THE

CONSTITUTION AND POWERS

OF THE

GOVERNMENT OF INDIA.

(Originally compiled by E. Woodall Parker, Esq.)

SECOND EDITION.

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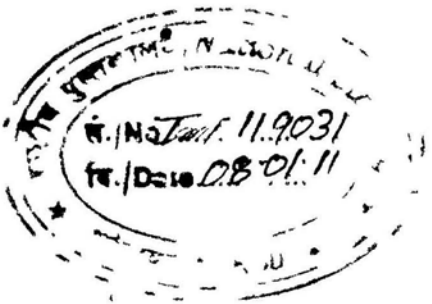
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PREFACE.

IF, in re-editing Mr. Parker's Manual of Jurisprudence, I have altered little of the original text, in performing the same office for these outlines, I have altered less, so that with the exception of a change in figures rendered necessary by the lapse of time and a few minor revisions the book is such as it was when it left Mr. Parker's hands.

The following are the chief authorities referred to in this work :—

CHAPTER I & II.—Amos: "*The English Constitution.*" *The British Constitution and Government, Wicks*, 1892. *Dicey's Lecture on Constitutional Law.*

" III to VII (inclusive) — *The Tagore Lectures for* 1872 *and the Statutes relating to India.*

" VIII.—*Powell's Revenue Manual, Chapters I & II, and the Statutes relating to India.*

" IX & X.—*Chesney's Indian Polity and the Statutes relating to India.*

" XI.—*India in* 1880, *by Sir R. Temple.*

" XII.—*India in* 1880 *and Aitchison's Treaties.*

PHILIP MORTON.

LAHORE;
29th March, 1893.

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THE CONSTITUTION AND POWERS OF THE GOVERNMENT OF INDIA.

CHAPTER I.

THE ENGLISH CONSTITUTION.

Characteristics of the British Constitution and Parliamentary Sovereignty.

The entire Indian Peninsula, as well as some other extensive and adjacent territories, are subject to the supreme sovereignty of the British Crown. Considerable portions of these territories are, it is true, held by Native Chiefs, who are termed sovereign and independent, but who are, necessarily, under the protection and general control of the British Government. The external political relations of the protected states of India are entirely regulated by the supreme sovereign power; while their internal affairs are left to the ruling Chiefs, subject to the liability to interference in the event of gross oppression or misgovernment. Thus the supreme political authority of Great Britain is the supreme political authority of India; and the

constitutional law of the latter country is bound up with that of the former. But the Government of Great Britain can only exercise powers of general control over so distant a country as India, and the main portion of the business of Government has to be performed by authorities in this country to whom powers are delegated by parliamentary statutes. Owing to the vast size of the Indian Empire the system of government comprises certain local authorities, who exercise administrative, and, in some instances, legislative powers over the provinces into which the country is sub-divided, as well as a supreme government and legislature controlling these subordinate local governments. In dealing with the constitution of the government of this country, therefore, it becomes necessary to consider the nature of the government of Great Britain, as well as that of the supreme and provincial governments in India; and also to ascertain the position of the protected states in relation to these governments.

The organization of any government includes the determination of the persons who take part in it; how these persons are related to one another and to the rest of the community; how laws are made; how and by whom they are enforced; and what securities the people of the country have against misgovernment. In the words of Dicey in his lectures on constitutional law: "constitutional law includes all rules which directly or indirectly

affect the distribution or the exercise of the sovereign power in the State."

The chief characteristics of the English Constitution are that the *supreme political authority* consists of a King or Queen and two Houses of Parliament; that the King or Queen is a particular member of a particular family; that the two Houses are composed respectively of members appointed by virtue of hereditary succession in special families and popular election; that no law can be enacted without the joint consent of the King or Queen and the two Houses of Parliament; that the King or Queen appoints, through the agency of Ministers directly responsible to the two Houses of Parliament, officials engaged in securing obedience to the laws, in collecting the taxes, in preserving the public peace, and in administering the Army and Navy; and lastly, that by Trial by Jury, by the *Habeas Corpus* Acts, and by special provisions for the independence of the Judges, the people are protected against abuses on the part of the executive. Another important feature of the Constitution is that the imposition of taxation is entirely controlled by the elected representative Chamber. While the general form and nature of the Constitution are liable to little or no change, there are subordinate features which, from time to time, are subject to alterations in accordance with the views of public opinion. Thus, for instance, the mode of election and representation

have varied from time to time. This elasticity or power of modification in details, without in any way affecting the fixity of the general characteristics and principles of the whole, is a source of the strength and endurance of the Constitution through all the vicissitudes and changes involved in the development of political opinion.

The British Constitution, in its present form, is the result of many centuries of growth and of many political influences. The early history of its origin and development is involved in obscurity, like that of most other political institutions. Until the last two centuries historians said little of civil institutions, and all Governments such as that of England arose before the time of written history. Even at the present time it is based largely on tradition and immemorial usage. To understand the Constitution of England (says Amos in his work on the English Constitution), existing and immemorial institutions must be studied as well as the following classes of authorities :—

(1.) Written documents of the nature of solemn engagements made at great national crises, between persons representing opposed political forces. Such are the Great Charter and its several confirmations and amended editions, the Petition of Rights, and the Declaration of Rights.

(2) Statutes, such as the Habeas Corpus Act and its amendments, the Bill of Rights, the Act of Settlement, Mr. Fox's Libel Act, the Prisoners' Counsel Act, the Reform Act, the Supreme Court of Judicature Act, the Naturalization Act, the Municipal Corporation Act, and the Local Government Acts.

(3) Authoritative judicial decisions, as those on the rights of jurymen, on the prerogative of the Crown, on the privileges of the Houses of Parliament and of their members, and on the rights and duties of the Police.

(4) Parliamentary precedents as recorded in reports of committees of both Houses, in the writings of authoritative commentators on parliamentary usage, and in the reported debates and proceedings of both Houses.

Some of the most important of these documents will be found at the end of this volume as being embodied in the Constitution as it at present stands. However instructive and interesting the study of constitutional history may be, it is beyond the scope of the present enquiry, which deals merely with constitution and powers of the Gov-

ernment of India as at present established, we will therefore proceed to consider at once:

The general principles of the Constitution.

It will be useful to glance at the nature of the checks imposed upon the power of the monarch and of the guarantees for the freedom of the people under the British Constitution.

The whole executive power is lodged in the sovereign; all the appointments to offices in the army and navy; all movements and dispositions of those forces; all negotiation and treaty; the power of making war; of forming alliances; all nomination to offices; the superintendence of the whole judicial administration; the power of remission of sentence; the disbursement of the sums voted by Parliament; all these are in the exclusive possession of the Crown. An ample revenue is allotted for the support of the sovereign's dignity, and provision is made for all members of the Royal Family. The sovereign chooses his own ministers, and can alone create peers and confer honours, while he possesses extensive church patronage.

On the other hand, the Houses of Parliament can refuse their confidence in the ministers selected; they may refuse supplies (a matter entirely within the powers of the House of Commons), and thus prevent the carrying on of any war, and indeed stop the whole course of government; this power

ensures the calling of Parliament every year, as also the annual sanction to the Army Act; and thus the sense of Parliament, which represents the whole interests of the nation, is paramount in the state. While the appointment of the judges lies with the Crown, they cannot be removed except upon a joint address of the two Houses of Parliament; their independence is thus secured against Court influences. They are removed from political influences by their disability to sit in Parliament. The security of personal liberty and a free Press complete the fabric of the British Constitution.

CHAPTER II.

PARLIAMENT.

Central and Local Authorities.

Parliament is the chief political authority in the territories governed by the British Crown; but while it constitutes the *central power*, it delegates much authority to local agencies in Great Britain, and to subordinate legislatures and officials in the colonies and dependencies.

The *central power* is compounded of two distinct elements—one legislative, and the other, executive or administrative. The *legislative authority* consists of the Sovereign, the House of Lords, and the House of Commons. The *executive* or *administrative authority* is composed of the Sovereign and his ministers, and the various depart-

mental officials. The popular working of the central government is secured by (1) the mode of electing members to the House of Commons; (2) the right of petitioning both Houses of Parliament and of presenting deputations to the ministers of the Crown; and (3) by the system of trial by jury, through which in all the most important criminal prosecutions, the final decision is given, not by an executive official, but by a body of twelve men, duly qualified, and impartially chosen out of the body of the people.

The *local powers* in the United Kingdom are various and numerous. They are either special officers or boards (that is, small assemblies of persons), and are fixed (1) in the parish or district; (2) in the county; (3) in the borough or town.

These officers or boards are generally elected by persons living and paying taxes on the spot, though in many cases the central executive authority controls the elections by refusing to sanction the election of certain persons, or by appointing additional officers of its own. The principal purposes for which these local authorities exist are—(1) the relief of the poor; (2) the education of the poor; (3) the management of goals and lunatic asylums; (4) the lighting, paving, drainage, and conservancy of a town or village; (5) the administration of the laws in the cases of all minor offences; (6) levying rates for these purposes.

In the British colonies and dependencies Parliament has delegated almost the whole of its legislative and administrative authority to local officers and legislatures; reserving merely the right to legislate directly in case of necessity, and the general supervision and control of the administration by a minister of the Crown. Such legislatures exist in the South African and Australian colonies, in New Zealand, Canada, and India In all the colonies the system of government is modelled upon that of England, and the legislative assembly is wholly or partially elective and representative. In India the existing political conditions necessitated a somewhat different form of legislature, composed of members selected by the chief executive authority The government is thus autocratic in this great Empire of India; at the same time it is so influenced and controlled by the spirit of the English nation and of Parliamentary government, that the people of India have obtained as much freedom as was secured to the people of England only after a struggle lasting many centuries, and they are governed on the most enlightened principles. There is, moreover, a strong tendency to encourage and foster native public opinion; to give the natives as large a share in the administration as is possible; to allow local (native) authorities to manage local affairs; and to let the people choose their own local representatives.

The Sovereign.

The succession to the Crown is regulated by an Act of Parliament passed in the year 1700, in the twelfth year of the reign of William III., and usually called the *Act of Settlement*. The Sovereign must be of the Protestant religion; and cannot quit the United Kingdom without the consent of Parliament. The monarch may be either a King or a Queen. The present Queen began to reign in 1837. Her eldest son is called the Prince of Wales. The order of succession is to the eldest son, and to his eldest son or grandson. If the Prince of Wales's eldest line die out, the second son would succeed. If none of the Prince of Wales's children or their children are living, then the Prince of Wales's next brother and his children successively would inherit. In the event of the Sovereign's being under some incapacity, a *Regent* is appointed by Parliament. The Sovereign is supported by an annual grant of £60,000, besides other sums for official charges and expenses, and for various members of the Royal Family. These sums form what is called the Civil List.

The Sovereign is always held to act upon the advice of his ministers, who are responsible to Parliament and to the country. The ministers as a body are termed the Cabinet. The members of the Cabinet, past and present, besides many other persons, are members of the Privy Council, a body

which at one time possessed very extensive powers, but which is now of little importance.

The monarch summons and prorogues or dissolves Parliament at will. If the Sovereign die while Parliament is sitting, or during prorogation, it continues to exercise, or resumes its functions until prorogued or dissolved by his successor. If the Sovereign die after the dissolution of one Parliament and before the day appointed for the assembling of a new one, the last preceding Parliament meets and continues for a period of six months, unless sooner prorogued or dissolved. No Parliament can last longer than seven years, unless, in the event last mentioned, it be extended by six months. When Parliament comes to a natural end or is dissolved, all the representative members have to be elected afresh; in case of its being prorogued the members have merely to be summoned again. The Sovereign cannot dispense with Parliament for more than a year, owing to the necessity for obtaining its sanction to the levy of taxes and the maintenance of the Army; or, in other words, for the yearly supplies and Army Act. Full liberty of speech is guaranteed by the Bill of Rights.

The *session* usually extends, with two short recesses, from February to August each year. The session is opened by a speech from the Sovereign which is delivered either by the Sovereign in per-

son, or by a body of Commissioners, of whom the Lord Chancellor is usually one. The Houses of Parliament communicate with the Sovereign by addresses.

The Sovereign appoints, either directly or by delegation, all Judges. In the case of the superior Judges, except the Lord Chancellor, they are appointed for life, and cannot be removed except for misbehaviour, and then only upon an address of both Houses of Parliament. All prosecutions for offences run in the name of the Sovereign; and the Sovereign can, with few exceptions, pardon all offenders against Criminal Law, either before or after conviction. This prerogative cannot be exercised in the case of an impeachment by the Commons in Parliament; or in that of committing any person to prison out of the realm contrary to the Habeas Corpus Act; or where the pardon would inflict an injury on an innocent person. It is usually exercised (1) where fresh evidence tending to exculpate the accused is discovered after the trial; (2) where it is discovered that evidence relied upon at the trial was untrustworthy, and that justice has consequently miscarried; (3) where the judge himself sees reason to make recommendations against a finding of a jury; and (4) in political offences after the danger has subsided. A pardon may be free or conditional; and is frequently offered as an inducement to participators in a crime to turn Queen's evidence.

The Sovereign alone confers honours and degrees of nobility; coins money; conducts affairs with foreign states; controls the army and navy; appoints governors and ambassadors; and the Sovereign is the head of the Established Church.

The House of Lords.

The House of Lords is composed of the nobility of the land, who are called Peers, and of the Archbishops and Bishops of England. The number of Peers composing the House of Lords is not fixed; it amounts to about 540; but it is liable to decrease by the death of Peers without heirs and to increase by the creation of new Peers. Of these, 5 are royal princes; 27 are life-members by right of office, as archbishops and bishops; there are 21 dukes, 18 marquises, 24 viscounts, 111 earls, 240 barons, 16 representative peers of Scotland—chosen for each Parliament; 28 representative peers of Ireland—elected for life.

Peerages are hereditary and descend to the eldest son, and to the eldest son of the eldest son, and so on. At one time, that is, about 800 years ago, the House of Lords was the only Legislative and Executive body in the country. It was composed of the most important persons in the kingdom, whether as holding estates of land from the King and owing him military services in return, or as having distinct offices in the government of the country. There was then only one Chamber, or

House of Assembly, and the King presided, as at a Great Council. Two important changes subsequently took place—one, the separation of some of the chief officers of state from the Great Council, so as to form a smaller council, or "King's Council;" the other, the separation of the lesser peers, that is, the poorer and less important ones, from the richer and more eminent ones. By this separation a Second Chamber, or new House of Assembly, was created, which was the beginning of the present House of Commons. Later on, only a few of the smaller "barons" or "knights," that is, the smaller tenants of land from the Crown were chosen to represent the rest, and later on, that is, in the year 1265, boroughs or towns were permitted to be represented by members in the House of Commons, as well as the Counties or County Divisions.

At the present day very little business is done in the House of Lords, though the consent of the House is needed for any Bill to become law. Sometimes Bills are introduced in the House of Lords, but never Bills relating to taxation. Some members of the Cabinet are invariably chosen from among the members of the House of Lords.

Up to quite recently the House of Lords was the highest Court of Appeal in the country, but these powers have been abolished. The only judicial functions now reserved to the House of Lords are in cases of impeachment and the trial of a peer for treason or felony.

The House of Commons : its constitution.

The House of Commons is now the most important branch of the legislature. It is composed of the representatives of the third estate of the realm, the Commons, chosen according to law. It numbers 670 members, 271 of whom represent cities and boroughs, 13 groups of boroughs, 9 universities and 377 counties. England and Wales send 495, Scotland 72, and Ireland 103. These members are chiefly composed of country gentlemen, members of the learned professions, and successful merchants and manufacturers, a few are representatives of the labouring classes maintained by those whom they represent.

Every member represents a particular town or district, and the special interests of some locality or of some class of persons. The number of members representing towns varies according to their size and importance, and may change from time to time; all changes as to the places represented, and as to the number of members to be sent up to Parliament, are fixed by statute Fundamental changes as to these questions, as well as to the system of election, are effected by laws enacted by Parliament for the purpose. These changes constitute what is called the Reform of Parliament and are embodied in Reform Bills.

Formerly, it was necessary that a man should possess a certain amount of property to qualify him

to sit in Parliament, but now any one may be a member of the House of Commons who can induce a constituency to return him, except an alien, a minor, one mentally imbecile, a peer, a clergyman of the Established Churches of England and Scotland, or a priest of the Roman Catholic Church, a judge other than the Master of the Rolls, a Government Contractor other than a loan Contractor, a bankrupt, and persons attainted of treason or felony, who are as dead in law.

The *qualifications of electors*, or persons who are entitled to vote for *members* of Parliament, are, generally, being a male of 21 years of age, and either having property in land or buildings of a certain amount, or living in a certain settled residence for at least 12 months previous to being registered as a voter. More particularly the qualifications are, for voting in a *borough*, (1) being for 12 preceding months a resident occupier of a *dwelling-house* within the borough; (2) having for the same period occupied lodging of the yearly value of £10; (3) belonging to certain specified classes of persons, as (in some cases) that of "freemen." For voting in *counties* the requirements are—

(1.) Being a "freeholder" of lands or buildings of the yearly value of £2 at least, these lands or buildings being either occupied by the freeholder, or, if not, acquired by him through marriage, a will, or promotion to an office.

[A "freeholder" is one who owns lands or buildings either for the duration of his own life or for that of another, or of others.]

(2.) Being a "freeholder" of lands or buildings of the yearly value of £5 at least, though not satisfying the last-mentioned condition.

(3.) Being a tenant for the unexpired part of a term of 60 years, of an estate of the yearly value of £5 at the least.

[This means that the lands or buildings were originally let on lease for 60 years, that the lease has not yet run out, and that the voter has the benefit of it till it runs out.]

(4.) Being for the 12 preceding months occupier of lands or buildings of the yearly value of £12 at the least.

Both in the case of the borough and in that of the county franchise, in order to claim in any year the right of voting, it is requisite to have paid, by the 20th of July in that year, all poor rates due, up to the preceding 5th of January, on behalf of the premises, the occupation of which gives the qualification.

All those possessing a *degree* from a *university* are usually entitled to vote at the election of the university member.

Each summer the list of electors of each locality entitled to return members, or a member, is revised and corrected.

There are three movements now on foot with reference to the qualifications of *electors*: the *first* has for its object the assimilation of the borough and county franchise, by giving the towns a number of representatives in proportion to population, and in other ways strengthening the town representation; the *second* relates to the so-called *universal suffrage*, or the giving of a vote to every male who has attained the age of 21, and who is not personally disqualified; the *third* is the proposal to admit *women*, who are otherwise qualified, to an equal right to vote with men. The first of these movements advanced a stage by the extension of the franchise in 1884 and by lowering the qualifications.

The *mode of election* comprises two questions, namely, the value of each vote, and the manner in which the votes are given. As to the *value* of *each vote*, the general rule is that each elector has as many votes as there are members to be elected for his constituency, but an elector need not use more than one of his votes, and must not give more than one vote to one candidate. Under this system the election is determined entirely by the majority of votes; and the minority, who might amount to half the nation, are thus entirely unrepresented. To meet these evils several remedies have been proposed. One of them is now being tried in a few parliamentary constituencies, and another in elections to school boards.

1. The method adopted in those exceptional parliamentary constituencies is to allow each elector to vote for all the candidates save one. If votes are given for more than the prescribed number of candidates, none of the votes on the voting paper are counted. In this way, if any one candidate have a fair number of supporters who vote for him, even though they do not compose the majority of the electors, he is very likely to be elected.

2. The method adopted in the elections to school boards is that called "cumulative voting." It consists in giving to each elector as many votes as there are members to be elected, and allowing each elector to give all his votes, or as many of them as he pleases, to any one candidate; or some of his votes to one candidate, and some to another.

There are objections to both these systems; other more exact methods have been devised which have not yet been tried, the object being to ensure that there shall be proportionate representation, and the chief objection to which lies in their being too complex and difficult to be mastered by the average elector.

Until within the last few years, *votes were given* publicly in such a way that every one could know who voted for each candidate. They are now given by secret ballot, except in elections for universities.

Powers and Privileges of the House.

The House of Commons possesses the power of expelling members for offences calculated to bring discredit upon Parliament: such offences are forgery, fraud, corruption, and other offences against the House itself. Contempts against the authority of the House, whether by members or others, can be punished by the House of Commons, which exercises the power of committing persons to prison for any such offences as disobedience of its orders; indignities offered by libellous reflections upon the House; interference with or libels against individual members. Members are not liable, for any language used in Parliament, to the ordinary tribunals, but only to the House itself. No member can be detained by any civil process while going to, attending, or returning from the House; but these rules do not extend to protect members against a criminal process.

The Business of the House.

The House is presided over by a member chosen by the House of Commons and approved by the Crown. He is called the *Speaker*. His duties are to keep order, decide all disputed points of procedure, regulate the order in which members address the House, and supervise the voting of the House. If votes are equal in any case, he gives the casting vote, but otherwise he does not vote. The Speaker generally holds office from Parlia-

ment to Parliament, as long as he pleases, and is usually made a peer on retirement.

The mode in which business is conducted in the House is by individual members making what is called a *motion*. Before a member does so, however, he must give *notice* of his intention, and enter it on the notice paper of a certain day; on that day he addresses the House on the subject A discussion may or may not take place; the question involved in the motion is then put to the vote; and, if agreed to, an *order* or *resolution* is passed upon it. By an *order* the House directs some of its members or officers to do or not to do certain acts; by a *resolution* the House merely declares its own opinions or purposes. The voting is taken by the Speaker asking members to say *aye* or *no* to the question; he decides which are in the majority; and if his decision is questioned, a *division* takes place and the members are counted.

A very important part of the business in both Houses is that of asking questions of members of the Government, or other members, as to their intention to bring forward certain measures, or to proceed with certain business; by such questions the House informs itself of the policy of the Government. Notice of such questions must also be previously given.

The most important business is that of *passing a Bill*, or legislating. Bills may be introduced in

either House of Parliament, except those affecting taxation, which must be brought in the House of Commons A Bill may be brought in either by the Government or by a private member. It is necessary first to obtain permission to bring in the *Bill;* it is usually read a first time without discussion, and a date is fixed for the second reading; this is the stage at which discussions take place and at which Bills wholly disapproved of are thrown out. If a Bill passes a second reading, it is *committed*, that is, the House sits as a Committee and discusses the measure, clause by clause. It is then brought up on a future day for a third reading, which is also purely formal, and is then passed. When the Bill has been passed by the House of Commons, it goes up at this stage to the House of Lords, where the same or a similar course is gone through. Thus the course of a Bill is briefly as follows :—

1. *Motion* for leave to bring in the Bill. *Order* to bring it in.

2. *Motion* to have the Bill read a *first* time. *Order* that it be read a *first* time.

3. *Motion* to have the Bill read a *second* time. *Order* that it be read a *second* time.

4. *Motion* to have the Bill "committed." *Order* that it be committed.

5. Committee on details of Bill. Report of Committee.

6. *Motion* that the Bill be read a *third* time. Motion that it be *passed*. Passing of a Bill and sending of it to House of Lords.

When the House of Lords has considered the Bill, if it makes no changes in it, nothing remains to be done but to obtain the Royal Assent, that is, the assent of the Queen. This is now-a-days never refused, and is, in fact, a purely formal proceeding.

If the House of Lords makes any changes in the Bill, it must go down to the House of Commons again, and the House of Commons must either accept the Lords' amendments or reject them. If it accept them, the Bill is ready for the Royal Assent. If it reject them, the Bill is lost unless the House of Lords can be induced to give up their amendments. In order to bring this about, two practices are resorted to—one, that of sending the Bill back to the Lords with the *reasons* for not accepting the amendments. This is the customary mode. The other practice (which is rare) is that of requesting a *conference* between the two Houses, that is, a meeting of certain members of both Houses for the purpose of ascertaining the points of difference between the Houses, and of thereby bringing the Houses into harmony.

It is to be noticed that the House cannot begin business unless forty members are present. It proceeds whatever number of members are present, unless a member "takes notice" that forty mem-

bers are not present. If, on the House being counted by the Speaker, this is found to be so, the House is adjourned. At any time during the discussion of the Bill, a member may endeavour to get rid of it for the session by moving "That it be read again this day six months, or three months," choosing the date so as to make it fall during the vacation. A member may also suspend or arrest a Bill for a time by moving that the matter with which it deals be referred to a "Select Committee," that is, a small body of not more than fifteen members sitting apart.

Select Committees of the House sit every day for a variety of purposes. They examine witnesses on oath, inspect documents, and investigate minutely all the details of a question. Upon completing the inquiry, they report to the House upon the desirableness or inexpediency of any legislation proposed.

Sometimes a question is referred to a *Royal* Commission; that is, a body of men, generally including members of both Houses, specially appointed to investigate the subject.

Every person or body of persons may petition Parliament, such petition must be presented to either House by a member of that House.

Political Parties.

For many years the members of both Houses have been accustomed to range themselves in large

opposed parties; all the members of a party voting together on all material questions. Some members belong to no party and vote on either side, as they may consider right. Of late years the Irish members have combined to form a party of their own. The two main parties were formerly called *Whigs* and *Tories*, but are now known as *Liberals* and *Conservatives*. It is from one or other of these great parties that the members of the Government are chosen. It depends upon which party has most votes in the House; whether the ministers are chosen from one party or from the other. The ministers and their supporters sit on one side of the House, and the members of the Opposition upon the other; the independent members sit on what are called the cross-benches. The Irish members, while keeping together for action in regard to Irish measures, range themselves as Liberals or Conservatives for other purposes. There is a section of extreme Liberal members, who are called Radicals.

Order and preservation are held to be the leading principles of the Conservatives, while progress and improvement inspire the policy of the Liberals. Both parties alike are equally free to adopt such measures as will secure good and wise government, but they are distinguished by leading general principles sufficiently marked to enable every member to select his own side.

The opposition are usually thoroughly organised under a leader, and they make it their

business to criticize all the measures introduced by Government, and the details of its administration. It happens very often that the party in power loses the confidence of the nation, or cannot command a majority in the House, in which case the ministry resigns, and the leading member of the opposition is usually called upon to form a new government.

It is to be noted that the party-struggle above described, and the defeats of the Government, go on in the House of Lords as well as in the House of Commons. There are always members of the Government in both Houses. As, however, there is far less business in the House of Lords than in the House of Commons, and as popular passion is less heated, most of the great party contests take place in the House of Commons; and, since the majority of the members of the House of Lords is always "Conservative," a Liberal Government does not necessarily resign on account of defeats or votes of censure in that House.

The task of selecting a member who shall be asked, on a resignation, to form a government is the most important part of the Queen's personal work at the present day, though it has long been the constitutional practice to resort, first, to the most prominent member of the party which is in opposition to the retiring Government. The members of the retiring Government continue to hold office till their successors are actually appointed.

CHAPTER III.

EARLY HISTORY OF BRITISH RULE IN INDIA.

The East India Company.

The assumption of the government of India by the Crown and the extinction of the East India Company in 1858 was followed by a general reconstruction of the system of government and a revision of the laws relating to it. The present constitution of the executive and legislative departments in India is based mainly upon legislation effected since that year. The previous enactments and administration have thus lost much of their value and importance; but still the general character and historical bearing of the government under the East India Company must necessarily be studied as an introduction to the consideration in detail of the existing organization.

The legal history of the East India Company may be roughly divided into three periods, each of which represents a peculiar phase of its existence. There is, first, the period from 1600 A. D. to 1773 A. D., during which the Company traded with India, founded factories, and acquired territories by grant or purchase from the native rulers for the purposes of business. The Company were at this time subordinate to the native government, though they managed their own affairs at the various stations and factories, and exercised some

small legislative and judicial functions under charters; the Europeans were governed by English law. From 1773 A. D. to 1833 A. D. the East India Company were brought under the more direct control of Parliament by the *Regulating Act;* the portion of this second period from 1773—1781 was one of great importance, as it witnessed the final struggle between those who wished to see English law and English courts of justice introduced at once into the country and rendered supreme over the executive, and those who considered that such a policy was wholly impracticable. The year 1781 commenced the era of independent Indian legislation; and was marked by the constitution of the Supreme Court; the recognition by Parliament of the provincial courts established by the Company, and of the rights of the people of this country to be governed by their own laws and usages. The third period extends from the year 1834 to 1858, and its special feature is that the East India Company ceased to be traders, and became trustees for the Crown in respect of all the enormous territories which had been acquired in the East; and were controlled by a body of Commissioners appointed by statute. It will be necessary to devote some attention to each of these periods, and to the relations between Parliament and the affairs of the Company which existed during the two-and-a-half centuries covered by them.

First Charter of the East India Company.

In the year 1600 A. D. Queen Elizabeth granted a charter to a corporation denominated "the Governor and Company of Merchants trading into the East Indies." The powers and privileges conferred by this charter were limited to a term of fifteen years; but by a further charter granted to the Company by James I. in the year 1609, this limitation was removed. Other charters were subsequently obtained from Charles II., James II., and William and Mary respectively. In the year 1698 William III. incorporated a second East India Company under the name of the "English Company trading to the East Indies." But the interests of the two Companies ended in their union in the year 1709, under the terms of an award of arbitrators; and the right of trading to the eastward of the Cape of Good Hope, together with the government of the forts and settlements possessed by the English in India, became vested in the "United Company of Merchants of England trading to the East Indies." By a subsequent enactment the Company was named the East India Company (3 and 4 Will. IV., cap. 85, Section 111). Down to the year 1773 the history of the government by the English of their Indian possessions is one of military struggle and civil conflict; the position of the Company was by no means secure, and their supremacy was confined to their ports and settlements

on the coast, at Bengal, Madras, and Bombay. Bengal was the chief presidency, and those of Madras and Bombay were governed in imitation of the policy pursued by the Supreme Government at the chief presidency. During the sixty-five years which elapsed from the union of the two Companies down to the Regulating Act of 1773, great acquisitions of territory were made, and the position of the Company was gradually changed from that of tenants of factories, owing obedience to the Mogal Emperor, to one of practical and independent sovereignty.

Territorial Acquisitions.

The first possession of the English was the Island of Bombay, ceded to Charles II. in 1661 by the King of Portugal as part of the marriage dowry of the Infanta. Charles II. granted it to the East India Company, who, about the same time, gained possession of some factories on the west coast of India. Somewhat later, factories were established at Madras and other places on the east coast. Last of all, the Company made trading settlements in Bengal, and founded Calcutta. The factories of Bombay, Madras, and Calcutta became the leading factories in their different localities, and exercised control and supervision over the subordinate depôts and places in their vicinity. The decline of the Mogal dynasty was very rapid after the death of Aurungzeb in 1707; and it was

during the feud between the Mahratta and the Mahomedan that the French and English began the work of conquest and annexation. The principal struggle between the French and English commenced in 1750 in Madras, where most of the French possessions were situated, and they ended in the supremacy of the English being established, and in Madras becoming the most important possession of the Company. The struggle in Bengal between the English and the native government continued from 1756 to 1765. It commenced upon the accession of Suraja Daula, who captured Calcutta, but was overthrown by Clive in 1757, with the result that the authority of the Company was established over the whole of Bengal. The powers and duties of Government were, however, carried on by the Nawab of Murshedabad and in the name of the native government. In 1765 the grant of the *Diwani* was conferred upon the English by the Emperor Shah Alam, in exchange for an annual payment of twenty-six lakhs of rupees; at the same time all the territories previously held by the East India Company under grants from the Emperor were confirmed to them. The civil and revenue administration was now carried on by the Company through native agency, while the administration of criminal justice was left in the hands of the Nawab, who received an annual grant of fifty-three lakhs of rupees; and who thus became dependent upon the Company.

Legislative and Judicial Authority at this period.

The general character of the position of the East India Company at this time, in regard to their territories other than Bombay, was that the English held them from the native government, and were, strictly speaking, amenable to native laws. They were not, however, in any way interfered with in this respect, and maintained their right to govern themselves and to administer their own laws within their territories, just as if the latter formed part of the British possessions of the Crown. Almost all the charters obtained by the Company from British Sovereigns conferred certain judicial and legislative functions, to be exercised in a manner reasonable in itself and consistent with the statute and common law of England. In some instances express treaty rights were obtained from the native emperors conferring power on the English to govern natives who resided within their ports and settlements; but in most instances the grant of territory, with leave to build forts and factories, was assumed to carry with it the right to administer justice amongst the people residing therein of whatever nationality. The charters granted by Charles II. in 1661 and 1683 not only confirmed the powers previously granted, but authorised the Governor and Council of the various settlements of the Company to administer both civil and criminal justice in the case of all persons

belonging to the Company or who should live under them; and to establish Courts of Justice. Mayor's Courts were established at Madras, Bombay, and Calcutta in 1726; and the Governors and Councils were given civil appellate jurisdiction in minor cases, and criminal jurisdiction as Courts of Session. A further appeal, in certain civil cases, lay to the Privy Council. These Courts and others of a similar character were constituted from time to time by various charters, but reference need only be made to that of 1753, which excepted natives from the civil jurisdiction of Mayor's Courts, and suits between them were directed to be determined among themselves.

Lord Clive did much towards organizing the administration and introducing reforms. He prohibited the private trade of the Company's servants, and substituted a liberal system of remuneration; by these means the rapid acquisition of wealth was stopped, and one great motive for oppression and extortion was removed.

He also placed the Government of Bengal on a new footing after acquiring the grant of the *Diwani*, and established more just and equitable relations with the natives.

The Regulating Act.

The second period commences with the Regulating Act of 1773. All that had been done by Clive down to 1765, and in that and the following

year, could not check the misgovernment of the country. The East India Company had to serve two masters, namely, the King of England and the Emperor of India. It was difficult, under all the circumstances, and with the means at the disposal of the Company, to introduce a thoroughly satisfactory government, which should control and check the administration of civil and criminal justice and the collection of the revenue. The form and character of the previous native rule had to be kept up, for in name it was still maintained. A Resident at the Nawab's Court, who inspected the management of the Murshedabad *Diwan*, and an officer of similar position at Patna, maintained an imperfect control over the civil and revenue administration in the provinces; the country in the neighbourhood of Calcutta being under the more direct supervision of the Company's European servants. In 1770 two revenue councils were appointed, at Murshedabad and Patna, with the view of introducing a more direct and closer supervision of affairs. Mahomedan Criminal Law was in force throughout the country, administered by Mahomedan Courts. About this time certain servants of the Company, under the title of supervisors, were appointed in various districts for the purpose of controlling the native agency. It was not until 1772, however, under Warren Hastings, that final measures were taken for the internal government of the country by British agency.

Collectors of revenue were established in each district, who superintended the Civil Courts also, and heard and disposed of all litigation except that relating to questions of succession to *zamindari* and *talukdari* property, which were decided by the Governor in Council. A Criminal Court was also established in each district, consisting of a Kazi, a Mufti, and two Maulvis, superintended by the collector; a Chief Criminal Court being established at Murshedabad.

Meanwhile Parliament became aware of the shortcomings and unsatisfactory nature of the administration of the Company's affairs, and in 1772 a committee of investigation was nominated. The result was that Parliament determined to interfere directly with the authority of the Company, and to assume the exercise of sovereign powers. This end was sought to be attained by the Statute 13, Geo. III., cap. 63 (1772-1773), which provided that the Government of Bengal should consist of a Governor-General and four counsellors; and subordinated the president and councils of Madras and Bombay to the Government of Bengal. Legislative powers, to make rules and regulations for the good order and civil government of the Company's possessions, were conferred on the Supreme Government, subject to the consent and approbation of, and to registration by, the Supreme Court. This Supreme Court was intended to be an independent and effectual check upon the executive government

The latter was still composed of the Company's servants entirely, but the Supreme Court consisted of Judges appointed by the Crown, and it was made a King's Court, and not a Company's Court; the Court held jurisdiction over all British subjects, in the provinces of Bengal, Behar, and Orissa; it consisted of a Chief Justice and (at first) three Judges; and was constituted by charter framed under the authority of the Regulating Act. The King in Council further retained the right to disallow or alter any rule or regulation framed by the Government in India; and in civil cases an appeal lay to the Privy Council.

The intention was to secure to the Crown the supremacy in the whole administration of justice, and to place an effective check upon the affairs of the East India Company. The arrangement, however, was soon found to be impracticable. The Act established in India two independent and rival powers, namely, the Supreme Government, comprising the Governor-General and his Council, and the Supreme Court; the boundaries between them were altogether undefined, one deriving its authority from the Crown, and the other from the Company. The wording of the statute and charter in regard to the Supreme Court was extremely loose and unsatisfactory; and the immediate result was a conflict of authority which raged for seven years, and which had the effect of paralysing the executive government and of undermining the whole administration.

The Court issued its writs extensively throughout the country, arrested and brought to Calcutta all persons against whom complaints were lodged,—zamindars, farmers, and occupiers of land, whatever their rank or consequence in the country. Revenue defaulters were set at liberty under *habeas corpus;* the criminal administration under the Nawab was declared to be illegal; the mofussil Civil Courts were held to have no validity; and the Supreme Court, itself modelled upon the Courts of England, introduced the whole system of English law and procedure. The Court exercised large powers independently of the Government, often so as to obstruct it; and had a complete contral over legislation. Such a system could not endure under any circumstances.

Although the Courts are independent of Government in England, both are absolutely subordinate to the Legislature, in which, however, the power of Government predominates. To make the Legislature subordinate to the Court, instead of the Court subordinate to the Legislature, and at the same time to direct it to enforce a system of law utterly inapplicable to India, independently of, or in opposition to, the Government, which was at the same time weakened by divisions purposely created, appears to be most destructive and pernicious policy that wit could devise. Although the judicial service should be independent of the executive, yet it must be

subordinate to the Legislature, and legislation must be, if power and responsibility are to go together, the unfettered expression of sovereign authority, wherever that authority may reside, or from whatever source it be derived, whether from an electoral body or an absolute prince.

The plan of controlling the Company's government by the King's Court entirely failed. The tribunal came to be regarded by the natives, for whose protection it was established, with the utmost abhorrence. The policy which shaped the Regulating Act was well-intentioned, but it was rashly and ignorantly executed. It had the effect of seriously endangering British power in India. The anarchy which ensued continued until the policy of the Regulating Act was reversed, and Indian society assumed the form which it, more or less closely, retained till the Company and the Mogal Empire vanished.

The Amending Act of 1780-81.

The dissensions between the executive government and the independent Supreme Court had been so serious that the former had been forced into open opposition to the strictly lawful authority of the latter, in order to carry on the government in the provinces at all; and it was consequently one of the important features of the act that the members of the government should be indemnified for all such acts and proceedings.

They were also in future excluded from the jurisdiction of the Supreme Court in regard to their official acts, it being directed that should any complaint be lodged against the government, the Supreme Court should, after causing the production of the necessary papers and evidence, transmit the proceedings to the proper Court in England. Further, the order of the Governor-General in Council was constituted a bar to further proceedings for any acts done thereunder; this provision operated in regard to all orders not affecting British subjects, over whom the Supreme Court retained its jurisdiction. It was expressly declared by the act that the Supreme Court should have no jurisdiction whatever in matters concerning the revenue, or concerning any acts ordered or done in the collection thereof, according to the practice of the country, or the regulations of the government. It was further declared that no person should be subject to its jurisdiction by virtue of possessing land or any interest therein in the provinces of Bengal, Behar, and Orissa; nor did the employment of any person by the Company, or by a European, bring such person generally within such jurisdiction. Further, no action for wrong or injury should lie in the Supreme Court against any person exercising a judicial office in the country courts for any order, judgment or decree of the said court; nor against any person for any act done by or in virtue of the order of such court.

As against natives, inhabitants of Calcutta, the Supreme Court retained its jurisdiction ; but it was provided that in matters of inheritance and succession, as well as in matters of contract and dealing, the Court should be guided by the laws and usages of the parties ; that the rights and authorities of fathers and masters of families should be preserved to them in accordance with their civil and religious usages ; and that acts done in accordance with the rule or law of caste, respecting the members of the families, were excluded from the criminal law.

The most important features of the act were, however, the recognition by Parliament of the civil and criminal provincial courts, existing independently of the Supreme Court ; of the Governor-General and Council, or some Committee thereof, as the chief appellate court of the country ; and the vesting the Council with the power to frame Regulations for those provincial courts, independently of the Supreme Court. This course entirely cut away the jurisdiction of the Supreme Court over natives in the mofussil, and gave a legal status to the administration thereof, comprising the Supreme Government and its courts and offices in the various districts.

Thus the whole policy of the Regulating Act was subverted by the amending act of eight years later ; but the latter act effected a settlement which

was practical and workable, whatever its faults; the Supreme Court was limited in its jurisdiction to European British subjects and the inhabitants of Calcutta; while the full legislative, judicial and administrative authority over the provinces was vested in the supreme government. The same system took effect in Madras and Bombay as was thus introduced into Bengal.

In Bengal a revised code was issued in the same year as this important act. Very little legislation had been effected under the Regulating Act, though, under the Act of 1781, a large body of regulations continued to be passed for half a century. Thus the Act of Parliament, the Revised Code, the Parliamentary recognition of the Sudder and Provincial Courts, the grant of legislative authority, apart from the veto of the Supreme Court, the restriction of the powers of that Court, and the declaration of the rights of Hindus and Mahomedans to their own laws and usages, were effected in 1781.

Commissioners for the Affairs of India and the Supreme and Local Governments in India.

The Statute 33, Geo. III., cap. 52 (1792-93) provided for the appointment of five Commissioners for the Affairs of India: of these, two were to be principal Secretaries of State, a third was the Chancellor of the Exchequer, and two were to be named by the Crown. Three Commissioners formed a quorum; and they were invested with full power to superintend,

direct and control all matters relating to the civil or military government, or revenues of the territories acquired by the Company in India. The affairs of the Company were administered at this time by their own Board of Directors in England; and by the Governor-General and Council in India, who were nominated by the Directors; by the Statute now referred to the Crown and Parliament appointed a Board of Commissioners, composed mainly of Ministers of the Crown, to control the whole administration of the Company. The Board of Commissioners were given the widest powers of superintendence, revision, and control over the Company's affairs, though their action was limited to the Directors in England. The Board of Directors had to nominate a Secret Committee of three of their number to act with the Commissioners.

The same statute reconstituted the governments of the three presidencies.

The Governor-General and three Counsellors were invested with the entire civil and military government of Bengal, Behar, and Orissa; a Governor and three Counsellors were similarly appointed to the presidencies of Madras and Bombay; but were placed under the superintendence and control of the Government of Bengal.

In the year 1800 a statute was passed extending the power of the Supreme Court to the ceded province of Benares, subject to the powers conferred

in 1781; and for the constitution of a Supreme Court, on the model of that in Bengal, in Madras, in supersession of the Mayor's Courts.

The statutes of most importance passed during the second period of the history of the East India Company were 13, Geo. III., cap. 63; 33, Geo. III., cap. 52; 37, Geo. III., cap. 142; 39 and 40, Geo. III., cap. 79; and 53, Geo. III., cap. 155. The first, second, and last of these statutes continued the East India Company in possession of the British territories in India, by terms of 20 years at a time; the constitution and powers of the government were from time to time altered and amended; provision was made for controlling the Company and its servants, and for the general improvement of the Revenue, Civil, and Judicial Administration, as well as for the proper organization of the army; while large legislative powers were vested in the Supreme Government, which were exercised with considerable effect. The system inaugurated in 1781 retained all its main features intact down to the year 1833.

The Company as Trustees.

The third phase of Government by the East India Company was inaugurated by the statute 3 and 4, William IV., cap. 85, passed in 1833. By this Act the East India Company surrendered their rights as a trading Company, and the Government

was vested in the Company as *Trustees* for the Crown; the shareholders accepting a fixed dividend on their capital charged upon the revenues in India. The main outlines of the system of Government were not, however, much changed, although the statute legislates for the first time for the Government of the British possessions in India as a whole. St. Helena, which had been held by the Company, was taken over by the Crown under this statute. The superintendence, direction, and control of the whole Civil and Military Government of the whole of the British territories and revenues in India were vested in the *Governor-General of India in Council.* The Council was thus subordinated to the Governor-General; extensive powers of legislation were conferred, the necessity for registering enactments in the Supreme Court being altogether abolished. The power to make laws affecting the Supreme Court, and its powers over European British subjects, was subject to the previous sanction of the Directors. Legislation was to be effected by a quorum consisting of the Governor-General and at least three ordinary members of council; while other affairs might be transacted by the Governor-General and one or more of such members; the Governor-General was given a double or casting vote in council. The rights of Parliament to legislate for India were reserved, and its control over Indian legislation preserved by requiring all enactments to be submitted to Parliament.