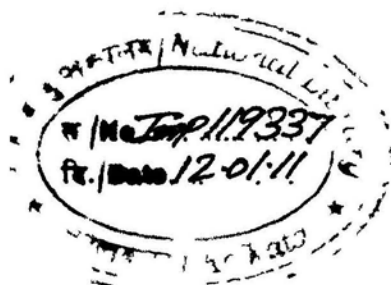


Printed by  
G. N. Kulkarni, at the Karnatak Printing Press,  
434, Thakurdwar, Bombay,  
and published by  
Dattaram Ramchandra Sanzgiri,  
Proprietor, Ramchandra Govind & Son,  
Kalbadevi, Bombay.



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## INTRODUCTION.

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To attempt a full description of the political institutions of a country is a very difficult, and often a thankless task. The entirety of administrative organs, with all their complexity of structure and variety of functions, is seldom described in a single instrument. In many countries, like Hungary, or Russia, or England, no such document at all exists. Even in the countries—like the United States or France—where all constitutional provisions are supposed to be contained in one document—the silent growth of usage, the accumulated force of indefinite but well-known precedent, render the letter of the constitution incomplete if not obsolete, unreliable if not altogether fictitious. Change and progress is the one law of human life to which all human institutions must submit, and political institutions, far from being an exception to the rule, are amongst the most unstable of our achievements. The experience of France alone suffices to show that a constitutional instrument, if it aims at immutability, attempts an impossible task. For the functions and importance of administrative authorities vary even while the constitution which instituted them remains itself unchanged. Only, in the absence of specific amendments of the constitution, the ingenuity of constitutional lawyers, sharpened by the exigencies of an unthought of situation, will suggest interpretations, which, because they were never intended by the authors, will not be the less approved and accepted. Such inter-

Difficulties of a  
writer on political  
subjects.

pretations make the original, unaltered constitution a mere fiction, a standing, solemn satire on those who intended it to be unalterable. Besides, in describing political institutions an honest author has often to wrestle—consciously or unconsciously—against the influences of his own education, and environment. He has eternally to be on his guard against losing sight of the perspective between the past and the present. Living in the present, thinking always of the present he often unwillingly, unconsciously exposes himself to the charge of partisanship. To avoid that charge altogether ought to be the aim, but it is often an impossible ideal. To outline all the aspects of a question would be the safest rule of conduct but for the risk of undue prolixity. To present one's own opinion on a question, and to support it, when necessary, by examining and exposing the opposite opinion is possible to every writer and not entirely reprehensible.

Special difficulties  
of an Indian writer:  
(a) variety of sources  
of political authority  
in India: (1) Acts of  
Parliament.

These difficulties, common to all writers on political subjects, are particularly hard to overcome for a writer on the Indian polity. The powers of the Government of India are derived from several sources, and of these the Acts of Parliament are the most important to-day. An Act of Parliament seldom deals exhaustively with a topic, but even when it does, English legislators delight in fashioning each Act so far as to suit only the exigency of the moment. They fancy themselves to be of an eminently practical bent of mind, because they exclude logic and system in the conception and finish of their creations. One cannot quarrel with a people who serenely accept their obvious defects as the

undisputed hall-mark of their genius. But since Acts of Parliament—even the best of them—leave ample room for forensic construction and judicial interpretation, the student is bewildered by the number alone of the statutes—each explanatory, amendatory or abrogatory of the previous ones—through which he has to pursue his investigations. In the case of the Government of India, for instance, the last consolidating Act—the Act of 1915—had to repeal, or amend 47 previous statutes. All these several Acts were passed as and when an occasion arose, and always with reference to that occasion only. Attempts were made from time to time to collect this medley of provisions into one consolidating enactment; but soon the Consolidating Act itself had to be amended, either because the growing needs of administration demanded an expansion, or because of the obscurity or imperfection that had been overlooked while framing the main Act. Thus the Regulating Act was superseded by Pitt's act, and that again by the various Charter Acts. The Government of India Act of 1858 was materially amended by the India Councils Act of 1861, by the Indian High Courts Act, and by the Reforming Acts of 1892, 1909, 1912. Even the latest Consolidating Act (5 & 6 Geo. V. Ch. 61) was itself amended within less than a year after its passage.

Acts of Parliament, even when they are logical, systematic and comprehensive, do not tell the whole tale. At most they can provide the bare skeleton; the breath of life has to be infused from other sources. Under the Company two distinct agencies tried to fill up the

Acts of Parliament have to be supplemented by reports of Parliamentary Committees, dispatches of Directors and speeches in Parliament.

inevitable gap left by an Act of Parliament. Great pieces of legislation, like the Charter Acts, were preceded by exhaustive inquiries by Parliamentary Committees, and the Acts were based on the reports of those committees. These reports, therefore, served as an unfailing guide to the motives actuating the authors of that legislation. And when a new Act was passed the comments of the Court of Directors, embodied in their dispatches to the authorities in India, served to explain and illustrate the changes made in the status quo. The dispatch of the Directors, for instance, on the Charter Act of 1833, is even now regarded as an authority on the principles governing the relations between the supreme government and its provincial lieutenants in India. Valuable light may also be thrown on the scheme of the governance of India under the Company by the pages of Hansard, though this last becomes particularly important only after India had passed to the Crown. More important than these is the voluminous literature comprising the biographies and private correspondence of some of the leading personages in the story of India under the British rule.

With the aid of these several agencies of Parliamentary reports and Directors' dispatches and the lives and correspondence of men like Clive and Hastings, and Burke and Dundas, and Canning and Wellington, we may indeed succeed in animating the bare skeleton provided by parliamentary enactments. But, as already observed, these are not the only source of the powers of the Government of India. The prero-

(ii) Prerogative of the Crown and (iii) acts of local legislatures.

gative of the Crown—vague and extensive in England—is not insignificant in India. And a still greater portion of the governmental machinery depends upon the acts and ordinances of the local legislatures and authorities. The entire scheme of local self-governing institutions in India, or the great code regulating the conduct of public servants in India is the result of such action. These local acts, ordinances and resolutions are more numerous than the statutes of Parliament, and need external commentaries as much. The force of custom and precedent, ever very powerful, is particularly important in the bureaucratic atmosphere of India. To explain this mass of local acts, to render precise the indefinite sway of usage, the student must seek the help of the published volumes of dispatches and correspondence, as well as that of the speeches and writings of eminent men connected with the administration. Authors and administrators like Sir R. Temple, Sir J. Strachey, Sir H. Maine, Sir W. Hunter have left ample material for a student to work upon. Reports of Royal Commissions—which in India as in England are the *ultima ratio* of embarrassed officials—and resolutions of policy issued by the Imperial Government on these reports are also indispensable.

The mere mention of the necessity to consult such a variety of authorities would suffice to give an idea of the difficulties of a student of Indian political institutions, even in that portion of them which has been the subject of definite legal enactments. A not insignificant portion of the powers of government in India is derived from the ancient rulers of the country. This is a heritage of the

(iv) Heritage of  
the past.

days when there was no constitution, and when the personal genius or caprice of the ruler was all-in-all. The whole of the Indian system of finance, if we exclude the most recent changes; the chief sources of public revenues; the constitutional position and practical importance of the army—all alike bear witness to this heritage of our past. In this respect the greatest difficulty is the lack of any authoritative pronouncement guiding the policy. As an instance in point we may mention the position of the Native States in India. The relations between the British Government and the Native States have formed the subjects of numberless treaties and engagements and sanads. These have been collected by an industrious official, the late Sir Charles Aitchison, and have been brought up-to-date. But many of the treaties, even when they have not been specifically annulled or abrogated are often obsolete owing to the ever increasing mass of custom and precedent, and not less to the changed atmosphere of the times. The older treaties contemplate the relations of equal allies; the more recent ones seem to suggest the position of sovereign and feudatories. We are at a loss to determine the exact principles governing this subject—in spite of an illuminating treatise by the late Sir W. Lee-Warner—because it has ever been the policy of the Government of India to regard these relations as confidential. In the absence of official, authoritative pronouncements, rumours and conjectures, unsound inferences deduced from exploded theories, have more than their due share; and the student, already bewildered by the mass of conflicting legislation, is at last completely mystified by this last aspect of the powers of the Government of India.

Yet another difficulty is raised by the admitted fact of political transition in India to-day.

(b) *India in transition.* The European War, an unmitigated disaster for mankind in general, has yet proved serviceable to India in as much as the claims of Indians have begun to obtain recognition, thanks to the services of India to the British Empire in the hour of its utmost need. Our soldiers have fought and bled and died for the Empire in France and Egypt and Mesopotamia. Our Government has offered a free gift of £ 100,000,000, to the Government of the King, besides subscribing heavily to the English loans from our various Reserves. The Indian people—the poorest in the world—have breathed not a murmur against the increasing burden of taxation, and our princes have hesitated not a moment to place their purse and their sword at the disposal of the King-Emperor. In return England has admitted the claims of India to a fuller recognition as an equal member of the Empire, and her Colonies have not protested. We are conscious of impending, radical changes. The acknowledged representatives of the people have put forth definite proposals, while even the leading officers of the state in India have admitted the necessity of a change in the democratic direction. For all these sentiments to materialise time must no doubt be allowed; though it is to be hoped, time will not serve to make the powers that be forgetful of the services as also of the needs of India. Be that as it may, the point remains, that Indian polity being admittedly in a state of transition, the student's task is as delicate as it is otherwise difficult.



The signs of a rapid and radical transition are not confined to India alone. Even the staid and sober old England is undergoing a revolution, all the more formidable because it is so silent. A Curzon-Milner-Lloyd George-Henderson combination would have been simply inconceivable three years ago, and is the most palpable reality of to-day. We must not, indeed, generalise too hastily upon the basis of the events forced by the War. We cannot say, for instance, if the military and industrial conscription necessitated by the War will be maintained in times of peace; we may doubt if the press censorship required to-day for obvious reasons, will continue when those reasons no longer exist; we may even question, in spite of the declaration of Mr. Lloyd George to the contrary, if the party spirit has vanished from the English politics never to return. Nevertheless we may be sure that every one of the War measures—from the “Business Government” and Directory of Five to the military and industrial conscription—have been accepted because they pointed out some flaws in the political and national organisation of England before the war, and that their spirit will not be lost sight of even if they do not endure in the exact shape they have to-day.

Corresponding to these changes in England the rest of the Empire has also felt the effects of the war. Till this war the English self-governing Colonies were intent upon developing their local resources. New countries with an almost virgin soil, they gave ample opportunities to every class of their inhabitants; and the best of the colonials were consequently unable to see

beyond the horizon of the Colonies. This is, perhaps, the only explanation of South Africa deliberately creating a tension with India, Canada negotiating a Reciprocity Treaty with the United States, and Australia affronting China and Japan by her labour legislation. The Imperial Government was often embroiled with its neighbours and embarrassed vis-a-vis its dependants because the colonial statesmen simply could not realise their imperial and other obligations. But the war, we may hope, has made them realise these responsibilities, even though the field for local development has not appreciably contracted. Without the Colonies of England understanding these duties there could never be a sound and durable Federation of the Empire, perhaps not even a durable reconstruction of Europe.

In the following pages I have discussed only the domestic problems of India from the standpoint of an Indian statesman. But the aspect of India as a unit of the British Empire has, by recent events, acquired an importance which no student of Indian political institutions can ignore; and this is perhaps as fit a place as any in the body of book to discuss that aspect. No one can write now, as Prof. Lowell wrote only a few years ago, that the question of Imperial Federation can have reference only to the self-governing colonies and England. If we are to believe the highest authorities in England, and if we may accept some of the recent events as an earnest of their intentions, we may take it as settled that no scheme of Imperial Federation will now be entertained which does not incorporate India as an integral part

of the Federation. The question, then, to discuss is how the idea of Federation, if realised, will affect India, and what ought to be India's position in that Federation.

It may be observed at the outset that there is not —and there cannot be—that unanimity of sentiment in favour of a closer union which we in India are at first sight apt to imagine. A closer union of the various self-governing members of the Empire would necessarily result in a surrender, to some extent, of the power of self-government now so fully enjoyed. That there is at all a sentiment for a closer union—and that not in England alone—is explained by the fact that under the existing state of things, on all occasions of the greatest moment, England could virtually compel her self-governing colonies to forego some of the powers of local autonomy. Said Mr. Hughes the Australian Premier, on the eve of his departure from England last year, "The consequences of the War to the Dominions are not confined to contributions of men to fight the battles of the Empire, nor to their maintenance; but extend in such a way as in effect to reduce the self-governing powers of the Dominions, merely giving effect to the war policy determined by those who control it. And the effect of doing those things that had to be done will not cease when the war ends, but will remain for many years—in this case at least for a generation—to modify profoundly, if not actually to determine, the policy of the Dominions. It will hardly be denied that if Britain had a right to compel the Dominions to incur such a tremendous burden of debt as this war will impose upon all of them,

Case for federation  
in other parts of the  
Empire.

it has, for all practical purposes, the power to compel them to impose heavy taxation upon themselves; and, if one nation has a right to tax another, it is perfectly clear that the sovereignty or quasi-sovereignty of the latter disappears." (*The Times*, June 1916.)

This long extract is given to show that the idea of a closer union of the Empire, stripped of its sentimentalism, is caused on the side of England because of the growing inability of England to meet single-handed the cost in men and money of a modern European War, as also the much greater cost of preparing for it; and on the side of the Dominions in a desire to control the foreign policy of England with a view to reap the economic and other advantages expected to result from a control of the external affairs. Where colonial politicians have not yet risen to the stature of Imperial statesmen, where the perception of advantages resulting from a co-ordination of foreign policy and defence is yet vague, the sentiment for union, involving a surrender in some measure of the powers of self-government, does not find favour with the public. Thus at a Nationalist Congress in South Africa, held at Worcester in September last, a resolution was moved and carried, "This Congress, having heard of the movement in the United Kingdom and its colonies in favour of a reconstruction of the British Empire, declares itself as strongly as possible against such reconstruction, which may have the effect of any reduction of the existing rights of colonial self-government, or any interference with the immediate power of the people of the Union, or our government, over matters of moment to the country." This resolution expresses the sentiments of

Opposition to Federation in Africa and Australia.

a not insignificant portion of the people of that colony. The Nationalist vote at the last election amounted to 80,000 and there is no reason to believe that the Nationalist party is losing ground. Perhaps we may explain this opposition to federation in South Africa on the ground of the unfortunate race question between the Boer and the Briton. Such race differences exist even in other colonies. That French and English Canadians are at one in this war may be explained by the close alliance between England and France, but in the untoward event of a difference between England and France, or worse still, between England and the United States may not the the same opposition be apprehended in Canada? Even in the purely British Colony of Australia the sentiment in favour of a Federation is by no means so unanimous as the utterances of Mr. Hughes and other Imperialist politicians might suggest. An Australian correspondent of the *New Statesman* writes from Melbourne on February 16, "The opinion prevails in this country that Australia's real attitude towards the Imperial Federation has been seriously misrepresented by publications like the *Round Table* and the *Quarterly Review* and a certain group of officials and politicians who pose as authorities on Commonwealth affairs.....The truth is that outside a very limited circle there is nobody of opinion which favours Imperial Federation or any closer political bonds with the United Kingdom." In support of this view the same writer quotes the "*Sydney Telegraph*" writing as follows.—"Nothing exists to show that the system which has yielded such excellent results until the war and during the war, cannot continue to do so. It is quite unwarranted to assume that in its foreign

policy the Imperial Government, as matters stand, does or can ignore, the interests of the Dominions, or that under a system of Imperial Federation, our influence upon the shaping of such policy would be greater than it is now. Any representation that you have in an Imperial Government would be insufficient to enable the Commonwealth view appreciably to affect its decisions." (*The New Statesman*, April 21, 1917).

Under such a state of public opinion in the colonies it would be presumptuous for an individual citizen of any one part of the Empire to pronounce upon the desirability of the Federation. Nor can it be said yet what powers and functions will be allotted to the Imperial Council proper—when one is constituted,—and what would be its relations with its constituents; though this much seems self-evident that at least the foreign affairs, defence, and some portion of financial powers will have to be made over to such a council. At this stage an Indian writer could, with propriety discuss India's attitude towards Imperial Federation. The case for a closer union with the United Kingdom and her colonies is fairly strong in India, though some of the advantages supposed to result from such a union are likely to be exaggerated. Thus we are often told that India gains immensely in administrative efficiency by that class of her public servants who are trained in England. By severing her connection with the Empire, India might no doubt lose her English servants; but England is no longer the only country for training up young men in the rudiments of public service; nor are Indians altogether

Case for Federation  
in India.

lacking in a turn for public service in every branch. On the other hand the necessity of public defence is yet too great for India to deny the value of England's co-operation in the defence of the country. The question whether India can ever be equal to her own defence is altogether a different one. But under the existing circumstances, and in view of the modern methods of warfare, it would be absurd to suggest that India could depend upon herself—unaided by England—at least for a generation. That her possible enemies on the frontier are weaker and cruder than herself is no reason to prove India's ability to meet all possible exigencies. In economic matters, too, membership of the Empire is fraught with decisive advantages for us. India is only just waking up to her vast industrial possibilities. These she cannot develop without capital. And capital she would find on much easier terms by participating in the joint credit of the Empire than on her own unsupported credit. Moreover, with the foreign affairs in the control of a truly Imperial Council in which India has her representatives, she might quite possibly succeed in securing for herself those advantages with which most treaties of the last generation were so fully occupied. The case for a closer union is, therefore, very strong on military and economic grounds.

On the other hand we must not ignore the possible case on the other side. The unfortunate experience of the consequences of a difference in race may incline many Indian publicists to declare against a closer union. But the question of a closer union can only be discussed on

Possible case against  
Federation in India,  
examined.

the assumption that India is completely autonomous for all her local affairs; and, with a popular government in India which is given an equal recognition in the Council of the Empire, the fears of racial differences are apt to be exaggerated, if not entirely unfounded. The experience like the one Indians were meeting with in South Africa may not be quite impossible even under a federated Empire; but it may be safely said that such experiences will be rare and always likely to be effectively remedied by India herself or by the Imperial Council.

Another obstacle in the way of a closer union may be found in the current of the informed public opinion of to-day. Leaders of public opinion seem to have definitely accepted the idea of provincial autonomy; but the logical conclusion of such an idea may quite possibly be a desire like the one expressed by the "Sydney Telegraph" quoted above. An attempt has been made in the body of this book to show why a really self-governing India would not need provincial autonomy so urgently as leaders of public opinion seem to think to-day. In any case it is not unreasonable to believe that a fuller realisation of India's political and economic needs would prevent the turn of Indian nationalism in a channel which might lead to a desire for separation from the British Empire in the near future. As already observed the materialisation of all these advantages in conditional upon India's being admitted in the Council of the Empire on terms of perfect equality. Even so one might urge that no scheme of representation can ever give any single part of the Empire an appreciable influence in the joint



Council of the Empire. Such a line of argument is based on a misconception of the nature and functions of the Imperial Council. While admitting that the constitution of the common council is bound to tax heavily the resources of Imperial statesmanship; while confessing that the problem of securing proper representation to each unit according to the different principles of population and political and economic importance is a grave one, we may yet say that the Imperial Council will only deal with purely imperial questions. The Government of India, like those of other units, will be supreme in the local concerns of India; and Indian representatives, we may assume, will be allowed a preponderant voice in the Imperial Council even in those foreign questions which *relate exclusively or preponderantly to India*. As regards inter-state differences, the unbiassed opinion of a majority of the elect of the whole Empire may well be allowed to prevail, though such a device as a  $\frac{2}{3}$  majority in all fundamental questions of imperial policy may be profitably adopted. And as for the burdens of the Empire, necessarily resulting as a corollary of the union, they will have to be accepted if the advantages of the union are at all commensurate.

In the face of all these obstacles I have ventured to present, in the following pages, a picture of the administrative machinery of India as it works to-day. The picture, it need hardly be added, is bound to be sketchy and perhaps incomplete. My only excuse for making an effort at all is the growing interest in an ever widening circle in political questions. It would be a pity if the awakening consciousness of the people

of India to their political existence were left to be guided entirely by those amateur politicians who are frequently without any equipment to handel political questions save their commonsense. Eevn so I would have hesitated, but for the admirable opportunity for a systematic, scientific treatment of our polity, afforded by the Consolidating Act of 1915. I have endeavoured to make this little work interesting—and even useful—to a wider circle than the one embracing the undergraduates of our University, though, it must be confessed, the first impulse to write originated from my connection with the students. And in saying this I have no intention to underrate the merits of those eminent authors who had already endeavoured to enlighten the Indian and English public on the subject. Sir Courtney Ilbert's work is deservedly recognised as an authority; but it is a wrok more likely to interest constitutional lawyers than the ordinary public. Sir George Chesney's classic work on the Indian Polity has even now its own value, though since he wrote vast strides have been made in the development of the Indian Polity. Sir John Strachey has given us an admirable picture of India as a high official of a generation ago looked at it, and his successors and imitators like Sir B. Fuller have not corrected their angle of vision. The Imperial Gazetteer gives a colourless but clear and authoritative version of the administration of India, while foreign observers—like Mr. Joseph Chailley—reflect the prejudices and preconceptions of their informants. Writers, also, of a more recent date, with an altogether new belief regarding the destiny of India, are not unknown, and chief among these may be mentioned the late Sir H. Cotton, who, though an Anglo-

Indian official himself, was yet able to rise superior to the prejudices of Anglo-Indiana. Of indigenous writers there is not yet a superabundance Indian publicists are too busy criticising current topics to attempt a systematic work describing the Indian system of administration, though of late years there has been a notable and welcome change even in this respect. To single out individual writers for praise or censure would be invidious, but the general remark may be hazarded that they all appear to minister to the need of an important, but still a limited, section of the public, the undergraduate world.

Working on the basis of a Parliamentary enactment,

Scope & Method  
of this work.

I had two alternative methods of treatment open to me. I might have followed Ilbert and made this book a handbook for the constitutional lawyer. I have preferred to take the law as a back-ground to trace upon it the outlines of the political institutions of our country. Designed originally for the undergraduate, the book in its present form will, I venture to think, be of use to a wider world of students of India. It has been my constant endeavour to discuss each question scientifically; it was inevitable, therefore, to take into consideration the important aspect of each controversial point. And though on many questions I have not hesitated to pronounce an opinion, I have on many another point refrained from pronouncing for obvious reasons of uncertainty in the question itself, or incompetency of the author. I may only add that the purpose of this book will not be misunderstood because, here and there, its outward form or some stray expression might lend itself to misconstruction.

My debt of gratitude is great to my friends Messrs. M. L. Tannan, B. Com., Bar-at-law, of the Sydenham College, and M. J. Mehta, B. A., LL. B., Bar-at law; the one for going through the index to this work and preparing a list of the errata, the other for looking over the proofs of some portions dealing with points of law. I also owe much to my students of the St. Xavier's College and of the Sydenham College, for their ingenious difficulties have often suggested to me new aspects of a question. I trust they will not be the less benefited by this work because it is not designed exclusively as a help in passing examinations.

BOMBAY, }  
1st June 1917. }

K. T. S.

# Errata.

—:G:—

Page	Line (from top)	For	Read.
41	26	" reasons.	reasons.
44	19	" united.	United.
55	16	" Committee was.	Committee was.
68	26	" tcontinent	Continent.
79	24	" representative.	Representative.
79	25	" government.	Government.
83	3	" Office ia.	Official.
84	17	" Least.	least.
88	7	" and.	an.
98	5	" Lientenant Governor	Lientenant-Governor.
174	25	" geven.	given.
179	6	" Ligeslative.	legislative.
204	9	" vacancya. nd.	Vacancy,—and.
222	22	" and.	
238	Last	" loca.	local.
269	"	" town-snow.	Towns—now.
273	24	" property of.	property or
275	34	" borrow	raise
298	15	" wase* Stablished.	was established.
318	3	" tassign.	resign.
326	Schedule 3,	India	Indian

## CHAPTER I.

# The British Parliament and the Government of India.



*Government of India Act, 1915*

( 5 & 6 Geo, 5. ch. 61. ).

An Act to consolidate enactments relating to the Government of India. (29th July 1915).

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

### PART I

## HOME GOVERNMENT.

### The Crown.

1. The territories for the time being vested in His Majesty in India are governed by and in the name of His Majesty the King, Emperor of India, and all rights, which if the Government of India Act, 1858, had not been passed, might have been exercised by the East India Company in relation to any territories, may be exercised by and in the name of His Majesty as rights incidental to the Government of India.

## COMMENTS.

**I. The Growth of Parliamentary Sovereignty over India.**

The East India Company was in its origin a creature of the Royal Prerogative, and as such dependent upon the goodwill of the Executive for all its powers. "By virtue of our Prerogative Royal, which we will not in that behalf have argued or brought into question," says the Charter of Queen Elizabeth, the East India Company is constituted and its powers determined. Under the immediate successors of Elizabeth those who depended for their existence on the Royal Prerogative had some very great hardships to face; for the first half of the XVII century was marked in England by the great struggle between the Crown and Parliament for ultimate supremacy which did not end by the execution of one king. Though the legality of the monopolies granted by Royal Prerogative was questioned under Elizabeth herself, and still more seriously under her immediate successor, the East India Company continued to be a creature of the Crown, or rather of the executive authority. Even when the Civil War had ended in the death of Charles I, and the establishment of the Protectorate, the position of the Company remained unaffected in this respect. The Protector, appreciating the value of the Eastern trade, and recognising the utility of the Company, lent them his strong support in their quarrels with their European rivals in the East. Thus in 1654, by the Treaty of Westminster, he forced the Dutch to pay the Company a compensation of £ 85,000 for the massacre of Amboyna, and for their exclusion from the trade of the Spice Islands. Like his Royal predecessors, and his later Parliamentary successors, Cromwell did not give his aid for nothing; this very sum of £ 85,000 not being easy to be apportioned among the several joint stocks of which the capital of the Company consisted, Cromwell "borrowed" £ 50,000, pending the settlement. He extended the prestige of the Company by another charter from himself incorporating a rival association with the East India Company. During the Restoration the position of the Company was quite satisfactory. Charter

followed Charter in quick succession, each more lavish than the preceding in increasing the powers of the Company.

After the Revolution of 1689, however, the situation of the Company became very critical. On the throne was a king who had not forgotten his Dutch origin because he was made a king of England by a successful Revolution; and who could not help looking with a favourable eye on the Dutch rivals of the English Company. Moreover, the then head of the Company, Sir Josiah Child, had identified himself and his Company far too much with the Stuart cause to be a *persona grata* with the ministers of William III. In the closing years of the XVII century the privileges of the Company were menaced by the growth of a New Company, which was encouraged by the ministers of the Crown, and which was given valuable rights by Acts of Parliament and Royal Charters. Though the Old Company managed to render nugatory, or at least innocuous, the privileges of their rivals by buying up a great portion of the stock of the latter, the situation became more critical than before, as the promoters of the New Company found their rights almost valueless to themselves. A coalition between the two Companies was the only means to remedy the situation; and it was effected by the intervention of Lord Godolphin in 1702. Further difficulties appeared in carrying out the arrangements of 1702. At last, therefore, an Act was passed in 1707, by which the New Company was required to advance to the Crown an additional loan of £ 1,200,000 without interest. In consideration of this the Company's exclusive privileges were continued till 1726; and Godolphin was empowered to settle the outstanding differences between the two Companies. Accordingly Lord Godolphin gave an Award in 1708, and in the following year the Old Company surrendered all its charters and its separate existence came to an end. The original Charter of the New or the English Company became the source of all the powers of the Company,—the United Company,—and it remained unaltered upto the end of the Company in 1858, except by Acts of Parliament.

Though the sovereignty of Parliament was thus asserted as early as the beginning of the XVIII century, the first real



attempt to regulate the government of the Company *in India* by Acts of Parliament did not come till more than two generations after. The acquisition by the Company of the Civil Administration of Bengal in 1765, and their constant engagement in wars in India had so completely changed their original character of traders, as determined by charters and Acts of Parliament, that the need for a wholesale revision of the powers and duties of the Company could no longer be ignored. Even so the reform might have been yet further delayed had it not been for the financial necessities of the Company. When they applied to the Treasury to advance them a loan, the Government of Lord North took the opportunity to revise the constitution of the Company by an Act of Parliament. The **Regulating Act** was the result; and for the first time the Government of the East India Company, both in England and in India, came to be regulated in all its entirety by an Act of Parliament. The principle seems to be from this time unquestionably established **that all changes in the structure of the Government in India as well as in England can only be made by an Act of Parliament.** The entire control of the Government in this country cannot, it would seem, be said to be under the sovereignty of Parliament from 1773. But even this doubt was removed by the **Act of 1784**, by which a **Board of Control** was established to superintend and control the affairs of India, and the President of which became responsible to Parliament. Even after the Act of 1784, though there was a regular machinery for the exercise of Parliamentary control, the authority of the Board, and therefore of the Parliament, was not the only authority concerned with the administration of India. The Court of Directors of the Company were still left considerable power, and very frequently it became exceedingly difficult to locate the responsibility for a particular act of the Government of India, as for instance in the first Afghan War. This situation was at last remedied by the transfer of the Government of India to the Crown in 1858, when **a Secretary of State was made solely responsible to Parliament for the Government of India, and was given power to superintend, control and direct the Government of India,**

## II. Nature and Extent of Parliamentary Sovereignty over India.

In the theory of the law, Government by the Crown means Government by the British Parliament. In common with all the parts of the British Empire, the legal Sovereign of India is the King-in-Parliament. There is, however, this difference between the sovereignty of the King-in-Parliament in the Self-Governing colonies and in India:—that while in the Self-Governing colonies the delegation by the Imperial Parliament of legislative independence has gone so far that Parliament seldom interferes in the domestic affairs of, or legislates directly for, those colonies; in India, on the other hand, though there is no doubt a certain amount of delegation of legislative authority, the right of the British Parliament to legislate directly for British India is more than nominal. It is true India has a constitution granted by Parliament—a constitution which is codified by the present Consolidating Act; but in spite of some delegation of legislative autonomy, Parliament still retains a considerable field for legislation relating to India in which its authority is supreme and is frequently directly felt.

It must be noted, however, that though the sovereignty of the British Parliament over India is as complete as that over any part of the King's Dominions, the Government of India derive a substantial portion of their power from the Royal Prerogative as well as from the old Mogul Emperors of the country. (1) That the Royal Prerogative is by no means as obsolete in this country as in England or in the Self-Governing colonies—prerogatives such as legislating by Orders in Council or by Executive orders,—is evidenced by the practical repeal of the Partition of Bengal by a personal proclamation of the King-Emperor in Delhi in December 1911. (2) And that the Government of India exercise certain powers which can only be explained by their being regarded as successors of the old Mogul Emperors can be proved by many a revenue code, and by the complex mass of undefined regulations governing their relations with the Native States. But when these allowances have been made,

it still remains true that the general constitution of the Government to-day, both in India and in England, has been created and regulated by Acts of Parliament. Thus the functions of the Governor-General, especially his relations with his Council and his supremacy over the Provinces; the powers of the local Legislatures; the constitution and jurisdiction of the several High Courts; the very existence of the Secretary of State and his Council—all alike are based upon Parliamentary enactments.

The supremacy of Parliament in legislation is unchallenged. But even in matters outside the legislative sphere, Parliamentary supremacy is very often directly felt by the Government of India. Thus in executive matters the Foreign relations of the Government of India are almost exclusively determined by the Home Government. And in so far as Parliament can be said to control the Foreign Policy of the Empire, the Foreign relations of India also are to that extent controlled by Parliament. Again, in matters financial, Parliament has laid down that the revenues of India may not be applied for military expeditions outside the frontiers of India without the consent of Parliament, except for preventing or repelling an actual invasion or any other sudden or urgent necessity; that detailed accounts of Indian revenues and expenditure must be laid annually before Parliament together with a Report on the Moral and Material progress of the country. In addition to all these, in accordance with constitutional usage, the Secretary of State, as Minister of the Crown, is exposed to criticism in Parliament and to a vote of censure should an occasion arise.

This is the position in theory. In point of fact, however, the influence of Parliament in the conduct of Indian affairs is relatively insignificant. There are various reasons why Parliament cannot interfere frequently and directly in the actual task of administration. Chief among these are the following:—

1. The British Parliament has neither the time nor the energy to superintend, much less to carry on directly, the Govern-

ment of a distant dependency like India. Even at Home, the practice has recently grown up of delegating a great deal of its legislative authority to the leading departments of State or to the King-in-Council. The so-called Statutory Orders are all framed under such delegated authority; and when they are approved of or notified to Parliament, they have as great a force as any law of the realm. The intricacy and complexity of modern legislation makes it inevitable for a body of amateur legislators to rely more and more upon expert advice both in the framing and working of those laws, reserving to itself only the power of criticism and approval. This dependence upon a subordinate authority becomes greater as the distance or dissimilarity of local conditions increases. In matters relating to India, therefore, though in the theory of the law Parliament is sovereign and is quite competent to legislate on any conceivable topic relating to this country, in point of fact, Parliament does not and cannot legislate for any and every topic. It confines itself usually to acts relating to the Political Constitution of the country, or those enabling the Secretary of State to raise moneys by loan in England.

2. The deliberate, settled policy of the statesmen of England, ever since the transference of the Government of India to the Crown, has been to keep all Indian questions entirely outside the pale of party politics. This is often regarded as a very wise maxim and people are not wanting who believe that India gains by it. All the same by being excluded altogether from party programmes, Indian questions never receive that searching, exhaustive, almost venomous criticism from the press and platform, from the opposition in and out of Parliament, which every question included in its programme by one of the leading parties in the State habitually receives in England. And even if we believe that the exclusion from party politics is a good thing for India, it cannot but be admitted that grave questions of imperial policy, in which India is vitally concerned, will never be thoroughly discussed if India is kept out of politics so determinedly in England. Party dominates the whole field of politics in England. Whatever their abuses, constitutional Govern-

ment would be impossible in England without parties. And however sound the theory of exclusion of India from party politics may seem, so long as the supremacy of the British Parliament over India is maintained, it is futile to expect any definite solution of our constitutional questions if our country is altogether kept out of politics in future as she has been in the past. We may conceivably lose by our political problems being brought on the party programme and being made party issues in England. But it is quite certain that Indian questions would receive much greater attention, and therefore much speedier solution, if they are brought on the party programme.

3. The expedients provided for maintaining the supremacy of Parliament have, in practice, either fallen into disuse, or ended in being mere formalities. Thus for instance, Parliament has laid down definite rules as regards the employment of the revenues of India. But such restrictions, from their very nature, are of a negative kind which can be, and have been, relaxed whenever necessary. Moreover it is common custom to present the finance accounts of the Government of India to Parliament towards the fag end of a Parliamentary session. The members at that time are more anxious to finish up the work, and enjoy their well-earned holidays, than to raise discussions or debates on such an uninteresting and intricate topic as the finance of India. Those who have attended in the visitors' gallery of the House of Commons on days when the accounts of the Government of India are laid on the table of the House, and when they ostensibly formed the subject of discussion for the day, could not but have been surprised at the scantiness of attention paid by Members of Parliament to the well-being of the peoples of an Empire which is described as the brightest jewel in the British Crown. Usually there are not more than half a dozen members all told in the whole House, including the Speaker and the Secretary or Under-Secretary of State who presents the accounts. The debate, if we may so dignify the proceedings, ends in a motion which amounts to saying that the accounts of the Government of India show what they show. Occasionally a member puts some questions

which the occupant of the almost empty treasury bench may answer or brush aside. For the salary of the Secretary of State, and the charges of his establishment, are paid out of the revenues of India, and not of England; and naturally the members have no interest to probe very deeply into Indian questions. The House of Commons never gets an opportunity to vote these charges as it does in the case of the Secretary of State for the Colonies. It has, therefore, no incentive to discuss or review the administration of India at a time when the attendance in the House is keen and regular.

4. Added to all these is the general ignorance, and in some cases total incompetence, of the Members of Parliament about questions relating to distant parts of the Empire which helps to perpetuate Parliamentary indifference to Indian questions. The average Member of Parliament has his hands full with questions that relate to his own constituency or to the peculiar interest he represents. Whether he is a lawyer, a merchant, a landowner, or a retired civil servant, he has very little time and interest to take up subjects in Parliament which he can have no knowledge of, especially when he has more urgent questions nearer home requiring his immediate attention.

### III. The Changing Situation and its Causes.

Of late, however, the situation as described above, has undergone some slight modification for the following reasons:—

(1) Ever since the Golden Jubilee of the late Queen in 1887, when British citizens from all over the globe assembled in London to celebrate the fiftieth anniversary of the reign of their beloved sovereign, English people began to take some direct interest in the greatness as well as in the latent powers of their vast Empire. Previous to that day, the great bulk of public opinion in England regarded colonies and distant depen-

dencies as costly luxuries, which England would lose nothing in giving up altogether. Perhaps the charters of Self-Government to the colonies, which were such a marked feature of the nineteenth century British imperial politics, were the result of this lurking distrust—itsself the child of the experience gained from the American colonies in the eighteenth century—of distant and disconnected colonies, rather than of any avowed preference for or belief in the merits of Self-Government by the colonies. Even if this were not true it is a universally acknowledged fact that the interest of the average Britisher in the Empire on which the sun never sets was, to say the least, very slight before 1887. From that day, however, opinion has changed. The change is as far reaching in effects as it is revolutionary in character. It has been brought about by the keener realisation of the rivalry of foreign countries in the fields of trade and industry. Britain, once supreme for nearly the whole century, is already finding some of her practical monopolies threatened by the growth of new and vigorous powers like the United States of America or the German Empire. If England is to retain her old position as the workshop, the carrier and the Banker of the world, she must put forth all the efforts she is capable of. That she has resources much more vast than any of her rivals was realised for the first time when men from the different parts of the Empire met in London in 1887 to celebrate the Golden Jubilee of their common sovereign and to realise their common citizenship. The necessity to organise and exploit these resources, to co-ordinate and focus the efforts and energies of the whole Empire on the one task of maintaining the old supremacy made English people look closer into the problems of the Empire. Indirectly, therefore, since that date along with the colonies, India began to loom larger before the British public, not only as the most important part of the British Empire both in men and material, but also as a part whose problems were unique; and whose problems, unless they were solved satisfactorily, would prevent the closer welding together of the different parts of the Empire. The welcome that the first Indian member—Mr. Dadabhai Naoroji—met with in the British Parliament in 1892 was but an indication of the realisation of its imperial responsibility by the British Legislature.

(2) There are other factors also which have helped to increase in recent years Parliamentary attention to Indian questions. Among these, we may reckon as the chief the growing class of the retired servants of the Government of India in England, who cannot forget the fields of their early triumphs or griefs, and whose efforts, therefore, result in attracting more and more attention every day to Indian questions. Whatever side they adopt, whether in Parliament like the late Sir Henry Cotton, or in the Press, or as authors of more permanent literature relating to India, they all serve in their own several ways the land where their prime of manhood was passed. While this class of retired Anglo-Indian officials provides information relating to Indian problems, there is steadily growing up another class of English Members of Parliament who come to the same questions from altogether different motives, and who view these questions from altogether a different stand-point. Elected by the public who looks upon him as their own special deputy to the Imperial Parliament, the average M. P. is, however, shut out, by the growth of the party system, altogether from any chance of winning distinction in domestic politics. The field of domestic politics, in which the constituents are directly interested, is dominated, almost exclusively, by the towering personalities of the party leaders in England. If the average Member of Parliament has any ambition to be known to the constituency—if he has any idea to rise one day to the ministerial or cabinet rank, he must find some other fields of activity—new as well as useful—which he should make it his task to make interesting to his leaders and even to the British electorate. These fields of activity are supplied by the outlying parts of the Empire, chief among which is India, who is entirely voiceless in the councils of the Empire. Her interests, therefore, may well be championed, not without hope of profit to themselves, by this class of aspiring Members of Parliament. They receive not only considerable encouragement by the frequent demonstrations of gratitude by the peoples of India, but substantial help from those educated Indians who are visiting England for profit or pleasure or education in greater and greater numbers every year. Facilities in the means of communication have not only resulted in



bringing the different parts of the Empire together; they have made interchange of views and the combination of effort through the identity of interest much more feasible.

Hence at the present day, the interest taken in Indian questions by the British Parliament as well as by the English public is appreciably greater than ten years ago. There is no doubt a great deal of ignorance or indifference still prevailing among the average Members of Parliament on Indian questions. And there is still a much greater ignorance on these matters among the British public at large. It is also true that in some cases, and notably in some economic questions, the interests of India are apparently opposed to those of England. But when all allowance has been made for these factors, it must be admitted that India is trying more and more to attract the attention of the British Parliament. It is an interesting question as to what would be the relative position of the Government of India and the British Parliament, as representative institutions are introduced in this country in ever increasing proportions till India becomes as much a Self-Governing country as Australia or Canada. If representative institutions take a deep root in this country, and the Government of India becomes national in tone and in character as well as in name, their present position of complete subordination to the Government of England would be found to be impossible to maintain; and we shall cease to look for improvement from a distant, incompetent, partisan assembly, when all the improvements we desire we can effect ourselves.

#### **IV. Means to attract Parliamentary Notice.**

The realisation of the complete sovereignty of the English Parliament over India has made the problem of attracting greater and greater attention of that body to Indian questions of the utmost importance in Indian politics. It was realised long before the present aspirations for Self-Government had taken

root that any change in the fundamental principles of Government in India could only come from England. In the days of the Company, when the princes and peoples of India had understood the real character of that body, appeals to Parliament or the Crown in England were not unknown. The impecunious Nawab of the Carnatic, for instance, even when he was defeated in a suit against the Company, could obtain a representative of the English Crown to his court, and thus frustrate many a design of Lord Wellesley (1793-99). In those days such an appeal to the ultimate source of all authority in India could, however, from the very nature of the case, be within the means of a very small section of the community in this country. With the transfer of the Government to the Crown, even this thin screen of independent authority vanished; and the governing authorities in India stood out directly as the servants of the British Crown, and as such under the control of the British Parliament. As education made progress among the people of India; as the ideals of Government cherished by the English people and taught by the English history began to be assimilated; and as the true position of the powers in India came to be fully realised, organised efforts were set afoot to reach at the very fountain-head, and there seek a change in the basic principles of government in this country.

The earliest and the most important of these efforts,—one not yet altogether abandoned,—was to try and educate the English public into a sense of India's growing needs, to meet which the established authorities of Government in India were alike unable and incompetent by their training, their temperament, and their general environment. With this view an organ of the advanced Indian opinion was established, and representative Indians were often sent to England to rouse the public in that country. This method, though intrinsically sound, could only yield results after a length of time. Besides, it was not impossible to misinterpret the object of such an agitation in sympathy with the corresponding agitation in India. The aim of such an activity was not, and could not have been, to induce Parliament to interfere in the details of admi-

nistration in India: Parliament could not, from the nature of the case, interfere without belittling itself. What was desired was to induce Parliament to make such a radical alteration in the maxims of Government as would be more in harmony with the changed conditions of India, and as would save it from all subsequent appeal for reform in details. The very magnitude of such a demand could not but require time to be accomplished. Those who have constituted themselves the guardians of the welfare of so many of their fellow-creatures cannot but hesitate before acceding to a change which, while absolving them from all further liability and responsibility, might not bring the promised improvement in the task. Until Parliament,—or rather the English public,—is convinced that the change desired is both salutary and feasible, it could not abdicate its authority without being false to itself. The clearest and the most conclusive evidence must therefore be laid before Parliament before such an alteration can be expected; and to do that time would have to be allowed.

Perhaps it was thought to be one form of this evidence, that Indians should seek election for a seat in the British Parliament; and from their seat in that house, and by their work in that assembly, convince the people of England of the fitness of the sons of India to govern their own country. So far two successful attempts of this kind have been made,—one by Mr. Dadabhoy Naoroji, and the other by Sir M. Bhowmugree. Both these gentlemen were elected by English constituencies; and their presence in the House of Commons served to attract the attention of Parliament to Indian questions. But it would be a mistake to see in this success a solution of India's present aspirations. It is neither possible nor practicable to obtain the real self-government for India by seeking a direct representation in the British Parliament. Even if the Indian members sat as the representatives of Indian constituencies, and not—as these two gentlemen—sitting as representatives of English constituencies, their position in that body can never be so important as to assure a real popular government for Indians in India from Whitehall. For one thing, the experience of the English nation

of such members for Ireland is not exactly encouraging enough to induce them to try a second venture in the same direction. Such members, doomed to a perpetual minority, and anxious to achieve a particular object, can only end by becoming mercenaries, selling their votes to whoever promised the speediest accomplishment of their object. They would be in a perpetual minority, because it is hopeless to expect that in an English legislature representation could ever be given to India on the basis of her population. Like the Irish members before them, such members from India, if they ever come into existence, could only hope to achieve their aim by trying to hold the balance between the parties in England. And even then their success is not quite secure; for they must give priority to the business nearer home,—or else they would not get the support of any party in England. If they do so it is just possible that their allies of a while ago might find unexpected difficulties in fulfilling the bargain, not for any want of good faith on their part,—though such infidelities are not unknown in politics,—but because they did not rightly gauge the strength of public opinion in England in favour of such a change. Neither England nor India can expect much from such a makebelieve, mercenary solution of the difficulties of this country.

The expedient of placing the salary of the Secretary of State for India and the charges of his establishment on the revenues of England has often been suggested as the surest means of attracting the attention of the English Parliament to the affairs of India. As to the justice of such an arrangement nothing can be said against it. Not only does the analogy of the colonies suggest it; but the share that India has borne in the defence of the Empire, for a longer period and to a much greater amount than any of the colonies,—makes it but a simple act of justice, all the more graceful on the part of England if by so doing she could assure the people of this country of her sleepless watch on their welfare. Nor would the burden be very great for England. The charges of the India Office do not exceed a quarter of a million sterling, while India has been contributing over 20 million sterling every year for maintaining an army which can be of

service,—and has been of service—in any part of the Empire. While the annual revenues of England are nearly 200 million sterling, those of India are much under a hundred. If there be any doubt about the wisdom of such a suggestion, it is due to the apprehension that the actuality may not be the same as the expectation. The mere opportunity to Parliament to discuss, once a year, the expenses of the India office, may, for all we know, be entirely inadequate to afford a permanent solution of all the problems of India. Moreover the inclusion of India on the party programme in England may not prove an unmixed blessing to India. Any desire in the minds of Indians to figure on the party programme in England, any co-operation with any political party in England is due to the belief that by so doing the ultimate goal may be reached the sooner. That goal can **never be anything else but this; that the real Government of India should be in India responsible to the people of India.** And so, though the suggestion under consideration may be an excellent one to realise that goal, it should never be confounded with the aim itself.

If the real object of the agitation in India is not lost sight of there would be no difficulty in understanding at their proper value such other suggestions as that the India Council should be abolished. At best it is a matter of detail. As it stands to-day the India Council is of very little importance in the administration of India; but its real original object was to serve as brake on the autocracy of the Secretary of State. To abolish it altogether is to remove this one check, however ineffective, on the absolutism of the Secretary of State. On the other hand the proposal that the India Council should be composed of the elected representatives of India would be useless, unless the powers of the Council are increased, and its decisions by majority are made binding upon the Secretary of State on all matters without exception. In the absence of such provisions the Indian members will always have the mortification of being overruled by a man who knows nothing of the questions at issue. A frequent disregard of the wishes of the Council is sure to cause discontent in India if it ever comes to be known. Besides, if the powers of the

Council are increased in this way, the real goal might be lost sight of. The effective powers of no authority in England, however constituted, should be increased at the cost of the authorities in India, if our ultimate goal is self-government in India.

In appraising all these suggestions it must be remembered that the Parliament of England can never interfere, with credit to itself and benefit to India, in the actual details of administration in India. What we want of that body, and what may justly be expected of it, if not as a price of our loyalty as a proof of her appreciation, is to abandon altogether the principles which have so far governed the Empire of India. Time was when the only champion of the Indian people was an independent, private Member of Parliament,—a Burke, a Wilberforce, a Bradlaugh. Time was when the Minister of State for India in England could well be regarded as the real and the only democratic check on the otherwise unlimited autocracy of the Indian Government,—a Canning, a Charles Wood, a Ripon. Time was when the average educated Englishman—of the type of the ordinary Civilian in India,—might be deemed more fit to govern in India than his fellow-subject of Indian birth. His education was more liberal, his experience undoubtedly greater, his neutrality among the religion-divided peoples of India quite probable. But that day has now passed away. The English Parliament, busy with its own immediate problems, cannot play for ever the guardian of the welfare of the Indian people. It has confessed its inability to do so in the case of the colonies planted by Englishmen, and where consequently the problems of Government could not be utterly dissimilar to the local problems of England. It cannot expect us to believe in its competency to go on being the guardian of India, when we are separated from her by thousands of miles every one of which could give a reason for granting autonomy to India. For with the real problems of India, with our widowed virgins and our untouchable pariah, Parliament is utterly, fundamentally incompetent to deal. And perhaps that is why they never have been approached. The Secretary of State has ceased to be the democratic check that he was meant to be on the absolutism in India, and has ended by becoming the President of the narrowest oligarchy, all the more

incompetent to deal with the daily newer and more complex problems of India because the men who compose it have had experience of India as it was 25 years ago. They will maintain themselves to be right with all the dogmatism of out-of-date experts. Even the young English Civilian, actually on the spot in India, and in daily touch with all the complex problems of Indian life, cannot now claim to be a better ruler than his Indian compeer. For his one great claim to superiority is gone or is fast going. As educated India learns the wisdom of religious toleration, his supposed impartiality amidst the warring creeds of India is useless. Education and experience are no longer his monopolies as they used to be. A trial of innate ability shows no unquestioned superiority of the English over the Indian, while his sympathy with his surroundings can never equal that of his Indian colleague.

The myriad problems of India must be and can be solved only by the Indians in India. Strangers to Indian life and sentiment, animated with the nobler motives which have governed the best of Englishmen in India, may be efficient rulers, may even be good rulers—so long as the functions of the State are no more than those of a policeman. Change the ideal of the State, and no one people could govern another, especially those utterly dissimilar in their habits and sentiments as the Indians and the English. Indians, when they come to rule in India, may quite conceivably be no better policemen than the English—perhaps no better engineers, financiers, diplomats, lawyers, or soldiers. But they are bound to be,—in spite of themselves, in spite of their history,—immeasurably superior in all those subtle, indescribable attributes which go to make good government as against efficient government, which help to uplift an entire people and make them realise the dignity of a human being, and the mission of human life.

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## CHAPTER II.

### The Secretary of State.



2. (1) Subject to the provisions of this act, the Secretary of State has and performs all such or the like powers and duties relating to the government or revenues of India, and has all such or the like powers over all officers appointed or continued under this act, as, if the Government of India Act, 1858, had not been passed, might or should have been exercised or performed by the East India Company, or by the Court of Directors or Court of Proprietors of that Company, either alone or by the direction or with the sanction or approbation of the Commissioners for the affairs of India, in relation to that government or those revenues and the officers and servants of that Company, and also all such powers as might have been exercised by the said Commissioners alone.

(2) In particular, the Secretary of State may, subject to the provisions of this Act, superintend, direct and control all acts, operations and concerns which relate to the government or revenues of India, and all grants of salaries, gratuities and allowances, and all other payments and charges, out of or on the revenues of India.

(3) There shall be paid out of the revenues of India to the Secretary of State and to his under secretaries respectively the like yearly salaries as may for the time being be paid to any other Secretary of State and his under secretaries respectively.

### The Council of India.

3. (1) The Council of India shall consist of such number of members, not less than ten and not more than fourteen, as the Secretary of State may determine.

(2) The right of filling any vacancy in the council shall be vested in the Secretary of State.



(3) Unless at the time of an appointment to fill a vacancy in the council nine of the then existing members of the council are persons who have served or resided in British India for at least ten years, and have not last left British India more than five years before the date of their appointment, the person appointed to fill the vacancy must be so qualified.

(4) Every member of the council shall hold office, except as by this section provided, for a term of seven years.

(5) The Secretary of State may, for special reasons of public advantage, re-appoint for a further term of five years any member of the council whose term of office has expired. In any such case the reasons for the reappointment shall be set forth in a minute signed by the Secretary of State and laid before both Houses of Parliament. Save as aforesaid, a member of the council shall not be capable of re-appointment.

(6) Any member of the council may, by writing signed by him, resign his office. The instrument of resignation shall be recorded in the minutes of the council.

(7) Any member of the council may be removed by His Majesty from his office on an address of both Houses of Parliament.

(8) There shall be paid to each member of the council out of the revenues of India the annual salary of one thousand pounds.

4. No member of the Council of India shall be capable of sitting or voting in Parliament.

5. The Council of India shall, under the direction of the Secretary of State, and subject to the provisions of this Act, conduct the business transacted in the United Kingdom in relation to the Government of India and the correspondence with India; but every order or communication sent to India, and every order made in the United Kingdom in relation to the Government of India under this Act, shall be signed by the Secretary of State.

6. (1) All powers required to be exercised by the Secretary of State in Council, and all powers of the Council of India, shall be exercised at meetings of the council at which not less than five members are present.

(2) The council may act notwithstanding any vacancy in their number.

7. (1) The Secretary of State shall be the president of the Council of India, with power to vote.

(2) The Secretary of State in Council may appoint any member of the council to be vice-president thereof, and the Secretary of State may at any time remove any person so appointed.

(3) At every meeting of the council the Secretary of State, or in his absence, the vice-president, if present, or, in the absence of both of them, one of the members of the council, chosen by the members present at the meeting, shall preside.

8. Meetings of the Council of India shall be convened and held as and when the Secretary of State directs, but one such meeting at least shall be held in every week.

9. (1) At any meeting of the Council of India at which the Secretary of State is present, if there is a difference of opinion on any question, except a question with respect to which a majority of votes at a meeting is by this Act declared to be necessary, the determination of the Secretary of State shall be final.

(2) In case of an equality of votes at any meeting of the council, the person presiding at the meeting shall have a second or casting vote.

(3) All acts done at a meeting of the council in the absence of the Secretary of State shall require the approval in writing of the Secretary of State.

(4) In case of difference of opinion on any question decided at a meeting of the council, the Secretary of State may require that his opinion and the reasons for it be entered in the minutes of the proceedings, and any member of the council, who has been present at the meeting, may require that his opinion, and any reasons for it that he has stated at the meeting, be also entered in like manner.

10. The Secretary of State may constitute committees of the Council of India for the more convenient transaction of business, and direct what departments of business are to be under those committees respectively, and generally direct the manner in which all business of the council or committees thereof is to be transacted,

## Orders and Communication.

11. (1) Subject to the provisions of this Act, every order or communication proposed to be sent to India, and every order proposed to be made in the United Kingdom by the Secretary of State under this Act, shall, unless it has been submitted to a meeting of the Council of India, be deposited in the council room for the perusal of all members of the council during seven days before the sending or making thereof.

(2) Any member of the council may record, in a minute book kept for that purpose, his opinion with respect to any such order or communication, and a copy of every opinion so recorded shall be sent forthwith to the Secretary of State.

(3) If a majority of the council so recorded their opinions against any act proposed to be done, the Secretary of State shall, unless he defers to the opinion of the majority, record his reasons for acting in opposition thereto.

12. (1) Where it appears to the Secretary of State that the despatch of any communication or the making of any order, not being an order for which a majority of votes at a meeting of the Council of India is by this Act declared to be necessary, is urgently required the communication may be sent or order made, although it has not been submitted to a meeting of the council or deposited for the perusal of the members of the council.

(2) In any such case the Secretary of State shall, except as by this Act provided, record the urgent reasons for sending the communication or making the order, and give notice thereof to every member of the council.

13. (1) Where an order concerns the levying of war or the making of peace, or the treating or negotiating with any prince or state, or the policy to be observed with respect to any prince or state, and is not an order for which a majority of votes at a meeting of the Council of India is by this Act declared to be necessary, and is an order which, in the opinion of the Secretary of State, is of a nature to require secrecy, the Secretary of State may send the order to the Governor General in Council, or to any Governor-in-Council or officer or servant in India without having submitted the order to a meeting of

the council or deposited it for the perusal of the members of the council and without recording or giving notice of the reasons for making the order.

(2) Where any despatch to the Secretary of State from the Governor-General in Council or a Governor in Council concerns the government of India or of any part thereof, or the levying of war, or the making of peace, or negotiations or treaties with any prince or state, and is, in the opinion of the authority sending it, of a nature to require secrecy, it may be marked " Secret " by that authority; and a despatch so marked shall not be communicated to the members of the Council of India unless the Secretary of State so directs.

14. Every despatch to the United Kingdom from the Governor-General in Council or a Governor in Council shall be addressed to the Secretary of State.

15. When any order is sent to India directing the actual commencement of hostilities by His Majesty's forces in India, the fact of the order having been sent shall, unless the order has in the meantime been revoked or suspended, be communicated to both Houses of Parliament within three months after the sending of the order, or, if Parliament is not sitting at the expiration of those three months, then one month after the next sitting of Parliament.

16. It is the duty of the Governor-General in Council to transmit to the Secretary of State constantly and diligently an exact particular of all advices or intelligence, and of all transactions and matters, coming to the knowledge of the Governor General in Council and relating to the government, commerce, revenues or affairs of India.

### **Establishment of the Secretary of State.**

17. (1) No addition may be made to the establishment of the Secretary of State in Council, nor to the salaries of the persons on that establishment, except by an order of His Majesty in Council, to be laid before both Houses of Parliament within fourteen days

after the making thereof, or, if Parliament is not then sitting, then within fourteen days after the next meeting of Parliament.

(2) The rules made by His Majesty for examinations, certificates, probation or other tests of fitness, in relation to appointments to junior situations in the civil service, shall apply to such appointments on the said establishment.

(3) The Secretary of State in Council may, subject to the foregoing provisions of this section, make all appointments to and promotions in the said establishment, and may remove any officer or servant belonging to the establishment.

18. His Majesty may, by warrant under the Royal sign Manual countersigned by the Chancellor of Exchequer, grant to any secretary, officer or servant appointed on the establishment of the Secretary of State in Council, such compensation, superannuation or retiring allowance, or to his legal personal representative such gratuity, as may respectively be granted to persons on the establishment of a Secretary of State, or to the personal representatives of such persons, under the laws for the time being in force concerning superannuations and other allowances to persons having held civil offices in public service or to personal representatives of such persons.

### **Indian Appointments.**

19. Except as otherwise provided by this Act, all powers of making rules in relation to appointments and admissions to service and other matters connected therewith, and of altering or revoking such rules, which, if the Government of India Act, 1858, had not been passed, might have been exercised by the Court of Directors of the East India Company or the Commissioners for the Affairs of India, may be exercised by the Secretary of State in Council.

Provided that in the appointment of officers to His Majesty's army the same provision as heretofore or equal provision, shall be made for the appointment of sons of persons who have served in India in the military or civil service of the Crown or the East India Company.

**Ss. 2—19 (both inclusive).**

The Secretary of State for India is the direct descendant of the Board of Control, referred to in this Act as the Commissioners for the Affairs of India, though his powers are much larger. He is the constitutional adviser of the Crown in all questions relating to India. He is appointed, like the other Secretaries of State in England, by the delivery of the seals of office. In passing it may be noticed, as a curiosity of the English constitution, that the office of the Secretary of State is a unit in the theory of the constitutional law of England, though there are really five Secretaries of State. Hence in speaking rather abruptly in s. 2 of the Secretary of State, the Act does not in any way specify him, since any Secretary of State is, theoretically, capable of discharging the duties of any other. Such division of work as there is in the English Secretariat is solely for the sake of administrative convenience, and has no reference to any corresponding distinction in point of law. The Secretary of State for India, however, enjoys power and position, not exactly identical with those of his colleagues. His salary for one thing, is paid not out of the revenues of England, but out of those of India. And in certain matters relating to his department, he is not the absolute master that other Secretaries of State are; he must, by this Act, act in consultation with his council. In all other respects the Secretary for India enjoys the same position. He is assisted by two under secretaries, one permanent, and the other Parliamentary, and both appointed by him. To the Secretary of State is paid an annual salary of £ 5000, to the Permanent Under Secretary an annual salary of £ 2000, and to the Parliamentary Under Secretary an annual salary of £ 1500.

In matters relating to India the Secretary of State has all the powers of the Board of Control, the Court of Directors of the East India Company, their Secret Committee, and the Court of Proprietors.

## I. Powers of the Secretary of State.

He has the power of giving orders to every officer in India, including the Governor-General, and of directing all the business relating to the Government of India that is transacted in the United Kingdom. Every order or communication must be signed by him and every despatch from India must likewise be addressed to him.

In considering the position of the Secretary of State for India, it must always be remembered that he is primarily a member of the British Cabinet. As such his interest in his department is like the interest of all the heads of other departments, who are also members of the Cabinet, in England. It is the interest of a politician not that of an expert who knows and loves his work. A long standing convention, never broken since the Government of India was transferred from the Company to the Crown, has laid down that the Secretary of State for India in every Cabinet should be a man who has had previously no experience of or connection with India. He is the democratic chief to control a bureaucratic organization. His position in the Cabinet—of which he is an important member either by his social position or by his political reputation—keeps him in touch with imperial questions. While to the Cabinet he brings the knowledge and experience relating to the local departments of India, to the India Office he brings the wider outlook, the broader policy of an imperial statesman. The convention which keeps India altogether out of party politics may have resulted in modifying the principles of such men as Lord Morley when they went to the India office. But in general it must be admitted that upon the bureaucratic temper of the India Office, the Parliamentary Secretary of State serves a useful brake as he brings in an element of democratic responsibility. This respect for popular opinion—towards which the permanent officials in a department are openly hostile—is all the more emphasised when we remember that the Secretary of State is not only a member of the Cabinet but also a member of the British Parliament, perhaps of the House of Commons. As such, he has to be in constant touch with public opinion. He has always to

be on his guard against any criticism from his colleagues in the legislative assembly; and while answering criticism, he must keep himself open to any suggestion or reform that comes from his critics. If the Secretary of State has any ambition to rise still higher in the world of English politics, it would not do for him to ignore altogether popular opinion. The authority, it is true, of Parliament as regards the Government of India is not wide in practice. The salary of the Secretary of State and the expenses of his department never come before Parliament for annual sanction. But yet the very fact of his presence in a democratic legislative assembly, coupled with his close relations with a body of men whose whole career, whose entire reputation, is based upon their successful carrying out of the fundamental principles of English democracy makes him listen to criticism even when he cannot be censured.

## II. The Origin of the Council of India.

The Council of India, is, in a certain limited sense, the descendant of the old Court of Directors. When in 1858 the Government of India was brought directly under the Crown, a board of advisers was found to be necessary to aid the minister of the Crown in the Government of India. Under the Act of 1858 it consisted of 15 members, of whom 8 were appointed by the crown, and the remaining 7 were to be elected, in the first instance by the Court of Directors, and afterwards by the council itself. The members were appointed to hold office during good behaviour, *i. e.* during life; and they could only be removed by an address of both the Houses of Parliament to the Sovereign, just like the Judges in England. In 1869 the right of appointing new members as vacancies occurred in the council was vested in the Secretary of State (32 & 33 Vict., c. 97); the tenure of office was also changed from life, or during good behaviour, to a term of ten years, with the power of reappointment for another five years for special reasons. Twenty years later, (52 & 53 Vict., c. 65) the vacancies as they arose need not be



filled, but the Secretary of State could only appoint a new member when the number of the Councillors was reduced to ten. The number of the council was still further reduced and the term of office shortened, as well as the qualifications modified, so that at the present time the council consists of:—

not less than ten and not more than fourteen members, appointed to hold office during a period of seven years, but re-eligible for a further term of five years for special reasons of public advantage which must be recorded in a minute by the Secretary of State and laid before Parliament, not removable from their office during that term except by an address of both Houses of Parliament, the members to be selected from those who have either served or resided in British India for at least ten years, and who must not have left India more than five years before their date of appointment.

The councillors, it may be noted, are not entitled to any pension after their seven or twelve years of service. though by a special Act of Parliament in 1876, an exception was made in the case of Sir Henry Maine, who was given a retiring pension of £ 500 a year; nor are the members of the council entitled to any compensation for the loss of office if Parliament reduces their number or otherwise deals with the constitution of the council.

### III. The Composition of the Council.

If we examine critically the qualifications required for the membership of the Council of India, we find that we can divide the members of the India Council roughly speaking into four groups. **First**, and the most important as far as numbers are concerned, is the element of the retired servants of the Crown in India, who, having risen to eminence in their several departments in the service of the Crown in India, retire to their country in the fullness of time, and are there rewarded by this

position of an India Councillorship. They furnish the experience gathered during their period of service, and may be taken to represent the expert opinion when questions arise affecting their several departments. The **second** element, important as evidencing the trend of recent developments, is that of the natives of India. Since 1907, it has become possible to appoint two natives of India to this council. Presumably they are there to represent the views of the Indian public on the several questions that may arise relating to Indian administration. The **third**—by no means a negligible—element consists of successful bankers, educationists, merchants etc. who are appointed to the council to furnish it with the light of experience, the maturity of judgment, which is expected to be characteristic of these men. The **last**—and never, numerically speaking, a very important element—is the element of the experts, whom the Secretary of State is at liberty to appoint in connection with some technical departments. At the present day, the council consists of the following gentlemen:—

- (1) Sir William Edgerly, Vice President.
- (2) Sir Felix O. Schuster, Bart.
- (3) Sir Theodore Morrison, K. C. I. E.
- (4) General Sir Edmund Barrow.
- (5) Abbas Ali Beg, C. S. I., LL. D.
- (6) Lawrence Currey.
- (7) Sir William Duke, K. C. S. I., K. C. I. E.
- (8) Sirdar Daljit Singh.
- (9) Sir Charles Arnold White, K. C. S. I.
- (10) Sir Murray Hammick, K. C. S. I., C. I. E.
- (11) Sir Charles Bailey, G. C. S. I., I. S. O.

Of these, six have been the servants of the Crown in India either in the Civil, Military or Judicial departments. Sir Felix Schuster is an eminent London banker and Sir Theodore Morrison is an eminent educationist of India. Two of these are Indians. Every one of these members is a personage of experience with a good reputation for administrative skill and judgment. They are men, moreover, with a long and personal knowledge of Indian problems.

Their position as councillors or advisers of the Secretary of State is one of peculiar interest. Here is a body of men avowedly qualified to pronounce a good, reasoned opinion—perhaps the best of its kind in London—on questions relating to India. They are set up to advise a man who is as avowedly entirely ignorant of Indian questions. By an unwritten convention of the English constitution, a person appointed to be the Secretary of State is usually a man who has had previously no dealings with India. If we except men who have been reappointed Secretaries of State in two or more administrations, and if we except Sir Charles Wood, there has never been in all these years since the transfer of the Government to the Crown, a Secretary of State who had been previously in any way connected with Indian affairs. And yet the Secretary of State has a sufficient reserve of powers to outvote and overrule, in the most important questions concerning India, the whole of his council if need be.

#### IV. The Secretary of State and the India Council.

The Secretary of State for India under the present Act is the constitutional adviser of the Crown in all matters relating to India. He has all the powers which were formerly exercised by the Board of Control, the Court of Directors, and the Secret Committee of the Board of Directors in respect of the Government and revenues of India. In particular, he has the power of giving orders to every officer of the Crown in India including the Governor-General, and he directs all business about the Government of India transacted in the United Kingdom whether in borrowing moneys, purchasing stores or getting servants for the Government of India. Now in all these matters, the council is expected to advise him. He is not necessarily bound to accept their views in all matters. For, every order or communication sent to India must be signed by him, and every despatch from India must likewise be addressed to him. This legal recognition of the supremacy of the Secretary of State has

more than formal importance. For, the same Act provides that the Secretary of State may act without consulting his council in the following cases:—

- (a) In advising the Sovereign to make appointments left to his discretion, that is, in all the appointments from the Governors of Presidencies downwards which require the sanction of the Secretary of State, that officer need not consult his council, and if he can thus control the choice of men for the highest appointments in India, his power in the actual administration of India can be readily imagined.
- (b) He need not also consult his council in sending or receiving communications to India and from India marked "Secret", nor even show such communications to his council. Such communications chiefly relate to the making of war or peace, to negotiations with foreign powers or to relations with the Native States. All these are questions of the highest administrative importance—questions involving some of the fundamental principles of Government, and yet on these questions the Act provides that the Secretary of State need not consult his council. As a rule he transacts business of this description through the Political Committee of his council which takes the place of the old Secret Committee of the Court of Directors.
- (c) In other cases too, he need not consult his council, provided communications to or from India relating thereto are marked "Urgent", and provided that the Secretary of State has recorded reasons for regarding them urgent.

There are cases no doubt specified in this act, where the Secretary of State is bound to consult his council, and even to have the concurrence of a majority of the members of the council present at a meeting of the council. These are:—

- (1) the appropriation of the revenues of India or property, S. 21,

- (2) purchase, sale or mortgage of property, S. 28,
- (3) the exercising of powers of entering in to contracts, S. 29,
- (4) approving rules for making assurances in India S. 30,
- (5) the alteration of salaries, furlough rules, etc., S. 85,
- (6) appointments of natives of India to offices reserved for the Indian Civil Service and the making of provisional appointments to the Council of Governor-General, S. 91 & 99.

But all these are matters on which, normally speaking, there is very little probability of a difference of opinion arising between men of common sense. They involve no question of principle likely to divide such men as the council is generally composed of. And, therefore, the provision that the Secretary of State cannot act without the support of a majority of his council in such cases, has at best but an academic importance.

If we leave aside those cases on the one hand in which the Secretary of State must consult his council and abide by a decision of the majority of his council, and on the other hand those other and by far the most important cases in which he need not consult his council, the rest of the ordinary business of the administration is, it is provided, to be carried on by the Secretary of State in consultation with his council. But it does not mean that in such ordinary cases, even though he has to consult his council, he should abide by the opinion of a majority. Wherever he is not bound by law to have a majority of his council to support him, there is nothing to prevent the Secretary of State from taking a decision against the views of the council—even of the whole council. The utmost that the council can demand is that their views, and the reasons for those views, should be entered on the records of the council, with some faint hope that one day when the public should come to know of their transactions, it should be able to apportion the blame or the merit to the right persons. Hence it follows that the position of the Secretary of State carries with it great powers which practically make him absolute in the government of India. He has an advisory council, but the peculiar position of that

body prevents it from being of any effective check upon the powers of the Secretary of State.

## V. Control of the Secretary of State over the Council.

The Secretary of State can control the council in more than one way.

I. He has the right to fill any vacancy that may be caused in the council by the death or resignation or the expiry of the term of office of a councillor [S.3 (2)]. True, he has not the right to remove a councillor, and he cannot therefore at any given time create his council to suit his views. It is also probable that the security of tenure given to the India councillors makes it impossible that during the tenure of office of the Secretary of State by one individual, the whole council would or could be renovated by that individual to suit his tastes. The fluctuations in English politics, and the continual transfer of the leading politicians from department to department, make the average tenure of office of a Secretary of State by any one individual never longer than the tenure of his councillors. Including reappointments of the same individual, there have been in the fifty-eight years that have elapsed since the transfer of the Government to the Crown, twenty-two Secretaries of State, or an average duration of office of each Secretary of State for slightly over two years and a half, while the normal duration of a councillor's office is now seven years. But still if all allowance is made for this, the fact remains that the power of appointment vested in the Secretary of State gives him a great influence on his council. Apart from the gratitude, the force of which in the cases of such independent men as the councillors of India may be negligible, there is always the possibility of similarity of views influencing a Secretary of State in choosing his councillors. And particularly his power to appoint experts in his council is bound to give him a great influence on his Council.

[ *N. B.*—This power to appoint experts to the council is not specifically given by this Act. But it was conferred on the

Secretary of State by 39 & 40 Vict. c. 7; and as this Act has not been repealed by the present Act we may take it that the power remains. The provisions of that Act have been thus summed up by Courtney Ilbert:—

“ The Secretary of State may also, if he thinks fit, appoint any person having professional or other peculiar qualification to be a member of the Council of India during good behaviour. ( In view of the very general language of S. 3 ( 4 ) of this Act it would seem as though such a member also can only be appointed for a period of 7 years, or re-appointed for special reasons for another period of 5 years, or in all twelve years, and not for life.) The special reasons for every such appointment must be stated in a minute signed by the Secretary of State and laid before both Houses of Parliament. Not more than three persons so appointed may be members of the council at the same time. If a member so appointed resigns his office, and has at the date of his resignation been a member of the council for more than ten years the King may, by warrant under his sign manual, countersigned by the Chancellor of the Exchequer, grant to him out of the revenues of India a retiring pension during life of five hundred pounds.” He adds in a note. “ This exceptional power was exercised in the case of Sir H. S. Maine, and was probably conferred with special reference to his case.” ]

( 2 ) The mode of conducting the business in the Council also helps to increase the powers of the Secretary of State. As a rule the council is divided into committees as nearly as possible corresponding to the departments of Government. To each committee are appointed four or five councillors with some consideration of their special aptitude for the subjects allotted to each particular committee. It is easier to influence a small body of men, however experienced or obstinate they may be, than to influence a larger body especially if they all agree in a particular opinion, and are men of status. And even if this was not always feasible, the system of working by committees is the surest way of creating difference of opinion and using that for one's own object. Provided the Secretary of State can find either the council as a whole to agree with him, or the committee to

adopt his side of the question, he can always have his way; for the support of the council may be represented, if it suits him so to represent it, as the support of common sense against the narrow-minded view of the experts, the committee being regarded as experts of the narrowest views; and if the committee agrees with him and the council as a whole differs from him, he can claim the support of what would now be represented as the sound practical opinion of the men who know their business. The council meets once a week, and the quorum of five is required. At these meetings the reports of the different committees on different questions are considered in the council. This procedure of transacting business through the committees is of course convenient, but it does weaken the practical utility of the council as a check upon the Secretary of State. The recent proposal in July 1914 to give this procedure, a matter of convenience, the force of law would have perpetuated a system resulting in the practical impotence of the council.

3. Apart from these modes of controlling the council, the Secretary of State has large reserves of powers behind him which would in any case render the council's opposition, even if it makes one, nugatory. In some of the most important questions such as making war or peace, or conducting foreign relations, or cases of urgent emergencies, the Secretary of State need not consult his council. In others again,—by far the largest number of questions though he may consult his council, he is not bound to accept the advice of his council. Such powers cannot but make the Secretary of State the absolute chief of his department even though he has been furnished with constitutional advisers.

4. His position is further strengthened by the monopoly of information. The members of the council have no means of collecting materials for pronouncing an opinion upon any question beyond the information that the Secretary of State places at their disposal, or beyond such information as they can get in common with the ordinary public from the periodical press. Says Sir John Strachey, "Such questions as the Afgan war, negotiations with Russia and the Amir of Kabul regarding the affairs of



Afganistan, or the annexation of Burma do not come before the council. Its members have not only no powers of interference but they have no recognised means of obtaining information in regard to such subjects other than those of the general public''. Wanting in information, they can never make up their minds on some of the most important questions. In this respect, the present position of the council differs radically from that of the Court of Directors of the East India Company even after they were superseded by the Board of Control from 1784. The present Council of India can only offer an opinion on matters which the Secretary of State chooses to bring before them, while the Court of Directors received in the first instance all despatches sent from India, and sent in their own name all the despatches from England to India.

5. The Secretary of State in all matters when he goes counter to the opinion of a majority of his council, can always make a show of independent unbiassed judgment. The fact that the members of the council have all been for a long time connected with India and have all had, in their period of service or residence in India, occasions for crystallising their information on certain matters,—perhaps for becoming partisans on certain questions,—can often be adduced by the Secretary of State as a reason to discredit their judgment. Unlike them he comes to his office with an open mind. A partisan himself in English politics, he claims an entirely unbiassed judgment in Indian affairs. For he comes to his office with no preconceived notions, nor prejudices nor pre-posessions. Such a man, himself of assured status and acknowledged experience in the politics of his own country, may reasonably claim that on questions of fundamental principles, he is a better judge than men who are likely to be partisan, or prejudiced. Besides, his position as the representative of the English democracy at the head of the Indian bureaucracy may well induce him to discount the opinion of a body of men, who could not be in touch with the latest information about Indian questions inspite of their long experience who have perhaps left India some years ago, and whose experience therefore of India is likely to be ten years out of date, while he himself, coming new

to his office, has all the desire to study at first hand all the questions of his department and has every facility to make his knowledge upto date.

6. But the causes which make the Secretary of State supreme in the council are still deeper. His power over appointments, his monopoly of information, the peculiar mode of conducting business, and of using an independent judgment are all but indications of those deeper springs of action, which, because they are seldom brought to light, not the less exist. The Secretary of State is a member of the British Cabinet and also of the British Parliament. To his department, he brings not only an open mind but the long experience and wider outlook of the Imperial Cabinet, and the democratic temperament of the British Parliament. If an occasion should ever arise when the Secretary of State finds himself obliged to disagree with a majority of his council, he can always in the last resource plead in his favour the support of the Cabinet, and also if necessary that of the British Parliament. In questions of policy a man who can speak before his colleagues, who have no other ways of making their opinion known to the public—with the united authority of the Cabinet and the Parliament behind his back, who can refuse to justify or explain a policy, when questioned in Parliament or when criticised by the Government, unless his view of the case is accepted, is bound to create a deep impression upon those colleagues. Hence even in those cases where the Secretary of State is by law bound to have a majority of the council supporting him, his views, should they differ from those of the majority of the council, are bound to command respect, if not from the intrinsic value of those views, at least from the position and the power of the man who maintains them.

## **VI. The Future of the Council.**

The question has been widely debated as to whether it is beneficial to India to leave such vast powers in the absolute

control of a man who, however experienced in English politics, is admittedly an amateur in Indian questions. If it was deemed wise by those who were responsible for the act of 1858 transferring the Government of the country to the Crown to provide this responsible officer of the State with some checks, would it not be as well to make those checks effective. At the present day, the council, whenever it disagrees with the Secretary of State, however much its views may be favourable to India, is unable to make its views appreciated or respected by the Secretary of State. And there is no means by which the Council could be so reformed as to be entrusted with wider powers. Even if we suppose that the elective element were to predominate in the Council of India, or to become the sole basis of the constitution of that council, its powers would not be appreciably increased. And if they increased the increase would not necessarily be beneficial to India. For, the questions of Indian politics are so intricate that no body of men—whether the elected representatives of India, or expert or experienced nominees of any other authority, would ever be able to give satisfactory solutions, if they are located at a distance from India. As Mill wrote "The Executive Government of India is and must be seated in India itself. The principal function of the Home Government is not to direct the details of administration, but to criticise or review the past Acts of the Indian Government; to lay down principles and issue general instructions for their future guidance and to give or refuse sanction to great political measures which are referred Home for approval." Citing this opinion with approval, Sir John Strachey adds, "The work of the Secretary of State is mainly confined to answering references made to him by the Government in India; and apart from great political and financial questions, the number and nature of those references mainly depend on the character of the Governor-General for the time being. Some men in that position like to minimise personal responsibility and to ask for the orders of the Home Government before taking action. Others prefer to act on their own judgment, and on that of their councillors. **The Secretary of State initiates almost nothing.**" It is true Lord Minto said that the last instalment of reforms were initiated in India by

the Government of India and not by Lord Morley, but there are instances also on the other side, when the Home Government has initiated and enforced measures upon India, such as the tariff policy of the Government of India. On the whole, however, it is still true that the Secretary of State for India-in-Council confines himself ordinarily to reviewing, revising or refusing his sanction to measures or proposals referred to him from India. With this view of the functions of the Home authorities of the Indian Government, every student of political science cannot but agree. It may happen, and it has frequently happened in history, that the governing authorities of one people are situated in another; but if the ideal of government is good government,—government in the interests of the governed,—in whatever form it may be organised, that ideal would never be realised so long as it is hoped to rule a distant dependency from one headquarters in all the details of administration. And especially is this true of a dependency like India which is so utterly dissimilar to England in every respect. The authors of the transfer of the Government of India to the Crown well understood this, and so they left to the Home authorities the power to advise, to criticise, to reject acts and proposals of the Government of India. The idea of providing an advisory council to the chief authority in England was not to strengthen the hands of the Secretary of State at the expense of the local powers, but to enable him to exercise all the better his powers of supervision and control. Another reason, of which the authors of the transfer were barely conscious, was the distrust of every English statesman of the time of all bureaucracies. The Council of India was to be a check, not so much on the Secretary of State, as on the Government of India. The reason for introducing such a deliberate check was obvious. The Government of India was in reality an autocracy; autocracies are bound to go astray,—at any rate to ignore the views of the people; to bring about good Government some popular check,—preferably of the English type, of course,—was indispensable; but the people of India were not in a position to exert that check; hence the establishment of the Council of India consisting of men whom it would be dangerous for any power to thwart. Some such train of reasoning

must have guided the men who fixed the first constitution of India under the Crown. The Council of India according to this view does duty for the people of India in checking the otherwise all-powerful Government of India. Any reform in the constitution of that council, any increase in its power, can be allowed only if we admit that the people of India are yet unfit, or unable to provide their own effective check on their Government. The need for the Council of India must disappear when the governing authorities in India become amenable to the control of the people of the country.

Accordingly we need say very little of that abortive attempt made a few years ago to amend the constitution of the India Council. The Bill in question tried to reduce the number of the councillors, to make the inclusion of at least two Indian members a statutory requirement, to secure the appointment of the Indian members by a system of indirect election by the non-official members of the Indian legislatures, to increase the salaries of the members to £ 1200 a year together with an additional allowance, in the case of Indian members, of £ 600, to appoint one expert for a period and on conditions to be specially laid down in each case; to simplify the procedure of the council by rules made by the Secretary of State—subject to approval by Parliament, to dispense with the meetings of the council once a week, and to increase the list of “secret” cases with which the Secretary of State may deal without consulting his council. The Bill evoked a strong opposition both in England and in India, for reasons into which we need not go into details, and it was eventually dropped.

The reasoning, however, which leads one to discount the importance of the India Council should not be construed to mean that, the people of India being able to provide their own check, there should be no connection with England in the future. Even when the people of India will be governing themselves in name as well as in fact, there will remain a strong case for keeping up connection with England, and, therefore, maintaining the Secretary of State for India as well as, quite probably, his council. Only in the event of the people of this

country being able to impose their will on their Government there will be no occasion for an outside power like the India Council to act their guardian. The Home authorities, under that supposition, would have no need to interfere in the internal affairs of India, their powers of direction and control being ordinarily confined to inter-colonial or foreign questions, in other words in truly Imperial matters.

## VII. Indian Appointments.

As regards Indian appointments, under the Company the Court of Directors had the power to make all appointments to every office in the state in India. Since Pitt's India Act of 1784, the Directors were required to obtain the approval of the Crown in making certain appointments to the highest posts in India, though this clause was removed by an Act of 1786. The Crown, however, retained its powers of recalling, by a sign-manual order, any public officer in India; and this power was confirmed by the Charter Act of 1793 and subsequent legislation. The Directors also had a similar power of recall, and they often exercised it, as for instance in the case of Lord Ellenborough. With the transfer of the Government to the Crown, the provision was introduced as regards the power to make rules for the admission of persons to the public service of the country, which is now embodied in s. 19 of the present Act. Two points in that section call for comment. First as regards the provision about appointments in the Indian army. At least one-tenth of the total cadetships in any year are reserved for the sons of those who had served in India in the military or civil service of the Crown or of the East India Company. This is due to historical reasons. At the time of the transfer the officers for the Indian army were recruited in two ways:—A certain number of cadets was appointed to Addiscombe, from which, according to their success at the college examinations, they went out to India in the engineers, artillery or infantry. Others received direct cadetships and went to India without any previous training. The Indian army was reorganised in 1860. The European army, which till then

had been a separate body, was abolished and the abolishing Act ( 23 & 24 Vict., c. 100 ) laid down that the same or equal provision for the sons of persons who have served in India shall be maintained in any scheme for the reorganisation of the Indian army. The mode of appointments to the native army was meanwhile also altered, and an order was made in 1862 by which the Secretary of State makes 20 annual appointments, from among the sons of Indian servants to cadetships at Sandhurst. The expenses of these cadets are paid out of the revenues of India if their pecuniary circumstances are such as to require such payment. The cadets, it may be noted, need not join the Indian army after they leave Sandhurst.

Another point requiring comment in this section about appointments is that all the appointments are made during the pleasure of the sovereign, though in practice the Secretary of State enters into a formal contract with persons appointed in England to the various branches of public service in India. Many of these contracts contain a clause by which the men appointed to the service are appointed for a definite term of years. The question whether, during the continuance of the stipulated term of service, the Crown can remove any public officer from his office, on the principles laid down in many cases, "in the present state of the authorities cannot be considered free from doubt", says Sir C. Ilbert. A case in point is *Grant V. the Secretary of State for India in Council*. Grant was an officer in the service of the East India Company since 1840. On the transfer of the Indian army to the Crown, he was continued in the Indian army, and was afterwards placed compulsorily on the Pension List, being thereby obliged to retire from the army. He brought an action for damages against the defendant, but it was held that there was no cause of action as the Crown acting through the defendant had a general power to dismiss a military officer at its will, and no contract could be made in derogation of that power. If this case holds good the Crown can presumably dismiss any public officer at its will. This question of contracts with the Secretary of State on behalf of the Crown is considered more fully below in the comments on ss. 26-32.

## THE REVENUES OF INDIA.

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20. (1) The revenues of India shall be received for and in the name of His Majesty, and shall, subject to the provisions of this Act, be applied for the purposes of the Government of India alone.

(2) There shall be charged on the revenues of India alone

- (a) all the debts of the East India Company; and
- (b) all sums of money, costs, charges and expenses which, if the Government of India Act, 1858, had not been passed, would have been payable by the East India Company out of the revenues of India in respect of any treaties, covenants, contracts, grants or liabilities existing at the commencement of that Act; and
- (c) all expenses, debts and liabilities lawfully contracted and incurred on account of the Government of India; and
- (d) all payments under this Act.

(3) The expression "the revenues of India" in this Act shall include all the territorial and other revenues of or arising in British India and, in particular,—

- (1) all tributes and other payments in respect of any territories which would have been receivable by or in the name of the East India Company if the Government of India Act, 1858, had not been passed; and
- (2) all fines and penalties incurred by the sentence or order of any court of justice in British India, and all forfeitures for crimes of any moveable or immoveable property in British India; and
- (3) all moveable or immoveable property in British India escheating or lapsing for want of an heir or successor, and all property in British India devolving as *bona vacantia* for want of a rightful owner.

(4) All property vested in or arising or accruing from property or rights vested in His Majesty under the Government of India Act,



1858, or this Act, or to be received or disposed of by the Secretary of State in Council under this Act, shall be applied in aid of the revenues of India.

21. The expenditure of the revenues of India, both in British India and elsewhere, shall be subject to the control of the Secretary of State in Council; and no grant or appropriation of any part of those revenues, or of any other property coming into the possession of the Secretary of State in Council by virtue of the Government of India Act, 1858, or this Act, shall be made without the concurrence of a majority of votes at a meeting of the Council of India.

22. Except for preventing or repelling actual invasion of His Majesty's Indian possessions, or under other sudden and urgent necessity, the revenues of India shall not, without the consent of both Houses of Parliament, be applicable to defraying the expenses of any military operation carried on beyond the external frontiers of those possessions by His Majesty's forces charged upon these revenues.

23. (1) *Such part of the revenues of India as are remitted to the United Kingdom, and all money arising or accruing in the united Kingdom from any property or rights vested in His Majesty for the purposes of the Government of India or from the sale or disposal thereof, shall be paid to the Secretary of State in Council, to be applied for the purposes of this Act.*

(2) All such revenues and money shall, except as by this section provided, be paid into the Bank of England to the credit of an account entitled "The account of the Secretary of State in Council of India."

(3) The money placed to the credit of that account shall be paid out on drafts or orders, either signed by two members of the Council of India and countersigned by the Secretary of State or one of his under-secretaries or his assistant under-secretary, or signed by the accountant-general on the establishment of the Secretary of State in Council, or by one of the two senior clerks in the department of that accountant-general and countersigned in such manner as the Secretary of State in Council directs; and any draft or order so signed and countersigned shall effectually discharge the Bank of England for all money paid thereon.

(4) The Secretary of State in Council may, for the payment of current demands, keep at the Bank of England such accounts as he

deems expedient; and every such account shall be kept in such name and be drawn upon by such person and in such manner, as the Secretary of State in Council directs.

(5) There shall be raised in the books of the Bank of England such accounts as may be necessary in respect of stock vested in the Secretary of State in Council; and every such account shall be entitled "the Stock Account of the Secretary of State in Council of India".

(6) Every account referred to in this section shall be a public account.

24. The Secretary of State in Council, by power of attorney executed by two members of the Council of India and counter-signed by the Secretary of State or one of his under-secretaries or his assistant under-secretary, may authorise all or any of the cashiers of the Bank of England:

- (a) to sell and transfer all or any part of any stock standing in the books of the Bank to the account of the Secretary of State in Council, and
- (b) to purchase and accept stock for any such account, and
- (c) to receive dividends on any stock standing to any such account;

and by any writing signed by two members of the Council of India and countersigned as aforesaid, may direct the application of the money to be received in respect of any such sale or dividend.

Provided that stock shall not be purchased or sold and transferred under the authority of any such general power of attorney, except on an order in writing directed to the chief cashier and chief accountant of the Bank of England, and signed and countersigned as aforesaid.

25. All securities held by or lodged with the Bank of England in trust for or in account or on behalf of the Secretary of State in Council may be disposed of, and the proceeds thereof may be applied, as may be authorised by order in writing signed by two members of the Council of India and countersigned by the Secretary of State or one of his under-secretaries or his assistant under-secretary, and

directed to the chief cashier and chief accountant of the Bank of England.

26. The Secretary of State in Council shall, within the first fourteen days during which Parliament is sitting next after the first day of May in every year, lay before both Houses of Parliament:—

- (a) an account, for the financial year preceding that last completed, of the annual produce of the revenues of India, distinguishing the same under the respective heads thereof, in each of the several provinces; and of all the annual receipts and disbursements at home and abroad for the purposes of the Government of India, distinguishing the same under the respective heads thereof;
- (b) the latest estimate of the same for the financial year last completed;
- (c) account of all stocks, loans, debts and liabilities chargeable on the revenues of India, at home and abroad, at the commencement and close of the financial year preceding that last completed, the loans, debts and liabilities raised or incurred within that year, the amounts paid off or discharged during that year, the rates of interest borne by those loans, debts and liabilities respectively, and the annual amount of that interest;
- (d) an account of the state of the effects and credits in each province, and in England or elsewhere, applicable to the purposes of the Government of India, according to the latest advices which have been received thereof; and,
- (e) a list of the establishment of the Secretary of State in Council, and the salaries and allowances payable in respect thereof.

(2) If any new or increased salary or pension of fifty pounds a year or upwards has been granted or credited within any year in respect of the said establishment, the particulars thereof shall be specially stated and explained at the foot of the account for that year,

(3) The account shall be accompanied by a statement, prepared from detailed reports from each province, in such form as best exhibits the moral and material progress and condition of India.

27. (1) His Majesty may, by warrant under His Royal Sign-Manual, countersigned by the Chancellor of the Exchequer, appoint a fit person to be auditor of the accounts of the Secretary of State in Council, and authorise that auditor to appoint and remove such assistants as may be specified in the warrant.

(2) The auditor shall examine and audit the accounts of the receipt, expenditure and disposal in the United Kingdom of all money, stores and property applicable for the purposes of this Act.

(3) The Secretary of State in Council shall, by the officers and servants of his establishment, produce and lay before the auditor all such accounts, accompanied by proper vouchers for their support, and submit to his inspection all books, papers, and writings having relation thereto.

(4) The auditor may examine all such officers and servants of that establishment, being in the United Kingdom, as he thinks fit, in relation to such accounts and the receipt, expenditure or disposal of such money, stores and property, and may for that purpose, by writing signed by him, summon before him any such officer or servant.

(5) The auditor shall report to the Secretary of State in Council his approval or disapproval of the accounts aforesaid, with such remarks and observations in relation thereto, as he thinks fit, specially noting cases (if any) in which it appears to him that any money arising out of the revenues of India has been appropriated to purposes other than those to which they are applicable.

(6) The auditor shall specify in detail in his reports all sums of money, stores and property which ought to be accounted for, and are not brought into account, or have not been appropriated in conformity with the provisions of the law, or which have been expended or disposed of without due authority, and shall also specify any defects, inaccuracies or irregularities which may appear in the accounts, or in the authorities, vouchers, or documents having relation thereto.

(7) The auditor shall lay his reports before both Houses of Parliament, with the accounts of the year to which the reports relate.

(8) The auditor shall hold office during good behaviour.

(9) There shall be paid to the auditor and his assistants, out of the revenues of India, such salaries as His Majesty, by warrant signed and countersigned as aforesaid, may direct.

(10) The auditor and his assistants (notwithstanding that some of them do not hold certificates from the Civil Service Commissioners) shall, for the purposes of superannuation allowance, be in the same position as if they were on the establishment of the Secretary of State in Council.

### PART III.

## PROPERTY, CONTRACTS AND LIABILITIES.

28. (1) The Secretary of State in Council may, with the concurrence of a majority of votes at a meeting of the Council of India, sell and dispose of any real or personal estate for the time being vested in His Majesty for the purposes of the Government of India, and raise money on any such real estate by way of mortgage, and make the proper assurances for any of those purposes, and purchase and acquire any property.

(2) Any assurance relating to the real estate made by the authority of the Secretary of State in Council, may be made under the hands and seals of three members of the Council of India.

(3) All property acquired in pursuance of this section shall vest in His Majesty for the purposes of the Government of India.

29. (1) The Secretary of State in Council may, with the concurrence of a majority of votes at a meeting of the Council of India, make any contract for the purposes of this Act.

(2) Any contract so made may be expressed to be made by the Secretary of State in Council.

(3) Any contract so made which, if it were made between private persons, would be by law required to be under seal, may be

made, varied or discharged under the hands and seals of two members of the Council of India.

(4) Any contract so made which, if it were made between private persons, would be by law required to be signed by the party to be charged therewith, may be made, varied or discharged under the hands of two members of the Council of India.

(5) Provided that any contract for or relating to the manufacture, sale, purchase, or supply of goods, or for or relating to affreightment or the carriage of goods, or to insurance, may, subject to such rules and restrictions as the Secretary of State in Council prescribes, be made and signed on behalf of the Secretary of State in Council by any person upon the permanent establishment of the Secretary of State in Council who is duly empowered by the Secretary of State in Council in this behalf. Contracts so made and signed shall be as valid and effectual as if made as prescribed by the foregoing provisions of this section. Particulars of all contracts so made and signed shall be laid before the Secretary of State in Council in such manner and form and within such times as the Secretary of State in Council prescribes.

(6) The benefit and liability of every contract made in pursuance of this section shall pass to the Secretary of State in Council for the time being.

30. (1) The Governor-General in Council and any local Government may, on behalf and in the name of the Secretary of State in Council, and subject to such provisions or restrictions as the Secretary of State in Council, with the concurrence of a majority of votes at a meeting of the Council of India, prescribes, sell and dispose of any real or personal estate whatsoever in British India, within the limits of their respective Governments, for the time being vested in His Majesty for the purposes of the Government of India, or raise money on any such real estate by way of mortgage, and make proper assurances for any of those purposes, and purchase or acquire any property in British India within the said respective limits, and make any contract for the purposes of this Act.

(2) Every assurance and contract made for the purposes of this section shall be executed by such person and in such manner as the Governor-General in Council by resolution directs or authorises,

and if so executed may be enforced by or against the Secretary of State in Council for the time being.

(3) All property acquired in pursuance of this section shall vest in His Majesty for the purposes of the Government of India.

31. The Governor-General in Council, and any other person authorised by any Act passed in that behalf by the Governor-General in Legislative Council, may make any ~~grant~~ or disposition of any property in British India accruing to His Majesty by forfeiture, escheat or lapse, or by devolution as *bona vacantia*, to or in favour of any relative or connection of the person from whom the property has accrued, or to or in favour of any other person.

32. (1) The Secretary of State in Council may sue and be sued by the name of the Secretary of State in Council, as a body corporate.

(2) Every person shall have the same remedies against the Secretary of State in Council as he might have had against the East India Company if the Government of India Act, 1858, and this Act had not been passed.

(3) The property for the time being vested in His Majesty for the purposes of the Government of India shall be liable to the same judgments and executions as it would have been liable to in respect of liabilities lawfully incurred by the East India Company if the Government of India Act, 1858, and this Act had not been passed.

(4) Neither the Secretary of State nor any member of the Council of India shall be personally liable in respect of any assurance or contract made by or on behalf of the Secretary of State in Council, or any other liability incurred by the Secretary of State in Council in *his or their official capacity, nor in respect of any contract covenant or engagement of the East India Company*; nor shall any person executing any assurance in Council be personally liable in respect thereof, but all such liabilities and all costs and damages, in respect thereof, shall be borne by the revenues of India.

#### COMMENTS.

#### **Ss. 20-32 (inclusive).**

The Act speaks throughout of the revenues of India when it would be more accurate to speak of the revenues of British