partly nominated, with a bare government majority. A bill approved by the committee could then be debated by the council but without the power to amend or reject it. The Joint Committee rejected this proposal as cumbrous and ineffectual and preferred a straightforward method of attaining the end in view.

Section 13 of the Act lays down the procedure to be followed in the exercise of the power of affirmative legislation. It provides:—"Where a governor's legislative council has refused leave to introduce or has failed to pass in a form recommended by the governor, any bill relating to a reserved subject the governor may certify that the passage of the bill is essential for the discharge of his responsibility for the subject and thereupon the bill shall, notwithstanding that the council have not cosented thereto, be deemed to have passed, and shall, on signature by the governor, become an Act of the local legislature in the form of the bill as originally introduced or proposed to be introduced in the council or ( as the case may be ) in the form recommended to the council by the governor." Every such Act shall be expressed to be made by the governor and as it involves an extraordinary procedure, a copy of it must be sent to the Governor General, who shall reserve the Act for the signification of his Majesty's pleasure. On that assent being signified, the Act shall have the same force as an Act passed by the local legislature. If, in the opinion of the Governor General, an emergency exists, he may not reserve the Act but may signify his assent to it forthwith. A further safeguard is provided by the requirement that "every such Act shall be laid before each House of Parliament as soon as practicable after its being made, and an Act which is required to be presented for His Majesty's assent shall not be presented until copies thereof have been laid before each House of Parliament for not less than eight days on which that House has sat".

Section 11 (4) provides that in the case of any bill or amendment moved or proposed to be moved, the governor may certify that it affects the safety or tranquillity of his province or of another province, and may direct that no proceedings or further proceedings shall be taken by the council in relation thereto and effect shall be given to such direction. Rules have been framed under this Section for regulating the course of the business of the council, for prescribing the quorum and for prohibiting or regulating the asking of questions on and the discussion of subjects specified in the rules. Standing orders have been made providing for the conduct of business and the procedure to be followed in the council, in so far as these matters are not provided for by rules made under the principal Act. The first standing orders have been made by the governor in council but they may, subject to the assent of the governor, be altered by the local legislature. Any standing order which is repugnant to the rules will be void to the extent of the repugnance.

Rules for the legislative councils relate to the general procedure, and the standing orders to its details. We can not here attempt more than a reference to the important rules. Rule 6 empowers the governor to allot time for non-official business and to determine precedence in it. The President is given power by Rule 7 to disallow any question, within the period of notice, on the ground that it relates to a matter which is not primarily the concern of the local government. Certain subjects are excluded as being outside the domain of enquiry, the final decision in this matter resting with the governor. The adjournment of the council may be moved, subject to certain restrictions, "for the purpose of discussing a definite matter of urgent public importance" ( rule 12 ). Business will be ordinarily transacted in English but a member may speak in any recognised vernacular of the province, and the President may call on any member "to speak in any language in

which he is known to be proficient". Then there are rules relating to irrelevence or repetition, the President's power to order the withdrawal of a member, notice of motion or leave to introduce bills, the power to disallow resolutions, vested in the governor and the restrictions of subjects of discussion, and lastly, the procedure to be followed with reference to the discussion and disposal of the budget.

The provisions of the Government of India Act, 1919, with reference to the budget are very important. Section 11 (2) lays down the process in the following words :— "The estimated annual expenditure and revenue of the province shall be laid in the form of a statement before the council in each year, and the proposals of the local government for the appropriation of provincial revenues and other moneys in any year shall be submitted to the vote of the council in the form of demands for grants. The council may assent, or refuse its assent, to a demand, or may reduce the amount therein referred to either by a reduction of the whole grant or by the omission or reduction of any of the items of expenditure of which the grant is composed." It will be noticed here that the financial statement of the province is to be framed and presented as a whole despite the division of the government into two parts. The great merit of the plan proposed by the authors of the Joint Report with respect to the budget lay in joint deliberation and the consequent co-operation and compromises between the two parts of the government. There are to be no separate purses as was proposed by some, but the province is to have a common purse from which the executive councillors and the ministers are to take what they may require by agreement between themselves, and if fresh taxation is found necessary, the proposal is to proceed from the government as a whole.

The Government of India, which accepted the idea of a common budget, wanted still to fix the responsibility

for additional taxation upon either part of the government which was not able to meet the estimated expenditure with the revenues of its own departments. In its first Reforms despatch that Government said:—"If either part of the government asks for new taxation which involves legislation, or desires to raise a loan, it will introduce a bill for the purpose. If the bill comes from the official side of the government and the legislature proves hostile, the governor can exercise his right of removing it by certificate to the grand committee. If, on the other hand, the bill has been promoted by the ministers it will stand or fall by the decision of the legislative council. There would be a similar distinction in the matter of resolutions." This suggestion was entirely opposed to the spirit of the Reforms and did not find favour with the Joint Parliamentary Committee, which insisted upon a common purse.

That Committee, while endorsing the view expressed in the Joint Report on this question, remarks:—"Whenever the necessity for new taxation arises, as arise it must, the questions must be threshed out by both parts of the government in consultation together, and it is specially important that in this matter both parts of the government should, if possible, be in agreement when the proposals of the government are placed before the legislature". In this matter of financing the administration, one or two important facts must be borne in mind. The management of the reserved departments being in the hands of an executive that lies beyond the control of the legislature, the supply required for those departments will have a prior claim and will be secured, if necessary, by the exercise of the governor's power of certification. There is also an impression in the public mind that the reserved deparments have been already too much pampered and must be subjected to the strictest scrutiny with a view to retrenchment and economy while the transferred services are generally those that stand in need of greater development and will

call for a steadily growing outlay and consequently fresh taxation.

The difficulty and the responsibility of the position of the ministers are thrown into glaring light in this connection. In their joint deliberations regarding the financial estimates they will have to fight very hard for economy in the reserved departments so as to secure sufficient resources for the services for the improvement of which they are responsible. The unpleasant task of going to the legislature with proposals about additional taxation will fall upon them because it will be the needs of the services in their charge that will necessitate the imposition of fresh burdens. The ministers must convince the legislature that new taxes are unavoidable if vital services are not to be starved and social development is not to be hampered. People generally have a prejudice about things which have been withheld from them and the legislature will watch with envious eyes the expenditure on the reserved departments. Ministers must openly or silently support the allotments for the reserved services and incur indirect responsibility for them. Partition of government into a responsible and a nonresponsible executive, is to blame for this. But the advantage of this position is that the legislature will be able to exercise some influence on the reserved departments through the ministers who are threatened with the necessity of proposing new taxation.

The budget procedure follows the parliamentary practice in this that the appropriation of moneys can be proposed by the executive alone; and the legislature may reject or reduce the grants asked for but it may not enhance them or propose new appropriations. The reserved departments are protected by a proviso which empowers the governor to certify that the expenditure provided for by grants, reduced or rejected, is essential; and the local government may act as if the demands had been

assented to by the legislature. In cases of emergency the governor has power to "authorise such expenditure as may be in his opinion necessary for the safety or tranquillity of the province, or for the carrying on of any department." There are certain heads of expenditure regarding which proposals shall not be submitted to the council, and they are the following :—(1) contributions payable by the local government to the Governor General in Council; (2) interest and sinking fund charges on loans ; (3) expenditure of which the amount is prescribed by or under any law ; (4) salaries or pensions of persons appointed by or with the approval of His Majesty or by the Secretary of State in Council and (5) salaries of judges of the High Court of the province and of the Advocate General. In matters of doubt in this connection, the decision of the governor will be final.

There are two stages in the discussion of the budget. Rule 28 of the 'Legislative Councils Rules' prescribes that on a day to be fixed by the governor and for such time as he may allot, "the council shall be at liberty to discuss the budget as a whole or any question of principle involved therein, but no motion shall be moved at this stage, nor shall the budget be submitted to the vote of the council." The Finance Member shall have a general right of reply at the end of the discussion. The President may, if he thinks fit prescribe a time limit for speeches. Rule 29 says :—"Not more than twelve days shall be allotted by the governor for the discussion of the demands of the local government for grants. Of these not more than two shall be allotted for the discussion of any one demand. As soon as the maximum limit of time for discussion is reached, the President shall forthwith put every question necessary to dispose of the demand under discussion. On the last day of the allotted days at 5 o'clock, the President shall forthwith put every question necessary to dispose of all outstanding matters in con-

nection with the demands for grants." When there has been an excess in the expenditure on any service over the grant for the year, a demand for the excess shall be presented to the council by the Finance Member and shall be dealt with by the council as if it were a demand for a grant. Supplementary estimates and grants become necessary owing to changed circumstances and needs.

When a bill has been passed by the council, the head of the provincial government may declare that he assents to or withholds his assent from the bill. If assent is withheld, the bill shall not become an Act. Bills assented to must be submitted to the Governor General and they will have validity as Acts only if they receive the assent of the latter and when the assent is published by the head of the local government. The Governor General must signify his reasons for withholding his assent. By Section 12 of the Act of 1919, the governor, lieutenant governor or chief commissioner may, instead of assenting or withholding his assent, return a bill to the council for reconsideration, either in whole or in part, and together with any amendments he may have to recommend. In cases prescribed by rules made under the principal Act, he may, and if the rules so require shall, reserve the bill for the consideration of the Governor General. 'The Reservation of Bills Rules' lay down that "the governor of any governor's province shall reserve for the consideration of the Governor General any bill not having been previously sanctioned by the Governor General, which has been passed by the legislative council of the province and is presented to the governor for his assent, if the bill appears to the governor to contain provisions (a) affecting the religion or religious rites of any class of British subjects in British India (b) regulating the constitution or function of any University, (c) having the

effect of including within a transferred subject matters which have been hitherto classified as reserved subjects, (d) providing for the construction or management of a light or feeder railway or tramway other than a tramway within municipal limits, or (e) affecting the land revenue of a province either so as to—(1) prescribe a period or periods within which any temporarily settled estate or estates may not be reassessed to land revenue, or (2) limit the extent to which the assessment to land revenue of such an estate or estates may be made or enhanced, or (3) modify materially the general principles upon which land revenue has hitherto been assessed, if such prescription, limitation or modification appears to the governor to be likely seriously to affect the public revenue of the province."

The governor may reserve for the consideration of the governor general any bill passed by the council and presented to him for his assent if the bill appears (a) to affect any matter wherewith he is specially charged under his Instrument of Instructions, or (b) to affect any central subject, or (c) to affect the interests of another province. When a bill has been reserved for the consideration of the governor general the head of the province may, with the consent of the former, at any time within six months, return the bill for further consideration by the council with a recommendation that the council shall consider amendments thereto. The bill may be presented again to the head of the province after a reconsideration as stated above, whatever the result of the second discussion. A bill reserved and assented to within six months by the governor general will be valid as an Act as if it had received the assent of the head of the province. Otherwise, it will lapse unless it has been returned for the reconsideration of the council. The governor general may, of course, reserve a bill for the signi-

fication of His Majesty's pleasure and in such a case the Act of the local legislature will not have validity until His Majesty in Council has signified his assent and the assent has been notified by the governor general.

Parliamentary procedure has been adopted throughout as regards legislative and other business of the councils and the experience of the first session of these bodies shows that members will take some time before they become thoroughly familiar with parliamentary methods of debate. There are technically no three "readings" of a bill, but the latter has substantially to go through the same stages before it can pass. There is the motion for leave to introduce a bill and there is another that the bill be taken into consideration, or be referred to a select committee, or be circulated for the purpose of eliciting public opinion. At the next stage amendments may be considered and the bill is discussed clause by clause and passed. Resolutions passed by the council are not binding on the executive government. They indicate the trend of feeling in the mind of the council, which has to be seriously considered. The non-responsible part of the government will try if it can, to meet the wishes of the council in relation to reserved departments but may ignore them. The ministers must, however, give effect to resolutions affecting them, only if the council is persistent and strong, unless they are prepared to resign their positions. The "closure" is an interesting device adopted to put an end to a debate the prolongation of which is not calculated to prove useful. When any motion is under discussion any member may move "that the question be now put," and unless it appears to the President that the request is an abuse of the rules of the council or an infringement of the rights of reasonable debate, the question shall be put forthwith. There is no debate on such a motion, and if there is a large majority in favour of it, the question is accordingly put

A careful study of the powers and the procedure of the legislative councils leaves on one's mind the impression that while these bodies are made more representative and are endowed with larger powers, the idea that they constitute an experiment which must be cautiously watched, is not allowed to get out of sight for a single moment. All possibilities of failure and abuse of their newly-acquired powers by the councils, are provided for. Central subjects are protected, as they must, and reserved departments are safeguarded against encroachments. The governor has, moreover, the power to override the council if he thinks it necessary to do so for maintaining the peace and good government of his province and may control even transferred departments in emergencies. Every precaution has been taken to prevent a breakdown of the machine of the newly-constituted provincial government; and further steps in advance are made to depend upon the success of the experiment undertaken. Within its limitations, however, the council has much scope for useful work and for opportunities to secure greater powers. Strong organization among members, effective criticism and steady opposition to the executive are bound to yield substantial results. It is in this respect that the first councils would appear to be very weak. Parliamentary practice without parliamentary opposition and paries, is a hindrance rather than a stimulus to progress. In the absence of a strong opposition the executive will have an easy time of it. It may be benevolent; but the mere benevolence of the executive does not make for the evolution of democratic government.

# IV.

## THE GOVERNMENT OF INDIA.

It has been shown above that the authors of the Reform scheme decided that while the executive governments in the provinces were to be brought in part under the full control of the legislature, the central government was to be allowed to remain in full possession of its powers subject only to the authority of Parliament. The elective element in the central legislature was to be substantially increased and in that way was the executive to be brought under the influence of the people. The Government of India thus will work under the close scrutiny of the legislature and its measures will be subjected to insistent though indirect, and constitutionally speaking, feeble control. That government, like the non-responsible part of the provincial executive, will be put upon its defence every time and will have to justify its policy to a legislature which will have in its composition a majority of elected members. This is the only gain secured by the Reforms in the way of democratic control in the central government. Of the same nature is the improvement by which the authority of the Secretary of State over that government will be relaxed in certain matters and it will, in its own turn, abandon its control over the provinces. The presence of three Indians among the members of the executive council is an additional channel of popular control.

The authors of the Joint Report and the Joint Committee had both recommended that the existing statutory restriction in respect of the number of the members of the executive council of the governor general should be removed so as to impart elasticity to the council in view of the changes introduced in the position of the central

government and the functions and powers of the local governments in relation thereto. The Joint Committee observed :—"the present limitation on the number of the members of the governor general's executive council should be removed, that three members of that council should continue to be public servants or ex-public servants who have had not less than ten years' experience in the service of the crown in India ; that one member of the council should have definite legal qualifications but that these legal qualifications may be gained in India as well as the United Kingdom ; and that not less than three members of the council should be Indians."

Effect has been given to this recommendation by Section 28 of the Act of 1919. It removes the limit on the size of the council, provides for at least three members with ten years' service in India, allows a pleader of a High Court of not less than ten years' standing to be appointed just like a barrister of England or Ireland. Section 28 further lays down :—"Provision may be made by rules under the principal Act as to the qualifications to be required in respect of members of the Governor General's executive council, in any case where such provision is not made by Section 36 of the principal Act as amended by this section." There is no statutory provision for the appointment of a particular number of Indians as such; nor are they excluded by statute. There are already three Indians in the council, and it is expected that the present proportion of Indians will be maintained whatever the total number of members. The Joint Committee thought that "the members of the council drawn from the ranks of the public servants will, as time goes on, be more and more likely to be of Indian rather than of European extraction." A rearrangement of business and a reshuffling of the portfolios became inevitable on the introduction of the Reforms, and this was one of the first

things Lord Reading was expected to look to on his arrival in India.

The Montagu-Chelmsford Report recognized that the machine of the central government was too cumbrous, overburdened with work and too slow-moving to show efficiency in the discharge of the duties entrusted to it. Consultations with local governments and references to the Secretary of State on all important questions, caused interminable delay. Developing autonomy in the provinces and less frequent interference by the Secretary of State were, therefore, calculated to remedy the existing defects in the working of the machinery of the central government, and the association of a really representative assembly criticising its measures, was expected to have a stimulating effect upon it. The reconstruction of the central legislature was undertaken with this object in view.

The outstanding change in this regard is the constitution of a bicameral legislature for India. There are two legislative chambers in almost all civilized countries and under different constitutions, monarchical, republican, unitary, federal. Second chambers have come to be regarded as a necessity mainly on account of the steadying influence they exercise upon legislation, the opportunity they afford for the mature delibration and revision of measures and the avenues they supply for the representation of classes and interests that cannot be adequately represented in a popular chamber. This was, not, however, the chief object of the authors of the Joint Report, in recommending a bicameral lagislature. They wanted to make the upper chamber a means of securing to the executive the affirmative power of legislation such as was proposed to be obtained in the provinces through the 'grand committee.' We do not propose, they said, to institute a complete bicameral system, but to create a second chamber, known as the 'council of state', which shall take its

part in ordinary legislative business and shall be the final legislative authority in matters which the government regards as essential. It was proposed that the Council should be composed of 50 members of whom 25 would be officials and 4 nominated non-officials. Essential legislation could be secured through this council without the concurrence of the lower chamber. The Joint Committee rejected this proposalas it had rejected the plan of the 'grand committee' and recommended that the council should be reconstituted from the commencement as a true 'second chamber.' The Indian Legislature is, therefore, to consist of "the Governor General and two chambers, namely, the Council of State and the Legislative Assembly," and "except as otherwise provided by or under this Act, a bill shall not be deemed to have been passed by the Indian Legislature unless it has been agreed to by both chambers, either without amendment or with such amendments only as may be agreed to by both chambers." (Section 17).

According to Section 18, the Council of State is to consist of not more than 60 members nominated or elected in accordance with rules made under the principal Act, of whom not more than 20 shall be official members. The Council of State Electoral Rules provide that the Council shall consist of (1) 33 elected members and (2) 27 members nominated by the Governor General, of whom not more than 20 may be officials, and 1 shall be a person nominated as the result of an election held in Berar. Section 23 of the Act provides for the making of Rules in respect of details regarding the nominations, vacancies, qualification of electors, the constitution of constituencies, the method of election &c. The 33 elected members are to be returned as under :-Madras : 4 Non-Mahomedan and 1 Mahomedan ; Bombay : 3 N. M., 2 M. and 1 European Commerce ; Bengal : 3 N. M., 2 M. and 1 Eur. Com.; United Provinces : 3 N. M., and 2 M. ; Punjab : 1 N. M. and 1 Sikh ; Bihar

and Orissa : 2 N. M. and 1 M.; Central Provinces : 1 General; and Burma : 1 General and 1 Eur. Gom. This makes a total of 30, and the remaining 3 are to be elected in rotation by constituencies in the Punjab, Bihar and Orissa and Assam as laid down in Schedule 1 to the Rules.

No person is eligible for election unless his name is entered on the electoral roll of the constituency concerned. The qualifications of an elector of a general constituency are based on (1) residence, or residence and community, and (2) (*a*) the holding of land, (*b*) assessment to or payment of income tax, (*c*) past or present membership of a legislative body, (*d*) past or present tenure of office on a local authority, (*e*) past or present university distinction, (*f*) tenure of office in a co-operative banking society, or the (*g*) holding of a title conferred for literary merit. These qualifications will show the nature of the interests and classes who are expected to be represented in the Council of State. Based on them the following qualifications were prescribed for the Bombay Presidency.

BOMBAY.

1. Where any property is held or payment is made or received jointly by the members of a joint family, the family shall be adopted as a unit for deciding whether under the provisions of this Part the requisite qualification exists; and, if it does exist, the manager of the family only shall be qualified as an elector in respect of such property or payment.

2. A person shall be qualified as an elector for a general constituency who has a place of residence in the constituency and who—

(*a*) is in Sind either a Jagirdar of the first or second class or a Zamindar who, in each of the three revenue years preceding that in which the electoral roll for the time being under preparation is first published under these rules, has

paid not less than Rs. 2,000 land revenue on land situated in any district in Sind ; or

(*b*) is a Deccan Sardar or a Gujarat Sardar, that is to say, a person whose name is entered in the list for the time being in force under the Resolution of the Government of Bombay in the Political Department, No. 2363, dated the 23rd July 1867, or in the list for the time being in force under the Resolution of the Government of Bombay in the Political Department, No. 6265, dated the 21st September 1909 ; or

(*c*) is a sole alienee of the right of Government to the payment of rent or land revenue in respect of an entire village assessed to land revenue of not less than Rs. 2,000, or a Talukdar holding on talukdari tenure land assessed at not less than Rs. 2,000 land revenue, or a co-sharer holding on talukdari tenure a share in any land which share if held separately would be assessed at not less than Rs. 2,000 land revenne, or a Khot responsible for the payment of land revenue in respect of an entire village assessed at not less than Rs. 2,000 land revenue ; or

(*d*) is a holder of land assessed or assessable to land revenue of not less than Rs. 2,000 ; or

(*e*) was, in the financial year preceding that in which the electoral roll for the time being under preparation is first published under these rules, assessed to income-tax on an income of not less than Rs. 30,000 ; or

(*f*) is or has been a non-official member of either chamber of the Indian legislature or has been a non-official member of the Indian Legislative Council as constituted under the Govern-

ment of India Act, 1915, or any Act repealed thereby, or is or has been at any time a non-official member of the Bombay Legislative Council ; or

(*g*) is or has been the president of the Municipal Corporation of the City of Bombay, or is or has been the non-official president or is the non-official vice-president of a city municipality within the meaning of section 3 (*1*) of the Bombay District Municipal Act, 1901, or of a district local board established under the Bombay Local Boards Act, 1884 ; or

(*h*) is or has been a member of the Senate or a Fellow or Honorary Fellow of any University constituted by law in British India ; or

(*i*) is recognised by the Government as the holder of the title of Shams-ul-Ulama or of the title of Mahamahopadhyaya :

Provided that—

(*i*) no person other than a Muhammadan shall be qualified as an elector for a Muhammadan constituency, and

(*ii*) no Muhammadan shall be qualified as an elector for the non-Muhammadan constituency.

*Special Constituency.*

3. A person shall be qualified as an elector for the Bombay Chamber of Commerce constituency who is a member of that Chamber and has a place of residence in India.

4. For the purposes of this Part a person shall be deemed to have a place of residence in a constituency if he—

(*a*) ordinarily lives in the constituency, or

(*b*) has his family dwelling house in the constituency and occasionally occupies it, or

(*c*) maintains in the constituency a dwelling house ready for occupation in charge of servants and occasionally occupies it.

It was originally intended that the bulk of the elected members should be chosen by the non-official members of the provincial councils; and the Franchise Committee advised that the non-official members should be elected by the same group of persons as elect the members of the Legislative Assembly and in the same constituencies. This plan was disapproved by the Joint Committee who strongly recommended a different system of election for the Council of State. Members of the Executive Council of the Governor General and other high officials belonging to the various departments, have been nominated to the two chambers and the provincial governments are likewise represented in both of them through their officers.

By Section 18 (2) the Governor General has been empowered to "appoint from among the members of the Council of State, a president and other persons to preside in such circumstances as he may direct." Under this Section the Governor General issued the following order and it was duly given effect to:—"At the commencement of every session the Governor General will nominate from among the members a panel of not more than four chairmen any one of whom may preside over the Council in the absence of the president when so requested by the President. The Governor General has the right of addressing the Council, and may for that purpose require the attendance of its members. Members of the Council are designated "Honourable"; and this privilege is shared by them with Ministers, Executive Councillors and a few select high officials. Members of the Legislative Assembly are designated M. L. A. on the analogy of the M. P.s of the House of Commons; and members of the provincial councils are M. L. C. The designation of Honourable

appears to be very much coveted and caused a lot of heartburning in some members of the Assembly. They wanted to secure the little but their claim was not admitted.

By Section 19, the total number of the members of the Assembly has been fixed at 140. Of these, 40 are to be non-elected members, and of the these, 26 are officials. Rules made under the principal Act, may provide for an increase in the total and for a variation of the proportion of the classes of members to one another; but "at least five-sevenths of the members of the Legislative Assembly shall be elected members, and at least one-third of the other members shall be non-official members." The indirect method of election proposed for the Assembly by the Franchise Committee was condemned by the Joint Committee who were not convinced that delay would be involved in preparing a better scheme of direct election. As a matter of fact, the Legislative Assembly Electoral Rules fixed the composition of the Assembly as follows :- (1) 103 elected members, and (2) 41 members nominated by the Governor General, of whom 26 shall be officials and 1 shall be a person nominated as the result of an election held in Berar. No person is eligible for election to represent a general constituency unless his name is entered on the electoral roll of the constituency or of a constituency situate in the same province and prescribed for elections to the provincial council under the Act. The qualifications of an elector for a general constituency are based on (1) community, (2) residence, and (3) 1. ownership or occupation of a building, or 2. assessmemt to or payment of municipal or cantonment rates or taxes or local cesses, or 3. assessment to or payment of income tax, or 4. the holding of land, or 5. membership of a local body. The following are the specific qualifications prescribed for the Bombay Presidency.

BOMBAY

*General Constituencies.*

5. A person shall be qualified as an elector for a non-Muhammadan or Muhammadan constituency who, on the 1st day of January next preceding the date of publication of the electoral roll, had a place of residence within the constituency or within a contiguous constituency of the same communal description and who—

(*a*) in the case of the Sind constituencies, on the 1st day of January aforesaid held in his own right or occupied as a permanent tenant or as a lessee from Government alienated or unalienated land in such constituency on which, in any one of the five revenue years preceding the publication of the electoral roll, an assessment of not less than Rs. 37-8-0 land revenue in the Upper Sind Frontier district and of not less than Rs. 75 land revenue in any other district has been paid or would have been paid if the land had not been alienated ; or

(*b*) in the case of any other constituency, on the 1st day of January aforesaid held in his own right or occupied as a tenant in such constituency alienated or unalienated land assessed at, or of the assessable value of, not less than Rs. 37-8-0 land revenue in the Panch Mahals or Ratnagiri districts and not less than Rs. 75 land revenue elsewhere ; or

(*c*) on the 1st day of January aforesaid was the alienee of the right of Government to the payment of rent or land revenue amounting to Rs. 37-8-0 in the Panch Mahals or Ratnagiri or Upper Sind Frontier Districts and of Rs. 75 elsewhere, leviable in respect of land so

alienated and situate within the constituency or was a khot or a sharer in a khoti village in the constituency or a sharer in a bhagdari or narvadari village in the constituency, responsible for the pavment of Rs. 37-8-0 land revenue in the Panch Mahals or Ratnagiri Districts and Rs. 75 land revenue elsewhere; or

(*c*) was assessed to income-tax in the financial year preceding that in which the publication of the electoral roll takes place :

Provided that—

(*i*) no person other than a Muhammadan shall be qualified as an elector for a Muhammadan constituency, and

(*ii*) no Muhammadan or European shall be qualified as an elector for a non-Muhammadan constituency.

6. A person shall be qualified as an elector for the Bombay (European) constituency whose name is registered on the electoral roll of either European constituency of the Legislative Council of the Governor of Bombay.

*Special Constituencies.*

7. (1) A person shall be qualified as an elector for the Sind Jagirdars and Zamindars constituency who is a Jagirdar of the first or second class in Sind, or a Zamindar who in each of the three revenue years preceding the publication of the electoral roll has paid not less than Rs. 1,000 land revenue on land situated in any district in Sind.

(2) A person shall be qualified as an elector for the Deccan and Gujarat Sardars and Inamdars constituency whose name is entered in the list for the time being in force under the Resolutions of the Government of Bombay in the Political Department No. 2363, dated the 23rd July 1867 and No. 6265, dated the 21st September 1909, or who

on the 1st day of January next preceding the publication of the electoral roll was the sole alience of the right of Government to the payment of rent or land revenue in respect of an entire village in the presidency of Bombay excluding Sind and Aden, or was the sole holder on talukdari tenure of such a village.

8. Members of the Indian Merchants Chamber and Bureau and of the Bombay Millowners' Association and of the Ahmedabad Millowners' Association shall be qualified as electors respectively for the constituency comprising the Association of which they are members.

The following table shows how the seats are distributed :—

| Province. | Non-Mah. | Mah. | Europeans. | Landholders. | Indian Commer. | Sikhs. | Non-Eur. | Total. |
|---|---|---|---|---|---|---|---|---|
| Madras ... | 10 | 3 | 1 | 1 | 1 | ... | ... | 16 |
| Bombay ... | 7 | 2 | 2 | .. | 1 | ... | ... | 12 |
| Bengal ... | 6 | 6 | 3 | 1 | ... | ... | ... | 16 |
| United Pr. | 8 | 6 | 1 | 1 | ... | ... | ... | 16 |
| Punjab ... | 3 | 6 | ... | ... | ... | 2 | ... | 12 |
| Bihar & Orissa ... | 8 | 3 | ... | 1 | ... | ... | ... | 12 |
| Central Prov. ... | 3 | 1 | ... | 1 | ... | ... | ... | 5 |
| Assam ... | 2 | 1 | 1 | ... | ... | ... | ... | 4 |
| Burma ... | ... | ... | 1 | ... | ... | ... | 3 | 4 |
| Delhi General | 1 | | ... | ... | ... | ... | ... | 1 |
| | | | | | | | | 98 |

Five members are to be returned in rotation by certain constituencies in Bombay and Bengal. The 7 Non-Mahomedan seats in the Bombay Presidency are distributed as follows:— Bombay City: 2; rural Sind: 1; the three divisions: one each; then Mahomedans in the city of Bombay and in Sind have one each; Europeans in the Presidency have 2 seats and the Indian Merchants' Chamber

is given 1 seat. Besides this, the Millowners' Associations in Bombay and at ahmedabad elect one member in rotation.

The President of the Assembly is, for the first four years, to be a person appointed by the Governor General, and after that to be a member of the body and elected by it so that he might possibly be an official or a non-official, nominated or elected. The Joint Committee advised that the first President should be a man with Parliamentary experience conversant with the procedure and conventions of the House of Commons. He was to be a person who would prove a guide and adviser to the Presidents of the provincial councils and would mou'd the parliamentary history of this country. The choice fell upon Mr. A. H. Whyte, a former M. P. whose work is reported to have given complete satisfaction to the people concerned. The Deputy President is to be elected by the Assemply and approved by the Governor General. The system in respect to the tenure of office and salaries of the president and the deputy president, is similar to that prescribed for the provinces.

The normal duration of the Council of State will be five years, and that of the Assembly, three years. The difference in tenure is in keeping with the approved practice of the upper chambers in other countries. The power of dissolution and extention of the life of the two chambers is vested in the Governor General and the provisions in this regard are similar to those made for the provincial councils. It may here be noted that in the case of both legislatures, their powers may be exercised notwithstanding any vacancy in them. Similarly, an official is not qualified for election, and if a non-official member accepts office in the service of the Crown in India, his seat becomes vacant. If an elected member of either chamber of the Indian legislature becomes a member of the other chamber, his seat in the first chamber shall thereon become

vacant. If a person is elected to both chambers, he shall, before he takes his seat in either, signify in writing the chamber of which he desires to be a member and thereon his seat in the other chamber shall become vacant. Every member of the Governor General's executive council shall be nominated a member of one chamber, and shall have the right of attending in and addressing the other chamber, but shall not be a member of both chambers. (Section 22 of the Act of 1919).

Section 24 provides for the making of Rules for regulating the course of business and the preservation of order in the Chambers and for the making of standing orders concerning matters which have not been provided for by the rules. The Indian legislature is not a sovereign law-making body and its power is limited by the superior authority of Parliament though a wide field for legislation is left to it. Under Section 67 of the principal Act it is not lawful without the previous sanction of the Governor General to introduce at any meeting of either Chamber any measure affecting the public debt or revenues of India, the religion or religious rites of any class of subjects, or the discipline and maintenance of His Majesty's subjects and the relations of government with foreign princes or States. To these, Section 27 of the Act of 1919 adds measures (1) regulating any provincial subject or part of it which has not been declared by rules to be subjected to legislation by the Indian legislature, (2) repealing or amending any Act of a local legislature, and (3) repealing or amending any Act or ordinance made by the Governor General.

Like the governor of a province, the Governor General is armed with power to secure the legislation he wants in the face of the refusal of the Chambers. It has been stated above that the authors of the Joint Report intended that the Council of State should be used as an instrument to effect this purpose, and it was a device analogous to

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the Grand Committee proposed for the provinces. The Joint Committee rejected this plan for reasons for which it disapproved the other, and it opposed the proposals in the Bill "which would have enabled the Governor General to refer to the Council of State, and to obtain by virtue of his official majority in that body, any legislation which the lower chamber refused to accept, but which he regarded as essential to the discharge of his duties." The Committee did want that the Governor General should have the requisite power but it thought it was unworthy "that such responsibility should be concealed through the action of a Council of State specially devised in its composition to secure the necessary powers." Section 26, therefore, gives the Governor General power, in cases where either chamber refuses leave to introduce or fails to pass in a form recommended, to certify that the passage of the bill is essential for the safety, tranquillity or interest of British India or any part thereof. On such certificate being given, a bill shall become an Act of the Indian legislature notwithstanding the refusal of either chamber. Every such Act shall be expressed to be made by the Governor General and shall be laid before both Houses of Parliament and shall not have effect until it has received His Majesty's assent. Where the Governor General thinks that a state of emergency exists which justifies such action, he may direct that any such Act shall come into operation forthwith; and it shall have such force: only it will be subject to disallowance by His Majesty in Council. The Governor General has likewise the power, after issuing the necessary certificate, to stop all progress of a bill introduced or proposed to be introduced in either chamber.

It has been already stated that a bill can not pass into an Act unless it has been assented to by both the chambers. By Section 24 (3) "if any bill which has been passed by one chamber is not, within six months after the passing of

the bill by that chamber, passed by the other chamber either without amendments or with such amendments as may be agreed to by the two chambers, the Governor General may in his discretion refer the matter for decision to a joint sitting of both chambers: provided that standing orders made under this section may provide for meetings of members of both chambers appointed for the purpose, in order to discuss any difference of opinion which has arisen between the two chambers." The ordinary procedure in this matter is prescribed in the "Indian Legislative Rules," and is briefly as follows. Every bill which has been passed by the originating chamber has to be sent to the other chamber and copies of it are laid on the table at the meeting of that chamber. Thereafter, any member acting on behalf of Government in the case of a Government bill or, in any other case, any member may give notice of his intention to move that the bill be taken into consideration. On the day fixed for the purpose, the member concerned may move that the bill be taken into consideration. At this stage only the principle of the bill and its general provisions may be discussed. If the bill has not already been referred to a select committee of the originating chamber or to a joint committee of both chambers, any member may move that it be referred to a select committee and if the motion is carried it is given effect to. If the original motion is carried, the bill is taken into consideration and the provisions of the standing orders of the chamber regarding amendments and the passing of bills comes into operation. If the bill is passed without amendment, a message is sent to the other chamber intimating that fact. If it is passed with amendments, the bill is returned with a message asking the concurrence of the originating chamber to the amendments. The amendments have then to go through the same process of notice and consideration and messages of agreement or disagreement. If finally the bill is returned with the intimation that the

other chamber insists on amendments to which the originating chamber is unable to agree, that chamber may either (1) report the fact of the disagreement to the Governor General, or (2) allow the bill to lapse. At a joint meeting which the Governor General may call at his discretion after six months and which shall be presided over by the President of the Council, the bill and the amendments in dispute will be debated and any amendments affirmed by the majority of members present will be taken to have been carried; and the bill with amendments if any will also pass in a similar manner. The bill will then be deemed to have been duly passed by both chambers.

Now we come to the budget. The procedure in this regard is almost identical with the one we have described in the case of the provincial councils. There are the demands for grants, the general discussion, the voting of demands, excess and supplementary grants etc. There is indeed no element of responsibility in the central government. There are no "ministers" responsible to the legislature there. Still as it was the intention of the authors of the Reforms to afford to the popular chamber opportunities of influencing the policy and measures of the executive government, the national budget had to be brought within the purview of effective criticism on the part of the council. Section 25 (5) of the Act of 1919, therefore, provided that "the proposals of the Governor General in Council for the appropriation of revenues or moneys relating to heads of expenditure not specified in the above heads shall be submitted to the vote of the legislative assembly in the form of demands for grants." The heads of expenditure excepted and not to be submitted to vote, are (1) interest and sinking fund charges on loans, (2) expenditure of which the amount is prescribed by or under any 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 classified as (a) ecclesiastical, (b) political, and (c) defence. The Assembly is at liberty to assent to or reject any demand or reduce the amount. The demands as voted are to be submitted to the Governor General in Council, and if he declares that any demand which has been refused is essential to the discharge of his responsibilities, the demand will be taken to have been assented to notwithstanding the fact that assent has been refused or the amount referred to therein has been reduced by the Assembly. Further, the Governor General has power, in cases of emergency, to authorise such expenditure as he may think is necessary for the safety or tranquillity of British India or any part thereof.

It will be seen that all the services in the central Government are regarded as "reserved," and the budget procedure followed in the local councils is reproduced in the Assembly on a larger scale. The expected outcome of this procedure is that though the power of the executive to restore the grants refused or reduced by the legislature, is intended to be real, the discussion and the voting will make the officials considerate and conciliatory and will bring about compromises and surrenders, complimentary to popular opinion and beneficial to public interests. Now what is the part which the Council of State plays in the matter of the budget and financial legislation ? The statement of the estimated annual expenditure and revenue is to be presented to it each year in the same way as it is presented to the other chamber. But Standing Order 70 clearly says that "there shall be no discussion of the budget as such, after it has been presented to the council, nor shall it be put to the vote of the council." The privilege of discussing the budget and of assenting to, reducing, and rejecting the demands for grants made by the executive government, is reserved to the Legislative Assembly. The Council can not discuss the budget "as such" but it can

discuss and criticise the financial policy and measures of government *e. g.* by means of resolutions. And further, and this is a very important point, the Council can discuss and may modify and reject taxation proposals, which arise out of the budget and are, so to say, part and parcel of it, coming up to it from the Assembly. The Council is an integral part of the Indian legislature and under the Government of India Act, no bill can become an Act unless it has received the concurrence of that chamber. Taxation proposals made by the Assembly are embodied in a regular bill which must be passed by both the chambers, and though the Council can not initiate money bills, it participates in their discussion and disposal.

It is interesting to note that this question of the financial powers of the Council became the subject of a heated debate in the very first session of the Indian legislature. The controversy arose over the Finance Member's proposel to appoint a joint committee of the two chambers to consider the Finance Bill which embodied modifications of certain existing taxation Acts necessitated by the budget proposals assented to by the Assembly. Rule 42 of the Indian Legislative Rules provides for the appointment of such a joint committee by mutual agreement, the two chambers nominating an equal number of members. The Finance Member had proposed the procedure on the occasion in question on the ground of convenience and to expedite matters. The objection that was taken to the proposal on the ground of constitutional law and practice, was that as Section 67A Clause 6 of the Government of India Act (Section 25 (6) of the Act of 1919) conferred on the Assembly the power to assent to, reduce or reject demands for grants and as the Council of State was given no such power and as money bills were part and parcel of the budget which provided the grants, the Assembly alone had the right to pass money bills. The analogy of the House of Lords was pressed into service to support

this interpretation of the law, and the right of the Council of State to meddle with money bills was strongly resisted.

Whatever one may think of the desirability of reducing the Council of State to the position of the British House of Lords and of vesting the power of passing money bills in the Assembly alone, there can be no doubt about the fact which was convincingly set forth by the Law Member at the time of the debate referred to above, that under the law as it stands, the Council has an indisputable right of discussing and modifying, if it thinks fit to do so, money bills like other bills sent up to it by the Assembly. Then again, there is nothing in reason as well as in law to debar the Council from taking part in the discussion of money bills and the shaping of national fiscal policy though that body may not have a hand in the granting of supplies. The Council may modify or even reject the Assembly's taxation proposals without altering the size or the direction of the budget grants. In case of disagreement, there is provided the device of a joint sitting at which the Assembly has the preponderating voice and can get the better of the Council. The function of a revising chamber can be performed by the Council with advantage without in any way encroaching upon the essential privileges of the Assembly. As a matter of fact, the Council of State did modify the taxation proposals of the Assembly at the very first session, after its right to do so had been disputed; and the Finance Bill as amended by the Council was quietly concurred in by the Assembly. There is no analogy between the Council of State and the British House of Lords. The latter is a hereditary House while the former is very largely elective. The Upper chambers in several democratic countries have the right to deal with money bills. The Council represents an important section of taxpayers and must have the power to deal with taxation bills.

# V.

## FINANCE.

The subordination of the provincial governments to the Government of India in the old regime was more pronounced and galling in the sphere of finance than in any other. The central government acted on the theory that all the revenues of the country belonged to it and that it allotted out of it whatever amounts were deemed necessary for the expenditure of the provincial governments. In practice, however, the financial system based on this principle created provincial discontent, extravagance in expenditure and perpetual wrangling; and it was found necessary, in the course of years, to assign to the provinces a growing share in certain sources of revenue so that there might be a stimulus to economy and opportunities for development in the Provinces. But even so, the central government had to control provincial expenditure and to interfere in provincial administration of revenue-producing departments because, owing to the system of sharing, its own financial position was vitally connected with them. As regards taxation, it was entirely under the control of the Government of India. Taxation involves the making of laws and all proposals in that behalf had to receive the sanction of the central government and the Secretary of State. This power of controlling the levy of fresh sources of income contributed, as the Joint Report has pointed out, to the close subordination in which provincial governments were held, and some means for their emancipation had to be found. In the matter of borrowing as in that of taxation, the provinces were at the mercy of the central government; and the Joint Report observed that "if provincial governments are to enjoy such real measure of independence as will enable them to pursue their own

development policy, they must be given some powers, however limited, of taking loans."

The fundamental principle with which the authors of the Reform scheme, therefore, started with reference to finance, was this: "If provincial autonomy is to mean anything real, clearly the provinces must not be dependent on the Indian Government for the means of provincial development." The first thing essential was, therefore, to separate completely the provincial and the imperial sources of revenue by abolishing the divided heads. The Joint Report proposed that land revenue, together with irrigation, should be made a wholly provincial receipt and that the income tax should be handed over entirely to the central government. Commercial stamps were to be an Indian receipt while judicial stamps were to remain provincial. Excise too was to be a provincial head in all the provinces. This redistribution of resources was calculated to produce a deficit in the Imperial treasury, and it could be made good only out of the surplus revenues which the provinces were able to secure through the new arrangements. It was proposed to distribute the amount of the Imperial deficit among the provinces in proportion to the excess revenue the latter were estimated to obtain. The provincial contributions were to be fixed at 87 per cent. of the estimated gross provincial surplus and the balance was to remain with the provinces as their net surplus. With regard to taxation it was suggested that certain subjects of taxation should be scheduled as reserved for the provinces and that the residuary powers should be retained in the hands of the Government of India. The provinces were to continue to do their borrowing through the central government and were to be allowed to tap the local markets under certain well-defined limitations.

The Joint Parliamentary Committee while declining to express any opinion on the general principles under-

lying the above scheme of financial reorganization, endorsed the suggestion of the Government of India that a fully qualified commission should be appointed to advise as to the policy to be adopted in that regard. A committee of three presided over by Lord Meston was accordingly appointed and its recommendations were adopted with slight changes. The knottiest question for the committee to decide was on what principle should the provincial contributions be fixed? The possible bases were those of population, wealth, revenues and needs of the provinces which were differently circumstanced. None of these was, by itself, a satisfactory guide for the determination of provincial contributions. The Meston Committee recommended the provincialization of receipts from General Stamps while retaining the income tax as an Imperial head, and calculated the Imperial deficit for 1921–22 at 10 crores of rupees, composed of the 6 crores previously estimated by the Government of India plus 4 crores for the loss of revenue from General Stamps. The increased spending power secured by the provinces, taken together, amounted to 18·50 crores and the share of each province in that amount was taken as the basis for fixing its contribution to the central government, backward provinces being treated with special favour.

According to the Committee, to do equity between the provinces, it was necessary that "the total contribution of each to the purse of the Government of India should be proportionate to its capacity to contribute," and it would consist in future of its direct contribution towards the deficit, together with its indirect contribution (as at present) through the channels of customs, income tax, duties on salt &c. The ratio on which the provinces were to be called upon to contribute to the Imperial deficit in the first year of contribution rested upon their existing financial position and the immediate prospects, and did not represent the ideal scale on which the provinces could, in equity, be

made to pay. The Committee, therefore, calculated the "standard" contributions which were to be steadily reached in the course of six years, in six equal annual steps from the "initial" contributions of the first year. The following table gives the per cent. initial and the standard contributions of the provinces.

| Province. | 1st year | 4th year | 7th year |
|---|---|---|---|
| Madras ... | 35½ | 26½ | 17 |
| Bombay ... | 5½ | 9½ | 13 |
| Bengal ... | 6½ | 12½ | 12 |
| United Prov. ... | 24½ | 21 | 18 |
| Punjab ... | 18 | 13½ | 9 |
| Burma ... | 6½ | 6½ | 6½ |
| Bihar and Orissa ... | nil | 5 | 10 |
| Central Prov. ... | 2 | 3½ | 5 |
| Assam ... | 1½ | 2 | 2½ |
| | 100 p. c. | 100 p. c. | 100 p. c. |

The question of the provincial loan account was easily disposed of. It was generally agreed that "the provinces should for the future finance their own loan transactions, and that joint account of this nature between them and the Government of India should be wound up as quickly as possible". The recommendation of the Committee was that "the Provincial Loan Account should be "funded" at a rate or interest calculated at the weighted average of the three rates of 3½, 4½ and 5½ per cent. now paid on varying portions of the account. Whatever portion of the account so funded the province is prepared to take over forthwith should, we recommend, be written off against an equal portion of the provincial balance as from April 1st, 1921: and the balance of the 'funded' account should remain outstanding as a debt from the province to the Government of India."

Section 1 of the Government of India Act, 1919, provides, among other things, for the making of rules for the allocation of revenues or other moneys to local govern-

ments and lays down that the rules may regulate the extent and conditions of such allocation, provide for fixing the contributions payable by local governments to the Governor General in Council and making such cotributions a first charge on allocated revenues or moneys and provide for constituting a finance department. Section 10 Clause 3 of the Government of India Act, 1919, ( Section 80 A of the Government of India Act, ) provides that "the local legislature of any province may not, without the previous sanction of the Governor General, make or take into consideration any law (a) imposing or authorising the imposition of any new tax unless the tax is a tax scheduled as exempted from this provision by rules made under the principal Act". Rules called "the scheduled taxes rules" have accordingly been framed and we shall refer to them presently. The Joint Parliamentary Committee accepted the fundamental feature of the proposals made by the Meston Committee, and the Devolution Rules contained provisions framed to give effect to them. The three Presidencies were dissatisfied with the proposed arrangements and contested the amounts of their contributions, Bombay going to the length of resisting the allocation of the heads of revenue, particularly in the matter of the income tax, an expanding source of income which it was not prepared to transfer to the central government. Madras was reluctant to make the large contribution imposed upon it as inequitble and Bengal resented the prospect of financial starvation which stared it in the face. Provincial jealousies and recriminations made their appearance, and the Joint Committee expressed the view that provincial inequalities were inevitable and could not be removed by a stroke of the pen, having been the result of longstanding and historical causes. The disappointment of the provinces was sought to be alleviated by the suggestion that "there should be granted to all the provinces some share in the growth of revenue from taxation on incomes so far as that growth is attributable to an increase in the amount of income assess-

ed." It was also suggested that "in no case should the initial contribution payable by any province be increased, but that the gradual reduction of the contribution should be the sole means of attaining the theoretical standards recommended by the Financial Relations Committee."

Devolution Rule 14 prescribes the following sources of revenue as allocated to the provinces:—(1) balances standing at the credit of the province at the time the Act comes into force; (2) receipts accruing in respect of provincial subjects; (3) a share (to be determined in the manner provided by rule 15) in the growth of revenue derived from income tax collected in the province, so far as that growth is attributable to an increase in the amount of income assessed; (4) recoveries of loans and advances given by the local government and of interest paid on such loans; (5) payments made to the local governments, by the Governor General in Council or by other local governments, either for services rendered or otherwise; (6) proceeds of any taxes which may be lawfully imposed for provincial purposes; (6) the proceeds of any loans which may be lawfully raised for provincial purposes; and (7) any other sources which the Governor General in Council may by order declare to be sources of provincial revenue. The revenues of Berar are allocated to the Central Provinces subject to the condition that the government of the C. P. shall be responsible for the due administration of Berar and the Governor General may terminate or reduce the allocation if in his opinion proper provision has not been made for the expenditure necessary for the safety and tranquillity of Berar.

Rule 15 of the Devolution Rules defines the share of the Provinces in the collections of the income tax at "three pies on each rupee brought under assessment under the Indian Income Tax Act, 1918, in respect of which the income-tax assessed has been collected." This amount was estimated to work at about 25 per cent. of the gross

revenue accruing from income tax and super tax collected by provincial agency in 1920-21. It would appear from this as if provincial governments had secured a substantial addition to their revenues through the concession granted to them. The Rule, however, proceeds to state :- "In consideration of this allocation, each local government shall make to the Governor General in Council a fixed annual assignment of a sum to be determined by the Governor General in Council as the equivalent of the amount which would have accrued to the local government in the year 1920-21 (after deducting the provincial share of the cost of special income-tax establishments in that year, had the pie rate fixed under sub-rule (1) been applied in that year, due allowance being made for any abnormal delays in collection of the tax." The effect of this rule is that the allocation to and the fixed annual assignment by the Provinces, are, to begin with, set off against each other, and in subsequent years, the net gain of the provinces will be one-fourth of the excess of the increasing allocation over the fixed assignment. The allocation made to the provinces at the pie rate will increase with the increase in the amount of the incomes brought under the income tax while the assignment from the provinces to the central government will remain fixed. The difference between the two amounts will constitute the growing gain of the Provinces. This addition to the resources of the provinces will not be appreciably large and the earlier the central government becomes independent of provincial contributions the better for the Provinces. Even then the grievance of Bombay will remain unredressed and that province will have to finance its increased and expanding needs with sources of revenue which can not be expected to expand rapidly and some of which threaten to shrink. Madras complains that it has to start the reforms with inadequate resources and Bengal that it is actually confronted with a deficit in the very first year of the new regime. The initial contributions of

the provinces proposed by the Meston Committee have been adopted in the Rules but the method and the proportions in which reductions shall be made are specified as under:—"When for any year the Governor General in Council determines as the total amount of the contribution a smaller sum than that payable for the preceding year, a reduction shall be made in the contributions of those local governments only whose last previous annual contribution exceeds the proportion specified below of the smaller sum so determined as the total contribution, and any reduction so made shall be proportionate to such excess":

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

In cases of emergency, provinces may be required to pay excess contributions with the sanction of the Secretary of State. Provincial contributions and assignments are a first charge on the allocated revenues and the time and the method of payment shall be determined by the central government. All moneys derived from sources of provincial revenue are to be paid into a common account with the central government, who will have power, in the financial interest of India as a whole, to require a local government so to regulate its expenditure as not to reduce its balance on a specified date or dates below a stated figure. Provincial balances may be withdrawn only after due notice given to the central government. Provincial loans owed to the central government shall carry interest which must be paid on dates determined by it. The amount of the capital sum must be re-paid in instalments to be fixed with a view to the repayment of the whole before the expiry of twelve years. Capital sums spent on irrigation works in the provinces shall be treated as advances to the local governments and shall carry interest at 3·3252 per cent. in case of outlay upto the

end of 1916–17, and in the case of outlay in later years at the average rate paid by the central government in the open market since the end of that year.

Rule 2 of the Scheduled Taxes Rules authorises the legislative council of a province, without the previous sanction of the Governor General, to make any law imposing, for the purposes of the local government, any tax included in schedule (1) to the Rules. That schedule enumerates the following eight taxes :— ( 1 ) on land put to uses other than agricultural; ( 2 ) on succession or on acquisition by survivorship in a joint family ; (3) any form of betting or gambling permitted by law ; (4) advertisements ; (5) amusements ; (6) any specified luxury ; (7) a registration fee ; and (8) a stamp duty other than duties the amount of which is fixed by Indian legislation. Schedule 2, specifies 11 taxes, (which includes cesses, rates, and duties), and the local legislative council may authorise, by law, any local authority to impose these taxes they being imposed on land, buildings, vehicles, animals, markets, trades, professions or may be an octroy or a water rate, lighting rate, or a drainage tax. Both the schedules may be expanded at his discretion by the Governor General in Council. A local authority need not, of course, seek the sanction of the local government when the right to impose the taxes has been already conferred upon it by any law in force for the time being.

The power of independent taxation having been conferred upon them, within certain limitations, local governments are expected to levy their own taxes when their existing sources fail to produce the revenue required to finance the ever-growing requirements of the provinces. Local governments are now responsible for "provincial" subjects, and among the latter, the Ministers are "responsible" to the people for the transferred services. The local legislature has control of these matters and must regulate taxation according to the needs

and the wishes of the people. The objects requiring expenditure are many. The cost of administration is already very heavy and it has largely increased owing to the high cost of living. People are naturally unwilling to be burdened with additional taxation and yet want improvements of all kinds. The financial problem of the immediate future is, therefore, surrounded with difficulties and must be boldly faced. Great responsibility, therefore, lies on the shoulders of the Ministers and the members of the legislative councils in this matter.

Devolution Rule 27 relates to the power of sanctioning expenditure on 'transferred' subjects and to the sanction of the Secretary of State or the Government of India required in cases enumerated in Schedule 3, which has reference to the creation or abolition of permanent posts and posts held by members of an all-India service, to the creation of a permanent post with a maximum salary of Rs. 1,200 a month, to the creation of a temporary post with a salary of Rs. 4,000 a month and to expenditure on purchase of imported stores or stationery otherwise than in accordance with rules made by the Secretary of State in Council. The Joint Committee suggested that in the matter of expenditure on reserved services, the Secretary of State may dispense with his previous sanction or delegate the power of control to the Government of India. With respect to transferred services the Committee held that the Secretary of State must retain his control over expenditure on them to the extent that it may be likely to "affect the prospects or rights of the all-India services which he recruits and will continue to control and he must retain power to control the purchase of stores in the United Kingdom." It goes on to say:—"But subject to these limitations, Ministers should be as free as possible from external control, and the control to be exercised over expenditure on transferred subjects should be exercised by the provincial legislature, and by that body alone."

One effect of financial decentralization was to transfer to local Governments responsibility for famine expenditure. The Joint Report proposed that "the provincial settlements should make allowance based on each province's average liability to this calamity in the past; and it will be the duty of provincial Governments liable to famine not to dissipate this special provision, but to hold a sufficient portion of their resources in reserve against the lean years." In cases of extraordinarily heavy famine expenditure, the central Government was to assist the local government concerned with a loan, temporary or permanent. Schedule 4 to the Devolution Rules requires that the 9 provinces mentioned shall make every year provision in their budgets for expenditure upon relief of, and insurance against, famine, of the amount stated against their names as under :—

| | Rs. | | Rs. |
|---|---|---|---|
| Madras | ... 6,61,000 | Burma | ... 67,000 |
| Bombay | ... 63,60,000 | Bihar & Orissa | ... 11,62,000 |
| Bengal | ... 2,00,000 | C. P. | ... 47,26,000 |
| U. P. | ... 39,60,000 | Assam | ... 10,000 |
| Punjab | ... 3,81,000 | | |

The provision for famine is to be made in the shape of a demand for a grant, and that portion of a grant which may not be spent for the purpose intended, is to be transferred to the famine insurance fund of the province. When the accumulated total of the fund is not less than six times the amount of the annual assignment, the annual provision may be temporarily suspended. The fund shall form part of the general balances of the Government of India who will pay to the local government interest on the average of the balances held in the fund on the last day of each quarter, the interest being credited to the fund. The balances in the fund may be utilised for the relief of famine or the construction of protective irrigation works or other works for the prevention of famine. They may likewise be used in the grant of

loans to cultivators under the Agriculturists' Loans Act or for relief purposes.

Devolution Rule 30 states that all proposals for raising taxation or for borrowing money are, in a governor's province, to be considered by the two portions of the executive government sitting together, but the decision is to be arrived at by that part which originates the proposal. This practically means that all taxation proposals must proceed from the Ministers. The executive councillors have in the Governor's certificate, a ready means of securing the grants they want and the balance of the provincial revenues not being enough for the needs of the Ministers, the latter must make proposals for additional taxation. And being responsible to the legislature, the Ministers must bear the brunt of the criticisms or opposition of the legislature. The anomaly arises from the fact, the reader need not be reminded, that while the finance of the province is one, the responsibilities of the executive government are divided. It may indeed be presumed that the colleagues of the Ministers will not insist on demands that are calculated to embarrass them and that the latter will exert themselves to the utmost to enforce economy on the executive councillors. That is the only way in which the disadvantage of dyarchy can be overcome. But the pressure will have to come, in the main, from the legislature which must constantly and consistently insist on the Ministers doing their duty.

Devolution Rules 31 to 35 provide for the allocation of revenue to the two parts of the executive government. It has been already stated that the distribution of expenditure between the reserved and the transferred departments is to be arranged by mutual agreement by the two portions of the government. If at the time of the preparation of the budget the Governor is satisfied that there is no hope of agreement being reached within a reasonable time between the executive council and the ministers, "he may, by order in writing, allocate the revenues

and the balances between reserved and transferred subjects, by specifying the fractional proportions of the revenues and balances which shall be assigned to each class of subject." Such an order of allocation may be made at his discretion by the governor or in accordance with the report of an authority to be appointed by the Governor General in this behalf on the application of the Governor. Every such order shall remain in force for a period to be specified in the order, which shall not be less than the duration of the then existing council and shall not exceed by more than one year the duration thereof. In case an agreement is reached in the meanwhile, the order may be revoked by the Governor or other allocation agreed upon may be made. The Governor General's consent must be obtained before the revocation of an order which has been made on the report of an authority appointed by him. If during the period of the order any increase of revenue accrues on account of the imposition of fresh taxation, the order must state that (unless the legislature otherwise directs), the increase shall be allocated to the part of the government by which the taxation is initiated. If at the time of the preparation of the budget, no agreement or allocation, as described above, has been reached, the budget shall be prepared on the basis of the aggregate grants respectively provided for the reserved and transferred subjects in the budget of the year about to expire.

This whole arrangement, which places so much power in the hands of the Governor, is obviously a safeguard against a deadlock between the Ministers and the Executive Council and is designed to ward off and prevent a breakdown of the machinery of the provincial government under dyarchy. It lends emphasis to what we have stated regarding the position of Ministers in the executive government of the province and the relations which ought to subsist between them and the legislature. If Ministers are not made to realize their responsibility to

the legislative council in an effective manner, responsible government will be nothing more than a name. People have been accustomed to unresponsible government for such a long time that they must make an effort to assimilate the new form of constitution. What is true of the local legislatures, is equally true of the Legislative Assembly. Though the executive with which the Assembly is associated, is unlike that in the provinces, wholly unresponsible, its potential strength is very great and an opposition, if it is well-organised, may very soon win power that will be embarrassing to the government. The serious drawback of the position of the Assembly is that it is a conglomeration of he terogeneous and ill-assorted elements that will not combine and a little tact is enough for the government to manage it. Mr. A. H. Whyte, the President of the Assembly, has expressed the following views on this question:—"New problems will, of course, very soon arise. There can be no degree of permanence whatever in a political situation whose principal factors are an irremovable executive on the one side and a large constitutionally irresponsible majority on the other. I think the political problem thus presented will ripen for treatment long before the ten years are over. We shall watch in the immediate future to see how the two parties develop; whether for instance, the Government will secure the necessary parliamentary cohesion before the majority reaches the same result for itself: Whichever develops first into a coherent parliamentary force, compact and well led, will be master of the situation. I say 'master of situation' because the Government may be in that position, even though it is in a minority, for this reason, that the majority is composed of fractions which will only coalesce with difficulty, and, therefore, it is not improbable that the majority will fail to weld itself into one compact whole, ready to act in unison on all important occasions."

## VI.

## THE SECRETARY OF STATE IN COUNCIL.

Two important popular demands in relation to the Secretary of State and his Council were that his salary should be placed on the British estimates instead of being paid out of the revenues of India and that his Council should be abolished. The Montague-Chelmsford Report accepted the first suggestion chiefly on the ground that Parliamentary control over government in India would be real if the salary of the Secretary of State were made to depend on the vote of the House of Commons and the latter were provided with a regular opportunity to call him to account for his stewardship. The Joint Committee concurred in this view and recommended that all charges of the India Office not being "agency" charges should be paid out of moneys to be provided by Parliament. But it was strongly opposed to the abolition of the Council of India because it thought that such a body of advisers was necessary to give the Secretary of State the benefit of their experience and advice.

By Sections 30 to 32, the Act of 1919 provides for the payment of the charges of the India Office, the composition of the Council of India, the qualifications, salary and tenure of its members and the procedure of its business. The old act is amended in several respects on these points. The minimum and the maximum number of the members of the Council is now 8 and 12 instead of 10 and 14. One-half of the members must be persons who have served or resided in India (not British India) for ten years and must not have left India for more than five years before the date of their appointment. The normal term of office is to be five years instead of seven. The annual salary of each member is fixed at £1,200 and a member who is domiciled in India shall receive in addi-

tion, an annual subsistence allowance of £600. "Such salaries and allowances may be paid out of the revenues of India or out of moneys provided by Parliament." The Secretary of State shall fix the quorum for the meetings of the Council. One meeting of the Council must be held once a month, not once a week as before. Committees of the Council may be constituted by the Secretary of State and he is to prescribe the manner in which the business of the Secretary of State in Council or the Council of India is to be transacted.

Section 33 of the Act authorises the Secretary of State in Council by rule to regulate and restrict the exercise of the powers of superintendence, direction and control vested in him in such manner as may appear necessary or expedient to give effect to the purposes of the Act. The Section proceeds to provide for the laying of the Rules before Parliament for its approval. The creation of the Legislative Assembly with a large majority of elected members and possessing the means to present a constant and inconvenient opposition to the Government of India, necessitated a good deal of decentralization and the relaxation of the Secretary of State's control. But so long as the latter is responsible to Parliament, no statutory change in the relations subsisting between the Home Government and the Government of India was possible. The conventions governing those relations could, however, be modified, and the Joint Committee was led to formulate the general proposition that "the Secretary of State may reasonably consider that only in exceptional circumstances should he be called upon to intervene in matters of purely Indian interest where the Government and the Legislature are in agreement."

A special case of non-intervention on which the Committee felt it necessary to lay stress was in relation to the Indian demand for "fiscal autonomy." It had long been the complaint of Indian public opinion that the

fiscal policy of this country was dictated from London and that the interests of India were often subordinated to those of England. The Joint Committee recognised that though India's membership of the Imperial Conference opened the door for negotiation between this country and the rest of the Empire, "negotiation without power to legislate is likely to remain ineffective." The solution suggested may be best stated in the words of the Committee itself thus:—"A satisfactory solution of the question can only be guaranteed by the grant of liberty to the Government of India to devise those tariff arrangements which seem best fitted to India's needs as an integral portion of the British Empire. It can not be guaranteed by statute without limiting the ultimate power of Parliament to control the administration of India, and without limiting the power of veto which rests in the Crown; and neither of these limitations finds a place in any of the statutes in the British Empire. It can only therefore be assured by an acknowledgement of a convention. Whatever the right fiscal policy for India, for the needs of her consumers as well as for her manufactures, it is quite clear that she should have the same liberty to consider her interests as Great Britain, Australia, New Zealand, Canada and South Africa. In the opinion of the Committee, therefore, the Secretary of State should as far as possible avoid interference on this subject when the Government of India and its Legislature are in agreement and they think that this intervention, when it does take place, should be limited to safeguarding the international obligations of the Empire or anyfiscal arrangements within the Empire to which His Majesty's Government is a party."

This last exception leaves a large loophole for the intervention of the Secretary of State. The fundamental drawback in India's fiscal position is that the Government of India is responsible and subordinate to Parliament un-

like the governments of the self-governing Dominions and the Indian Government is not amenable to Indian public opinion. The Government of India may not agree to the view taken by the Indian legislature on an important fiscal measure, and the voice of the former must in the end prevail. If, besides, His Majesty's Government accepts a scheme of Imperial preference with the assent of the Dominions which the Indian legislature does not want, there is nothing left for the latter but to submit to the arrangement. The Imperial Government cannot force upon a self-governing Dominion a policy which it disapproves. But India can be coerced into acquiescence by the very fact of its constitutional subordination. The conventions referred to above will indeed go some way in the emancipation of the Government of India. Short of full self-government, and in the absence of popular control in the Government of India, relaxation of restrictions by the Secretary of State in certain well-defined cases remains the only means of granting fiscal freedom to this country.

Local governments require freedom from control from above as much as the Government of India. The Joint Committee says :— "In purely provincial matters, which are reserved, where the provincial government and legislature are in agreement, their view should ordinarily be allowed to prevail, though it is necessary to bear in mind the fact that some reserved subjects do cover matters in which the central government is closely concerned." Over transferred subjects the control of the central government and of the Secretary of State is to be restricted to the narrowest limits possible as defined by Section 1 clause 3. We would draw the attention of the reader to what has been stated above in connection with Rules to be made by the Secretary of State and the Government of India, on pages 16 and 17 above. The Secretary of State in Council is to prescribe by order the procedure for the sending of orders and communications to India and in general for correspondence between the Secretary of State and the Governor General in Council or any local government.

Section 35 provides that His Majesty may by Order in Council make provision for the appointment of a High Commissioner for India in the United Kingdom, and for

the pay, pension, powers, duties and conditions of employment of the High Commissioner and of his assistants; and the Order may further provide for delegating to the High Commissioner any of the powers previously exercised by the Secretary of State or Secretary of State in Council whether under the principal Act or otherwise in relation to making contracts, and may prescribe the conditions under which he shall act on behalf of the Governor General in Council or any local government. The Crew Committee appointed to consider the organization and functions of the Home Government, felt "satisfied that the time has come for a demarcation between the agency work of the India Office and its political and administrative functions," and this was regarded as marking a stage in India's progress towards full Dominion status. The Dominions have their own representatives in London who perform certain duties there on behalf of their governments. The Government of India has, for instance, to buy stores and railway material abroad and there is no reason why this work should not be done independently of the India Office. The Indian High Commissioner has been appointed and is now performing the above duties. The appointment is not, however, made by the Government of India but by His Majesty by Order in Council while Dominion Governments appoint their own High Commissioners.

People in England are still under the impression that the fiscal and the economic policy of India can be and ought to be controlled from London in matters like the purchase of railway material. Recently the Secretary of State was asked in the Commons if it was desirable in Imperial interests that Indian State railway orders should be given to foreign companies and Mr. Montagu replied that the matter was under the control of Sir William Meyer, India's High Commissioner "whose policy was to give full weight to considerations urged by the questioner." Of a similar nature was the pressure sought to be exercised upon the Secretary of State in connection with the enhanced duties on British among other imports, and the Secretary of State defended the convention recommended by the Joint Committee and referred to above.

# APPENDIX.

## THE INDIAN ELECTIONS.

### A SUMMARY OF RESULTS.

In a memorandum issued by the India Office showing the results of the first elections to the Indian Legislature and the Provincial Legislative Councils constituted by the Government of India Act, 1919, some interesting particulars regarding these elections are to be found. Taking the 10 Legislative bodies collectively (two Chambers of Indian Legislature and eight provincial councils) there were 774 seats to be filled by election, and 1,957 candidates stood for these. There were contested elections for 535 of the 774 seats, and for these 535 seats 1,718 candidates were forthcoming—an average of over three per seat, though in some constituencies as many as 12 candidates stood for one seat, and in one constituency in the United Provinces 16 candidates were nominated. For only about half a dozen of the 774 seats was there no candidate nominated in the first instance, and all of these have since been filled by by-elections. The Central Provinces had the largest number of uncontested elections and the smallest total number of candidates. In all provinces the dearth of candidates was most marked in Muhammadan constituencies, particularly in the towns, and this was specially noticeable in the Bombay Presidency and in the Punjab. It is generally agreed (states the memorandum) that this must be attributed to a considerable extent to the boycott which was largely advocated and adopted by Muhammadans as a protest against the Turkish peace terms.

In view of the great variations in conditions from province to province, and even from constituency to constituency, general deductions from provincial averages are apt to be misleading. But certain general conclusions can safely be drawn. In the first place, the percentages of votes polled in contested elections was on the whole remarkably high. Not unnaturally, percentages tended to be highest in the "special" constituencies—landholders, universities, commerce, etc.—where voters were less numerous and as a whole of superior education; but high averages were reached also in many "general" territorial constituencies. Thus in Madras City and two Madras districts, over 50 per cent. of voters came to the polls, the poor results common in the southern districts of the Madras Presi-

dency being attributed mainly to severe floods at the time of the elections. In the United Provinces one "general" rural constituency polled 66 per cent. 11 over 50 per cent. and 8 between 40 per cent. and 50 per cent. In Bihar and Orissa rural constituencies percentages of 75, 71, 69 and 58 are examples, and in this province the general average in contested elections was 40 per cent. Small polls were generally commoner in urban than in rural constituencies, particularly in Muhammadan urban constituencies, no doubt chiefly for a reason noticed above in the matter of Muhammadan candidature; and this was specially the case in the Punjab. But in that province the polls varied in rural areas from 22 per cent. to 67 per cent. In the United Provinces even Muhammadan constituencies showed quite high percentages in rural areas, the average figure for this class of constituency being 28 per cent. as compared with 35 per cent. for rural non-Muhammadan constituencies.

In the second place, the general average of rural voters (who form the great majority of the voting population) is considerably higher than was commonly anticipated, having regard to their previous almost total inexperience of elections in general, and to the not inconsiderable distances which had frequently to be traversed between the voter's home and the polling station. In Bihar and Orissa it was noticed particularly that rural voters displayed marked interest in contests where the real interests of the cultivating classes were stirred and an appeal was made by a candidate of their own.

Another noteworthy feature of the results which has belied expectations is the success of the non-Brahmins in the Madras Presidency. Although they constitute the great bulk of the population, the non-Brahmins expressed grave apprehensions as to their position under the Reforms Scheme in the belief that they would fail to secure adequate representation on the provincial Council, and that the 28 seats reserved for them to safeguard their interests would prove wholly insufficient. On this Council 74 seats were open to all Hindus, of which non-Brahmins secured no less than 54. Another "special interest" which had also expressed doubts as to its chances of securing adequate representation was that of landholders; but this class, in addition to the seats, specially reserved for them, secured a large proportion of the open seats in the Councils of the three provinces in which their apprehensions had been specially expressed—Bengal, the United Provinces and Bihar and Orissa. The extension of the franchise for provincial Councils to ex-soldiers as such, resulted in the addition of over 98,000 electors to the rolls in the Punjab, the province principally affected.—*Times of India.*

# INDEX.