ministers, effective power over specified subjects, it will be realised how the intention of Parliament and the purpose of the Act was thwarted by the Rules made by the Government of India, and by the Governors and by the constitutional practice established in the Provinces by the civilian administrators who were in charge of them.

CHAPTER V

DYARCHY IN THE PROVINCES—(continued)

(1) *The Legislature and the Executive*

(When the authority of the Legislature, in its own special field of Transferred subjects, is so restricted, it is not possible that it would have effective power in those important departments of Government reserved for the Executive Council.) The Reserved subjects, as we noticed, include all the important branches of executive government, such as Revenue, Law and Order, Finance, Justice and Home administration. (Over these the direct authority of the Council was limited to voting on demands. This control of the purse, in the ordinary course of things, would have been an important power, but it was greatly restricted by the right of certification, expressly granted by the Act to the Governor. Besides this right to cut down the demands for the executive side, the Legislatures have also the power to discuss, interpellate and move resolutions on all Provincial matters.) Thus, though the authority of the Governor in Council, and through him of the Secretary of State, continued unimpaired, as the Act itself stated, it would be untrue to say that the Legislatures had no influence on the executive side. (Besides, the Councils elected standing Committees—one of which, the Finance Committee, was statutory—which were in close touch with the administration and influenced the decision of the Executive by the expression of the views represented in the Council. These three methods of action became popular in the Councils and

were used effectively to press the Indian point of view on the administration.)

The power of voting on grants, though the most important, and within its limits most effective, was conditioned by two facts; one was, it could be used when only the Government asked for money either at the budget time, or on a supplementary grant. As this was ordinarily only once a year, the right of controlling the Executive through the purse was not a weapon open to the Council at all times. The second restriction was the right of certification vested in the Governor.

Budget procedure is regulated by the Rules made under the Act and by the Standing Orders of the Council. The Budget is introduced by the Finance Member on a day previously notified, usually at the end of February or early in March. After two or three days' interval, given to the Members to study the provisions, there is a general discussion of the Budget for three days. After this, the Members send in notices for omitting or curtailing particular items or totals of expenditure in any part of the Budget which is open to the vote of the Council. After a further interval of a week, the Executive Councillors and the Ministers responsible for the departments concerned move their demands, when the motions for omission or reduction are discussed to express the views of the Council on the policy followed by the department. These discussions continue for a maximum of 12 days and it is during that time that the Council assumes the aspect of a "grand inquest." In Madras, 100 motions of this kind were discussed in 1923-24. During the first four years, no less than 753 motions for reduction were discussed out of a total of 3,393 motions admitted for discussion. In Bengal, this power was used with equal effect and steady pressure was exerted on the Executive to conform to the wishes of the Council. The Bombay Government notes the same fact in its report to the Government of India on the working of the Reforms. It states—

"The most important example of the way in which the Legislative Council have forced Government to conform to their wishes in the matter of retrenchment, was the 60 lakhs cut from the Budget of 1922-23. The manner in which they attained this end was eminently practical. Instead of attempting to reduce the total by rejecting or reducing various budget demands in detail, a course which would have involved them in great difficulties and split their own ranks over the interests affected, they wisely took the course of rejecting the Entertainments Tax Bill and threatened the rejection of the Stamp Bills if their demand for retrenchment was not substantially met. Government thereupon promised to cut it down by 60 lakhs—a promise which has been more than fulfilled."*)

The right of certification, which is vested in the Governor, is in the nature of things an extraordinary power. It has been used and liberally used in all the Provinces, but it is impossible to certify every vote that is reduced or rejected. Though a serious restriction on the rights of the Council, certification cannot affect the influence of the Legislature on the Executive exercised through a strict control of the purse. (That this right has been used wisely by the Council is recognised by all Provincial Governments. The Government of Bombay, under Sir George Lloyd, which of all the Provincial administrations was, least friendly to the Reforms, states that "there have been no important instances in which the Legislative Council have abused the powers" of financial control. It is true that in Bengal, the non-official parties joined together to throw out the whole budget; but the political conditions of that Province—owing especially to the arbitrary measures taken under the Bengal Ordinance—necessitated the utmost use of the constitutional powers of the Legislature, in order to demonstrate to the Executive Government the protest of the people against that particular policy.)

*Views of Provincial Governments 1923, p. 68.

(Motions for token cuts have been the common method for expressing the popular views with regard to the administration of departments. They have provided ample opportunities for criticism of Executive action as well as of Government policy. The Government was enabled to find out the strength of popular feeling on particular questions and the Members came often to appreciate the Executive point of view. On the whole, it is undeniable that the Councils have used their power of voting on demands with moderation and wisdom, and directed it mainly to pressing the popular view and influencing the Government in administration.)

(2) Resolutions and Interpellations

Besides the great influence the Council thus exercised by its rights with regard to taxation of appropriation, (there was the more popular and easier method, open at all times, of raising discussions on resolutions and on motions of adjournment.) Non-official Members in all Councils have used liberally their powers with considerable benefit to the public. (In the first Reformed Councils, there was a noticeable tendency to put down motions even on matters of routine and detail ; but with greater experience, the Members have concentrated their attention to important matters of policy. This is evidenced by the fact that there has been a considerable decrease in the number of resolutions tabled for discussion. The use to which the Members have put this power and the importance which they have attached to it, may be judged from the range of subjects discussed. Among the important resolutions discussed and carried in Madras, were those asking for the enfranchisement of women (1st April 1921), the re-settlement of Provincial contributions (2nd of April), the introduction of permanent settlement of land revenue (14th of December 1921), the appointment of a Retrenchment Committee (16th Sept. 1922), and the increase in the pay of village head-

men. The resolutions discussed in all Councils, dealt with important questions of public policy like the separation of judicial and executive functions, encouragement of temperance, the grievances of railway passengers, &c. The Provincial Governments were fully alive to the importance of conciliating the views of the Councils in these matters, wherever possible. Of the 109 Resolutions that were passed in the Bengal Council from 1921 to 1923, the Government took action in accordance with the recommendations on 51 cases and part action on 29. This is true of all Provinces. While the Provincial Governments have justly refused to consider the resolutions to be mandatory, they have all along tried to give effect to them as recommendations emanating from popular representatives on which action should be taken, if possible.

The right of interpellation has been another potent instrument in the hands of the Council. Though from its very nature, it could not be put to the same use as the right to move Resolutions, in pressing upon Government questions of policy or expression of popular discontent or disapproval, the power of putting questions to the Executive, on matters of daily administration, has been of great value, especially in bringing to the notice of the higher authorities, the petty oppressions and malpractices of the lower ranks of officials. By this method, the Council was enabled to keep a strict watch on the administration. It is true, that in the first sessions of the Reformed Councils, the Members asked questions, the reply to which benefited no one and cast unnecessary burdens on the departments concerned. But with growing experience and strict enforcement of Standing Orders and the discretionary powers vested in the President, this right has gained in value as a check on the administration.

In these matters, the Councils have been able to use their authority in full for two reasons. First, because the leading

Members in the new Legislatures had considerable experience of these powers in the Minto-Morley Councils. Resolutions, on important matters, constituted the chief activity of the Councils before 1920. The constitutional practice relating to them was widely known and appreciated and the increased opportunities given by the Councils were fully utilised by the Members. The same could be said about the right of interpellations. The motions of adjournment were altogether new ; and as a result, there was considerable misunderstanding as to their use. The Presidential ruling, that the adjournment of the House could not be moved unless the matter was one of urgent public importance, was not appreciated in the beginning, when Members were anxious to call the attention of the Government to some crying public need, by resorting to this method. After the first two sessions of the Council, the limitations of the procedure of adjournment were fully recognised, and their value was thereby increased by being confined to what is really of urgent public importance.

(3) Committees ✓

The influence of the Councils on every sphere of Government activity would tend to become spasmodic and periodical, if it were exerted solely through questions, resolutions and annual votes on demands. (The continuity of this check was maintained by the system of Committees, which came to be an important feature of the Reformed Government. Both the Councils and the Administration recognised in the Committee system, a fruitful method of associating non-officials with Government, whereby the former could be familiarised with the problems that affect the Government and the latter could realise the popular points of view. Such Committees are, mainly, of two kinds :

(i) Standing Committees elected by the Council or

appointed by the Government from among Members of the Council :

- (ii) Committees appointed by the Government, at the instance of the Council, to further some scheme or enquiry which the Council deems to be important.)

Of these Standing Committees, the only one which is statutory, is the Public Accounts Committee constituted under Rule 33 of the Council Rules, for the purpose of dealing with the audit and appropriation accounts of the Provinces and other matters as may be referred to it, by the Finance Committee. The Public Accounts Committee consists of 10 Members, of whom 7 are elected and 3 are nominated. Of the work of this Committee, the Madras Government states "Its most important resolutions dealt with the public works department and the finances of local bodies. With reference to the first, it emphasised the need for closer examination by the Finance department with a view to check such irregularities as starting works without estimates, exceeding estimates without sanction, and the late payment of bills. As regards local bodies, the Committee took a very serious view of the growing practice of overdrawal of accounts ..."

The Finance Committee deals with current and proposed expenditure. This consists of 9 Members, of whom 3, including the President who is the Finance Member, are nominated by the Government, while 6 are elected by the Council. The Finance Committee is the most important of all the Committees of the Council. Before it are placed, for discussion, proposals involving new or recurring expenditure, before they are included in the Budget (The discussion in the Committee helps the Finance Member to judge the temper of the House on his proposals and he gets a chance of accommodating them to the point of view of non-official Members without open conflict in the Council. The Finance Committee

is even of greater importance from the popular view-point, because it enables the leading Members of the Council to study all schemes of new expenditure before they come up for discussion in the Council.)

(The departmental Committees appointed to advise the administration could not be said to have met with conspicuous success. These Committees, which were appointed to all important departments, consisted of a majority of non-officials. Such Committees have been of value in providing selected Members with knowledge of departmental problems, but otherwise, they have had no influence on the course of administration. The point of view of the Government with regard to these Committees may be inferred from the view expressed by Sir Harcourt Butler and his Council in the United Provinces. "The conclusions of the Governor in Council on the Standing Committees system generally are, that it ought to be absolutely confined to the subject of finance and public accounts. There are clear indications that its extension into the administrative departments will mean collision and result in the duality and confusion which attends the working of a similar system in France.") The Provincial Governments have also, on occasions, found it advisable to appoint Committees of the Council to study projects of legislation which they have in view, both in order to canvass support and to know the trend of popular opinion.

(From the point of view of the influence of the Legislature over the Executive, the Committees, appointed in pursuance of resolutions and interpellations in the Council, are more significant. Such Committees are appointed under popular pressure and the purposes for which they are constituted is either to examine some official policy, or to suggest ways and means for reducing expenditure, or to go into complaints of serious public importance. Most Councils put considerable pressure on the Government for the reduction of expenditure,

and the Committees, appointed to go into the questions are naturally inquisitorial in their methods and uncompromising in their attitude towards public expenditure. In Madras, the Committee system seems to have specially flourished. Of the Committees appointed as a result of resolutions and interpellations in Council, the following are the most important.) The Board of Revenue Reorganisation Committee, whose main recommendations have been given effect to; the Famine Code Revision Committee, the Education Reorganisation Committee, the Andhra University Committee, the Srirangam Temple Committee and the Cauvery Delta Irrigation Committee. The increasing use of these Committees by the Council, as well as by the Government, has had the result of bringing the administration of the Provinces more into touch with the people and less impervious to non-official views.

(4) *The Party System*

The influence of the Council on the administration would have been much greater, if the work in the Council had been directed by well-organised parties. The only organised party in Indian public life has so far been the *Swarajists*, the main plank in whose platform was non-acceptance of office and organised obstruction of Government work. Naturally, the object of such a party where it had an absolute majority—as in the Central Provinces in 1924-27—would be to make the administration of the Transferred departments, through the Ministers, impossible. That was what happened in the Central Provinces and in Bengal. Where the *Swarajists* could not command a majority, their influence as a party on the administrative work of the Government would be negligible. (Apart from the *Swarajists*, there has been no organised party in the English sense, in any of the Provincial Councils. The Ministers selected by the Governors had factions to support them, based mainly, as in the Punjab, Bengal and Madras,

on communal groupings, more than on political opinion. But it must be remembered that Dyarchy, as worked in India, did not postulate a party system: more, it made the growth of party system impossible. The Members are elected on programmes which embrace not merely the subjects under the administration of Ministers, but those under the Reserved half. The line of demarcation, therefore, often cuts through the supporters of the Ministers and their opponents in matters relating to the Reserved subjects. (Again, even if the Ministers are the leaders of a party, they cannot, in important matters, voice party opinion, or even give a lead to their followers on matters affecting the Reserved side.) Thus, it often happens that the Ministers vote with their colleagues on the Reserved side and suffer defeat along with them, while the party is victorious. It is impossible to conceive a party system in which the leaders are defeated but the party remains victorious. In the Oudh Rent Bill in the U. P. Council, the Liberal party, whose leader was then Minister, refused its support to the Government. The leader remained neutral and continued to be Minister, while the party voted against the Bill. (The party system is also rendered impossible by the theory of individual responsibility of Ministers which, as we have noticed, was the accepted principle in the Provinces. When two Members of opposing views are nominated Ministers in a Province, their parties would not support a common programme, and the defeat of the one would not mean the defeat of the other. Thus, besides the Opposition, there will be at least two groups which will be partially in opposition and partially in office. Besides, party system can develop only when there is a removable executive. When even the Ministers are not in practice removable, because of the retainer-vote of the Government which is at their disposal, the theory of party government breaks down. Thus, there was never an opportunity for the

development of a grouping based on opposition or support to the Government in the Councils. The work in the Councils was, therefore, unorganised and in consequence did not have as much influence as it could have had.)

CHAPTER VI ✓

FINANCE AND THE COUNCILS

WE have traced in outline, in the second chapter, the financial system that was established in the Provinces. It may be summarily stated as a division of the revenue heads into Central and Provincial: the Central revenues being collected and expended by the Government of India and the Provincial heads being handed over to the Provinces for their expenditure. The main heads of revenue allocated to the Provinces were, receipts accruing from provincial subjects, the proceeds of taxes which may be lawfully imposed in the Province and a share in the income-tax collected within the Province. All the other sources of revenue, such as customs, railway earnings and land revenue, were reserved for the Government of India. As the Government of India was faced at the outset of the Reforms with a large deficit, it was decided that the Provinces should pay contributions in proportion to their increased revenue, to enable the Central Government to balance its budget. The share of each Province was settled by a Committee of which Lord Meston was President. The contributions fixed were as follows :

Madras	... 348 lakhs
Bombay	... 46 "
Bengal	... 63 "
United Provinces	... 240 "
Punjab	... 175 "
Central Provinces	... 22 "
Assam	... 15 "

It was further provided (Devolution rule 18) that when the Government of India's revenues showed improvement, a reduction would be made in the contributions of Provincial Governments who had under this award to pay more than others. (The finances of the Government of India continued to be extremely unsatisfactory till 1926, and the hoped for reduction did not take shape till that year. The Provinces, therefore, especially Madras and the United Provinces, which between them paid over 60 p. c. of the contributions, started with a heavy handicap. In criticising the Meston Award, at the time when it was under discussion, Sir Harcourt Butler, who was Lieutenant-Governor of the United Provinces, pointed out that it was unwise "to commit the new system of government beforehand to a preliminary agreement which, so far as he could see, will hamper the natural development of the Province for years to come." This pessimistic anticipation was fully justified by events.) For the first 6 years of the Reforms, the unjust levy continued and left the Provinces without adequate funds for the developments which the Reforms had led the public to anticipate. What had appealed most to the public, with regard to the Act of 1919, was the fact that "the nation-building" departments; *e. g.* education, sanitation and local government, were handed over to the Ministers. It was naturally expected that progressive schemes for which the old Councils had been clamouring would now be taken up: that the educational system would be reorganised, that primary education would be made free and compulsory, that greater attention would be paid to rural and urban sanitation, and that encouragement would be given to Indian industry and agriculture. The Ministers who were appointed were all committed to schemes of this kind. But it was soon found that there was no money available for developments in these departments. (The Meston Award had killed the child even before it was born.)

The system of financial administration in the Provinces also contributed to the difficulty. The Joint Select Committee did not accept the proposal of a divided purse and left Finance as a subject common to both sides. Rule 36 (I) of the Devolution Rules made Finance a Reserved subject under the control of an Executive Councillor. The Finance department by the nature of its functions is more powerful than all other departments. It has a practical veto on the schemes and proposals of other departments under rule 37 G iii which charges the department "to examine and advise on all schemes of new expenditure for which it is proposed to make provision in the estimates and to decline to provide in the estimates for any scheme which has not been so examined." Clearly, it is in the departments of Education, Sanitation, Industries and Agriculture, that proposals, involving new expenditure, originate, more than in the departments of Law and Order and Revenue. The Transferred departments are therefore practically placed under the supervision of a Member of the Executive Council, who is not likely to be in sympathy with the objects that the Ministers have in view. This is what led all the Ministers to complain of before the Muddiman Committee, that the Finance department had greatly hampered the working of the Reforms. (Sir K. V. Reddi, in his memorandum submitted to that Committee, complained that "the Ministers were unable to carry out schemes costing very little money and for the carrying out of which they had the mandate of the country and the Legislative Council, because the Finance department and the Finance Member made it impossible, on the strength of the powers vested in them.)

"The position of the Finance department on the side of the Reserved half, handicapped the Ministers and thereby the activity of the Legislatures in another way. All the schemes of the Transferred departments were fully known to the Executive Council, while the proposals of the Reserved half remained secret. The Reserved half would therefore know what sums are

available for re-appropriation. With the knowledge they possess of the existence of funds, the Members of the Executive Council apply for re-appropriation at a comparatively early stage. The Executive Councillors, therefore, get larger sums by way of re-appropriation and are thereby enabled to carry their schemes through."*

Thus burdened with a system of contributions which left the Provincial exchequers very little balance, and a Finance department which exercised effective control over all new schemes and discouraged all proposals if they involved expenditure, the Councils and the Ministers could not carry through schemes of improvement which they had promised the country. (The Finance department was the nerve system of the whole scheme: that nerve system was not only weak, but diseased; weak, because the Meston Award had not worked out satisfactorily, owing to the continued deficit in the finances of the Central Government; and diseased, because of its permanent alliance with the Reserved half. Much of the difficulties in the working of Dyarchy must be traced to this.)

One other matter, relating to the failure of the Reformed Government to come up to the anticipations aroused by it, must be noticed here; that is the position of the permanent services under the Reforms. (It was expected that a noticeable breach would be made in the wall of bureaucratic government by the changes introduced in the Provinces. Not only the people of India, but the Services themselves believed it to be so. In the first two years of the Reformed Government, there was a remarkable fall in the number of candidates for the Indian Civil Service. In the examination of 1921, out of 86 candidates only 26 were Europeans. There were 16 appointments and only 8 were Europeans, one of whom almost immediately retired from service. The number of retirements on proportionate

* Sir K. V. Reddi's evidence, vol. 5.

pension was also large. The extent of the alarm that was felt among the officials, at the possibility of their interests being subordinated to the demands of India, may be realised by the measures they took. They formed associations to protect their interests by the same kind of methods, as Sir William Joynson Hicks explained in his speech in the House of Commons championing the Services,* "as those by which Trade Unionists in this country band themselves together to protect themselves from hardship.")

But the ground that was lost was soon gained. Within the first two years, the Services consolidated their position and were once more in supreme authority. This was done by three methods. The Ministers were not given authority over the Imperial Services in matters relating to (a) promotions, (b) transfers, and (c) disciplinary action. As we have noticed, the Governor was specially charged to see that the officials received fair play, an instruction which was interpreted so liberally by the authorities, as to deny the Ministers control over the Services which served under them. The right of appeal to the Governor-General in Council and the Secretary of State was maintained as before. The cumulative result of all this was that the Services continued undiminished in authority and unimpaired in their prerogatives.)

(Much confusion and friction had been foreseen in the relations between the Ministers and the Services.) The Government of India, in its letter of March 5th, 1919, gave a picture of what might happen under the Reforms. "Ministers will be taking over departments staffed by public servants, Europeans and Indians alike, with no personal experience of popular government, who may tend to be impatient of new methods and unappreciative of changes in policy. Ministers may be apprehensive of obstruction and intolerant of the rigidity of official

* August 2, 1922.

methods. We recognise that it is possible, that in the exercise of their responsibility and from the best of motives, the Ministers may adopt a policy which the Service feels, it cannot consistently with its conscience and self-respect, carry out. Ministers may, again, naturally prefer their own agents and be disposed to treat lightly vested claims to important or desirable appointments. Officers who personally render themselves unpopular will be treated with less consideration than they sometimes receive now. Disciplinary cases will present a difficulty and a Minister's handling of them will be more closely scrutinised than if the decision lay with an official. In short, Ministers and Government servants will take time to shake down into each other's ways. It would be foolish to imagine otherwise."

These predictions have not been fulfilled, not because the Ministers and Civil servants took no "time to shake down into each other's ways," but because the Ministers were transformed from effective political chiefs to nominal figure-heads. The relations between the Civil Service and the Ministers have been extremely cordial; not one of the ex-Ministers who gave evidence before the Muddiman Committee has complained of the attitude of his civilian subordinates. The reason is that, after the first shock, the Civil Service set itself to consolidate its authority, which it did effectively in the course of the first two years of the Reformed Government.

Thus, so far as the working of Dyarchy is concerned, the hopes that have been based on it have not been realised in its executive and administrative aspects. Ministerial responsibility was denied from the beginning. The position of the Finance department and the undiminished authority of the Services allowed the Councils very little effective power, though their indirect influence on administration was considerable. In

short, so far as the executive and administrative sides are concerned, the Councils have been merely a continuation of the Minto-Morley Reforms and nothing more; and, even in the Transferred departments, the position approximated more and more, as time went on, to the earlier Councils than to the Parliamentary Government which it was supposed to inaugurate. In the Dyarchical animal, which was a cross between the irresponsible Advisory Councils of the Minto-Morley type and responsible Parliamentary Government, the characteristics of the first become more and more clear with age, though the colour and shape remain that of the second.)

CHAPTER VII

THE COUNCILS AND THE PEOPLE

So far, we have been concerned with the relations of the Council with the Government, in both its Transferred and Reserved sides and with its machinery, the Services. A no less important question is the relation between the Councils and the Public. <A parliamentary institution stands midway between the government which controls it from above and the people below, who elect the members with a view to watch, influence and direct the executive.> The relations with those in authority form but one aspect of the problem. The relations with those below—those whose interests the Councils represent and those from which they derive their authority—are of equal importance in judging the work of a representative system.

[The Reforms had a direct and immediate effect of enfranchising a considerable section of the Indian people. Altogether about 5,000,000 persons were given the right to vote and this was a change which was bound to have far-reaching consequences. It is true, that in the first election, a very large percentage of voters did not take part, but that in itself was an evidence of political awakening, because, the boycott of the elections was not due either to apathy or to ignorance, but to the intense political propaganda of Mr. Gandhi's non-co-operation movement. It was a conscious act of refusal which was, in itself, a determined expression of the will of the electorate. The second

and third elections which took place after the breakdown of the non-co-operation movement, were characterised by party propaganda in the country, and the popular interest aroused, justified the expectation that the masses would soon learn the value of the vote.) The experience of the elections shows that political education through voting has made considerable progress in India. In the general election that followed the first Councils, many of the most prominent politicians, who, either as Ministers or as Members of the Councils had acted against popular opinion, lost their seats. Among those whom the electorate rejected were men like Sir Surendranath Bannerjee, one of the founders of the national movement, whose activities in the Reformed Council made him unpopular, Paranje Pye, Minister of Education in Bombay, and Sir Chimanlal Setalwad, Vice-chancellor of the Bombay University. In the elections in 1926, the voting was even more remarkable as an assertion of the will of the electorate on the policy of Ministers.) In Madras, during the first two Councils, the South Indian Liberal Federation, representing the non-Brahmin party, was in power. It commanded an effective majority in the Council. The Ministry which was put in power had the enthusiastic support of the Council, and their administration of the Transferred departments proved a striking success. The social legislation which they undertook and carried through the Councils, was welcomed by the public, and their activities in educational and industrial fields were on the whole considered beneficial and in the interests of the people. They were responsible for such far-reaching reforms as the Hindu Religious Endowment Act and the Madras University Act. The former placed the accumulated wealth of Hindu temples and monasteries under secular control, while the latter converted the University of Madras from an examining body into a teaching institution. But in spite of their success in adminis-

tation and their achievements in legislation, popular opinion turned against them, on the ground that they were not sufficiently strong to influence the Executive in its general policy. The Ministry was suspected of being too much influenced by the Reserved side and it was held responsible to the public for the actions of the whole Government. The Ministers were of course powerless to influence the decisions of the Government on important matters affecting law and order, revenue and other subjects administered by the Reserved side. They were also suspected of being lukewarm in championing public rights against the encroachment of the Executive. The result was that this party, which had an overwhelming majority in the two previous Councils, was practically annihilated at the polls in the general election of 1926.

(The real difficulty of the relations between the Councils and the People lies in the communal grouping of Members. We shall have something to say of the system of communal representation in a later chapter. What is of importance here is that a large body of the Members of the Council do not represent the general people but special communities. In every Province, there is a solid block of Members elected to represent communal constituencies, whose responsibility is towards the community which elects them. This sectional character of representatives affects their attitude towards public questions which they approach from the point of view of the communities they represent. Their activities inside and outside the Council tend to be sectional, with the result that political discussion in the country goes on communal rather than national lines. In the general scheme of political education of the people, this is undoubtedly a great disadvantage.

Another fact which handicaps the effective political education of the people, which would have resulted from the Reforms, is the artificial character of the Provinces. The

present division of India into Provinces rests on historical accidents. Their boundaries take neither geographical nor ethnical considerations into account. The districts jumbled together into one administration, with the name of a Province or a Presidency, have often little in common in economic interests. Their populations speak different languages and often are of different races. Thus in Madras, there are 3 important languages, Tamil, Telugu and Malayalam. The Tamil population, comprising 18 million people, occupy the area south and west of Madras, while the Telugu population live in the northern districts. The Telugus have been demanding the constitution of their districts into a separate province for a long time, and there is much to justify their demand. The Telugu population—over 20 millions—is homogeneous in race. They occupy a well-defined area and speak the same language. But the Presidency of Madras jumbles both these people together, to make an unwieldy whole, creating thereby jealousies and antagonisms between the people. Again, the Province of Bihar and Orissa, as its very name shows, is an artificial creation. The Oriyas are a different people and their area is also clearly marked out geographically. The Presidency of Bombay consists of 3 clearly separable areas with distinctive populations. The Mahrattas, in the south, form a compact nationality with Poona as their capital. The Gujuratis form a no less important population, and they have also a capital at Ahmedabad. Sind is no more connected with Bombay than Aden is, but it is an integral part of the Presidency. (The artificial character of these divisions makes political work in the Provinces well-nigh impossible. Except Bengal, the United Provinces and the Punjab, every Province has at least two important languages spoken by the people. Political propaganda and work among the people can only be through their mother-tongue and the present divisions render that important aspect of representative government extremely difficult.)

But in spite of these difficulties, the political education of the people has made marked progress during the last 8 years. The discussions and debates in the Councils are reported with great prominence in all the papers, both in the Indian and English languages, and are read, studied and commented upon even in the villages. The popularity and circulation of the vernacular newspapers have much increased during the period of the Reforms, and whatever be the value of the comments offered by them, the propagation of political news, especially of the discussions in the Councils, has had the benefit of interesting the large class of vernacular-educated people in political questions.

(A more important instrument of political awakening, has been the new system of local self-government.) From the time of Lord Ripon's Act, which really laid the foundation of representative institutions in modern India, local self-government has been a great source of political experience. Just before the Reform Act came into operation, the local boards and municipalities had been reconstituted on a more popular basis. Official control over them was relaxed and they were placed under non-official chairmen. As a result there was, as the Madras Government noticed in their memorandum presented to the Muddman Committee, "an awakening of civic consciousness." The capture of municipalities by advanced political parties, like the *Swarajists*, also goes to prove that the interest in local administration is increasing, especially as a training ground for the higher politics of the Councils. Many of the leading Members in the Councils are also members of district boards and municipalities, and successful work in local government, is a claim which is valued by the electors to the Legislature. It is also a significant fact that one of the first questions, the Ministers took up on assuming office under the Reformed Government, was the reorganisation of municipalities and district boards. In the Puniab, three important Acts, the

Small Towns Act, the Village Franchise Amendment Act, and the Town Improvements Act, were passed with the object of disseminating a democratic and self-reliant spirit among the people, and of setting up a better organisation for the purposes of sanitation and public health. In the case of municipalities and district boards, the franchise was also lowered, and the Punjab Government recognized that the movement towards the democratisation of local bodies was accelerated by the introduction of the Reforms. The Bombay Council passed, in 1922, an Act which extended the franchise, removed sex disqualifications and gave increased powers to local boards. In Calcutta, an important Measure was introduced by Sir Surendranath Bannerjee and passed by the Council, democratising the Corporation and removing sex disqualification in municipal franchise. In the United Provinces also, a Measure was enacted reducing municipal franchise and a District Board Act liberalising rural bodies. In Bihar and Orissa, three important Measures dealt with the problem of local government on a similar basis. The Reformed Governments could not, therefore, be accused of neglecting local self-government, and this was, to a large extent, due to the realisation by the Ministers of the important part played by the district boards and municipalities in influencing local opinion.

(The close contact between the people and their representatives in the Council, could also be seen in the legislation which the Ministers undertook or which the Reserved side introduced, as a result of pressure by the Members. The claims of urban and rural tenants were voiced loudly in the Councils and found general support.) The Madras City Tenants Protection Bill of 1921, and the Calcutta Rent Act of 1923, show that the interests of the poorer classes were not neglected by the Councils. In Madras, a Bill to protect the tenants in Malabar was introduced by a non-official member and was passed by the Council with the support of the Ministerial

party. But the Governor refused his sanction and appointed a Committee to go into the whole question and report with a view to official legislation. In the United Provinces also, the Council took up tenancy legislation and passed the Oudh Rent Act, giving the tenants of the Talukdars a life-interest in their holdings with 5 years reversion to the heirs.

Another group of important legislative enactments initiated by Ministers dealt with education. The whole country had demanded, for a long time, a change in educational policy with a view to making it more Indian in outlook. The officialised Universities were denounced as charnel-houses of Indian freedom and were looked upon with distrust by all political parties. Naturally, the Indian Ministers utilised the very first opportunities afforded to them to reform the Universities and liberalise their constitutions. In Bengal, this was not possible, because by the Government of India Act, the Calcutta University was considered a Central subject for the first five years. The Madras University was reorganised by the Madras University Act of 1922. Until then, the University was solely an examining board which did not concern itself with teaching or with the administration of colleges. The Act popularised its constitution and introduced facilities for direct teaching and for maintaining close contact with colleges. In the United Provinces, the Allahabad University was re-constituted, and two new Universities, those of Lucknow and Agra, were established. In Bombay, an important step was taken towards the introduction of compulsory primary education.

Far-reaching social legislation was also attempted in some Provinces. Of these the most important Measures were the Bengal Children's Act, 1922, and the Hindu Religious Endowment Act of Madras. The Children's Act of Bengal followed the same lines as the English Acts. Though the Government had not included in the Bill a provision empowering rescue

officers to rescue minor girls from houses of ill-fame, the non-official majority in the Council moved an amendment and carried it in spite of official opposition. It was a reform, the need for which had long been felt, but which it would have been impossible to pass in the Minto-Morley Councils, where the opposition of the Government was sufficient to kill any proposal.

The Hindu Religious Endowment Act of Madras was an almost revolutionary change in social reform, which was welcomed with enthusiasm by its supporters, and attacked as violent, unconstitutional and expropriatory by its opponents. As this is a type of important legislation which the British Government could not have undertaken at any time, it is necessary to examine its principles to understand the attitude of the new Councils to social and religious reform. The Hindu temples and monasteries in South India possess vast properties, either through endowments or through the accumulation of income derived from pilgrims. The *mutts* or monasteries which were originally endowed for charitable and religious purposes had come, in course of time, to be considered as the private property of the incumbents for the time being, who owed no account and utilised the funds in any way they chose. This naturally gave rise to grave abuses. The trustees of the temples also assumed proprietary rights and the endowments which really belonged to the Hindu public had practically passed into private hands. As this is a matter closely affecting the Hindu religion, the Government, in conformity with its declared policy of religious neutrality, could never have intervened and legislated for its control. The Madras Ministry essayed the task by its Hindu Religious Endowment Bill. It established a Hindu Board on the line of the Board of Charities, and placed all the temples—except those which were strictly proprietary and private—directly under its control. It empowered the

Board to assume the management of these endowments in case of maladministration, to inspect them, and provided for accounting and auditing in all establishments. An important clause which aroused much controversy was that which introduced the *cy pres* doctrine in relation to surplus funds. The Board was authorised to divert the accumulated surplusage in the temples for education in the Hindu religion, sanitation of pilgrim centres, and other objects of allied interest, which would benefit the Hindu community as a whole.

This Bill was revolutionary, in so far, as it was the first attempt that was made to legislate directly in matters affecting the Hindu religion. It would have met with universal opposition if it had originated from the Government or had been passed by official votes. Such an enactment was possible only, because the Council had an elected majority which championed the cause of social reform and was able to explain the Measure to the ignorant populace. The cry of "religion in danger" with which such a Measure would have been greeted if the British Government had introduced it, could not be raised when its originator was himself a Hindu and his supporters were men of approved orthodoxy. The reactionary elements, defeated in the Council, made its amendment or repeal their main plank in the general election; but the country returned the same Minister and the same Party to power, though with an attenuated majority.

Sufficient has been said already to show that the Reformed Councils take their legislative work seriously and in the interest of the people they represent. It is often said that, as the Councils are elected on a narrow franchise, they represent only certain sections and not the whole people, and therefore, cannot be trusted with responsibility. This was the same with the British Parliament before 1832, but it was never said that the House of Commons could not therefore speak for the people of England or claim to represent them. The

Reformed Legislatures in India, in all the varied phases of their activity, have shown an equal sense of responsibility towards the people whom they represent and, as the analysis of the legislation given above would show, have in every way tried to discharge that obligation. (There is no case of a progressive, social and economic legislation, that has failed to pass through the Councils through want of non-official support. There is clear evidence of the anxiety of non-official Members to press forward with schemes of education, sanitation and social reform. There was, in fact, considerable zeal manifested by the Councillors to liberalise the provisions of existing Acts, in order to associate the rural and urban population with the government of their areas.)

(The success or failure of the Councils, as Responsible Legislatures, can be judged on 3 grounds :

- (i) Have they shown a sense of responsibility in matters relating to administration : especially in relation to finance ?
- (ii) Have they truly represented the opinion of the country ?
- (iii) Have they, in their activities, kept in view the advancement of the public ?)

The work of the Provincial Councils must be submitted to these tests before we can say how far they have been successful in the use of the new opportunities given to them. It is only, if in all these matters they have acted with discretion, prudence and wisdom, and with a view to national progress, that the Councils can be said to have achieved success. We are now in a position to attempt to answer these questions.

(In considering the attitude of the Councils, the suspension of the Reforms in Bengal and the Central Provinces, should not conceal from us the work of the other six Provinces during the whole period of the Reforms, and of Bengal and

the Central Provinces themselves during the first and the third Councils. The action of the *Swarajist* combination in Bengal did not mean the break down of the Reforms. It was meant as a demonstrative protest against the insufficiency of the Reforms, the irresponsibility of the Ministers, and other weaknesses on the Executive side of Dyarchy which we pointed out in the preceding chapters. It cannot, however, be too much emphasised that there is a fundamental difference between the Executive and Conciliar—it is impossible to call it parliamentary as it has not full responsibility—side of the Reforms. The Executive side fell far short not only of the expectations of the Indian people but of the intentions of Parliament. The Conciliar side, on the other hand, increased in authority as time went on, by the establishment of conventions and by the compromises which the Executive, needing money and not desirous of certifying it, was forced to enter into with popular representatives. So far as this important aspect of the Reforms is concerned it has proved a striking success.

In the matter of financial responsibility, though the Councils justly insisted on retrenchment and scrutinised with vigilance all expenditure, they were always ready, if the Executive had a strong case, to support taxation. The Bombay memorandum says—* “The main spring of the Legislative Council’s action in all financial business has been the desire to avoid responsibility for fresh taxation, but they have faced it where the plain necessity has been established, as for instance, in the increase in Court Fees and Stamps.” The United Provinces Government also bears witness to this reasonable and responsible attitude of the Council. The memorandum of that Government (1923) says—“The attitude of the Council towards these measures (of taxation) was hostile but not unreasoned. . . . On the whole the Governor in Council

*1923, p. 67.

does not think that the Legislative Council responded badly to the call made to them to shoulder responsibility. It is true that the new burdens were moderate, that large concessions had been made and that additional revenue was granted in fact, in the first instance, for one year only. But the fact remains that a Legislature, unaccustomed to such a decision and within nine months of dissolution, agreed to place moderate additional burdens upon the tax-payers in order to maintain the Provincial finances on a sound basis." In the Punjab when, at the end of the year, demands were made for excess grants, the Council showed its disapproval, but did not refuse to vote the demands. In Madras, the Ministry and the Council supported additional schemes of taxation though after scrutiny and criticism. It cannot, therefore, be said that the Councils have either shirked their financial responsibilities or refused to face the unpopularity of fresh taxation.

It is, of course, true that the Councils utilised this power with caution and in such a manner as to increase popular authority over the Executive. The Bombay Government noted that "the Legislative Council have learnt to use their wide powers in financial matters to enforce respect for their opinion in extra financial matters. For example, the Budget provision for revision of the pay of village officers was recently rejected by the Legislative Council, not upon its merits, but as a protest against what they considered to be the unsympathetic attitude of Government with regard to the imprisonment of a Member of the Legislative Council."

In matters of law and order also, this sense of responsibility was evident from the beginning. In this, as in the matter of financial responsibility, the Councils have a two-fold function. They must support the Government to maintain law and order, but they are also the constituted guardians of popular rights and therefore have the primary duty of seeing that the Executive does not, in the name of law and order, unnecessarily encroach

on the rights of the citizens. A popular assembly has therefore to be critical of actions taken in the name of law and order; but also, at the same time, to support the Government in its duty of maintaining public peace. How have the Councils fulfilled this important function? In Madras, as the late Education Minister pointed out in his minute appended to the Madras Government memorandum, (1924)—“the Legislature fully realised its responsibility during critical times. The passing of enactments safeguarding peace and order in the country is the most positive proof of the realisation of the responsibility.” The Madras Government itself officially acknowledged this fact. It says in the official memorandum, (1924)—“In regard to the riots in Madras there was some difference of opinion; but in dealing with the other disturbances and demonstrations against authority, the Government received a great measure of support from the Council. Throughout the Malabar rebellion, there was a gratifying disinclination to embarrass the Government. Early in the life of the Council, when the District Magistrate of Malabar, with the approval of the Government, found it necessary to restrain the agitator Yaqub Hasan, leave was obtained to move the adjournment of the Council, to discuss this action, but in the course of the discussion, it became clear that the balance of opinion was opposed to any censure.” In other Provinces also, in times of extreme crisis, the Councils have supported Executive action even when they were sceptical of its wisdom and critical of its methods.

The second test by which a legislature could be judged is whether it has represented the genuine opinion of the country. The boycott of the Councils, preached and to a large extent enforced, by the Non-co-operators led to a serious position in the first Councils. In all the Provinces, except Madras, the Councils represented only a small percentage of the electorate and could in no sense claim to speak on behalf of the

people. But, it is equally true, that in the second and third Councils, the elections were held amidst widespread political and party activity and the Members elected could claim to represent, in a very large measure, the opinion of the electorate. The views of the Members found support in the constituencies and opinion in the electorate was reflected in the Councils. Most of the Members came from the districts they were, elected to represent, and were therefore, in a position to be closely in touch with the views of their electors. Except with regard to the first Councils, it could not be said that the Reformed Legislatures represented no one and spoke only on their own authority.

The third test is how far the Councils tried to improve the conditions of the people, and how far their activities have been directed towards the political, social and economic development of the country. The analysis of provincial legislation given in this chapter will show that, in all Provinces, the Councils took their responsibility in this matter seriously and championed progressive measures for the benefit of the masses. Constant pressure was put on the Executive to introduce measures for the extension of education, sanitation and public health. The Hindu Religious Endowment Act of Madras shows how the Councils have not lacked courage in setting themselves to reform long-established abuses in Hindu society. The real justification of the Indian Councils lies, and must lie, in the attitude which they take in purely social, economic and welfare questions; Government intervention in which is rendered impossible, by the leaden weight of the encrusted traditions of Indian society. In all these matters, the Councils have utilised their authority with courage, caution and foresight. The obstructionist tactics followed for a time in Bengal and the Central Provinces, have obscured the achievement of the Councils in these directions. The *Swarajist* action, as we said before, was a protest against the inadequacy of the

Reforms, and was largely due to causes, traced in a previous chapter, which had nothing whatever to do with the powers and functions of the Council. But even in these Provinces, after a short suspension, the Councils are working satisfactorily and in accordance with the best traditions established in other Provinces.

Thus Dyarchy in the Provinces, though it did not usher in Responsible Government even in the Transferred departments, and only led to a strengthening of the power of the Governor on the Executive side, has, in the legislative and conciliar aspects, resulted in considerable success. The administrative efficiency of the Provinces could not be said to have suffered; nor could the Services complain of a parliamentary inquisition into their conduct. The Legislative work undertaken has been everywhere of a progressive and liberalising character, and, at least so far as the work in the Councils was concerned, all the fears entertained by the opponents of Indian reform have certainly been falsified.

CHAPTER VIII

REFORMS IN THE CENTRAL GOVERNMENT

THE working of the Reforms in the Central Government is outside the scope of this work, as the principle of Dyarchy was not introduced in the Cabinet of the Governor-General. The Government of India continued to be responsible solely to the Secretary of State and through him to Parliament. Though its character remained unchanged, it was reformed with a view to associate it more with Indian opinion. The Central Legislature was reconstructed into two Houses, a popularly elected Legislative Assembly and a Council of State meant as a second Chamber. The Assembly consists of 140 members—26 officials, 14 nominated non-officials and 100 elected representatives. All Central Legislation in India must be introduced in the Assembly or in the Council of State and ordinarily must be passed by them. But if the Governor-General certifies that any "Bill is essential for the safety, tranquillity or interests of British India," it becomes law on his signature, if it is passed by either of the Houses, or if rejected by both, on his own authority. As the Council of State was constituted specially, in order to prevent a complete dead-lock, the Governor-General would never be forced to resort to the methods of *lit de justice*, of enacting legislation on his own authority. With the consent of one of the Houses, he could promulgate a Law which he certified to be essential, and the only safeguard against arbitrary action, is the provision laid down in sub-section 2 of Section 67 B of the Act, that

all such preferential Acts shall be laid before the Houses of Parliament and shall not have effect until they have received His Majesty's assent. There has been only one case of actual legislation—besides the Finance Bills thrown out or radically amended by the Assembly—in which this extraordinary power has been used: that of the Princes Protection Act which was thrown out by the Lower House.)

In matters affecting finance, the Council of State following the House of Lords, has no voice. The Assembly is vested with wide powers of financial control, except in matters declared by the Act itself to be non-votable. It is provided that the appropriation of revenue relating to the following heads of expenditure shall not be submitted to the vote of the Legislative Assembly, nor shall *they be open to discussion* by either Chamber at the time when the annual statement is under consideration. (1) Interest in sinking fund charges and loans, (2) the expenditure of which the amount is prescribed by law, (3) salaries and pensions of persons appointed by or with the approval of His Majesty or by the Secretary of State in Council, (4) salaries of Chief Commissioners and Judicial Commissioners and (5) expenditure classed by the order of the Governor-General as ecclesiastical, political and defence.

Subject to these exceptions, every proposal for expenditure must be submitted to the vote of the Assembly. The only restriction imposed on the free exercise of its discretion is, that if the Governor-General in Council declares that he is satisfied that any demand refused by the Assembly is essential to the discharge of his responsibilities, he can act as if the demand had been actually assented to. This extraordinary power considerably restricts the financial control of the Assembly, but in practice it has been used only on occasions when the Assembly has been deliberately recalcitrant, or the demand refused is essential. All Taxation Bills must come before the Assembly and be passed by it, but the same power, as in other

acts of legislation, rests with the Executive Government to certify them, in case the Assembly refuses leave to introduce them or fails to pass them, in a form recommended by the Governor-General in Council.

Both the Assembly and Council of State have the power of interpolating and moving resolutions on all questions of importance, except those relating to the foreign relations of the Government, or to its relations with Indian States, or in reference to any matter which is *sub judice*.

(The most important characteristic of the Central Government is that it establishes, in a more emphasised form, the anomalous structure of a parliamentary body possessing an elected non-official majority, without ultimate responsibility on any matter. The Act takes for granted the political and financial irresponsibility of the legislatures and provides not only for extraordinary powers in case they should prove recalcitrant, but for the normal continuance of administration in face of whatever it may do. It is given the power to vote, but no responsibility attaches to its use. An irresponsible vote is the most demoralising of political influences. It is the very negation of the idea of parliamentary government, as it encourages members to vote without any consideration as to what the result of that vote would be. This is exactly what the more extreme section of the Legislative Assembly has done. They know well enough, that if they throw out the Finance Bill, the Government would certify it and everything would go on in the normal manner. This knowledge is a direct encouragement to recklessness and certainly not a method of creating a sense of political responsibility either in the electorate or in the Legislature. Every vote on the Finance Bill is now taken as a demonstration, perhaps futile, but certainly spectacular. To throw out the Finance Bill looks like that ultimate sanction of Parliamentary Government, the refusal of supply. The Indian parties can indulge

in it without inconvenience when they know that not a single department would suffer by it. This is why, that while in matters of legislation, the Nationalist party in the Indian Assembly has not only showed itself to be reasonable, moderate and progressive, in financial matters it has preferred spectacular demonstration to constructive criticism.

But, besides the inherent vice of votes without authority, the Central Legislatures also suffer from the fact that the Government of India whom it seeks to influence, may be to control, is itself not a free agent. The Government of India is only a subordinate branch of the administration in London, and as such, is under the orders of the Secretary of State, who may direct it to take any particular course of action—without reference either to the view of the Governor-General in Council or of the Indian Legislature. It often happens that the Government of India recognises the wisdom of the attitude of the Assembly or at least is prepared to compromise with it on the ground of expediency. But the orders of the Secretary of State, may direct it to follow a contrary course. The recent action of the Whitehall authorities in directing the withdrawal of the Reserve Bank Bill, after the Government of India had come to an agreement in principle with the Opposition in the Assembly, is a case in point. The Reserve Bank Bill was an important Measure arising out of the recommendations of the Hilton Young Commission on Indian currency. The Bill as originally introduced contained provisions which were not acceptable to Indian opinion. But its importance was recognised and a reasonable agreement was reached after prolonged negotiations. When the Bill, as agreed upon by the Government of India and the Nationalist parties, seemed to have entered on smooth waters and to all appearance was going to arrive safely in port, an order was received from the Secretary of State directing the Governor-General in Council not to proceed with it. Sir Basil Blackett, the

Finance Member, is known to have offered his resignation as a result of this arbitrary intervention, and the Assembly provided the strange spectacle of the Nationalist opposition championing the cause of the Government and the official spokesman trying half-heartedly to condemn themselves! So long as the Government of India is treated merely as an agency of the Secretary of State—irreverently alluded to in India as the Grand Moghul at Whitehall—the Legislative Assembly can merely be a body where the vote will be looked upon more as a method of political demonstration than as an instrument of Government, as a weapon and not as a trust which is to be used with a full sense of responsibility as to its consequence.

It should not however, be thought that the Legislative Assembly does not realise in full the authority that is vested in it by the control of finance—limited though it be—and that it does not know how to increase its power and make its influence felt by its judicious use. The Assembly has been able to gain many points in its favour by the indirect use of this power. One important instance may be quoted. When the Government sought to separate railways from general finances and made it an important part of its policy, the Assembly insisted, as the price of its assent to the proposals, that an Indian Member should be appointed to the Railway Board and that the dictation of Whitehall in the purchase of railway stores must stop. On the latter point, the Government could only communicate the view of the Assembly to the Secretary of State, but an assurance was given that, in practice, such interference would not take place in future. The appointment of an Indian Member to the Railway Board was definitely promised, though it has not yet been realised. It is impossible, as long as the Government of India remains subject to Whitehall, to make it in any degree responsible to the Assembly; but at the same time, it is in this matter that with the lever of

financial control, the Legislative Assembly has more and more enforced respect for its views and compelled the Government to follow it in many important matters.

The position of the Government of India in matters relating to administration and finance, apart from general legislation, is difficult under the Act of 1919. It is placed in the awkward position of being responsible to two masters. It is clear that legally the Government of India is answerable only to the Secretary of State. But even that legal theory can be maintained only on the basis of certification and legislation by the autocratic method of *lit de justice*. As it is, in practice the responsibility of the Government of India to the Central Legislature is a fact which we cannot ignore. It is responsible to the Assembly, not in the sense that if it goes against its wishes it could be removed, or its officers impeached; but in the more general sense of being compelled to conform to its wishes, for the sake of avoiding both the inconvenience of always having to fight against a hostile majority which has considerable powers, and the odium of having to depend always on extraordinary power for ordinary business. The peculiarity of the present position is, that while the direct authority of the Indian Legislature is limited by the rights of certification, &c., its power of giving trouble is unlimited. Naturally, the Government is desirous of conciliating an opposition which is troublesome and which can make its life unpleasant. This indirect responsibility towards the Legislature, which has grown during the six years of the Reforms, conflicts seriously with its responsibility to the Secretary of State, as was recently seen in the case of the Reserve Bank Bill.

The Montagu-Chelmsford Reforms in criticising the proposal submitted jointly by the Muslim League and the National Congress, expressed in strong language their disapproval of a scheme which gave the Council influence and power, while the

responsibility remained with the Executive. This is what the Report said with regard to that scheme—"It is unsound that the Legislature and the Executive should derive their power from and be responsible to different authorities. As one observer has put it—the Executive has a mandate for good government from the Secretary of State and the British Parliament, and the Legislature has *ex hypothesi* a mandate from the electorate: the two mandates may not agree and which is to yield? There would certainly be questions on which the mandates did not agree. If the latter gave way, it would become merely the agent of the legislature."* This very same unsound principle against which the authors of the Joint Report directed their destructive criticism has been enshrined in the Central Legislature. That is now fully recognised. The official Report of the Government of India on the "Material and Moral Progress of the country," presented to Parliament in 1924, contains the following observations on the constitutional position resulting from the system of an elected majority without responsibility. "Since the ultimate decision rests with the Governor-General, an authority who, from the point of view of the Legislature, is not only irremovable but also immune from discussion, the elected members can, if they so desire, play the parliamentary game with most of its privileges and none of its penalties. If the Government of India accept the opinion of the elected majority, the responsibility, either for good or for evil, still remains with the Executive. If good results, the elected members are naturally able to claim credit with the country. If the consequences are evil, there is no inducement for them to assume an onus which really rests on the shoulders of the Executive. On the other hand, if the opinion of the elected members is not accepted by the Government, no matter with what weight of argument the officials are fortified in their refusal,

the only consequence is that the Legislature is affronted and Indian political opinion is presented with a new grievance." *

The constitutional authority which the Assembly has won by the use of its financial and other powers, should not conceal from us this fundamental and primary defect of the Central Legislature. It has demoralised public life in India, by making criticism of Government measures uninstructed and reckless. It has put the authorities into the anomalous position of having to obey the Legislatures or go its way by the use of arbitrary powers. On its political side, it has only accentuated the faults of the Minto-Morley system, and this has been the weakest spot in the Reforms. ✓

But, as in the Provincial Councils, the legislative work of the Assembly and the influence it has exerted on the Executive in national affairs, have been its real justification. During its life of six years, the Assembly has placed to its credit a great deal of legislation, the full value of which could not be appreciated to-day. They may be divided into 3 categories—(1) legislation to establish rights of citizenship: (2) Acts of social progress: and (3) Acts of codification. The record of the Legislative Assembly, with regard to all these matters of vital interest to the nation, is highly creditable. The first Assembly, naturally enough, devoted most of its time to eradicating from the Statute book evidences of subjection, inferiority and repression, which affected the self-respect of the people of India. The most important of these were the Acts abolishing racial distinction in criminal trial and the Measures giving effect to the reports of the Repressive Laws and Press Law Committees. There were provisions in the criminal law of India akin to the privileges of capitulations enjoyed by European nationals in Asiatic and African countries *e. g.* the right of a European to be tried by a jury consisting of a majority of Europeans. Indian public opinion had always con-

* Moral & Material Progress Report, 1924, pp. 53-54.