

India, though the third sub-section defines the revenues to include "all tributes and other payments." Against the revenues of India were charged all the debts and liabilities of the East India Company in 1858, and the provision of the Act of 1858 has been repeated in this. The remark is, therefore, often made by the critics of this measure that while the British Crown got the rich patrimony of India, the people of India had to pay the purchase price. Under the East India Company India was conquered for the English traders by Indian soldiers, and when it passed to the Crown by an act of purchase, the price was paid not by England but by India.

Under the Company Parliament had frequently passed laws to restrain what the great Canning described as the irrepressible tendency of our Eastern empire to expand, but they were more frequently ignored than obeyed. The revenues of India were squandered in ceaseless and costly wars, and the Company was almost always in financial difficulties. To safeguard against this irrepressible tendency again asserting itself, it was provided by the Act of 1858 that the expenditure of the revenues of India, in India or outside India, shall be subject to the control of the Secretary of State. The latter was prohibited by the same Act from making any grant of these revenues or appropriating any part thereof, or assigning any property vesting in the Crown, except by the consent of a majority of the India Council. This provision has also been incorporated in the present Act. To make the assurance against a misuse of the revenues of India for military purposes still stronger, it has been further provided that without the consent of Parliament the revenues of India cannot be employed for military operations beyond the frontiers of India, except for preventing or repelling an actual invasion. This is a sufficiently vague provision to leave a margin of discretion to the Government of India and to the Secretary of State. Since the transfer of the Government of India to the Crown there have been numerous occasions on which the spirit of this section, if not the letter, has been infringed upon. In the Afghan war of 1878, in the Burma campaign of 1886, in the Egypt and Soudan campaign, and lastly during the Tibet Campaign of 1904, this section and its effects were discussed in Parliament. It is not yet quite

clear whether the consent of Parliament is required before the actual declaration of war. The power to declare war is by the general principle of the British constitution vested in the Crown; and, in the case of the Government of India, is vested in the Crown acting through the Secretary of State by s. 13 of this Act. The consent of Parliament is only needed to appropriate the revenues of India for the purpose of the war already declared. Under the circumstances, it is not unlikely that Parliament would have to give its consent even if it disapproved of the war as such. And all this is apart from the saving clause, "except for preventing or repelling an actual invasion," for which, presumably, the consent of Parliament is not required. Fighting with neighbouring tribes, especially the ever turbulent neighbours of India, may easily be represented as an attempt to prevent a possible, or to repel an actual, invasion.

The revenues of India that are remitted to England or that arise in England are to be paid into the account of the Secretary of State for India in Council at the Bank of England. This account cannot be drawn upon except by a draft or an order signed either by two members of the Council and countersigned by the Secretary of State, or by one of his under-secretaries or by the assistant under-secretary, or signed by the accountant-general of the India Office or by one of the two senior clerks in that department, and countersigned in the manner prescribed by the Secretary of State. There may also be a separate account for the stocks and property held by the Secretary of State for India in Council. These accounts, together with a general statement of the moral and material progress of India, must be laid before Parliament at one time or another during the session, and by common practice they are so submitted at the *lag end* of the session. The accounts are to be audited by an independent officer, who must submit an independent account to both the Houses of Parliament, and whose appointment is during good behaviour.

As regards the contracts by the Secretary of State several points of legal and general importance have to be noted. (i) Contracts, which by English law, if made by private individuals, would have to be made under seal, should be made under the

hand and seal of two members of the Council. (2) For making all such contracts the Secretary of State must have a majority of votes with him in his Council. (3) For contracts so made the Secretary of State for India in Council is regarded as a corporation and may sue and be sued upon these contracts. (4) Neither the Secretary of State nor any member of his Council is personally responsible on these contracts. (5) The Secretary of State is not in the position of a body corporate for the purpose of holding property, though he is in the position of a body corporate for making contracts and for suing or being sued. (6) There is a statutory remedy against the Secretary of State which is not confined to those cases for which a petition of right will lie in England; but it would seem that only such suits,—apart from special statutory provision—may be brought against the Secretary of State as are in respect of acts done in the conduct of undertakings which might be carried on by private individuals without sovereign powers. (7) Hence a suit or action against the Secretary of State may sometimes be met by the plea that the act complained of was an act of state. All these points are illustrated by a few cases given below.

According to a maxim of the constitutional law of England the King can do no wrong, and so the subject in England has no remedy, not even by a petition of right. For a wrong committed in obedience or professed obedience to the Crown the remedy is against the wrong-doer himself, and not his official superior, since the ultimate superior, the Crown, is not responsible. Even for a breach of contract the remedy is not by an ordinary action but by a petition of right, which, since the case of *R. vs. Thomas* in 1874, has been allowed in all cases of breach of contract. In the case of *Frith vs. Regina* in 1872, Frith, representing the creditor of the King of Oudh, whose territory was annexed by the East India Company in 1856, sought to recover the debt by a petition of right from the Queen as the successor of the East India Company. It was held that, assuming the East India Company became liable by reason of the annexation to pay the debt, the remedy of the suppliant was against the Secretary of State for India in Council, who, under the act of 1858, was the successor of the Com-

pany, and not the Crown. It was further pointed out that even if a judgment was given for the suppliant it would be barren since the revenues of England could not be liable to pay the claim. In the Tanjore case, (*Secretary of State in Council of India vs. Kamachee Bye Saheba* 1856, 13 Moore P. C. 22) a bill was filed on the equity side of the Supreme Court at Madras to establish a claim as private property to certain property of which the Government had taken possession and for an account. The acts in question were done by a commissioner on behalf of the Government for taking over the administration of the Tanjore State on the death of the Raja without heirs. It was held that the annexation was made by the British Government as a sovereign power, acting through its delegate the East India Company. As such it was an act of state to inquire into the propriety of which no court,—not even the Judicial Committee—was competent. Lord Kingsdowne, giving judgment in the Privy Council in that case remarked: "It is sufficient to say that even if a wrong has been done, it is a wrong for which no municipal court can afford a remedy." The principle of this case was upheld in a quite recent case. The principle was slightly different in *Forester & others vs. the Secretary of State for India in Council*. There the Government of India had resumed the property of Begum Sumroo on her death, and the legality of that act was questioned by her heirs. It appeared that the Begum was not quite an independent sovereign at the time of her death, but a British subject. Hence the annexation of her estate was not the annexation by arbitrary power of the territories of one sovereign power by another, but the resumption, under colour of legal title, of lands previously held from the Government by a subject under a particular tenure, on the alleged determination of that tenure. The questions in that suit, therefore, were regarded as cognisable by a municipal court. The facts in Dhulip Sing's case were very nearly the same as in the Tanjore case and the same principles were upheld. (*Salaman vs. the Secretary of State for India in Council*, 1905, 1 K. B. 613).

Apart from the acts of state the Secretary of State as a corporate body is able to sue and be sued in respect of contracts; but in contracts of service regard must be had also to the

principles regulating the tenure of servants under the Crown. In the case of *Jehangir M. Cursetji vs. the Secretary of State for India in Council* (*I. L. R. 27 Bom. 189*) the plaintiff was a Huzur Deputy Collector in Poona, and for certain acts done by him he was censured by a Resolution of the Government of Bombay, dated 6th November 1899. This censure was construed by the plaintiff into a defamation and he sued the Secretary of State for the same. It was held (a) that the Governor of Bombay and the members of his Council are exempt by law from the jurisdiction of the High Court of Bombay for acts done in their public capacity. Hence no action lies against the Secretary of State in respect of such acts. (b) The Secretary of State could only be sued in respect of those matters for which the East India Company could have been sued, *i. e.* matters for which private individuals and trading corporations could be sued and those matters for which there is express statutory provision. No suit would lie against the East India Company in respect of acts of state, and so no suit lies against the Secretary of State for such matters. (c) The plaintiff was a public officer, whose employment was one which could only be given to him by the sovereign or the agents of the sovereign. Such public servants hold their office at the pleasure of the sovereign, being liable to dismissal at his will and pleasure, if that power is not limited by statutory provision as for instance in the case of the members of the Council of India. The power of dismissal includes all other powers of censure or reprimand. We may at the cost of some repetition, but for the sake of clearness, sum up once again the position of the Secretary of State in respect of contracts as follows:—

For the purpose of making contracts the Secretary of State is a body corporate—or in the same position as a body corporate, though he is not such for holding property. Such property, as would have formerly vested in the East India Company, now vests in the Crown. [*Kinlock vs. the Secretary of State in Council 1880, L. R. 15 Oh. D.*] The debts due to the Secretary of State in India rank in priority of all other debts. There is a statutory remedy provided against the Secretary of State, and that remedy is not confined to those cases for which a petition

of right would lie in England. But, apart from special statutory provisions, the only suits which could have been brought against the East India Company, and which can now be brought against the Secretary of State in Council, are suits in respect of acts done in the conduct of undertakings which might be carried on by private individuals. Hence if an act complained of was an act done by the Secretary of State in the exercise of the sovereign power of the Crown, and on behalf of the Crown, no court of justice would have jurisdiction to try that case. In suits or actions against the Secretary of State for breach of contract of service, regard must also be had to the principles regulating the tenure of servants under the Crown. And the liability of the Secretary of State in Council to be sued does not deprive the Crown of its privileges by virtue of its prerogatives.

Before commencing an action against the Secretary of State notice of 2 months must be given according to S. 80 of the Civil Procedure Code of 1908.

CHAPTER III.

The Governor-General in Council.



PART IV

GENERAL POWERS AND DUTIES OF THE GOVERNOR-GENERAL IN COUNCIL.

The Governor-General in Council.

33. The superintendence, direction and control of the civil and military Government of India is vested in the Governor-General in Council, who is required to pay due obedience to all such orders as he may receive from the Secretary of State.

The Governor-General.

34. The Governor-General of India is appointed by his Majesty by warrant under the Royal Sign Manual.

The Governor-General's Executive Council.

35. The Governor-General's Executive Council consists of the ordinary members and the extra-ordinary members (if any) thereof.

36. (1) The ordinary members of the Governor-General's Executive Council shall be appointed by His Majesty by warrant under the Royal Sign Manual.

(2) The number of the ordinary members of the Council shall be five, or, if His Majesty thinks fit to appoint a sixth member, six.

(3) Three at least of them must be persons who at the time of their appointment have been for at least ten years in the service of the Crown in India, and one must be a barrister of England

or Ireland, or a member of the Faculty of Advocates of Scotland, of not less than five years standing.

(4) If any person appointed an ordinary member of the council is at the time of his appointment in the military service of the Crown, he shall not, during his continuance in office as such member, hold any military command or be employed in actual military duties.

37. (1) The Secretary of State in Council may, if he thinks fit, appoint the commander-in-chief for the time being of His Majesty's forces in India to be an extraordinary member of the Governor-General's Executive Council, and in that case the commander-in-chief shall, subject to the provisions of this Act, have rank and precedence in the council next after the Governor-General.

(2) When and so long as the council assembles in any province having a Governor, he shall be an extraordinary member of the council.

38. The Governor-General shall appoint a member of his Executive Council to be vice-president thereof.

39. (1) The Governor-General's Executive Council shall assemble at such places in India as the Governor-General in Council appoints.

(2) At any meeting of the council the Governor-General or other person presiding and one ordinary member of the council may exercise all the functions of the Governor-General in Council.

40. (1) All orders and other proceedings of the Governor-General in Council shall be expressed to be made by the Governor-General in Council, and shall be signed by a secretary to the Government of India, or otherwise, as the Governor-General in Council may direct.

(2) The Governor-General may make rules and orders for the more convenient transaction of business in his executive council, and every order made, or act done, in accordance with such rules and orders, shall be treated as being the order or the act of the Governor-General in Council.

41. (1) If any difference of opinion arises on any question brought before a meeting of the Governor-General's Executive Council,

the Governor-General in Council shall be bound by the opinion and decision of the majority of those present, and, if they are equally divided, the Governor-General or other person presiding shall have a second or casting vote.

(2) Provided that whenever any measure is proposed before the Governor-General in Council whereby the safety, tranquillity or interests of British India, or any part thereof, are or may be, in the judgment of the Governor-General, essentially affected, and he is of opinion either that the measure proposed ought to be adopted and carried into execution, or that it ought to be suspended or rejected, and the majority present at a meeting of the council dissent from that opinion, the Governor-General may, on his own authority and responsibility, adopt, suspend or reject the measure, in whole or in part.

(3) In every such case any two members of the dissentient majority may require that the adoption, suspension or rejection of the measure, and the fact of their dissent, be reported to the Secretary of State, and the report shall be accompanied by copies of any minutes which the members of the council have recorded on the subject.

(4) Nothing in this section shall empower the Governor-General to do anything which he could not have lawfully done with the concurrence of his council.

42. If the Governor-General is obliged to absent himself from any meeting of the council, by indisposition or any other cause, and signifies his intended absence to the council, the vice-president, or, if he is absent, the senior ordinary member present at the meeting, shall preside thereat, with the like powers as the Governor-General would have had if present:

Provided that if the Governor-General is at the time resident at the place where the meeting is assembled, and is not prevented by indisposition from signing any act of council made at the meeting, the act shall require his signature; but if he declines or refuses to sign it, the like provisions shall have effect as in cases where the Governor-General, when present, dissents from the majority at a meeting of the council.

43. (1) When the Governor General in Council declares that it is expedient that the Governor-General should visit any part of India

unaccompanied by his executive council, the Governor-General in Council may, by order, authorize the Governor-General alone to exercise, in his discretion, all or any of the powers which might be exercised by the Governor-General in Council at meetings of the council.

(2) The Governor-General during absence from his Executive Council may, if he thinks it necessary, issue, on his own authority and responsibility, any order, which might have been issued by the Governor-General in Council, to any local Government, or to any officers or servants of the Crown acting under the authority of any local Government without previously communicating the order to the local Government; and any such order shall have the same force as if made by the Governor-General in Council; but a copy of the order shall be sent forthwith to the Secretary of State and to the local Government, with the reasons for making the order.

(3) The Secretary of State in Council may, by order, suspend until further order all or any of the powers of the Governor-General under the last foregoing subsection; and those powers shall accordingly be suspended as from the time of the receipt by the Governor-General of the order of the Secretary of State in Council.

War and Treaties.

44. (1) The Governor-General in Council may not, without the express order of the Secretary of State in Council, in any case (except where hostilities have been actually commenced, or preparations for the commencement of hostilities have been actually made against the British Government in India or against any prince or State dependent thereon, or against any prince or state whose territories His Majesty is bound by any subsisting treaty to defend or guarantee), either declare war or commence hostilities or enter into any treaty for making war against any prince or state in India, or enter into any treaty for guaranteeing the possessions of any such prince or state.

(2) In any such excepted case the Governor-General in Council may not declare war, or commence hostilities, or enter into any treaty

for making war, against any other prince or State than such as is actually committing hostilities or making preparations as aforesaid, and may not make any treaty for guaranteeing the possessions of any prince or state except on the consideration of that prince or state actually engaging to assist His Majesty against such hostilities commenced or preparations made as aforesaid.

(3) When the Governor-General in Council commences any hostilities or makes any treaty, he shall forthwith communicate the same with the reasons therefor, to the Secretary of State.

COMMENTS.

Ss. 33—44 (both inclusive).

The provisions of this consolidating Act do not give an exhaustive statement of the powers of the Governor-General-in-Council. (1) The powers, for instance, of the Government of India, as the paramount power in India, extend beyond the limits of British India. (2) Again the Governor-General-in-Council as representing the Crown in India enjoys all those powers, privileges, prerogatives, and immunities appertaining to the Crown, as are appropriate to the case and consistent with the local legal system. Thus the rule is maintained that the Crown debts rank in priority of all other debts, or that the Crown is not bound by a statute unless expressly mentioned therein. *Ganpat Putaya vs. the Collector of Canara* (I. L. R. 1, Bom. 7) West J. said "It is a universal rule that the prerogative and the advantages it affords cannot be taken away except by the consent of the Crown embodied in statute. This rule of interpretation is well established and applies not only to the statutes passed by the British, but also to the Acts of the Indian legislature framed with constant reference to the rules recognised in England." (3) The Governor-General in Council has also by delegation powers of making treaties and arrangements with Asiatic states, of exercising jurisdiction in foreign territory, and of acquiring and ceding territory. It is not quite free from doubt whether the Crown in England can cede territory to foreign powers without the consent of Parliament, though the

Crown has undoubtedly the power to make treaties. It is admitted that a treaty made by the Crown in England, if it imposes any financial obligations upon the British citizens, will not be carried out unless its provisions are given effect to by an Act of Parliament. As regards other treaties involving cession of territory, recent practice has been to seek the approval of Parliament. In India, however, the power of the Governor-General-in-Council to make treaties and to cede or acquire territory thereunder has been long since recognised [*Damodhar Khan vs. Deoram Kanji*, I. L. R. 1 Bom. 367; *The Taluka of Kotda Sangani vs. the State of Gondal*, A. C. 1906] (4) The Government of India, moreover, derive certain of their powers not from the English Crown, but from the native rulers of the country whose place they have taken. Thus the rights of the Government in India in respect of lands and minerals in India are different from the similar rights of the Crown in England. The Governor-General may also be said to have the great Royal prerogative of pardoning criminals, though Ilbert says that power is doubted, since it has not been expressly conferred upon him by his warrant of appointment. This power is possessed by all colonial Governors; and the Viceroy, who is a representative of the King-Emperor par excellence, must be taken to have that power. The Code of Criminal Procedure gives power to remit sentences, and so the question is of little practical importance.

The present authority of the Governor-General-in-Council is, thus, not the result entirely of Parliamentary enactments. No doubt the Government of India have to work under the orders of the Home Government. In such matters as the reduction or increase in taxation, or measures which substantially affect the revenues; changes in the general financial policy regarding currency or debt; matters raising important administrative issues or involving considerable, unusual or novel expenditure the previous sanction of the Secretary of State in Council is required. But when all allowance is made for these, it still remains true that the Governor-General is the immediate ruler of the country. To him in Council are committed the weal and woe of this country. His powers are vast because in all ordinary matters his only superior is too far away from the actual

seat of Government to control or overrule him; because to dictate to an authority like the Governor-General-in-Council requires an exceptionally strong personality or an overwhelmingly great principle; because the Viceroy enjoys powers—as the representative of the English Crown, as the successor of the great Moghul, which no Secretary of State can control, no Parliament can alter. And if besides all this, the opinion of the Governor-General-in-Council can be made to appear as the opinion of the people of India, the domination of the Secretary of State over the Government of India must be modified.

I. The Governor-General.

The Governor-General is an Imperial Officer appointed on the advice of the Prime Minister and not on the advice of the Secretary of State, by the Crown. He is also called the Viceroy, a title most frequently used in ordinary speech, but yet it has no legal authority, since it has never been employed in any Act of Parliament. The first time that title was used was in the proclamation of 1858 which announced the assumption of the Government of India by the Crown. In the course of the proclamation, Lord Canning was referred to as the first Viceroy and the Governor-General. This title of Viceroy is employed frequently in the statutes of Indian Orders and public notifications; and may be regarded as a title of ceremony used appropriately in connection with the said functions of the representative of His Majesty in India. The Viceroy has a salary of Rs. 256,000 a year.

The Governor-General is usually a man who has already made his reputation in English public life. He is either a diplomatist of experience or one who has served as governor in some of the British colonies. Though no definite qualifications for this office have been laid down, it seems to be generally understood that the highest executive office in India shall be given to a man who has already served his

apprenticeship in the service of the Crown in one department or another. It is also understood in the same way that the Governor-General shall be a man who has had previously no connection with India. Like the Secretary of State he comes to his task perfectly new and entirely unprejudiced.

Since the transfer of the Government of this country to the Crown, the only permanent Governor-General, who had had previous experience of India, was Sir John Lawrence. But the case of Sir John stands apart. Even at the time of his appointment there was a strong opposition to the idea of an ex-civilian, with all the prejudices and preconceptions of the service, being appointed to the highest executive post under the Crown in India. That the opposition was well-founded is evident from the fact that since the time of Lord Lawrence, the experiment has not been repeated. Among his successors, Lord Curzon seems to be the only man who has had any knowledge of the country and its people, prior to his appointment as Governor-General. Not as a servant of the Crown in India, but as a traveller and a student, a writer and a minister at home, he had gathered information relative to this country long before there was any chance of the greatest ambition of his life being realised. Says his historian, "Lord Curzon embarked with an equipment for his task such as few Viceroys have possessed. He had spent nearly one year at the India Office and three years at the Foreign Office. He had visited India four times and had travelled widely within its borders. He knew at first hand the North-West frontier always an object of deep anxiety" and yet even in his case some critics of his appointment argued that the very greatness of his qualifications disqualified him. The same writer continues, "Reduced to a simple formula, their contention is that the less a Viceroy-elect knows about India, the better ruler he would make, provided he has an open mind and a balanced sense of judgment. The proposition hardly bears serious examination, but it is typical of a certain school of British thought. No one maintains that a man would be a better admiral, or a better general, or a better surgeon if he was entirely without learning or special knowledge; but the task

of steering the government of India through the vast and complex issues which constantly beset it, is supposed by these publicists to be best accomplished by an unprepared man with a cross-bench mind. **India cannot be properly governed upon such theories in these stormy days.....it is a mistake to think of a Viceroy as a judicial referee,** surrounded by men necessarily far more competent than himself. **A good Viceroy will initiate as well as adjudge.** The Indian Civil Service is the best service in the Empire, but its effect upon its members is to kill initiative in all, save the men of very strong individuality, who rarely rise to the highest place. **The head of the government must not only decide, he should also on occasion lead and direct;** and a Viceroy who realises that his office is something more than a Court of Appeal, therefore, starts with a very long advantage if he has made, as Lord Curzon had made, a serious and detailed study of Indian questions."

This long extract is adduced to show that there are two schools of opinion with regard to the qualifications of a Viceroy. One believes that only such men—selected from among the prominent public men in England—will be a success as Viceroys of India who have had no previous knowledge of the country and its questions. The other regards only those Viceroys likely to be the best rulers for a country, with all its maze of racial and social and political and economic problems, each peculiar to itself—who have had previous experience of the country and who have studied its problems. Between these two views the policy of the Imperial Cabinet has fluctuated, though the weight of opinion is in favour of the former course. Driven to its logical conclusion the ideas of the second school would lead to the appointment only of retired Civil Servants of the Crown in India. It may, however, be safely asserted at this time that this course will never be adopted, notwithstanding the precedent of a very successful Viceroyalty under Sir John Lawrence. And there are good reasons. Thirty years of service in a country like India leaves a man—however strong-minded he may be—with habits of obedience and of dependence upon others for final orders. Besides, the sound principle of the British constitu-

tion, whereby the head of even such departments as the Army and the Navy are civilians without technical skill or knowledge, is equally necessary in India; and it is realised only if the Viceroy is unacquainted with India. If the ideal of Ministerial responsibility is ever to be realised in this country, it can only be if the highest officers of the State are neither pedants nor experts. The Viceroy is the only man to-day who brings the democratic atmosphere of English or Colonial public life in the bureaucratic Government of India. A Viceroy who knows too much about India would never know enough to make a good chief of a nascent democracy. It is because the signs of the times have begun to be appreciated by the powers that be, that the Viceroys are chosen from among English diplomats like Lord Hardinge, or the proconsuls of the great English colonies. And the latter class of men are by far the most suitable. The hopes and aspirations of new India can be encouraged and guided only by men who have had some experience of constitutional rule in British democracies over seas.

The idea of the Viceroys for India being selected from the Royal family of England has already been abandoned too long to require a lengthy consideration. The experiment, however, of the Duke of Connaught as the Governor-General of the Dominion of Canada is too great a success, judging from reports, not to give rise to apprehensions for a repetition of the same on the Indian field. The government of this country is a charge vast enough to tempt the ambition or the imagination of a Royal prince. The traditions of constitutional rule of the English Royal family are long enough to reconcile the radical opponents of Royal Viceroys for India merely on constitutional grounds. The days, besides, are long gone by when reasonable fears could be entertained of an ambitious and imaginative Prince of the Blood creating an independent kingdom for himself in India if once appointed a Viceroy. And yet there are strong reasons why a Royal Viceroy might be unacceptable in India under her present circumstances. For one thing the control of the Secretary of State for India would not be so easy over a Royal Viceroy of India as over other English gentlemen—whether peers or commoners. The Government of India is yet

an illdisguised autocracy. The only check on that autocracy is that of the Secretary of State. If that check should in any way be weakened, the interests of the people of India might seriously be endangered. Even if a Royal Prince prove successful in colonies like Canada or Australia, that success would be no reason to repeat the experiment, for in the self-governing colonies democracy is an accomplished fact; the Governor or the Governor-General is only a constitutional monarch who can never do wrong, because he never does anything save through his constitutional advisers. In India democracy has still to grow, and the Viceroy can do much more than we are apt to think to promote or retard that growth. Besides, public criticism of Royal personages is bound to be moderate. And the Indian peoples—above all others—are likely to carry their moderation in this respect to extremes. At the time, therefore, when high hopes are entertained in all quarters for a new, healthy democracy in India, it would be most inopportune to appoint Royal Viceroys who quite unconsciously, quite unwillingly, perhaps inspite of themselves, might lend themselves to stifle or repress the growth of a new democracy in this old land.

II. The Duties of the Viceroy.

In one of his last speeches in India, Lord Hardinge said that to his mind the role of the Viceroy consisted in interpreting before the people of India the tradition of self-government of the people of England; and to interpret before the people of Great Britain—the legal and political Sovereign of India,—the wishes and aspirations of the people of this country. Though by law he is vested with the superintendence, direction and control of the whole government of India under the orders of the Secretary of State, his real functions have well been summarised in this remark of Lord Hardinge's. The Viceroy does no doubt initiate measures whenever he is clever and hard-working as Lord Curzon, or working under special orders from Home as Lord Lytton. But the greater portion of

his daily work consists in supervising, with the aid of his council, the work of the various provincial governments; and in directing and controlling those departments for which the Governor-General-in-Council is primarily responsible. It would be impossible for him, even if he was capable of it, to conduct in person the whole administration of this vast Empire. The actual administration is—and must be—left to the various provincial and departmental authorities. He, as the highest executive officer, with his experience of other peoples and other Governments, with his broader outlook and unprejudiced mind, must be ever ready, if not to initiate, at least to advise. He must conciliate and placate and harmonise the discordant elements of this vast machine. He must combine the savoir-faire of the diplomat with the constitutional temperament of the colonial Governor. In a thousand ways a good Viceroy can fulfil his duties—besides those of actual Government. He must discountenance the rapacity and turbulence of some members of the ruling race in India outside the official classes; he must encourage the native princes in improving their administration, appreciate their efforts as well as their difficulties, restrain their waywardness and punish—when necessary—their mis-rule; he must animate the dead routine of departmental work, impress upon the officials their duties as servants of the country where their position has made them masters; he must eliminate friction and promote good-will among the various races of this continent; and above all, undaunted by temporary ebullition of temper, undismayed by criticism or abuse, uninfluenced by flattery he must ever promote the true interests—social and political—of the new India. All this is outside government, and yet indispensable to make a good Viceroy a great ruler.

III. The Executive Council of the Governor-General.

The History of the Council.

The Governor-General's council dates from 1773 if not from the earliest days of the East India Company's rule

in India. Under the Regulating Act the Governor of Fort William in Bengal was made the Governor-General of Bengal, and was given a council of 4 members appointed from England. Each of the members had the same voting power, with the exception of the Governor-General, who, as the President of the council, had a casting vote. The council of the Governor-General, or to speak in technical terms, the Governor-General-in-Council, was made supreme over the other two Presidencies, which also had each their own Governor-in-council from and after 1773. The equal voting power of each member caused embarrassment and dissensions in the council which considerably hampered the task of administration. In an Act passed after the Act of 1784, the Governor-General was given power in certain cases to overrule the majority of his council. The number of the ordinary members of the council was fixed at 3 in 1793, and the Commander-in-chief could be added as an extraordinary member if specially appointed. The act of 1833 added a special member for legislation, who was entitled to sit and vote only when the council of the Governor-General (which from that day becomes the sole legislative authority for the whole of the British India) met for the purpose of passing rules and regulations. In 1853 he was made a full member of the council, *i. e.* he was entitled to sit and vote at every meeting of the council no matter what the question before the council. This feature of the council having special members for certain departments, was further extended in 1859 when the disordered state of the finances of the country required and obtained a trained financier. In 1874, the Governor-General-in-Council obtained the power, under an act of Parliament, to appoint another member for the Public Works Department only if he thought fit. This power was not always exercised, and in 1904 the restriction limiting it to Public Works purposes was removed. In 1905 the Public Works Department was abolished, and a new Department of Commerce and Industry was created, to which was made over the bulk of the Public Works Department, *viz.*, the Railway matters, while Irrigation works were placed under the charge of the Revenue and Agriculture member. The Commander-in-Chief under the

present act may be appointed by the Secretary of State in Council as an extraordinary member of the council. In practice, he is always so appointed. Before 1905 the Commander-in-chief had no department under him. In virtue of the changes made in that year, the Military Department of the council was replaced by the Army and Military Supply Departments. The former was placed under the Commander-in-chief who thus for the first time received the charge of a department. The latter was in charge of a separate member who replaced the member in charge of the Military department. In 1909 the Military Supply Department was abolished, and the responsibility for the whole military administration passed to the Commander-in-Chief as member in charge of the Army Department. Finally in November 1910 a sixth ordinary member was again added to take charge of the newly constituted Education Department.

At present, therefore, there are six ordinary and one extraordinary member in the Viceroy's Council. The ordinary members are:--

- The Hon. Sir William Vincent, Home Member.
- „ „ Sir William Meyer, Finance Member.
- „ „ Mr. Claude Hill, Revenue & Agriculture Member.
- „ „ Sir Sankar Nair, Education Member.
- „ „ Mr. Lowndes, Law Member.
- „ „ Sir G. Barnes, Commerce & Industry.
- „ „ Sir. Charles Munro, the Commander-in-Chief, Extraordinary Member.

Besides this usual extraordinary Member, the Governors of Madras, Bombay and Bengal are also entitled to be extraordinary members of the Viceregal Council whenever it is held within their province.

IV. Qualifications of the Members.

The qualifications of the members according to this Act are:—(1) 3 of them at least must have been in the service of the Crown for at least 10 years at the date of their appointment. (2) One must be a barrister of England or Ireland of at least 5 years standing or a member of the Faculty of Advocates of Scotland. (3) No ordinary member of the council can be a military officer. If, at the time of his appointment, a member is a military officer, he must resign his command; he cannot be employed in military duties during the tenure of his office as member of the Viceregal Council. The qualifications of only 4 members are thus laid down by law, so that there is a discretion in the appointment of the remaining two, who may be chosen for different qualifications.

The presence of an Indian gentleman in the Viceroy's Council is not secured by any legal provision. On the other hand Indians are not by law debarred from holding these offices. Said Lord Morley in 1908, "The absence of an Indian member from the Viceroy's Executive Council can no longer, I think, be defended. **There is no legal obstacle or statutory exclusion.** The Secretary of State can, tomorrow, if he likes, if there be a vacancy on the Viceroy's Council, recommend His Majesty to appoint an Indian member." Lord Morley added that he would feel it his duty to advise the King to appoint an Indian, and Lord Minto, the then Viceroy, concurring in, and even suggesting the step himself, an Indian gentleman was appointed for the first time in 1910. It must be noted also that there is nothing in this Act, or any other Act, to prevent the majority or even the entirety of the council being composed of Indians, provided of course, they fulfil the requirements about service etc.

Of the six ordinary members of to-day, Sir W. Vincent, Sir William Meyer and Mr. Claude Hill are distinguished members of the Indian Civil Service. Sir George Barnes is a member of the Home Civil Service, who had risen to one of the highest posts in the service of England prior to his appoint-

ment to the Governor-General's council in 1915. Sir S. Nair is an Indian gentleman of judicial experience and has been appointed to the Education Department. Mr. Lowndes was a practising barrister in Bombay. He had retired from active practice before his appointment to the council. The Councillors hold their office for 5 years as a matter of custom, though no definite term is laid down by law.

V. Character of the Council.

The council thus consists of a number of men who have distinguished themselves in the task of administration long before their appointment. At least 3 out of the 6 ordinary members must have been connected directly with the task of administration in India; and the other 3 also must in one way or another have long experience of Indian problems. They thus form a body of eminent men of experience and reputation, entrusted with the task of advising and assisting the Governor-General in the administration of India. The Governor-General is, as we have seen already, a novice as regards Indian problems. His councillors on the other hand are admittedly experienced in Indian questions. For those unconnected with the Government it is difficult to say what is the exact influence of the Governor-General and his councillors in the actual administration of India. Arguing on abstract principles, it would seem *that in matters of every day routine, it is not probable that the Governor-General would take it upon himself to go against the considered opinion of his experienced advisers, and especially if that opinion is the opinion of the majority of his colleagues.* The Governor-General has a right to overrule his Council under certain circumstances. But it is very doubtful if he ever feels the need of exercising this extraordinary power. The last case when this right was exercised was in 1877 or 1878, Lord Lytton, the then Viceroy, having been pledged to carry out the tariff policy of the Home Government at any cost. It may be argued that that incident was of too peculiar a character

to form a valid precedent. At any rate the mere fact that the right was exercised but once in the course of nearly sixty years is enough to show that, though the provision is incorporated in the present act, the power it gives will not be lightly resorted to. In cases like this, mere disuse of a legal power does not amount to its abolition, though it shows its abeyance. The prerogative of the King in England to veto Bills sent up by Parliament has not been specifically abolished by any Act of Parliament, and yet almost every writer on the English constitution takes it for granted that the royal veto is dead. The prerogative has been in abeyance—as far as England is concerned—for more than 2 centuries. It must be admitted that the presence of such a clause shows, more than anything else, the absolute, autocratic nature of the Government of India. In proportion, however, as the principles of representative Government are extended, bringing in their train the ideas of responsible government, such powers in the supreme head of the Government, however closely circumscribed, would be found to be incompatible if not altogether useless.

VI. The Council at Work.

By subclause (2), Sec. 40, power is given to the Governor-General to make rules and orders for the more convenient transaction of business in his executive council. This power, first given by the Indian Councils Act 1861, was utilised by Lord Canning to introduce some division of work in the Council. Before 1861 every question of administration had to go through the whole council, no matter what the department in which it had originated, because the council worked as a collective board, and left no power to individual members to work each for a separate department. Under the Indian Councils Act of 1861, the provisions of which have been incorporated in Sec. 40 (2) of this act, the Governor-General can, for the more convenient transaction of business, parcel out the work of administration amongst his colleagues. By that method can be secured

more convenient as well as expeditious transaction of business. Each member of the council is thus also the head of a Department. At the present time, the business of the Government of India, it may be said, is conducted in a manner analogous to the Cabinet administration prevalent in England. The papers regarding any subject which comes up for consideration are prepared by the department concerned, and are first submitted to the member in charge of that department. The member passes his own orders in all minor cases; but in important cases, and especially in cases where two departments differ in opinion, or when it is proposed to overrule a Provincial Government, the member cannot pass final orders by himself. Such cases are, therefore, referred to the Governor-General. He may pass final orders in consultation only with the member in whose department the question originally arose. If he concurs with the member in charge, and the question is relatively a minor one, the usual practice would be for the Governor-General to pass the final orders. Questions involving large issues of general policy, or questions which cannot be decided without legislation of the Government of India are referred to the whole council, and are decided by a majority in case of a difference of opinion. The council usually meets once a week but it may meet more frequently. The meetings are private and the decisions arrived at are always represented as the decisions of the Governor-General-in-Council.

The council is divided into 8 departments. They are: (1) the Foreign Department, usually in charge of the Governor-General himself, (2) the Army Department in charge of the Commander-in-Chief since 1909, (3) the Home Department, (4) the Revenue and Agricultural Department, (5) the Commerce and Industry Department, (6) the Education Department, (7) the Finance Department and (8) the Legislative Department.

VII. The Work of each Department.

The Foreign Department transacts all business relating to the foreign policy of the Government of India, to the frontier

tribes, and to the Native States in India. It also controls the general administration of such provinces as Ajmer-Merwara, Coorg, the North-West Frontier Province, and British Baluchistan. The Government of India have really speaking very little control over their external relations; and such control as they have is confined to the relations with the frontier powers in the North-West, such as Afghanistan and Persia, and in the North-East such as Tibet, China and Siam. The Foreign Department also deals with questions of ceremonial, and those relating to the Indian orders, the Imperial Service Troops, the Cadet Corps, and the Chiefs' colleges.

The **Home Department** is concerned with the work of general administration, and deals with internal politics, law and justice, police, hospitals, public houses, Municipalities, Local Boards and a number of other subjects. Matters ecclesiastical are also under this department. As all these matters fall primarily within the jurisdiction of Local Governments, the work of the Home Department consists chiefly in controlling and supervising the Provincial Governments. Its share of actual administration is confined to the Government of the penal settlement of Port Blair.

The department of Revenue and Agriculture, created in 1871 and abolished in 1879, and reconstituted in 1881, is concerned with the administration of land revenue and agricultural enquiry, agricultural means and famine relief. The organisation of economic and scientific investigation and of measures of agricultural improvement is also in the charge of this department. The mere enunciation of its branches *e. g.* the Meteorological Department, the Survey Department, the Civil Veterinary Department, the Forest Department, will suffice to show its multifarious activities. As in the case of the Home Department the functions here again are primarily falling within the jurisdiction of Local Governments, and the functions of the Revenue and Agricultural Department are mainly of a supervising and controlling character. Since 1905, it has also received charge of the Irrigation branch of the Public Works Department.

The Commerce and Industry Department, formed in 1905, has taken over some portion of the work from other depart-

ments, and is concerned with the questions relating to the trade and manufactures of the country. It is also the department which represents the railways in the council of the Governor-General. It is concerned with the administration of the Factories, Petroleum, and Explosives acts. Postal business, customs, statistics, printing and stationary; and everything relating to ports, shipping, and trade, generally have been transferred to this from the finance department. Other functions directly connected with the trade and under this department are the Merchandise Marks Act. It controls the Post-office—an Imperial Department under a Director General under whom are the Provincial Post-Masters—and also the Telegraph Department. It considers all labour questions including emigration to foreign countries, as also to Assam. The control of expert mining staff, including inspection of all mines, and the matters relating to geological enquiries are made over to that department.

The Legislative Department is responsible for all matters connected with the conduct of the Legislative Council of the Governor-General. It is also entrusted with drafting of enactments and of publishing and revising the Statute book. It also supervises the legislation of the provincial councils, and it assists the other departments of the Government of India with advice on legal questions and principles.

The Army Department is under the sole charge, since 1909, of the Commander-in-Chief. It deals with all questions relating to enlistment, pay and promotion of soldiers, volunteers, and the Royal Indian Marine, and the Indian Medical Service, ordnance and stores.

The Education Department, created in 1909, deals with all educational matters such as the control and establishment of universities and technical institutions, the grants-in-aid, the establishment of schools and their equipment, the extension of education etc. As all these matters fall within the jurisdiction of the various provincial governments, the work of the Department is chiefly of a supervising and controlling nature,

besides the main question of formulating the educational policy of the Government of India.

The Finance Department deals with the general administration of Imperial and Provincial Finance, with questions relating to the salaries, leave and pensions of public officers, and with currency and banking. It supervises and controls such sources of revenue as opium, excise, stamps, salt and assessed taxes. It also administers the mint, and the Government Treasuries. One single department manages the civil accounts of both the supreme and the provincial governments. At the head of this department is the Comptroller and Auditor General who is also the Head Commissioner of paper currency. A separate branch, called the Military Finance Department, is entrusted with all questions relating to the financial administration of the Army.

VIII. The Indian Council and the English Cabinet.

Is the Council a Cabinet ? Says Sir J. Strachey, "Although the separation of departments is less complete than in England, and the authority of the member of Council much less extensive and exclusive than that of an English Secretary of State, **the members of Council are now virtually cabinet ministers**, each of whom has charge of one of the great departments of Government. Their ordinary duties are rather those of administrators than of Councillors." In spite of the writer's intimate experience of the system of the Government of India, it is difficult to accept the opinion that the Indian Council is a Cabinet in miniature. Apart from the delegation to each member of a specific department, there is no resemblance between the Council of the Governor-General and the Cabinet of Western democratic countries. On the other hand, the differences between the two are many and striking. (1) The authority of a Cabinet Minister in England or France is much wider—as Sir John himself admits than—that of a Councillor of

the Viceroy of India. (2) The public actions of a Cabinet Minister in those countries, moreover, are taken by each Minister by himself, while the similar actions of the Councillors in India are invariably expressed as being the acts of the collective entity, the Governor-General-in-Council. (3) It is true that these Councillors like the Cabinet Ministers in European countries are members of the Legislature, apparently pursuing a uniform, pre-concerted policy, but there the resemblance ends. The councillors in India by no means hold their position in the Council, as do the Cabinet Ministers in democratic countries, because they are the acknowledged leaders of the dominant party in the legislature. There are no parties in politics in this country. There is also no duty imposed upon the Councillors to hold themselves answerable to the legislature for their acts, and to resign in the event of their acts or policies not finding favour with the legislative assembly. (4) There is also no Prime Minister in India—unless, indeed, we take the Viceroy to be his own Prime Minister—as is usual in all cabinets; And even if we take the Viceroy to be his own premier, there is not that bond of union between him and his colleagues as is always found between the prime minister and his cabinet colleagues in England or France, the bond of identical opinions on leading political questions of the day and of sympathetic changes of political fortune. The Viceroy is a new comer, while his colleagues are all veterans in the service of India. The Viceroy is immeasurably their superior in social position and theoretical powers, and they are his superiors in local knowledge. They do not, by any means, come to their work at the same moment, and leave it also at the same. Beyond the fact that the Viceroy usually takes charge of a department of State, and that he regulates the distribution of work among his colleagues, there is really no similarity between an English Prime Minister and the Viceroy of India. (5) The English Cabinet is a body quite unknown to the constitutional law of England. In other countries they have legal existence; but no where has constitutional law invested them with that corporate capacity which we find in the case of the Executive Council of the Viceroy. (6) The fancied resemblance to a Cabinet breaks down even

when we look to points merely of detail. Thus the position of the Secretary in an Indian Department has been compared to that of the permanent Under Secretary in England. But there are important differences between the Indian Secretary to the Government and the English permanent (of course he cannot be compared to the Parliamentary) Under Secretary of State. The report of the Royal Commission on Decentralisation says:—"The Secretary, as above stated, is present at Council meetings. He attends on the Viceroy, usually once a week, and discusses with him all matters arising in his department, and he has the right of bringing to the Viceroy's special notice any case in which he considers that His Excellency's concurrence should be obtained to action proposed by the departmental member of council. His tenure of office is usually limited to three years." In all these respects, the position of the English permanent Under-Secretary is radically different. He cannot be present at Cabinet meetings; he has no direct excess to the Prime Minister nor the right to appeal against his departmental chief; and his tenure of office is in no way limited.

Under these circumstance, it would be impossible to regard the Government of India in the same light as the Cabinet Government in England. The principles which guide the working of the Indian Council have been well summarised by J. S. Mill. "The Councils" he says in his representative government, "should be consultative merely in this sense, that the ultimate decision should rest undividedly with the Minister himself; but neither ought they to be looked upon, or to look upon themselves, as ciphers, or as capable of being reduced to such at his pleasure. The advisers attached to a powerful and perhaps self-willed man ought to be placed under conditions which make it impossible for them, without discredit, not to express an opinion; and impossible for him not to listen to and consider their recommendations, whether he adopts them or not. The relation which ought to exist between a chief and this description of advisers is very accurately hit by the councils of the Governor-General and those of the different presidencies in India. As a rule every member is expected to give an opinion, which is, of course, very often a simple acquiescence;

but if there is difference of opinion, it is at the option of every member, and is the invariable practice, to record the reasons of his opinion; the Governor-General or Governor doing the same. In ordinary cases the decision is according to the sense of the majority. The Council, therefore, has a substantial part in the government, but if the Governor-General or Governor thinks fit, he may set aside even their unanimous opinion, recording his reasons. **The result is that the chief is, individually and effectually, responsible for every act of the government.** " No apology is needed to record at length the opinion of one of the most eminent political thinkers of the last century, who was himself for a long time in the service of the East India Company. At the time when Mill was writing this, however, the council was working as a collective board, each member in which shared equally in every act of administration. The distribution of the work of the council in different departments, each in the charge of one member, was introduced subsequently. But the principles he has laid down still hold good. It is even now recognised as a fundamental principle of the Government of India that while the Governor-General of India possesses in the last resort power to act upon his own judgment, even against the unanimous opinion of his colleagues, he is also obliged to hear the opinion of his experienced councillors. And those counsellors have the right to make known their opinion, not merely as regards their particular departments, but on all questions coming before the council. On account, however, of the cumbrousness of the system of collective working, the practice which prevailed under the Company was abandoned in 1861, though in form the acts of the Government of India are even now the acts of the Governor-General-in-Council.

It is impossible, therefore, to accept the opinion that the Indian Council is for all practical purposes a Cabinet like that of England. Those who are entitled to as much deference as Sir John Strachey have declared that the Government of India is even now conducted by a collective board or committee, in which every member—even the Viceroy—has the same powers. Says Lord Curzon, "Never let it be forgotten that the Govern-

ment of India is conducted not by an individual but by a committee. No important act can be taken without the assent of a majority of that committee. In practice this cuts both ways. The Viceroy is constantly spoken of as though he and he alone were the Government. This is, of course, unjust to his colleagues, who are equally responsible with himself, and very often deserve the credit which he unfairly obtains. On the other hand, it is sometimes unfair to him, for he may have to bear the entire responsibility for administrative acts or policies which were participated in or originated by them. **The Viceroy has no more weight in his council than any individual member of it.**" If such a strong willed ruler as Lord Curzon could publicly utter such sentiments, there is every reason to believe that the growth of departmentalism has by no means diminished the importance of the council, or displaced old theories of Government.

IX. The Councils of the Governor-General and of the Secretary of State compared.

A comparison of the powers of these two great bodies shows that while in theory the council of the superior authority, the Secretary of State, appears to have wider powers, in practice, the Council of the Governor-General, the man on the spot, must of necessity have the more effective powers. (1) It is true the councillors of the Governor-General may be overruled by him in any case whenever the tranquillity, safety and interests of British India, in his opinion, require him to do so, while the India Council cannot be overruled by the Secretary of State in certain specified matters. (2) At the same time, it must be remembered that the council of the Governor-General is not excluded from any matters whether secret or urgent. (3) Again, though the tenure of office of an India councillor is definite, and though he is not removeable from office except by a joint address of both the Houses of Parliament, thus apparently enjoying a more independent position, he does not in reality enjoy the same position as the viceregal councillor

whose tenure of office is less secure, because the latter is never confronted by the opposition of a man, with the influence and importance of the Secretary of State, whenever he differs from his chief. (4) The Secretary of State, moreover, in most matters, is not bound to accept the opinion of the majority of his council, even when he consults them, while the Viceroy must in most cases abide by the decision of a majority of his council.

In considering the wider question as to the relations between the Government of India and the Secretary of State, it is difficult to say exactly what is the principle governing these relations. Sir Courtney Ilbert says that the relations are governed by well known constitutional usages. When we think only of the past the opinion of Ilbert seems to contain a considerable degree of truth. In every case that has arisen in the last 60 years or so, the Secretary of State has always been acknowledged as the final authority; and the Governor-General, in cases where he differs from the Secretary of State, has no alternative but to submit or to resign. Lord Northbrook in 1875, and again Lord Curzon in 1905, chose to resign when they could not accept and carry out the policy determined upon by the Secretary of State. The action of Lord Lytton in 1878 seems to be conclusive on the point that in all matters the Government of India have in the last recourse to obey the orders of the Secretary of State. At the same time Sir John Strachey, who was intimately connected with the Government of India for nearly half a century, takes a different view. Much depends, according to him, upon the character of the individuals for the time being holding the two offices of the Governor-General and the Secretary of State. It must be confessed that in the administration of any progressive country no amount of petrified usage, however sanctified by precedent, can hold its ground before the daily expanding needs of the Government. A critic so shrewd and penetrating as Sir Valentine Chirol has declared that the effect of the constitutional reforms of Lord Morley, giving some share in the Government of the country to the representatives of the people, is bound to result in developments, which must inevitably enhance the importance of the Government of India in the eyes of the home authorities.

In proportion as the ideas of responsibility to the people of India is recognised and accepted by the Government of the country, they will ever carry that weight due to the office of spokesmen of three hundred million human beings, which could never be attributed to a committee of bureaucrats however experienced they might be. As the control of the Indian people grows, the control of the Secretary of State and his council must diminish and eventually disappear. This does not necessarily mean that the sovereignty of the Imperial Parliament would in any way be impaired.

The legal liability of the Governor-General and his councillors—and of all Governors and their councillors—is very different from those of the colonial Governor. For acts done in their official capacity the Indian Governors and their councillors are immune from any liability. They can in no way be proceeded against, or arrested or imprisoned before the Indian High Courts. For certain specified offences, however, such as engaging in trade on their own account or receiving presents, they may be prosecuted before the King's Bench division of the High Court in London.

CHAPTER IV.

Local Government.



PART V

GENERAL.



General.

45. (1) Every local Government shall obey the orders of the Governor-General-in-Council, and keep him constantly and diligently informed of its proceedings and of all matters, which ought, in its opinion, to be reported to him, or as to which he requires information, and is under his superintendence, direction and control in all matters relating to the government of its province.

(2) No local Government may make or issue any order for commencing hostilities or levying war, or negotiate or conclude any treaty of peace or other treaty with any Indian prince or state (except in cases of sudden emergency or imminent danger when it appears dangerous to postpone such hostilities or treaty), unless in pursuance of express orders from the Governor-General-in-Council or from the Secretary of State; and every such treaty shall, if possible, contain a clause subjecting the same to the ratification or rejection of the Governor-General-in-Council. If any governor, lieutenant-governor or chief commissioner, or any member of a governor's or lieutenant-governor's executive council, wilfully disobeys any order received from the Governor-General-in-Council under this subsection, he may be suspended or removed and sent to England by the Governor-General-in-Council, and shall be subject to such further pains and penalties as are provided by law in that behalf.

(3) The authority of a local Government is not superseded by the presence in its province of the governor-general.

Governorships.

46. (1) The presidencies of Fort William in Bengal, Fort St. George and Bombay are, subject to the provisions of this Act governed by the Governors in Council of those presidencies respectively, and the two former presidencies are in this Act referred to as the presidencies of Bengal and of Madras.

(2) The Governors of Bengal, Madras and Bombay are appointed by His Majesty by warrant under the Royal Sign Manual.

(3) The Secretary of State may, if he thinks fit, by order, revoke or suspend, for such period as he may direct, the appointment of a council for any or all of those presidencies; and whilst any such order is in force the Governor of the presidency to which the order refers shall have all the powers of the Governor thereof in Council.

47. (1) The members of a Governor's Executive council shall be appointed by His Majesty by warrant under the Royal Sign Manual, and shall be of such number, not exceeding four, as the Secretary of State in Council directs.

(2) Two at least of them must be persons who at the time of their appointment have been for at least twelve years in the service of the Crown in India.

(3) Provided that, if the Commander-in-chief of His Majesty's forces in India (not being likewise Governor-General) happens to be resident at Calcutta, Madras or Bombay, he shall, during his continuance there, be a member of the Governor's council.

48. Every Governor of a presidency shall appoint a member of his Executive council to be vice-president thereof.

49. (1) All orders and other proceedings of the Governor in Council of any presidency shall be expressed to be made by the Governor in Council, and shall be signed by a secretary to the Government of the presidency, or otherwise, as the Governor in Council may direct.

(2) A Governor may make rules and orders for the more convenient transaction of business in his Executive council, and every order made or act done in accordance with those rules and orders shall be treated as being the order or the act of the Governor in Council.

50. (1) If any difference of opinion arises on any question brought before a meeting of a Governor's Executive council, the Governor in Council shall be bound by the opinion and decision of the majority of those present, and if they are equally divided the Governor or other person presiding shall have a second or casting vote.

(2) *Provided that, whenever any measure is proposed before a Governor in Council whereby the safety, tranquillity, or interests of his presidency, or of any part thereof, are or may be, in the judgment of the Governor, essentially affected, and he is of opinion either that the measure proposed ought to be adopted and carried into execution, or that it ought to be suspended or rejected, and the majority present at a meeting of the council dissent from that opinion, the Governor may, on his own authority and responsibility, by order in writing, adopt, suspend, or reject the measure, in whole or in part.*

(3) In every such case the Governor, and the members of the council present at the meeting shall mutually exchange written communications (to be recorded at large in their secret proceedings) stating the grounds of their respective opinions, and the order of the Governor shall be signed by the Governor and by those members.

(4) *Nothing in this section shall empower a Governor to do anything which he could not lawfully have done with the concurrence of his council.*

51. If a Governor is obliged to absent himself from any meeting of his Executive council, by indisposition or any other cause, and signifies his intended absence to the council, the vice-president, or, if he is absent, the senior civil member present at the meeting, shall preside thereat, with the like powers as the Governor would have had if present.

Provided that if the governor is at the time resident at the place where the meeting is assembled, and is not prevented by indisposition from signing any act of council made at the meeting, the act shall require his signature; but, if he declines or refuses to sign, the like provisions shall have effect as in cases where the governor, when present, dissents from the majority at a meeting of the council.

52. The Secretary of State in Council may, if he thinks fit, direct that the province of Agra be constituted a presidency under a Governor in Council, and, if that direction is given, the presidency shall be constituted on the terms and under the conditions mentioned

in section nineteen of the Government of India Act, 1858, and section four of the Government of India Act, 1854.

Lieutenant-Governorships and other Provinces.

53. (1) Each of the following provinces, namely, those known as Bihar and Orissa, the United Provinces of Agra and Oudh, the Punjab, and Burma, is, subject to the provisions of this Act, governed by a Lieutenant-Governor, with or without an executive council.

(2) The Governor-General-in-Council may, by notification with the sanction of His Majesty previously signified by the Secretary of State in Council, constitute a new province under a Lieutenant-Governor.

54. (1) A Lieutenant-Governor is appointed by the Governor-General with the approval of His Majesty.

(2) A Lieutenant-Governor must have been, at the time of his appointment, at least ten years in the service of the Crown in India.

(3) The Governor-General-in-Council may, with the sanction of His Majesty previously signified by the Secretary of State in Council, declare and limit the extent of the authority of any lieutenant-governor.

55. (1) The Governor-General-in-Council, with the approval of the Secretary of State in Council, may, by notification, create a council in any province under a lieutenant-governor, for the purpose of assisting the lieutenant-governor in the executive government of the province, and by such notification

- (a) make provision for determining what shall be the number (not exceeding four) and qualifications of the members of the council; and
- (b) make provision for the appointment of temporary or acting members of the council during the absence of any member from illness or otherwise, and for the procedure to be adopted in case of a difference of opinion between a lieutenant-governor and his council, and in the case of

equality of votes, and in the case of a lieutenant-governor being obliged to absent himself from his council by indisposition or any other cause:

Provided that, before any such notification is published, a draft thereof shall be laid before each House of Parliament for not less than sixty days during the session of Parliament, and if, before the expiration of that time, and address is presented to His Majesty by either House of Parliament against the draft or any part thereof, no further proceedings shall be taken thereon, without prejudice to the making of any new draft.

(2) Every notification under this section shall be laid before both Houses of Parliament as soon as may be after it is made

(3) Every member of a lieutenant-governor's executive council shall be appointed by the governor-general, with the approval of His Majesty.

56. A Lieutenant-Governor who has an executive council shall appoint a member of the council to be vice-president thereof, and that vice-president shall preside at meetings of the council in the absence of the lieutenant-governor.

57. A Lieutenant-Governor who has an executive council may, with the consent of the Governor-General-in-Council, make rules and orders for more convenient transaction of business in the council, and every order made, or act done, in accordance with such rules and orders, shall be treated as being the order or the act of the Lieutenant-Governor in council.

58. Each of the following provinces, namely, those known as Assam, the Central Provinces, the North-West Frontier Province, British Baluchistan, Delhi, Ajmer-Merwara, Coorg and the Andaman and Nicobar Islands, is, subject to the provisions of this Act, administered by a chief commissioner.

59. The Governor-General in Council may, with the approval of the Secretary of State, and by notification, take any part of British India under the immediate authority and management of the Governor-General in Council, and thereupon give all necessary orders and directions respecting the administration of that part, by placing it under a chief commissioner, or by otherwise providing for its administration.

Boundaries.

60. The Governor-General-in-Council may, by notification, declare, appoint or alter the boundaries of any of the provinces into which British India is for the time being divided, and distribute the territories of British India among the several provinces thereof in such manner as may seem expedient, subject to these qualifications, namely:—

- (1) an entire district may not be transferred from one province to another without the previous sanction of the Crown, signified by the Secretary of State in Council; and
- (2) any notification under this section may be disallowed by the Secretary of State in Council.

61. An alteration in pursuance of the foregoing provisions of the mode of administration of any part of British India, or of the boundaries of any part of British India, shall not affect the law for the time being in force in that part.

62. The Governor of Bengal in Council, the Governor of Madras in Council, and the Governor of Bombay in Council may, with the approval of the Secretary of State in Council, and by notification, extend the limits of the towns of Calcutta, Madras and Bombay, respectively; and any Act of Parliament, letters, patent, charter, law or usage conferring jurisdiction, power or authority within the limits of those towns respectively, shall have effect within the limits as so extended.

COMMENTS.

I. The Development of the Provincial Governments in India.

British India is divided into 8 large provinces and 7 lesser charges each of which is termed a Local Government. The provinces are the two old Presidencies of Madras and Bombay, to which, since 1912, has been added the Presidency of

Bengal; the four Lieutenant-Governorships of the United Provinces, the Punjab, Burma, and Bihar and Orissa; the Chief Commissionerships of the Central Provinces, Assam, North-West Frontier province; British Baluchistan, Ajmere-Merwara, Coorg and the Penal Settlement of Andaman Island. To these was added in 1912 the Commissionership of Delhi, when that city was made the capital of the Government of India. The new Chief Commissionership was a charge created by separating the district of Delhi and the enclave of territory around it from the Punjab, and placing it under a Commissioner directly under the Government of India. Originally, the three Presidencies of Fort St. George or Madras, of Fort William or Bengal, and Bombay were centres of the East India Company, politically independent of one another. Though in point of history, Madras was the oldest of the East India Company's possessions in India, the acquisition by Clive in 1765 of the Diwani of Bengal, Bihar and Orissa from the Mogul Emperor made the Presidency of Fort William the premier Presidency in India. From 1773 this practical importance was recognised also in theory, the Governor of Fort William being made the Governor-General of Bengal, and being given supremacy over other provinces and over the Governors of Bombay and Madras. This supremacy of the Governor-General of Bengal was carried a step further in 1785, and was made permanent in 1833, when the Governor-General of Bengal was declared to be the Governor-General of India, though the same officer was also the Governor of Bengal.

The year 1833 is also remarkable in the history of the provinces in India, because in that year Parliament permitted the East India Company to erect a fourth Presidency out of territories acquired by the Company on the north-west frontiers of Bengal, and comprising a great portion of the modern provinces of Agra and Oudh. This permissive clause of the Charter Act of 1833 was not carried into execution till 3 years later; and even then in a modified form. The territories on the north-west frontier of Bengal were erected into a Lieutenant-Governorship by notification in the gazette of February 21, 1836. They were styled the North-West Provinces upto 1901, when, in order to distinguish them from the North-West Frontier Province, formed

in that year, they came to be known as the United Provinces of Agra and Oudh. By section 53 of the present Act these provinces may be erected into a Presidency by the Secretary of State in Council.

Another change came 20 years later in 1853, when the Governor-General of India was relieved from the immediate administration of the Presidency of Bengal, and a new Lieutenant Governorship was created to administer that province. Here also s. 16 of the Government of India Act gave power to the Court of Directors, subject to the sanction of the Board of Control, to appoint a Governor for the Presidency of Fort William. Until, however, a separate Governor was appointed under that Act, the Governor-General was given power to appoint a Lieutenant-Governor. The Governor-General exercised this alternative power and Bengal remained a Lieutenant-Governorship till 1912. The Governor-General becomes from that date, both in name as well as in fact, the Governor-General of India and not immediately of any particular province.

The Punjab, annexed in 1849, was governed first by a board, afterwards by a Chief Commissioner, and was made a Lieutenant-Governorship in 1859. Oudh, which was annexed in 1856, was first placed in charge of a Chief Commissioner; but was later on merged in the Lieutenant-Governorship of the then North Western Province, and the modern United Provinces of Agra and Oudh. Burma was the next Lieutenant Governorship. In 1862 the Burma provinces were known as British Burma and were administered by a Chief Commissioner. After the war of 1886 the whole province was styled Burma and was raised to the status of a Lieutenant-Governorship in 1897. On their annexation in 1853 the territories of the Raja of Nagpur were made a separate administration, and placed under the charge of a Chief Commissioner in 1861. To them was added the district of Berar ceded by the Nizam in 1903. Assam was at first added to Bengal on its annexation in 1876; but in the same year it was detached and placed under the charge of a Chief Commissioner. In 1905 it was combined with the short-lived province of Eastern Bengal and Assam,

Seven years later, however, by the decree of the King Emperor the partition of Bengal of 1905 was rescinded. Bengal became once more the Presidency that it was before 1833. The provinces of Behar and Orissa became a new Lieutenant-Governorship; and Assam was once more made a separate Chief Commissionership. The North-West Frontier province was created in 1901, and consisted of the districts detached from the Punjab, partly to allow the Government of India to exercise more direct control over frontier questions, and partly to relieve the Government of the Punjab. To them also were added a number of adjoining border tracts over which direct influence had been exercised by the Government of India since 1892. British Baluchistan was formed into a Chief Commissionership in 1877. Coorg, conquered and annexed in 1829, is administered by the Resident of Mysore who is also the Chief Commissioner of Coorg. So also the small British territory of Ajmere-Merwara in Rajputana, which is administered by the Agent to the Governor-General in Rajputana, being also Chief Commissioner of Ajmere. Finally, in 1912, the district of Delhi, with a territory round about it, was detached from the Punjab (to which it had been annexed after the mutiny) and was made into a Commissionership under the immediate charge of the Government of India, who since that date have made it their capital.

II. Procedure to create new Provinces.

The power of the Governor-General, by notification in the Gazette, and subject to the approval of the Secretary of State for India in Council, to take any part of British India under the direct authority of the Government of India, was questioned by Sir Barnes Peacock in 1852. It was therefore expressly granted by s. 3 of the Act of 1853; and has been embodied in s. 59 of the present Act. This power has been frequently used, *e. g.* in the case of Arracan, originally annexed to Lower Burma, taken under this authority directly under the Government of India, and annexed to British Burma in 1862, by notification, So

also the Province of Assam. On the other hand in creating the Chief Commissionerships of Oudh, Central Provinces, and British Burma the procedure followed was the issue of a resolution reciting the reasons for such a creation, defining the territories included in it, and specifying the staff appointed, without making any reference to any Statute. The reason for this difference in procedure is that the Government of India do not consider the section of the Act of 1858 to apply to territories already included in a Chief Commissionership, for a Chief Commissionership is already under the direct management of the Government of India. A Chief Commissioner merely administers the territory under his charge on behalf of the Governor-General in Council, and the latter does not divest himself of any of his powers in making over the administration to a Chief Commissioner. The Chief Commissioner, however, is, according to Act X of 1897, s. 3 (29), a local Government and is so considered by the present Act.

The power to alter the boundaries of the existing provinces, by notification in the Gazette, was given by the Charter Act of 1833, s. 38. It is subject to the reservation that (a) an entire district may not be transferred from one to another province, without the previous consent of the Crown through the Secretary of State in Council; and (b) that any such notification may be disallowed by the Secretary of State. In 1878 the Government of India were advised that the Act of 1865, by which this power was first modified, enabled the Governor-General in Council to transfer territory from a Chief Commissionership to a Presidency or a Lieutenant-Governorship but not vice versa.

Both these powers are subject to the proviso that no law or regulation in force at the time of the transfer shall be altered or repealed except by law made by the Governor-General in Council.

III. The relative Status of the Provincial Governments.

The provinces, as we have seen, are divided into Governorships, Lieutenant-Governorships and Chief Commissionerships,

This division does not by any means suggest a great difference in the powers and position enjoyed by each of these classes of provinces. For all practical purposes within his own jurisdiction each head of a Provincial Government, whether a Governor, a Lieutenant-Governor, or a Chief Commissioner enjoys very nearly the same independence and authority. In fact one might even say that the more dignified position of the Governor carries with it less actual powers, — the powers of government being shared by the Governor with his council, while the Lieutenant-Governorship gives more substantial powers. Nevertheless there is some difference in the relative rank and position of each of these provinces. The difference is important because it points to the old historic distinction, because it has some practical importance even to-day, and because it throws some curious light on the question of Provincial autonomy.

IV. The Presidency Governors.

The three governorships of Madras, Bombay and Bengal have a certain superiority over all the other provinces. Not only that they are historically the oldest provinces, existing even before the Central Government itself came into existence; but this prior existence of theirs and the independent position they enjoyed at the time, is reflected even to-day in the position of their chief authorities in their relations with the Government of India. Each of these provinces is governed by a Governor in Council, on the model of the Government of India. The Governor, like the Viceroy, is appointed directly from England by the Crown. He is usually a person of some importance in the social or political life of England. Like the Viceroy, the Governor is styled His Excellency; and is, *virtute officii*, an extraordinary member of the Viceregal Executive Council whenever that Council assembles within the jurisdiction of his Presidency. His Council, like the Council of the Governor-General, is appointed to advise and assist him in the task of administration. He has the same powers of overruling the council as the Governor-General

has, in cases of emergency. The Governors have still the right of communicating directly with the Secretary of State (cp.S. 14 of this Act); and also to appeal to the Secretary of State against the Government of India in cases where they differ from the Government of India, provided the appeal is transmitted to and communicated through the Government of India. They are more independent, besides, than the other governments in such matters as their revenue settlement, or the choice of persons to certain important posts, like the nominated members of the Legislative Council for instance. Altogether their position, even to-day, contains many traces of their original equality with, and independence of, one another.

V. Lieutenant-Governors.

Next in authority to the three Presidency Governments, there are four Lieutenant-Governorships of the United Provinces, the Punjab, Burma, Bihar and Orissa. Of these the last alone is governed by a Lieutenant-Governor, with an executive council of three members one of whom is an Indian, and it therefore falls in a special class by itself. The present Act contains provisions enabling the Governor-General to establish executive councils in any of the Lieutenant-Governorships by a proclamation, provided the draft proclamation is submitted to both the Houses of Parliament 60 days before coming into operation, and provided that neither of the Houses of Parliament moves an address to the King against such a proclamation. Lord Hardinge attempted to utilise this power in 1915 for establishing an executive council in the United Provinces. But the House of Lords addressed the King against such a proclamation and the reform has been postponed, if not dropped altogether. The presence of a council in a Local Government may be taken to mean a restraint on the powers of the executive head of the Government. If so, the Lieutenant-Governors, who do not have a council, concentrate in their own person the whole authority of the Government in their provinces.

And in so far as the ideal of Government is promptness in action and uniformity in policy, the ideal may, indeed, be said to be fully realised in the case of the Lieutenant-Governors of India. On the other hand it must not be forgotten that there are also disadvantages inseparable from such an eminent position. The Lieutenant-Governor of a province like the United Provinces rule over a larger population, and therefore is under a much heavier burden of work, than the Governor of a Presidency like Bombay. Not only is the work too great for a single officer; it throws on him an entirely disproportionate share of responsibility. Nor is it quite certain that the ideal of bureaucratic government—efficiency—is best realised under a Lieutenant-Governor. A single executive officer has neither the time nor the equipment to consider fully each one of the scores of administrative questions coming before him from every department, which an officer, of perhaps the same standing, assisting him, by looking after one or two specific departments, could devote. Government by such means loses inefficiency and in the close personal attention to each important question what it might conceivably gain in theory by the possibility of prompt action and expeditious transaction of business.

All this is apart from the other advantage of council government in important provinces, that the institution of a council in a Lieutenant Governorship would almost certainly involve the appointment of at least one more Indian gentleman to an executive office of the highest importance. The presence of an Indian in an executive council is claimed to be an advantage to the Government, not because it means more employment for Indians; men who are appointed to such a position are almost always in a position to dispense with their official emoluments; and to get these emoluments they have to make much greater sacrifices. It is an advantage because the presence of an Indian gentleman in the executive council brings the Government into touch with the sentiments of the people, which, presumably, they otherwise would not have appreciated at their proper value.

The position of a Lieutenant-Governor with all its load of business and responsibility is not in any way indemnified by

the possession of more extensive and independent powers as might appear at first sight. Says Sir John Stratchey "The checks against the wrongful exercise by the Lieutenant Governor of the arbitrary power are, however, complete. There is no branch of the administration in which he is not bound either by positive law, by the standing orders of the supreme Government, or by the system which has gradually grown up under his respective predecessors." Any great changes which he may desire to introduce must first receive the approval of the Governor-General-in-Council. He can impose no dues or taxation. He has no control over the military forces. His power, in fine large in appearance, is carefully restricted in practice.

For many years after the transfer of the Government of India to the British Crown, the Lieutenant-Governors were also the legislative authority for their provinces. Since the establishment of the Legislative Councils in their provinces, the legislative authority has been separated from the executive. This process has more than ever intensified the necessity of an Executive Council. The letter of the Government of India, dated 1st October 1908, says, *inter alia*, "We recognise that the effect of our proposals will be to throw a greater burden on the heads of the Local Governments, not only by reason of the actual increase of the work caused by the long sittings of the Legislative Councils, and in dealing with the recommendations of those councils. It may be that experience will show the desirability of strengthening the hands of the Lieutenant-Governors in the larger provinces by the creation of Executive Councils. The Executive Councils, by allowing a distribution of administrative work among the different members of the council, would relieve the Lieutenant-Governor from attending personally to the every day routine of all the departments of the administration; and leave him more free to attend to the general principles of administration."

We may, then, sum up the points in which a Lieutenant-Governor differs from a Governor; (1) he is styled only "His Honour" while a Governor is described as "His Excellency." (2) He is appointed by the Viceroy from among the members of the

Indian Civil Service, while a Governor, often of the same or even of a superior social position than the Viceroy, is appointed by the Home authorities. (3) Except in Bihar and Orissa, a Lieutenant-Governor has no executive Council. (4) The powers of a Lieutenant-Governor are more narrowly circumscribed, and the interference of the Viceroy in their domestic concerns is greater, than in the case of the Presidencies. (5) A Lieutenant-Governor has no right to communicate directly with the Secretary of State.

VI. Chief Commissioners.

Next in authority to the Lieutenant-Governors are the Chief Commissioners. The title of the Chief Commissioner was adopted to distinguish the head of the administration in a minor province from the financial and judicial commissioners. The title was first introduced in 1853, when John Lawrence was appointed Chief Commissioner in the Punjab and Baluchistan. The Chief Commissioners stand on a lower footing than the Lieutenant-Governors. There are 8 Chief Commissionerships, those of the Central Provinces, Assam (in which there are legislative councils also), the North-West Frontier Province, British Baluchistan, the new province of Delhi, Ajmere-Merwara, Coorg, and Andaman and Nicobar Islands. The appointment of the Chief Commissioners is not, unlike that of the Lieutenant-Governors, specifically provided for by a special Act of Parliament. The territories under their charge are, under the theory of the law, under the immediate authority and management of the Governor-General-in-Council, who appoints Chief Commissioners at his discretion, and delegates to them such powers as are necessary for the purpose of administration. In practice, however there is very little difference between the powers of the Chief Commissioners of the Central Provinces and Assam and those of the Lieutenant-Governors of other provinces. The Chief Commissioners of the North-West Frontier Province and of British Baluchistan are officers administering territories of less magnitude.

They are at the same time agents to the Governor-General for dealing with the tribes and territories outside British India. The chief commissionership of Delhi has a special importance of its own on account of Delhi city being made the capital of India. British territories in Ajmere-Merwara and Coorg are governed by the agent to the Governor-General in Rajputana and the resident in Mysore respectively.

A general survey of Provincial Government shows the following **Principles of Provincial administration in India.**

The Governor-General in Council is responsible for the entire administration of British India, and for the control exercised in varying degrees over the Native States. The Local Governments must obey the orders received from the Governor-General-in-Council, and they must communicate to him their own proceedings. This subordination is derived partly from Acts of Parliament, partly from the terms of the delegation of authority by the Governor-General to Lieutenant-Governors and Chief Commissioners. Every local government, including a Chief Commissioner, is the executive head of the administration within the province; and, though there are minor differences in the relative status of the different local governments *inter se*, they are all alike in this: that they are all the delegates, or at least the subordinates, of the Supreme Government of India represented by the Governor-General-in-Council.

The actual work of administration is divided between the Government of India and the local Governments on the following principles. All matters of Imperial importance, or matters which concern more than one province, are controlled by the Government of India exclusively, as also matters having relation to concerns outside British-India. On the other hand matters requiring local knowledge and experience for efficient administration are left to the Provincial Governments. Thus the Supreme Government retains in its own hands all matters relating to (1) foreign relations, (2) the defence of the country, (3) general taxation, (4) currency, (5) public debt, (6) tariffs, (7) post office and telegraphs, and (8) railways. On the other

hand ordinary internal administration, assessment and collection of revenue from land, education, medical and sanitary arrangements, irrigation and public buildings, fall to the share of the Provincial Governments. But **in all these matters the Government of India exercises a general and constant control in different ways.** (1) The most important method of supervising and controlling the working of every provincial administration is the financial power of the Government of India. Not only do they habitually receive, and, if necessary, modify, the annual budgets of all local governments, not only are they the common banker for every province; but every new appointment of importance, every large addition, even to minor establishments, must receive their specific sanction, so that no new departure in administration could be undertaken without its previous approval. (2) The Government of India also lays down lines of general policy for carrying on the work of different departments under the the control of the Provincial Governments; and it finds out how far these principles have been carried out by the annual administration reports of the main departments under the local governments submitted to the Supreme Government. (3) In the departments for which it is itself directly responsible, the Government of India has controlling officers for those departments in the different provinces. (4) In the departments which are primarily left to the local Governments, such as agriculture, irrigation, medical, education, and archeology the Government of India employs a number of inspecting or advising officers. Those Inspectors-General frequently examine the working of the department to which they are attached in the different provinces and report to the Government of India the result of their inspection. Should the Government discover any shortcoming or complaints in any of these reports it would take action to remedy the particular question. (5) Besides all these a wide field of appeal to the Government of India is given to officials and private individuals who may have any cause of complaint against any particular local Government. (6) Outside the major provinces of Madras, Bombay, and probably Bengal, appointments made to the most important posts under the provincial Governments are subject to the approval of the

Governor-General. (7) In matters of legislation every proposed provincial legislation is subject to the preliminary scrutiny of the Government of India; and, when passed by the local Government, it must also receive the assent of the Governor-General before it could become valid. (8) Specific instructions may also be issued to particular local Governments in regard to matters which may have attracted the attention of the Government of India, whether the from departmental administration reports, or the from reports of the proceedings of a local Government submitted to the Imperial Government.

VII. Regulation and Non-Regulation Provinces.

In the present Act the old distinction between the Regulation and Non-regulation Provinces is almost ignored. For administrative purposes, however, the distinction still exists. Upto 1834 the common mode of legislation was by Regulations issued by the Councils of Fort William, Fort St. George and Bombay. The intricacy and complexity of these early Regulations made them unsuitable to newer conquests of the East India Company; and so, on their annexation, simple codes were passed on the principles of the regulations, but modified to suit the circumstances of each case. The provinces in India came to be distinguished into Regulation and Non-regulation provinces according as they were originally administered under regulations or less formal codes. The only Regulation provinces are Bengal, Madras, Bombay and Agra. On account of the development in material progress and legislative activity, the distinction between the more advanced Regulation provinces and their non-Regulation compeers has practically disappeared, except in certain differences in administrative arrangements explained below. So far as legislation is concerned the contrast now is not between the Regulation and Non-Regulation areas, but rather between the territories for which the Government of India can still legislate by the Executive Council alone, and the rest of British India where the machinery of a local Legisla-

tive Council is required. Among the provinces to which this method of legislation has been made applicable may be mentioned Aden, Perim, Hill tracts of Chitagong, the Sonthal Parganas, parts of the Punjab and the North-West Frontier Province, Ajmere-Merwara, Coorg, and the Andaman and Nicobar Islands.

VIII. A Sketch of a Provincial Administration.

At the head of the Government in a Regulation Province is the Governor in Council, or the Lieutenant-Governor, as the case may be. The Executive Councils of Madras, Bombay and Bengal carry on the business of the administration in much the same way as the larger council of the the Governor-General. The departments of the administration are divided between the members of the council. All important questions are dealt with by the council collectively, the decisions being arrived at by majority. The Governor, however, has a right to over-rule his Council in special cases [c. s. 50 (2)]. For the province of Agra the Lieutenant-Governor is solely responsible for the administration, his powers being limited only by law, and the standing orders of the Supreme Government. The Secretariats of the Provincial Governments are divided into departments, each under a Secretary with subordinate officers as in the case of the Supreme Government. Thus in Bombay the secretariat is divided into five main departments. 1. Revenue and Financial; 2. Political, Judicial and Special; 3. General, Marine and Ecclesiastical; 4. Ordinary public works; 5. Irrigation. The senior of the three Civilian Secretaries is called the Chief Secretary. In addition to the secretariat there are special departments such as Inspectors-General of Police, Jails and Registration, Director of Public Institution, the Inspector-General of Civil Hospitals, the Sanitary Commissioner, and the Superintendent of the Civil Veterinary Departments. There are also the Chief Engineers for Public Works who are likewise Secretaries to the Governments in the Public Works Depart-

ment. Each of the principal department of the civil service is under the charge of an officer who is attached to and advises the local Government. He himself is brought in touch with local works by making frequent tours of Inspection. Except in Bombay, the Revenue Department is administered under the Governor by a Board of Revenue, consisting of two or three members who are the highest officers in the administrative branch of the service. The work of this board may be divided into departments of Land Revenue and the departments of Excise, Opium, Income Tax, etc. The members of the Board may act separately or collectively according to the practice prevailing in each province. In Madras the Board consists of four members, two of whom are Land Revenue Commissioners, one a Settlement Commissioner, and one a Commissioner for Salt, Excise, Income Tax and Customs. The similar departments are controlled in Bombay by the Director of Land Records and Agriculture, and the Commissioner of Stamps, Excise, and Opium. These officers are immediately subordinate to a local Government. Besides these officers each Government has its own law officer, called the Advocate General, to advise it on legal questions, and to conduct important cases in which the Government is interested.

In both Regulation and Non-regulation provinces the actual system of administration is based on the repeated division of territories. Each unit of administration is in the responsible charge of an officer who is subordinate to the officer next in rank above him. The most important of this administrative units is the District, and the most accurate impression of the system of Indian administration is gained by regarding a Province as consisting of a collection of districts, which may themselves be split up into sub-districts and smaller areas still. There are 250 districts in British India, each of an average size of 4432 square miles, and the average population of close upon a million. Several districts are combined in a Division. There are four such Divisions in the Presidency of Bombay namely Sind, the Northern Division, the Central Division and the Southern Division. Each Division is in the charge of a Divisional Commissioner. In Madras there are no such Divisions, the

Districts being immediately under the Provincial Government there.

IX. District Administration.

"The District Officer," says Sir William Hunter in the Indian Empire, "whether known as the Collector-Magistrate or Deputy Commissioner, is the responsible head of his jurisdiction. Upon his energy and personal character depends ultimately the efficiency of our Indian Government. His own special duties are so numerous and various as to bewilder the outsider; and the work of his subordinates, European and Native, largely depends upon the stimulus of his personal example. The Indian Collector is a strongly individualised worker in every department of rural wellbeing, with a large measure of local independence and of individual initiative. As the name of the Collector-Magistrate implies, his main functions are two-fold. He is a fiscal officer charged with the collection of the revenue from land and other sources; he is also a Revenue, and Criminal Judge, both in first instance and in appeal. But his title by no means exhausts his multifarious duties. He does in his smaller sphere all that the Home Secretary superintends in England, and a great deal more, for he is the representative of a paternal, and not of a constitutional, Government. Police, jails, education, municipalities, roads, sanitation, dispensaries, the local taxation and the Imperial revenues of his district are to him matters of daily concern. He is expected to make himself acquainted with every phase of the social life of the natives, and with each natural aspect of the country. He should be a lawyer, an accountant, a financier and a ready writer of state-papers. He ought also to possess no mean knowledge of agriculture, political economy and engineering."

This sketch of his duties is substantially true, though the independent initiative which the District Officers formerly enjoyed has been of late considerably restricted. Even to-day

a Collector is the principal officer in his district. He is a local representative of the Government. His duties as Collector differ in different provinces according to the system on which the Land Revenue is assessed. Though he is not the only officer in the district, he is the supreme officer; and nothing can pass in the district of which it is not his duty to keep himself informed and to watch the operation. He must watch the vicissitudes of trade, the state of the weather, the administration of the civil justice. He must avoid undue interference in matters which are not primarily within his control, but must offer his remonstrance against anything which he believes to be wrong in the interests of the people. He is also a Magistrate of the First Class, though in practice he does not try in person many criminal cases. But he supervises the work of all other magistrates in his district. He is responsible for the peace of the district and suppression of crime.

The District Officer is assisted by a staff of officers both English and Indian. The most important officer under his command is the assistant Magistrate who is also called the senior Assistant Collector. He must be a man of some length of service and experience; the extent of his authority mainly depends on the amount of confidence reposed in him by the District Officer. The District Superintendent of Police is another Officer on the staff of the District Officer to whom he is responsible for the internal peace and order of the district, for the detection and suppression of crimes, and for the prosecution of criminals. For the internal management of the Police affairs, he is, however, responsible only to his immediate superior at the headquarters.

In consequence of the formation of special departments, such as those of public works, sanitation and education, the functions of the District Officers are now-a-days less important than before. But even in these special departments the active co-operation and the advice of the District Officer are always needed. So also in the new self-governing institutions, such as the municipalities within his districts, which are all guided and controlled in their working by the District Officer. He is also

generally the chairman of the District Board which, with the aid of subsidiary Boards, maintains roads, schools and dispensaries and carries sanitary improvements in rural areas.

In fine the District Officer rules and guides the people, informs the Government of every thing that takes place in his district, suggests improvements, and protests against innovations which he considers detrimental to the interests of the people within his jurisdiction, and maintains peace and order and good feeling among the various races in his charge.

The District is divided into a number of small units each in the charge of a responsible officer. In general the districts are split up into sub-divisions under the charge of officers of the Imperial Civil Service, or the members of the provincial service, and these sub-divisions are in their turn further divided into minor charges each under officers of the subordinate service. Each sub-divisional officer usually resides at the headquarters of his jurisdiction and has a court house, office, sub-treasury, and sub-jail at his headquarters. In Bombay and in the United Provinces the sub-divisional officers generally live at the head office of the district when not on tour. In these two provinces, as well as in Madras, sub-district units are styled Talukas or Tahsils, and are administered by Tahasildars, or Mamiatdars as they are called in Bombay. These officers belong to the subordinate service. The area of an ordinary Tahsil is from 400 to 600 square miles. The Tahsildar is assisted by his subordinate officers, styled revenue inspectors, or Kanungos and the village officers. The latter are mostly hereditary. The most important of them are: the Patel or the headman who collects the revenue, and, in Madras, also acts as a petty Magistrate and Civil Judge, the Kulkarni or Patvari who keeps the village accounts, register of holdings, and in general all records connected with the land revenue; and the Chokidar or village watchman who is the rural policeman. The Indian village organization is very ancient and endures even now, though with modifications required by the peculiar character of the present system of government.

Such is the organization of a Provincial Government in the Regulation provinces. The Non-Regulation provinces differ in their organization in accordance with the importance and the progress which they have made. The head of the administration in those provinces is either a Lieutenant-Governor, or a Chief Commissioner, who governs with the aid of a Secretariat and departmental chiefs. The superior officers of the administration were formerly drawn from a variety of sources; but at the present day they are chiefly drawn from the Indian Civil Service and from the Indian army. Since 1903 the appointment of Military officers has been discontinued in the Punjab, and since 1906 in Assam. Burma is the only major province in which important posts are still given to Military as well as to Civilian officers. The District Officer in the Non-Regulation province is called a Deputy Commissioner and not Collector-Magistrate; and his subordinates are similarly called the Assistant Commissioners or Extra Assistant Commissioners. With the exception of Oudh, which may be, and is now practically regarded as one of the United Provinces, Non-Regulation provinces have no Board of Revenue, the functions of the Board being discharged either by a Financial Commissioner—as in the Punjab and Burma—or by the Commissioners of divisions and Revenue Officers at the head quarters, as in the Central Provinces. The district administration is pretty nearly the same as in the Regulation provinces, but the District Magistrates and his First Class Subordinates have more extensive criminal jurisdiction. Thus they may be invested with powers to try all criminal cases not involving capital punishment, and can inflict sentences upto seven years' imprisonment or transportation. Moreover administrative and judicial functions are, in the less advanced provinces, frequently combined. But the system in the Punjab, and to some extent in the Central Provinces, approximates very closely to the system in the Regulation provinces, except that the judicial functions of a District Judge are divided between a Divisional Judge and a local District Judge entrusted with less important functions.

The Presidencies as well as the United Provinces, and, since 1915, Bihar and Orissa have each a High Court, while the highest

Judicial Tribunal in the Punjab and Burma is called a Chief Court; and authority similar to the Chief Courts is exercised in the Central Provinces and Assam by one or more Judicial Commissioners.

Of the minor Provinces, two—the North-West Frontier Province and British Baluchistan—are administered on nearly the same lines. As the more important Non-Regulation provinces, they are divided into districts and administered by Deputy Commissioners. In the former the Chief Commissioner is also agent to the Governor General for frontier tribes. He is aided by the principal officers who are: the Revenue and Judicial Commissioners, corresponding to the financial Commissioners and the Chief Court of the present province of the Punjab. So also British Baluchistan which is made up of three British Districts, the agency territories held on lease, and the native states of Kalat and Lasbela. Ajmere-Merwara and Coorg are governed by the agent to the Governor General in Rajputana and the resident in Mysore respectively, while the Superintendent of the penal settlement of Port Blair is also the Chief Commissioner of Andaman and Nicobar Islands.

X. Relations between the Government of India and the Heads of Provinces.

It would be as interesting to know as it is difficult to say, what exactly are the relations between the supreme Government and its various subordinate chiefs. On paper, of course, every thing seems to be so well ordered as to leave hardly any room for friction. But in reality there is not always found that smooth and noiseless working of the wheels of government as an uninitiated outsider would be inclined to believe in. We know for a fact that Sir Bartle Frere, as the Governor of Bombay, in the days when Sir John Lawrence was the Viceroy of India, caused more than one sleepless night to the Viceroy on the question of the failure of the Bank of Bombay as well as on

questions of Frontier policy. It is also recorded that the Duke of Buckingham, as Governor of Madras under Lord Lytton, caused a serious obstruction to that Viceroy's famine policy; so much so that the Home Government had to interfere, and to recall, almost peremptorily, the refractory Duke. Perhaps it was to such cases as these that Lord Curzon alluded in one of his farewell speeches: "In old volumes of our proceedings which it has been my duty to study at midnight hours, I have sometimes come across peppery letters or indignant remonstrances, and have seen the spectacle of infuriated proconsuls strutting up and down the stage." For himself, he added, notwithstanding the fact that during his seven years' tenure of the Viceroyalty nearly thirty Governors, Lieutenant-Governors and Chief Commissioners had come and gone, there never had been a time when the relations between the Supreme Government and the heads of the local Government had been so free from friction or so harmonious. No one except those intimately connected with the Government of India can say how often such friction arises even to-day. It would seem, however, that the prevalence of the more liberal views as regards the extent of the authority of local Governments, the great expansion of their Legislative Councils and the greater harmony between the rulers and the ruled resulting therefrom, the large concessions in matters of finance, the definite demarcation of the other spheres of public activity, the growth of precedent, the improved means of rapid communications, and above all the characters of the men chosen for such posts have all combined to minimise, if not entirely to destroy, all causes of friction. The right to be obeyed is so firmly established in the Government of India, that the privilege of subordinate proconsuls to tender their resignation by way of a protest against the undue encroachments or interference of the supreme authority has ceased to be a censure upon the Viceregal powers, and is rather a means of affording a speedy solution of an unpleasant problem. The resignation of Sir Bamfylde Fuller afforded the last instance of this nature, vindicating the right of the Supreme Government to be obeyed, as well as the right of its lieutenant to be relieved of an untenable situation.

XI. The Structure of Indian Government.

The question of provincial autonomy, which has been exercising the minds of the public for some time past, and which is discussed more in detail hereafter, will best be solved by trying to understand whether our present constitution is unitary or federal in form. In a Unitary Government, like that of England or France, all sovereign power is concentrated in the hands of the Central Government. There may, indeed, be a division of functions between the central and local governing bodies. But this division in no case amounts to a distribution of sovereign powers. The local governing bodies are the creatures, the delegates and the dependents of the central power, which is the sole, supreme, sovereign authority in the state; and between which and the local bodies no other sovereign or semi-sovereign authority is interposed. On the other hand the chief characteristic of a Federal Government is the distribution of sovereignty between the Federal power and its constituent states. A federation is a combination of several independent states into one single state. The combining state may have desired, or been compelled, to unite in order to promote their economic development, or to secure their political integrity or safety. But even when combined they do not lose all trace of their original independence. Hence the new central state, made by the union of the old independent states, is entrusted only with such sovereign powers as the combining state might decide to vest in a central authority. Consequently even in cases where the necessity of unification is enforced by the considerations of self-preservation, the central authority, though allowed a liberal share of sovereign powers, is never quite the undisputed sovereign which the similar authority in a unitary state is. There is always a difference between powers allotted to the central power and those reserved for individual state.

The Government of India resembles, as well as differs from, both these kinds of states. The dominant position of the Supreme Government in India, and its unquestioned powers of control, and even of creation, suggest a great affinity to a unitary state. But the presence of Provincial Governments, which

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are an intermediary between the Supreme Government and the local governing bodies, and which are essentially deputies of the Supreme Government, serves to distinguish the Government of India from a unitary state. Nor can we quite describe it as a federal state. The mere presence of a number of provinces, with each its own separate Government, is not enough to constitute a federation. With the exception of the three Presidencies, all the other provinces in India have been created by the central authority in order to relieve the latter of some portion of its heavy administrative work. In stead, therefore, of the provinces combining to create a united central Government, as is the case in federations, it was rather the central Government which deputed its minor functions of government in order to strengthen its main hold. Even the originally independent Presidencies were forced to submit to the central authority. Besides, the supremacy of the central Government once established, it is unquestioned in every province. In so far as the Government of India can themselves be called a sovereign power, there is really no distribution of sovereignty between them and the various provincial Governments. It must, however, be remembered that the Government of India themselves are not sovereign in the sense that the King in Parliament is the sovereign of the whole British Empire. They are, in fact, more under the control of the Secretary of State for India, than the self-governing colonies are under the control of the Secretary of State for the colonies. Such decentralisation, therefore, as already exists in this country, notably in financial matters, is hardly large enough to amount to a distribution of sovereignty, and yet not insignificant enough to be described as a mere delegation, of powers which can be resumed by the Central Government whenever the latter choose to do so.

The case of the Government of India, therefore, must be classed by itself. There is no doubt a division of work between the Supreme and the Provincial Governments; but the division is brought about for the sake of administrative convenience, and not out of any deliberate desire to create independent, semi-sovereign authorities. The view, however, is gaining ground that even if in the past, there was no such deliberate

intention to establish semi-sovereign states in the provinces, it is high time that they were so regarded now—a view which will be examined hereafter. This tendency, more than any actual organization of Government, precludes us from regarding ours as a unitary state.

XII. Provincial Autonomy

The question of giving wider powers to the provinces is at least as old as the Government by the Crown directly. In his speeches on India about the time that the government of the country was transferred to the Crown, Mr. Bright repeatedly insisted upon the necessity of a greater decentralisation. Says he in one of his most famous speeches, "What you want is to decentralise the Government. You will not make a single step towards the improvement of India unless you change your whole system of Government, unless you give to each Presidency more independent powers than are now possessed by them.....How long does England propose to govern India? Nobody answers that question, and nobody can answer it. Be it 50, or 100, or 500 years, does any man, with the smallest glimmering of common sense, believe that so great a country, with its 20 different nations and its 20 different languages, can be bound up and consolidated into one compact and enduring Empire? We must fail in the attempt if we ever make it, and we are bound to look in the future with reference to that point."

Commenting on this subject, Sir John Strachey remarks that the suggestion of Bright for a separate, independent government for each of the Presidencies of India, subject only to the British Crown, and for the abolition of the Central Government is impracticable. "There is clearly nothing more essential to the maintenance of our empire in India," says he "than a strong central authority: but Mr. Bright's belief was undoubtedly true that there could be no successful government in India, unless the fundamental fact of the immense diversity of

the Indian peoples and countries be recognised, and each great province be administered with a minimum of interference from outside."

On the other hand Lord Curzon remarked in his speech already quoted, "I am not one of those who hold the view that local Governments are hampered in their administration by excessive centralisation or that any great measures of devolution would produce better results. x x x I believe that with due allowance for the astonishing diversities of local conditions, it is essential that there should be certain uniform principles running through our entire administration, and that nothing could be worse either for India or for the British dominion in India than that the country should be split up into a number of separate and rival units, very much like the Austro-Hungarian Empire in Europe where the independent factors are only held together by the nexus of a single Crown. x x x I believe, therefore, in a strong Government of India gathering into its own hands and controlling all the reins. But I would ride local Governments on the shaffle and not on the curb: and I would do all in our power to consult their feelings, to enhance their dignity, and to stimulate their sense of responsibility and power."

This presents in the strongest possible light the case for centralisation. But the views of the Government of India underwent an almost radical change six years later. The famous Delhi despatch of Lord Hardinge's Government says, "The maintenance of British rule in India depends on the ultimate supremacy of the Governor-General-in-Council; and the Indian Concils Act of 1909 itself bears testimony to the impossibility of allowing matters of vital concern to be decided by a majority of non-official votes in the Imperial Legislative Council. Nevertheless it is certain that, in the course of time, the just demands of Indians for a larger share in the Government of the country will have to be satisfied, and the question will be how this devolution of power can be conceded without impairing the Supreme authority of the Governor-General-in-Council. The only possible solution of the difficulty would appear to be gradually to

give the provinces a larger measure of self Government, until at last India would consist of a number of administrations, autonomous in all provincial affairs, with the Government of India above them all, and possessing powers to interfere in cases of mis-government, but ordinarily restricting themselves to matters of Imperial concern. In order that this consummation may be attained, it is essential that the Supreme Government should not be associated with any particular provincial Government."

These long extracts from the speeches or writings of great statesmen have been adduced to show how easy it is even for trained and experienced public men, to take different views of such a complex problem, and how difficult it is to offer a simple and satisfactory solution by men relatively inexperienced and ignorant of the actual difficulties of the problem. As early as 1833 an attempt was made to confine the interference of the Supreme Government in a local concern to the requirements of a just control, indispensable to the maintenance of the Imperial unity and avoid all "petty, vexatious and meddling interference." But in practice it is very difficult to determine exactly where the just control of general principles ends, and the petty, vexatious, meddlesome interference in details begins. It may quite conceivably happen that what is normally a detail, which had best be left to the local Government, might, in exceptional circumstances, assume the dignity of a great principle. Take for instance the Cawnpore Mosque case, where the Viceroy interfered in apparently only a local riot; or the still later case of the United Provinces Municipalities Act, where the interference of the Supreme Government was invoked by the people, though strictly speaking, it is only a matter of detail. Under such circumstances the Government of India, and even the Secretary of State, must assert themselves. It is, therefore, not quite a thing to be wished for that the relations, between the Supreme Government and its local subordinates should acquire the rigidity of a federal constitution; rather should they be capable of being readily adaptable to new or changing conditions.

The various requirements of the maintenance of Imperial supremacy and local autonomy, and constitutional elasticity,

and national solidarity which are all desired at the same time make the question still more difficult. India is, at the present moment, under the simultaneous operation of what Brice calls the centrifugal as well as centripetal tendencies. On the one hand there is the development of rapid means of postal and telegraphic communications, which preclude the possibility for the Provincial Governments of the old excuse for acting without orders—the exigency of the moment requiring prompt action without delay. The ease and rapidity with which the advice of the Supreme Government can be always procured, the obviously superior information of the Supreme Government in all important questions and their wider outlook, the elimination from the Provincial Governments of all those spheres of activity in which promptness of action is more valuable than sound deliberation,—all combine to make references to the Central Government more frequent and the dependence of the Provincial Governments much closer. The spread of English language, which creates and intensifies a consciousness of national solidarity among the educated classes of the peoples themselves, has also worked—though perhaps unconsciously,—towards the same goal. The recognition of the economic needs of the country, and the consequent efforts towards its material development make it inevitable that the control of the Central Government be constant and universal, and the welding of the country into a single solid block, not only desirable, but absolutely indispensable. The increasing attention paid in Parliament to the details of Indian administration makes the control of Home authorities more effective even on the Government of India itself. The edifice of the Indian Empire, moreover, includes not only British provinces, but also the Native States. They are in India, and yet, for many purposes, not of it. No scheme of reorganisation can be formulated without taking account of them; and yet to attempt to include them in a new structure, without radically altering the principles which now govern their existence and determine their powers and position, is to invite inevitable failure. Above all the character of the present provinces makes any scheme of complete provincial independence and autonomy almost unthinkable. Our provinces

are no homogenous units whether by race or religion, by language or geography, by traditional unity or sentimental or economic identity of interests. They are mere administrative charges, with the possible exception of Bengal, created merely to afford relief to the Central Government. The only uniting factor throughout India is the common obedience to a single Government. And the idea of provincial autonomy is inimical in its nature to this one single uniting principle.

On the other hand there are grave forces working in the opposite direction. The difficulty in administering a vast continent like India from a single headquarters, and the consequent failure in statesmanship and inefficiency in Government are too obvious to need a detailed consideration. The very divergence in the social and economic conditions of the different provinces is a strong reason for decentralization. For the principles which a Central Government like that of India can lay down must, of necessity, be uniform, and therefore hardly suitable to every province alike. There is, moreover, great political wisdom in the desire to make local authorities feel their responsibility more vividly, which can only be done if they were made independent in some measure. And, above all, the aspirations of the people towards self-government are easier to be realised on the narrower field of a Provincial Government, than on the wider stage of the Supreme Government. The decentralisation commission recorded its opinion that "both the Government of India and the Provincial Governments have hitherto been too much dominated by considerations of administrative efficiency. They have, we think, paid too little regard to the importance of developing a strong sense of responsibility among their subordinate agents, and of giving sufficient weight to local sentiments and traditions."

In the face of these opposing tendencies it is almost impossible to say whether the present situation needs a change. The ideal of provincial autonomy has been too definitely accepted by the leaders of native opinion to allow a criticism of that ideal without a charge of want of sympathy with the noble ideal of self-government. And yet it must be said that the history of

the last century or so all over the world shows the struggle of imperialism—if one may so describe the centralising tendencies—against provincialism, resulting in the indisputable victory of the former. Prussia helps to form the German Empire, and Sardinia Italy. The provinces of Canada unite to form a Dominion and the States of Australia—admittedly the most democratic of the self-governing colonies of England—voluntarily combine to form the Commonwealth. Even in the United States the power and prestige of the central federal Government have grown immensely at the expense of local independence. And territorial acquisitions, or political influence, beyond the frontiers of the United States are not rigidly excluded. Hence a centralised government is not necessarily hostile to the development of democracy, or to its maintenance. It is doubtful, moreover, if a complete provincial autonomy in India would be quite to the advantage of the people. No doubt provincial autonomy would secure better representation of the people in the councils of the Government, and facilitate the advent of responsible government on the model of the Governments in England or the colonies. But if this increased representation in the Provincial Councils and greater responsibility are obtained without any change in the powers of Supreme Government, the self-government so obtained would be perfectly illusory. Real self-government for India can only be realised when the Supreme Government becomes perfectly amenable to public opinion in India. If that is accomplished provincial autonomy would have very little value beyond sentiment; and if that remains unachieved provincial autonomy would be only one more agency to raise hopes which might never be realised. The necessity a real self-government as thus defined is emphasised by the economic conditions of India. If our industrial development is to be pushed on as rapidly as possible, if our citizens in other parts of the British Empire are to be considered and treated much better than slaves, we need a Central Government which is national in its composition as well as in its tone; and which can protect and promote the interests of its citizens both at home and abroad more than any Provincial Government possibly can do,

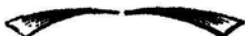
If we stretch our imagination and look a little in the future the problem of decentralisation,—of Provincial Autonomy,—would be seen to wear an entirely different aspect. The people of India disunited by centuries of misunderstandings have at last been united, or are beginning to be united in a single nationality. If they would be left to themselves they would soon forget that they are Hindus or Mahomedans in trying to learn that they are Indians, and that they have to accomplish the herculean task of restoring India to the position that she once occupied as the centre of the civilised world. This task can never be accomplished by another people than the Indians themselves, however sincere and sympathetic that other people might be. To achieve this self-government would be indispensable. But it does not need, it would indeed be gravely prejudiced by, any separation in different provinces. The most serious problem before a united self-governing India in the near future would be, not how to give the greatest play to local sentiment, but how to wrest the economic supremacy from Japan or Germany. To solve that we shall need the undivided strength of every one who thinks of India before thinking of Bengal or Gujerat; we shall have to organise and co-ordinate the resources of the entire peninsula with a view to bring them to bear on one single issue. If therefore, the ideal of provincial autonomy means the weakening of the central government, we may confidently say that a self-governing India, ten years after the realisation of self-government, will have no need for it, whatever be the vogue for it to-day.

The problem of decentralisation no doubt exists, and the foregoing remarks should not be construed to mean that the present arrangements, whether as between the Imperial and the Provincial Governments, or as between the Provincial Governments and the local-governing institutions, are the best possible arrangements. But perhaps the best solution of the problem is not so much in the creation of almost independant provincial Governments with no bonds *ninter se*, but rather by basing our local self-governing institutions on a broader, more liberal, more genuinely democratic principle. India has arrived at a stage

when the municipalities and the District Boards may safely be given the powers and the position of the County Council in England. If democracy is fully realised at the base in this way, and also at the top, we shall have no great need for Provincial Autonomy.

CHAPTER V.

Indian Legislature.



PART VI.

INDIAN LEGISLATION.



The Governor-General in Legislative Council.

63. (1) For purposes of legislation the Governor-General's Council shall consist of the members of his Executive Council with the addition of members nominated or elected in accordance with rules made under this Act. The council so constituted is in this Act referred to as the Indian Legislative Council.

(2) The number of additional members so nominated or elected, the number of such members required to constitute a quorum, the term of office of such members, and the manner of filling casual vacancies occurring by reason of absence from India, inability to attend to duty, death, acceptance of office, or resignation duly accepted, or otherwise, shall be such as may be prescribed by rules made under this Act.

Provided that the aggregate number of members so nominated or elected shall not exceed the number specified in that behalf in the second column of the first schedule to this Act.

(3) At least one-half of the additional members of the council must be persons not in the civil or military service of the Crown in India; and, if any additional member accepts office under the Crown in India, his seat as an additional member shall thereupon become vacant.

(4) When and so long as the Indian Legislative Council assembles in a province having a Lieutenant-Governor or Chief Commissioner he shall be an additional member of the council, in excess, if

necessary, of the aggregate number of nominated or elected additional members prescribed by this section.

(5) The additional members of the council are not entitled to be present at meetings of the Governor-General's Executive Council.

(6) The Governor-General-in-Council may, with the approval of the Secretary of State in Council, make rules as to the conditions under which and manner in which persons resident in India may be nominated or elected as additional members of the Indian Legislative Council, and as to the qualifications for being, and for being nominated or elected, an additional member of that council, and as to any other matter for which rules are authorised to be made under this section, and also as to the manner in which those rules are to be carried into effect.

(7) All rules made under this section shall be laid before both Houses of Parliament as soon as may be after they are made, and those rules shall not be subject to repeal or alteration by the Governor-General in Legislative Council.

64. (1) The Indian Legislative Council shall assemble at such times and places as the Governor-General-in-Council appoints.

(2) Any meeting of the council may be adjourned, under the authority of the Governor-General in Council, by the Governor-General or other person presiding.

(3) In the absence of the Governor-General from any meeting of the council the person to preside thereat shall be the vice-president of the council, or, in his absence, the senior ordinary member of the council present at the meeting, or, during the discussion of the annual financial statement or of any matter of general public interest, the vice-president or the member appointed to preside in accordance with rules made under this Act.

(4) If any difference of opinion arises on any question brought before a meeting of the council, the person presiding shall have a second or casting vote.

65. (1) The Governor-General in Legislative Council has power to make laws—

- (a) for all persons, for all courts, and for all places and things, within British India; and
- (b) for all subjects of His Majesty and servants of the Crown within other parts of India; and
- (c) for all native Indian subjects of His Majesty, without and beyond as well as within British India; and
- (d) for the government officers, soldiers and followers in His Majesty's Indian forces, wherever they are serving, in so far as they are not subject to the Army Act;
- (e) and for all persons employed or serving in or belonging to the Royal Indian Marine Service; and
- (f) for repealing or altering any laws which for the time being are in force in any part of British India or apply to persons for whom the Governor-General in Legislative Council has power to make laws.

(2) provided that the Governor-General in Legislative Council has not, unless (expressly so authorised by Act of Parliament,) power to make any law repealing or affecting

- (1) any Act of Parliament passed after the year one thousand eight hundred and sixty and extending to British India (including the Army Act and any Act amending the same), or
- (2) any Act of Parliament enabling the Secretary of State in Council to raise money in the United Kingdom for the Government of India;

and has not power to make any law affecting the authority of Parliament, or any part of the unwritten laws or constitution of the United Kingdom of Great Britain and Ireland whereon may depend in any degree the allegiance of any person to the Crown of the United Kingdom, or affecting the sovereignty or dominion of the Crown over any part of British India.

(8) The Governor-General in Legislative Council has not power, without the previous approval of the Secretary of State in Council, to make any law empowering any court, other than a High Court, to

sentence to the punishment of death any of His Majesty's subjects born in Europe, or the children of such subjects, or abolishing any High Court.

66. (1) A law made under this Act for the Royal Indian Marine Service shall not apply to any offence unless the vessel to which the offender belongs is at the time of the commission of the offence within the limits of Indian waters, that is to say, the high seas between the Cape of Good Hope on the West and the Straits of Magellan on the East and any territorial waters between those limits.

(2) The punishments imposed by any such law for offences shall be similar in character to, and not in excess of, the punishments which may, at the time of making the law, be imposed for similar offences under the Acts relating to His Majesty's Navy, except that in case of persons other than Europeans or Americans, imprisonment for any term not exceeding fourteen years, or transportation for life or any less term, may be substituted for penal servitude.

67. (1) At a meeting of the Indian Legislative Council no motion shall be entertained other than a motion for leave to introduce a measure into the council for the purpose of enactment, or having reference to a measure introduced or proposed to be introduced into the council for that purpose, or having reference to some rule for the conduct of business in the council, and no business shall be transacted other than the consideration of those motions or the alteration of those rules.

(2) It shall not be lawful, without the previous sanction of the Governor-General, to introduce at any meeting of the council any measure affecting:—

- (a) the public debt or public revenues of India, or imposing any charge on the revenues of India; or
- (b) the religion or religious rites and usages of any class of British subjects in India; or
- (c) the discipline* or maintenance of any part of His Majesty's military or naval forces; or
- (d) the relations of the Government with foreign princes or states,

(3) Notwithstanding anything in the foregoing provisions of this section, the Governor-General-in-Council may, with the sanction of the Secretary of State in Council, make rules authorising at any meeting of the Indian Legislative Council the discussion of the annual financial statement of the Governor-General in Council and of any matter of general public interest and the asking of questions, under such conditions and restrictions as may be prescribed in the rules. Rules made under this sub-section may provide for the appointment of a member of the council to preside at ~~any~~ such discussion in the place of the Governor-General and of the vice-president, and shall be laid before both Houses of Parliament as soon as may be after they are made, and shall not be subject to repeal or alteration by the Governor-General in Legislative Council.

68. (1) When an act has been passed at a meeting of the Indian Legislative Council, the Governor-General, whether he was or was not present in council at the passing thereof, may declare that he assents to the Act, or that he withholds assent to the Act, or that he reserves the Act for the signification of His Majesty's pleasure thereon.

(2) An Act of the Governor-General in Legislative Council has no validity until the Governor-General has declared his assent thereto, or, in the case of an Act reserved for the signification of His Majesty's pleasure, until His Majesty has signified his assent to the Governor-General through the Secretary of State in Council, and that assent has been notified by the Governor-General.

69 (1) When an Act of the Governor-General in Legislative Council has been assented to by the Governor-General, he shall send to the Secretary of State an authentic copy thereof, and it shall be lawful for His Majesty to signify, through the Secretary of State in Council, his disallowance of any such Act.

(2) Where the disallowance of any such Act has been so signified, the Governor-General shall forthwith notify the disallowance, and thereupon the Act, as from the date of the notification, shall become void accordingly.

70. The Governor-General in Legislative Council may, subject to the assent of the Governor-General, alter the rules for the conduct of legislative business in the Indian Legislative Council (including

rules prescribing the mode of promulgation and authentication of Acts passed by that Council); but any alteration so made may be disallowed by the Secretary of State in Council, and if so disallowed shall have no effect.

Regulations and Ordinances.

71. (1) The Local Government of any part of British India to which this section for the time being applies may propose to the Governor-General in Council the draft of any regulation for the peace and good Government of that part with the reasons for proposing the regulation.

(2) Thereupon the Governor-General in Council may take any such draft and reasons into consideration; and, when any such draft has been approved by the Governor-General in Council, and assented to by the Governor-General, it shall be published in the Gazette of India and in the local official gazette, if any, and shall thereupon have the like force of law and be subject to the like disallowance as if it were an Act of the Governor-General in Legislative Council.

(3) The Governor-General shall send to the Secretary of State in Council an authentic copy of every regulation to which he has assented under this section.

(4) The Secretary of State may, by resolution in council, apply this section to any part of British India, as from a date to be fixed in the resolution, and withdraw the application of this section from any part to which it has been applied.

72. The Governor-General may, in cases of emergency, make and promulgate ordinances for the peace and good Government of British India or any part thereof, and any ordinance so made, shall, for the space of not more than six months from its promulgation, have the like force of law as an Act passed by the Governor-General in Legislative Council; but the power of making ordinances under this section is subject to the like restrictions as the power of the Governor-General in Legislative Council to make laws; and any ordinance made under this section is subject to the like disallowance