return to India or to his province, his salary and allowance shall, subject to any rules in that behalf made by the Secretary of State in Council, be paid to his personal representatives.

(5) If any such officer does not return to India or his province, or returns to Europe, his salary and allowances shall be deemed to have ceased on the day of his leaving India or his province.

88. (1) His Majesty may, by warrant under his Royal Sign Manual, appoint any person conditionally to succeed to any of the offices of Governor-General, Governor, ordinary member of the executive council of the Governor-General, or member of the executive council of a Governor, in the event of the office becoming vacant, or in any other event or contingency expressed in the appointment, and revoke any such conditional appointment.

(2) A person so conditionally appointed shall not be entitled to any authority, salary or emolument appertaining to the office to which he is appointed, until he is in the actual possession of the office.

89. (1) If any person entitled under a conditional appointment to succeed to the office of Governor-General, or appointed absolutely to that office, is in India on or after the event on which he is to succeed, and thinks it necessary to exercise the powers of Governor-General before he takes his seat in Council, he may make known by notification his appointment and his intention to assume the office of Governor-General.

(2) After the notification, and thenceforth until he repairs to the place where the council may assemble, he may exercise alone all or any of the powers which might be exercised by the Governor-General-in-Council.

(3) All acts done in the Council after the date of the notification, but before the communication thereof to the council, shall be valid, subject nevertheless, to revocation or alteration by the person who has so assumed the office of Governor-General.

(4) When the office of Governor-General is assumed under the foregoing provision, the vice-president, or, if he is absent, the senior ordinary member of the council then present, shall preside therein with the same powers as the Governor-General would have had if present.

90. (1) If a vacancy occurs in the office of Governor-General when there is no conditional or other successor in India to supply the vacancy, the Governor who was first appointed to the office of Governor by His Majesty shall hold and execute the office of Governor-General until a successor arrives, or until some person in India is duly appointed thereto.

(2) Every such acting Governor-General, while acting as such, shall have and may exercise all the rights and powers of the office of Governor-General, and shall be entitled to receive the emoluments and advantages appertaining to the office, foregoing the the salary and allowances appertaining to his office of Governor; and his office of Governor shall be supplied, for the time during which he acts as Governor-general in the manner directed by this Act with respect to vacancies in the office of Governor.

(3) If, on the vacancy occurring, it appears to the Governor, who by virtue of this section holds and executes the office of governor-general, necessary to exercise the powers thereof before he takes his seat in council, he may make known by notification his appointment, and his intention to assume the office of Governor-General, and thereupon the provisions of this Act respecting the assumption of the office by a person conditionally appointed to succeed thereto shall apply.

(4) Until such a Governor has assumed the office of Governor-General, if no conditional or other successor is on the spot to supply such vacancy, the vice-president, or, if he is absent, the senior ordinary member of the executive council, shall hold and execute the office of the Governor-General until the vacancy is filled in accordance with the provisions of this Act.

91. (1) If a vacancy occurs in the office of Governor when no conditional or other successor is on the spot to supply the vacancy, the vice-president, or, if he is absent, the senior member of the Governor's executive council, or, of where there is no council, the Chief Secretary to the local Government, shall hold and execute the office of Governor until a successor arrives, or until some other person on the spot is duly appointed thereto.

(2) Every such acting Governor shall, while acting as such, be entitled to receive the emoluments and advantages appertaining to

the office of Governor, foregoing the salary and allowances appertaining to his office of member of council or Secretary.

92. (1) If a vacancy occurs in the office of an ordinary member of the executive council of the Governor-General or a member of the executive council of Governor, and there is no conditional or other successor present on the spot, the Governor-General-in-Council or Governor-in-Council, as the case may be, supply the vacancy by appointing a temporary member of council.

(2) Until a successor arrives the person so appointed shall hold and execute the office to which he has been appointed, and shall have and may exercise all the rights and powers thereof, and shall be entitled to receive the emoluments and advantages appertaining to the office, foregoing all emoluments and advantages to which he was entitled at the time of his being appointed to that office.

(3) If any ordinary member of the executive council of the Governor-General, or any member of the executive council of a Governor, is, by infirmity or otherwise, rendered incapable of acting or of attending to act as such, or is absent on leave, then, if any person has been conditionally appointed to succeed to his office and is on the spot, the place of that member shall be supplied by that person; and, if no person conditionally appointed to succeed to the office is on the spot, the Governor-General in Council, or Governor-in Council as the case may be, shall appoint some person to be a temporary member of Council.

(4) Until the return to duty of the member so incapable or absent, the person conditionally or temporarily appointed shall hold and execute the office to which he has been appointed, and shall have and may exercise all the rights and powers thereof, and shall be entitled to receive half the salary of the member of council whose place he fills, and also half the salary of any other office which he may hold, if he hold any such office, the remaining half of such last named salary being at the disposal of the Governor-General in council or Governor-in-Council, as the case may be.

(5) Provided as follows:—

(*a*) No person may be appointed a temporay member of council who might not have been appointed under this Act to fill the vacancy supplied by the temporary appointment; and

(*b*) if the Secretary of State informs the Governor-General that it is not the intention of His Majesty to fill a vacancy in the Governor-General's executive council, no temporary appointment may be made under this section to fill the vacancya, nd if any such temporary appointment has been made before the date of the receipt of the information by the Governor-General, the tenure of the person temporarily appointed shall cease from that date.

93. (1) A nominated or elected member of the Indian Legislative council or of a local Legislative Council may resign his office to the Governor-General or to the Governor, Lieutenant-Governor, or Chief Commissioner, as the case may be, and on the acceptance of the resignation the office shall become vacant.

(2) If for a period of two consecutive months any such member is absent from India or unable to attend to the duties of his office, the Governor-General, Governor, Lieutenant-Governor or Chief Commissioner, as the case may be, may, by notification published in the Government Gazette, declare that the seat in council of that member has become vacant..

94. Subject to the provisions of this Act, the Secretary of State in Council may, with the concurrence of a majority of votes at a meeting of the Council of India, make rules as to the absence on leave of persons in the service of the Crown in India, and the terms as to continuance, variation or cessation of pay, salary and allowances on which any such leave may be granted.

95. (1) The Secretary of State in Council, with the concurrence of a majority of votes at a meeting of the Council of India, may make rules for distributing between the several authorities in India the power of making appointments to and promotions in offices under the Crown in India, and may reinstate officers and servants suspended or removed by any of those authorities,

(2) Subject to such rules, all appointments to offices and commands in India, and all promotions, which, by law, or under any regulations, usage or custom, are, at the commencement of this Act, made by any authority in India, shall, subject to the qualifications, conditions and restrictions, then affecting such appointments and promotions respectively, continue to be made in India by the like authority.

96. No native of British India, nor any subject of His Majesty resident therein, shall, by reason only of his religion, place of birth, descent, colour, or any of them, be disabled from holding any office under the Crown in India.

COMMENTS.

Ss. 85–96 (both inclusive).

The salaries of the Viceroys, Governors, and Members of Councils are fixed at the maximum in the first schedule of this Act. Originally they were so fixed by 3 & 4 Wm. IV, c. 85, s. 76; but the same Act declared that these salaries were subject to such reductions as the Court of Directors, with the sanction of the Board of Control, might at any time think fit. The salaries of the Commander-in-Chief and of the Lieutenant-Governors were fixed at 1,00,000 Company's rupees by 16 and 17 Vict. c. 95, s. 35, and they were made liable to the same provisions and regulations as the salaries fixed by the Act of 1833. At the present time it would seem that the salaries may be fixed at any amount not exceeding the amounts fixed by the Acts of 1833, and 1853. "The power to reduce", says Ilbert, "has been exercised more than once, but it is open to argument whether the power to reduce involves a power to raise subsequently." Besides the salaries thus fixed by law, a certain number of specified officers are entitled to an allowance for equipment and voyage to India, such as the Viceroy, the Governors of Presidencies, Commanders-in-Chief, Members of the Viceregal Council, Judges of High Courts, and Bishops of Calcutta, Madras and Bombay. These allowances are fixed by the Indian Salaries and Allowances Act of 1880, but they may

be altered or abolished by the Secretary of State in Council. Under that Act the following allowances are paid to-day:—

Viceroy	£. 5,000
Governors of Presidencies...	„ 1,000
Commander-in-Chief	„ 500
Member of Council	„ 300
High Court Judges	„ 300
Bishops	„ 300

These allowances are paid, it should be further noted, only when the officer in question is resident in Europe at the time of his appointment. If he resides anywhere else a smaller allowance will be paid. No additional charge can be levied on the revenues of India under the Act of 1880, or for the purpose of these allowances.

PART VIII.

The Indian Civil Service.

97. (1) The Secretary of State in Council may, with the advice and assistance of the Civil Service Commissioners, make rules for the examination, under the superintendence of those Commissioners of British subjects desirous of becoming candidates for appointment to the Indian Civil Service.

(2) The rules shall prescribe the age and qualifications of the candidates, and the subjects of examination.

(3) All rules made in pursuance of this section shall be laid before Parliament within fourteen days after the making thereof, or if Parliament is not then sitting, then within fourteen days after the next meeting of Parliament.

(4) The candidates certified to be entitled under the rules shall be recommended for appointment according to the order of their proficiency as shown by their examination.

(5) Such persons only as are so certified may be appointed or admitted to the Indian Civil Service by the Secretary of State in Council.

98. Subject to the provisions of this Act, all vacancies happening in any of the offices specified or referred to in the Third Schedule to this Act, and all such offices which may be created hereafter, shall be filled from amongst the members of the Indian Civil Service.

99. (1) The authorities in India, by whom appointments are made to offices in the Indian Civil Service, may appoint to any such office any person of proved merit and ability domiciled in British India, and born in British India of parents habitually resident in India and not established there for temporary purposes only, although the person so appointed has not been admitted to that service in accordance with the foregoing provisions of this Act.

(2) Every such appointment shall be made subject to such rules as may be prescribed by the Governor-General in Council and sanctioned by the Secretary of State in Council with the concurrence of a majority of votes at a meeting of the Council of India.

(3) The Governor-General in Council may, by resolution, define and limit the qualifications of persons who may be appointed under this section, but every resolution made for that purpose shall be subject to the sanction of the Secretary of State in Council, and shall not have force until it has been laid for thirty days before both Houses of Parliament.

100. (1) Where it appears to the authority in India, by whom an appointment is to be made to any office reserved to members of the Indian Civil Service, that a person not being a member of that service ought, under the special circumstances of the case, to be appointed thereto, the authority may appoint thereto any person who has resided for at least seven years in India, and who has, before his appointment, fulfilled all the tests (if any) which would be imposed in the like case on a member of that service.

(2) Every such appointment shall be provisional only, and shall forthwith be reported to the Secretary of State, with the special reasons for making it; and, unless the Secretary of State in Council approves the appointment, with the concurrence of a majority of

votes at a meeting of the Council of India, and within twelve months from the date of the appointment intimates such approval to the authority by whom the appointment was made, the appointment shall be cancelled.

I. The History of Public Service in India.

The service of the East India Company in India was composed of three grades:—Writers, Factors and Merchants. The pay and conditions of service, during the period that the Company was merely a body of merchants, may perhaps have been adequate; but as the Company began to be transformed into a ruling sovereign body, the emoluments of its servants became wretchedly insufficient, and the temptation to provide against a rainy day by illicit means became irresistible. The abuses thus creeping into the service had attracted the attention of authorities both at home and in India; and attempts were made by men like Clive and Hastings to check the rapacity of the Company's servants by removing the possibility of temptation from their way. Besides, the training of the Company's servants was utterly inadequate to help them in the discharge of their duties as administrators. It was not, however, till the days of Lord Cornwallis that the Public Service of the country was organised on a more satisfactory basis. Three main principles governed the new institution, to which the name of the Covenanted Service of the East India Company was given. These were: (1) that every civil servant should enter into a covenant not to engage into trade, nor to receive presents from the natives, and to subscribe for the pension fund. In return the Company bound themselves to provide a handsome scale of pay and regular promotion, as also a certain pension for every servant retiring after a certain number of years of service. The Company also undertook to set apart a certain number of the more important posts in its service in India for men so drafted. This principle is maintained almost intact even to-day. The civil servant of to-day has not only to enter into a covenant as before; he must

also observe the Government Servants' Conduct Rules, which are applicable to every public servant in India, however chosen The scale of pay, allowances and pension remains almost unchanged. Every retiring Civil Servant–whether before his retirement he was a Lieutenant Governor, a High Court Judge or merely a District Officer–gets the same pension of £ 1000 a year; while the widows and orphans of the deceased members of the service are provided for by an annuity fund to which every civilian, married or single, must subscribe. As regards the number of posts reserved for the members of the covenanted service, the Act of 1793, modified by the Indian Civil Service Act of 1861, offered them the posts of Secretaries and Under-Secretaries to Government, Commissioners of Revenue, Civil and Session Judges, Magistrates and Collectors of Districts etc. The present Act reserves for them the offices of:—

1. Secretaries, Joint-Secretaries, Deputy Secretaries and Under Secretaries to the several governments in India, except the Secretaries, Joint Secretaries Deputy Secretaries and Under Secretaries in the Army, Marine and Public Works Department.
2. Accountants-General.
3. Members of the Board of Revenue in the Presidency of Bengal and Madras, the United Provinces, Bihar and Orissa.
4. Secretaries to those Boards of Revenue.
5. Commissioners of Customs, Salt, Excise and Opium.
6. Opium Agent.

Besides these in the Regulation Provinces the offices of:—

1. District and Sessions Judges.
2. Additional District or Session Judges and Assistant Session Judges.
3. District Magistrates.
4. Joint Magistrates.

5. Assistant Magistrates.
6. Commissioners of Revenue.
7. Collectors of Revenue or Chief Revenue Officers of Districts.
8. Assistant Collectors.

Though so many offices are reserved for the members of the Indian Civil Service—as the covenanted service is now called—they by no means exhaust the list. It has been said that nearly one fo-urth of the members of the service-now aggregating over 1300 men—are employed in posts not exclusively reserved for them. They serve in Native States, in the Post Office, in the Police department, in important Municipalities, and great Public Trusts like the Port Trust or the City Improvement Trust in Bombay. On the other hand it must be added that recent statutes, beginning from 1870, have enabled the authorities in India to appoint to posts reserved for the members of the Civil Service, men who have not passed the test of that service. Such appointments are made from amongst men of proved merit and ability in accordance with rules made by the Governor-General in Council, and sanctioned by the Secretary of State in Council with a majority of votes at a meeting of the India Council.

The second principle accepted in 1793 was that the first appointments to the service should be made by the Directors of the Company in England—without any interference by the authorities in India, while the subsequent promotion of men once appointed should depend entirely upon the authorities in India without any interference from home. This principle has been modified to some extent in the course of time. The right of nomination of the Directors was taken away in 1853 when the service was thrown open to competition among the natural born subjects of Her Majesty, and that system was maintained by the Act of 1858, and is accepted by the present Act. Still the principle remained that the first appointments should be made in England by the Secretary of State upon the recommendation of the Civil Service Commissioners. Even this was modified

in 1870. The Charter Act of 1833 and the Queen's Proclamation of 1858 had distinctly promised that the public service will not be closed to the natives of the Country by reason merely of their caste, colour or creed, and that the only requirement for recruiting would be merit and efficiency. But the fact that the first appointments were to be made in England operated by itself as a bar to the admission of Indians in the service of their country. Men who were able to pass any, the stringest, test were, however, precluded from serving their country honourably and profitably because they were unable to bear the expense of a protracted residence in England and unwilling to run the social risks of a voyage to Europe. This was impressed upon the authorities at home, and the Act of 1870 was passed, which, after reciting that "It is expedient that additional facilities should be given for the employment of Natives of India, of proved merit and ability, in the Civil Service of, Her Majesty in India, " authorised the appointment of Natives of India to posts in the civil service irrespective of the statutory restriction, and subject only to rules made by the Governor-General in Council and sanctioned by the Secretary of State and a majority of his council. This Act, however, could not be carried into effect at once. It was not till 1879 that rules were framed by the Governor-General in Council which threw open to the natives of India of "proved ability and merit" one-sixth of the posts usually held by members of the Indian Civil Service. Thus in Bombay 2 posts of Collectors, 1 of Talukdari Settlement Office on th Revenue side, 2 posts of District and Sessions Judges, 3 posts of Assistant Judges, 1 post of the Registrar of the High Court once held by the members of the Indian Civil Service, are now open to natives of India, not belonging to the Civil Service proper. But the rules did not work satisfactorily in practice. Though the intention of the Government of India was sought to be given effect to by reducing to five-sixths the appointments made in England, between 1879 and 1889 only about 60 Indians could be appointed to this "Statutory Civil Service" as it was called. Already in 1886 a commission was appointed by the Government of India under the presidency of Sir C. Aitchison—" to devise a scheme which might reasonably

be hoped to possess the necessary elements of finality, and to do full justice to the claims of natives of India to higher employment in the public service." The Commission was a representative body, and made recommendations under which the following scheme was framed.

"The Civil Service for the management of the higher branches of the executive and judicial administration is divided into 3 sections: first is the Imperial Civil Service, recruited in England by competitive examination and open to all subjects of the King-Emperor. It has its own conditions and standards, and a few natives have been able to pass its tests and obtain employment within its ranks. It fills the majority of the highest civil offices together with such a number of less important offices as would provide a course of training for the younger members of the service. The second is called the Provincial service, recruited in each province chiefly from among educated natives by nomination and sometimes by examination and promotion from the subordinate service. Admission to this branch of the service is regulated by rules framed by the Local Government and approved by the Government of India. The members of the provincial service are eligible for some of the offices reserved for the I. C. S., and lists of such posts open to them have been published. The third is the subordinate service which is recruited almost exclusively from the natives of the country and is entrusted with minor posts." (Strachey).

This arrangement, though satisfactory at the time, has not proved so definite and final as its authors intended it to be. There is a growing demand among the educated natives of India for a larger share in the actual administration of their country. Natural in itself, this desire has been encouraged and intensified by recent events. Lord Morley's tenure of the India office was memorable for the appointment of two Indians to the India Council, and one in the several executive Councils in India. If Indians could be appointed, with profit both to themselves and to the Government, to the highest and the most exalted posts, their practical exclusion from the general body of the superior

service seemed quite unreasonable. Moreover half a century of experience both in British India and in the Native States had proved beyond the possibility of a doubt the fitness and aptitude of educated Indians for the administrative and judicial work of the highest order. The days were also gone when the natives of the country could be suspected of a want of integrity. Education and example had increased and confirmed their probity. And yet, as the following table shows, the position of the natives of India in the superior service of the country is far from enviable.

Appointments on less than Rs. 1000 a month.

Year.	Europeans.	Eurasians.	Hindoos.	Mahomedans.
1867	4128	2629	5078	948
1877	4706	3443	7432	1175
1887	5147	4164	9733	1388
1897	5017	4965	12249	1832
1903	5205	5420	14131	2152
1910	No figures.	No figures.	No figures.	No figures.

Appointments on Rs. 1000 or more a month.

Year.	Europeans.	Eurasians.	Hindoos.	Mahomedans.
1867	632	4	12	0
1877	995	5	18	1
1887	1007	0	24	3
1897	1227	11	56	13
1908	1263	15	71	21
1910	1721		134	27

For the highest offices for every native of the country in the public service there are more than ten Europeans and Eurasians. On the 1st of April 1913 out of a total strength of 1319 there were only 46 Indians in the Indian Civil Service. Or to put it differently, in 1903 the Europeans held 6468 posts for which they got the aggregate salary of £ 35,09,000, while the Hindus, who held 14201 posts, got only £ 3,21,16,000, and the Mahomedans who held 2173 posts got only £ 3,41,000. In other words the Natives of India who filled the majority of places 16374 got only £ 24,55,000, while the Europeans got nearly half as much again £ 35,90,000, for slightly more than one third of the posts—6468.

It was perhaps to remedy such a state of things that another Public Service Commission was appointed in 1912, nearly 25 years after the Aitchison Commission had made its recommendations. The Islington Commission was to examine and report upon the following matters in connection with the Indian Civil Service, and other Civil Services, Imperial and Provincial:—

(a) The methods of recruitment and the system of training and probation.

(b) The conditions of service, salary, leave and pension.

(c) Such limitation as still exist in the employment of non-Europeans and the working of the existing system of division of services into Imperial and provincial. And generally to consider the requirements of the public service, and to recommend such changes as may seem expedient.

On this Commission there were three Indian Gentlemen. It enquired into the conditions etc. of the Public Services in India as well as in England for nearly two years, and submitted a report in 1914. Owing to the War the publication of the Report was delayed, but it was at length published in January 1917. As no action has so far been taken on the report, further comment would seem unnecessary, though the general tenour of the Report shows a most deplorably retrograde tendency. If Indians had expected any great concessions as the result of this Report, they cannot but be disappointed.

The third principle adopted in 1793 was that regulations should be framed for insuring proper training and qualifications in the aspirants for the Indian Civil Service. These regulations are made, under the present Act, by the Secretary of State for India in Council, with the advice and assistance of the Civil Service Commissioners. These regulations should be submitted to Parliament, 14 days after their framing. They prescribe the age limit of the candidates and their qualifications as also the subjects of examinations. These have varied from time to time. For instance the age limit before 1906 were 21 and 23, while since 1906 the rule has been that the candidates appearing for the Civil Service Examination in London must not be under 22 years of age in August of that year and must not be over 24 years of age. A candidate once plucked is allowed a second attempt, but no one is allowed more than two attempts in all. Originally the nominees of the Court of Directors were sent

direct to join their appointments, but the want of adequate previous training made them inefficient. Lord Wellesley sought to remedy this defect by opening a College at Calcutta in 1800 to give the necessary preliminary training to newly arrived Civilians; but this attempt was foiled by the Directors who started in 1805 a College at Haileybury. Till the day–1858–when this College was closed, nominees to the Indian Civil Service underwent there a course of two years training before proceeding to take up their appointments in India. At the present time the practice is a little different. After a candidate has shown the required proficiency at the Civil Service Examination, and has been recommended for appointment by the Civil Service Commissioners, he is encouraged to pass one year at an English University, to pursue there a prescribed course of study, and is given an allowance of £ 150 during that probationery year. At the end of that year there is another examination, failure to pass which might mean final loss of the service, while seniority in the service is determined by combining the results of the open competition examination and this final compulsory examination.

The principles, therefore, adopted in 1793, have all been maintained upto the present, with such slight modifications as the progress of the country demanded. There is practically the same covenants—if anything more strict than before; there are nearly the same posts reserved for them, though the increasing activities of the State have been met by the comparatively wider employment of Indians; there is nearly the same scale of pay, allowance and pensions, as also the general conditions of service. The first appointments are even now made in England, though there has been, since 1870, some authority delegated to the Government of India to make appointments under certain limitations. The regulations regarding the courses of study, age and qualifications have varied from the day that Lord Macaulay drafted the first regulations; but the general principle that there should be a certain standard of efficiency for every candidate is maintained. In addition to the Imperial Civil Service there are now also the provincial and subordinate Civil

Services, staffed in the main by the Indians, and governed by rules framed on the model of the rules for the Indian Civil Service.

II. Recent Changes.

Owing to the war, and the special measures which England has been forced to adopt to fight this war, it was felt that the old regulations of the Indian Civil Service would operate unfairly. A number of young men, who, in the ordinary course of events, would have offered themselves for the examination, have been called to arms, and so prevented from competition. Besides, if the old rules were allowed to remain unaltered, and if all the posts were to be filled by men in order of their proficiency at the competitive examination, there would be the risk of deterioration in the standard. On the other hand, the war had opened opportunities to Indians which, perhaps, they would not have had otherwise. Bearing in mind all these considerations an emergency bill was introduced in Parliament in October 1915, suspending the system of open competition and replacing by a method of recruitment which would be just to Indians, as well as to those Englishmen who had sacrificed their careers by obeying the call of duty. The main provisions of this Act "to enable *persons during the continuance of the* war, and for a period of two years thereafter, to be appointed or admitted to the Indian Civil Service without examination" were:—(1). The Secretary of State in Council may, with advice and assistance of the Civil Service Commissioners, make rules providing for the admission and appointment to the Indian Civil Service by the Secretary of State in Council, during the continuance of the present war, and for a period not exceeding two years thereafter, of British subjects possessing such qualifications with respect to age and otherwise as may be prescribed by the rules, not withstanding that they have not been certified as being entitled for appointment as the result of examination in accordance with the regulations and rules made

under S. 32 of the Government of India Act 1858, and S. 97 of the Government of India Act 1915.

Provided that (*a*) not less than one-fourth of the persons admitted to the Indian Civil Service during such period as aforesaid shall be as certified as aforesaid; and (*b*) a person shall not be appointed to the Indian Civil Service, under the rules made under this section, unless the Civil Service Commissioners certify that by such means as may be prescribed by the rules they have satisfied themselves that in their opinion he possesses the necessary educational qualifications.

The effect of this temporary act was (1) not to suspend or abolish altogether the Civil Service Examination. Only instead of the whole number of vacancies in the service being filled by the successful candidates in the examination during the period described, one-fourth—at least one-fourth—shall be so filled. (2) The remaining vacancies may be filled by men who need not have passed the examination, but who must possess such qualifications as the rules, framed by the Secretary of State in Council and accepted by Parliament, lay down. (3) Further, no man can be appointed without success at the examination, unless the Civil Service Commissioners are satisfied that he possesses the necessary educational qualifications. (4) As regards the Indians, if among the one-fourth, which is to be still recruited by examination, there is not the same proportion of Indians as was usual in the last few years, then the deficit would be made up by the appointment of unsuccessful Indians, provided they satisfy the Commissioners about their educational and other qualifications. This was construed by the Government as showing their anxiety to be just and fair to Indians. On the other hand the critics of the Government pointed out that the whole Act was unjust since it limited the one opportunity Indians had so far to obtain admission in the service of their country in larger numbers. It must be added that the latter construction is not entirely unreasonable. At the same time Government could not ignore altogether the claims of these who were fighting for their country, nor suffer the standard of efficiency to deteriorate. Under the circum-

stances the measure was inevitable; and If it should operate unjustly upon the Indians the consolation is that the Act is only a temporary measure, and that, whatever be the recommendations of the Public Service Commission, we are undoubtedly on the eve of great and radical changes in this matter.

III. The Career of a Civil Servant.

Every young civilian, on joining the service in India, is attached to a district as assistant to the Collector. He is given the powers of a Magistrate of the lowest class, and is required to pass an examination in a vernacular language, local laws, and Revenue Procedure. When he has passed that examination he attains the full magisterial powers and holds charge of a revenue sub-division. At this stage he has two alternatives—to go into the Judicial branch of the service or the Executive branch. In the former line in the regular course of promotion he becomes an Assistant Judge and a District and Sessions Judge; but the last office he does not attain to, unless he has served for ten years. As District Judge he is the principal civil tribunal of the district and has considerable appellate powers. As Sessions Judge he tries the more important criminal cases. If he is intelligent and assiduous he may hope to rise and be on the High Court Bench or a Judicial Commissioner. In this branch of the service the highest available post is that of a High Court Judge.

If our Civilian elects to go in the Executive line in the regular course of promotion he becomes a Collector-Magistrate. In this branch the highest posts available are those of members of the Viceroy's Executive Council or even of a Lieutenant Governor. Civilians are now debarred from becoming Governors-General or even Governors of the presidencies. In general, however by the time that the highest grades in the offices of Collector or Judge are reached, the Civilian has nearly completed his 25 years of service, which are necessary before he can retire

on a pension. Should he, however, elect to remain in service there are still ten years more, and he can hope to rise to higher posts. Every one must retire on completing 35 years of service or 55 years of life, except the Judges of the High Court who are allowed to complete 12 years on the Bench.

VI. Other Public Services.

"Besides this general service," says Sir Ilbert Courtney "there are special services such as the Education department, the Public Works Department, the Forest Department, and the Police Department." To these we might add the Agricultural service, the Pilot service, the Medical service and the Ecclesiastical service. In all those services there are generally speaking three main branches, *viz*:—the Imperial branch, recruited chiefly in England from Englishmen, the provincial branch recruited in India from Indians, and the subordinate branch. To take a bird's-eye-view of the conditions and prospects of some of the most important of the services:—

1. The Indian Agricultural Service.

The chief appointments in this service are:-Deputy Director of Agriculture, Agricultural Chemist, Economic Botanist, Mycologist, Entomologist and Professors of Agriculture in Agricultural Colleges. A few of these posts are directly under the Government of India, but a large majority is under the Provincial Governments. Sometimes the candidates are appointed directly to their posts, but as a rule they are appointed on probation or as supernumeraries. As such they undergo a course of training in Indian Agriculture, and will be appointed to permanent posts as they become vacant and as the candidates are specially suited for the posts. The qualifications as to age are that the candidates should not be under 23 nor over 30 years of age. Their specia

qualifications may be (*a*) either a degree in honours in science, or a diploma of a recognised school of Agriculture; (*b*) qualifications in the special science according to the nature of the post to be filled and (*c*) practical experience. The salaries attached to posts in this department are: Rs. 400/- per month in the first year, Rs. 430/-in the second, Rs. 460/- in the third, and Rs. 500/- rising by annual increments of Rs. 50/- per month to Rs. 1000/- in the fourth and subsequent years.

2. The Ecclesiastical Establishment (Anglican.)

The Secretary of State makes appointments of chaplains on probation from time to time as vacancies occur. Candidates must be priests, between the age of 27 and 34 and must have been in Holy Orders for 3 years altogether. A chaplain is on probation for three years. If confirmed at the end of the period he is appointed a junior chaplain. While on probation he gets Rs. 5760/- per year and when confirmed he gets Rs. 6360/- per annum for five years, and thereafter Rs. 8160/- until promoted to be Senior Chaplain. He cannot be a senior chaplain until after ten years of service, and then he gets Rs. 10,200/- for the first five years and Rs. 12,000/- per year thereafter.

3. The Educational Department

This service, like the Civil Service, has two main branches. The Imperial Educational Service is recruited from Englishmen in England and by the Secretary of State. It consists of two branches (*a*) the teaching branch, including principals and professors of Colleges and Head Masters in certain High Schools and (*b*) the Inspectors of Schools. They are all appointed by the Secretary of State as vacancies occur. As a rule candidates must not be under 23 years of age nor over 30. They

must have a University Degree in honours, some experience as teachers, and qualifications in special subjects according to the nature of the appointment. The salaries paid are: Rupees 500 a month rising by annual increments of Rs. 50/- monthly to Rs. 1,000/- a month. When this point has been reached the increase of his emoluments depends upon his promotion, and is generally in the form of allowances varying from Rs. 200 to Rs. 500 in addition to the salary of Rs. 1000 a month. Besides, to this branch of the service are open the posts of the Director of public Instruction in the various Provinces, receiving a salary varying from Rs. 1,250 to Rs. 2,500.

The Provincial branch is recruited chiefly from Indian Graduates in India. It includes some principals and professors of colleges, head masters of schools and translators to the Government. The minimum pay is Rs 200 and maximum Rs. 750 in this branch of the service. The subordinate Educational service includes a few head masters, assistant Deputy Inspectors, and all the assistant masters in the Government High Schools and Middle Schools. The minimum pay in this service is Rs 40 and the maximum somewhere near Rs 400.

4. The Indian Medical Service.

This service is under the Government of India and consists of some 768 medical men and recruited in England by competitive examination. Its chief duty is the care of the Native troops and of the British officers and their families. In the course of time these duties have been amplified so that to-day they include the provision of medical aid to civil servants and their families, the administration of the civil Hospitals in large towns, and the supervision of numerous small dispensaries pubilc as well as private, the sanitation of large areas, the protection of water supply, the prevention of epidemic disease. The jails in British India are also in their charge.

The service dates from the earliest days of the East India Company. In 1766 it was divided into two branches, Military and Civil, though in the latter case the medical men were considered primarily as army officers temporarily lent to the civil Government, and liable to be called to duty at any time. In 1898 the officers of the service were given military rank and since 1906,the names of the officers serving in the different provinces are all combined in one list. Since 1853 the service has been thrown open to the Indians, and up to 1910 nearly 90 men of purely Indian extraction had been able to find employment within its ranks. And while in the Civil Service hardly three per cent. of the whole body were Indians in 1913, in the Indian Medical service the proportion of Indians is over 5 per cent and is yearly increasing. The service is recruited by open competition under rules and regulations framed by the Secretary of State in Council. The rules operating at present may be summarised as follows:—

The candidates must be of British or East Indian descent and subjects of His Majesty. They must be of sound bodily health, married or unmarried. They must possess a medical qualification registrable in the United Kingdom. No candidate is allowed to compete more than three times, while candidates for the examination in each year must be between 21 and 23 years of age. These examinations are held twice a year—in January and in July—and consist of the following subjects:—medicine, surgery, applied anatomy and physiology, pathology, and bacteriology, midwifery and diseases of women and children. Successful candidates are appointed as Lieutenants on probation, and, after two short courses of study at the Royal Medical College, Aldershot, are drafted in the regular service. At the head of the service is the Director General-sometimes called Surgeon-General—who is an official of the Government of India. The pay varies from Rs. 420 to Rs. 3000 a month.

5. The Public Works Department.

In this department the permanent establishment is recruited from:—

(*a*) Officers of Royal Engineers.

(*b*) persons appointed to the Imperial Service by the Secretary of State by selection from the United Kingdom.

(*c*) persons educated at the Government Civil Engineering College in India, and appointed to the provincial service by the Government of India.

(*d*) occasional admission of other qualified persons.

The Secretary of State in council appoints Assistant Engineers to the Public Works Department of the Government of India on the following rules:—

(1) Candidate must not be under 21 years and over 24 years of age.

(2) They must produce evidence that they have obtained a University Degree, or passed the A. M. I. C. E. Examination; or obtained some other satisfactory diploma or distinction in Civil Engineering.

In this Department the newly arrived officer begins as an Assistant Engineer with a salary of Rs 4560 a year, and has a regular increment of nearly Rs.500 every year till he becomes an Executive Engineer, when he gets Rs 10,200 a year with a regular similar increment. Over the Executive Engineer are the Superintending Engineers of the First, Second and Third class; and over them all are the Chief Engineers of the First and Second Classes. The highest officer—the First Class Chief Engineer gets Rs. 33,000 per annum.

Like other departments this department has also its provincial and subordinate branch of the service.

6. The Military Department.

This department has its own service. All officers of this department are not, however, always on active military duty. In non-regulation provinces they are frequently placed in charge of civil posts. The diplomatic service of India is also staffed to a great extent by the army officers. No Indian, however, has so far been allowed to hold commissions in the Indian Army, and so this department is of relatively little interest to an Indian writer. It is expected that as the result of this war, and perhaps upon the recommendation of the Public Service Commission this restriction will soon be removed, just as the distinction of the Victoria Cross was thrown open to the Indian soldiers by the King Emperor from 1912.

A survey of the various public services in India brings out prominently the following general features:—

(1) In almost every department the service is divided into three branches, the Imperial, the Provincial and the Subordinate branches.

(2) In almost every case all the higher ranks in the service are filled by Europeans, though, except in the army, there is no statutory disability upon Indians in every case. The lower ranks are filled by Indians–mostly Hindus.

(3) The conditions of pay and pension etc., are quite handsome. Compared to other countries, compared even to England, the public servants in India are extremely well paid.

(4) Almost all branches of the service are filled by men who have given sufficient, though varying, proofs of ability. This is done either by means of an examination, or by departmental rules for testing the ability of the candidates.

In general, then, the reflection is irresistible that in securing men for the public service in India, so much attention is paid to efficiency that every other consideration of economy or even justice has been sacrificed to this one dominating consideration of efficiency. The standards for admission are fairly high; and

the reputation of the service almost unique in the world. In the general emulation which must and does result the whole body of public servants vie with one another in giving proofs of sterling integrity and marvellous ability. If efficiency were the only condition of good Government, there would be no hesitation in asserting that India is at present about the best governed country in the world.

CHAPTER VII.

Judicial Administration.

PART IX.

THE INDIAN HIGH COURTS.

Constitution.

101. (1) The High Courts referred to in this act are the high courts of judicature for the time being established in British India by letters patent.

(2) Each high court shall consist of a chief justice and as many other judges as His Majesty may think fit to appoint provided as follows:—

(i) The Governor-General in Council may appoint persons to act as additional judges of any high court, for such period, not exceeding two years, as may be required; and the judges so appointed shall, whilst so acting, have all the powers of a judge of the high court appointed by His Majesty under this Act;

(ii) The maximum number of judges of a high court, including the chief justice and additional judges, shall be twenty.

(3) A judge of a high court must be:—

(a) A barrister of England or Ireland or a member of the Faculty of Advocates in Scotland, of not less than five years standing; or

(*b*) A member of the Indian Civil Service of not less than ten years standing, and having for at least three years served as, or exercised the powers of, a district judge; or

(*c*) A person having held judicial office, not inferior to that of a subordinate judge or a judge of a small causes court, for a period of not less than five years: or

(*d*) A person having been a pleader of a high court for a period of not less than ten years.

(4) Provided that not less than one-third of the judges of a high court, including the chief justice but excluding additional judges, must be such barristers or advocates as aforesaid, and that not less than one-third must be members of the Indian Civil Service.

(5) The high court for the North-Western Provinces may be styled the high court of judicature at Allahabad, and the high court at Fort William in Bengal is in this Act referred to as the high court at Calcutta.

102. (1) Every judge of a high court shall hold his office during His Majesty's pleasure.

(2) Any such judge may resign his office, in the case of the high court at Calcutta, to the Governor-General in Council, and in other cases to the local Government.

103. (1) The chief justice of a high court shall have rank and precedence before the other judges of the same court.

(2) All the other judges of a high court shall have rank and precedence according to the seniority of their appointments, unless otherwise provided in their patents.

104. (1) The Secretary of State in Council may fix the salaries, allowances, furloughs, retiring pensions, and (where necessary) expenses for equipment and voyage, of the chief justices and other judges of the several high courts, and may alter them, but any such alteration shall not affect the salary of any judge appointed before the date thereof.

(2) The remuneration fixed for a judge under this section shall commence on his taking upon himself the execution of his office,

and shall be the whole profit or advantage which he shall enjoy from his office during his continuance therein.

(3) If a judge of a high court dies during his voyage to India, or within six months after his arrival there, for the purpose of taking upon himself the execution of his office, the Secretaey of State shall pay to his legal personal representatives, out of the revenues of India, over and above the sum due to him at the time of his death, a sum equal to six months' salary.

105. (1) On the occurrence of a vacancy in the office of chief justice of a high court, and during any absence of such a chief justice, the Governor-General in Council in the case of the High Court at Calcutta, and the local Government in other cases, shall appoint one of the other judges of the same high court to perform the duties of chief justice of the court, until some person has been appointed by His Majesty to the office of chief justice of the court, and has entered on the discharge of the duties of that office, or until the chief justice has returned from his absence, as the case requires.

(2) On the occurrence of a vacancy in the office of any other judge of a high court, and during any absence of any such judge, or on the appointment of any such judge to act as chief justice, the Governor-General in Council in the case of the high court at Calcutta, and the local Government in other cases, may appoint a person, with such qualifications as are required in persons to be appointed to the high court, to act as a judge of the court; and the person so appointed may sit and perform the duties of a judge of the court, until some person has been appointed by His Majesty to the office of judge of the court, and has entered on the discharge of the duties of the office, or until the absent judge has returned from his absence, or until the Governor-General in Council or the local Government, as the case may be, sees cause to cancel the appointment of the acting judge.

Jurisdiction.

106. (1) The several high courts are courts of record and have such jurisdiction, original and appellate, including admiralty jurisdic-

tion in respect of offences committed on the high seas, and all such powers and authority over or in relation to the administration of justice, including power to appoint clerks and other ministerial officers of the court, and power to make rules for regulating the practice of the court as are vested in them by letters patent, all such jurisdiction powers and authority as are vested in those courts respectively at the commencement of this Act.

(2) The high courts have not and may not exercise any original jurisdiction in any matter concerning the revenue, or concerning any act ordered or done in the collection thereof according to the usage and practice of the country or the law for the time being in force.

107. Each of the high courts has superintendence over all courts for the time being subject to its appellate jurisdiction, and may do any of the following things, that is to say,

(*a*) call for returns;

(*b*) direct the transfer of any suit or appeal from any such court to any other court of equal or superior jurisdiction;

(*c*) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts,

(*d*) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts; and

(*e*) settle tables of fees to be allowed to the sheriff, attorneys, and all clerks and officers of court:

provided that such rules, forms and tables shall not be inconsistent with the provisions of any Act for the time being in force, and shall require the previous approval, in the case of the high court at Calcutta, of the Governor-General in Council, and in other cases of the local Government.

108. (1) Each high court may by its own rules provide as it thinks fit for the exerise, by one or more judges, or by division courts constituted by two or more judges of the high court, of the orignal and appellate jurisdiction vested in the court.

(2) The chief justice of each high court shall determine what judge in each case is to sit alone, and what judges of the court, whether with or without the chief justice, are to constitute the several division courts.

109. (1) The Governor-General in Council may, by order, transfer any territory or place from the jurisdiction of one to the jurisdiction of any other of the high courts, and authorise any high court, to exercise all or any portion of its jurisdiction in any part of British India not included within the limits for which the high court was established, and also to exercise any such jurisdiction in respect of Christian subjects of His Majesty resident in any part of India outside British India.

(2) The Governor-General in Council shall transmit to the Secretary of State an authentic copy of every order made under this section.

(3) His Majesty may signify, through the Secretary of State in Council, his disallowance of any such order, and such disallowance shall make void and null the order as from the day on which the Governor-General notifies that he has received intimation of the disallowance, but no act done by any high court before such notification shall be deemed invalid by reason only of such disallowance.

110. (1) The Governor-General, each Governor, and each of the members of their respective Executive Councils, shall not—

(*a*) be subject to the original jurisdiction of any high court by reason of anything counselled, ordered, or done by any of them in his public capacity only; nor

(*b*)* be liable to be arrested or imprisoned in any suit or proceeding in any high court acting in the exercise of its original jurisdiction; nor

(*c*) be subject to the original criminal jurisdiction of any high court in respect of any offence not being treason or felony.

(2) The exemption under this section from liability to arrest and imprisonment shall extend also to the chief justices and other judges of the several high courts.

111. The order in writing of the Governor-General in Council for any act shall, in any proceeding, civil or criminal, any in high court acting in the exercise of its original jurisdiction, be a full justification of the act, except so far as the order extends to any European British subjects; but nothing in this section shall exempt the Governor-General, or any member of his executive council, or any person acting under their orders, from any proceedings in respect of any such act before any competent court in England.

Law to be Administered.

112. The high courts at Calcutta, Madras and Bombay, in the exercise of their original jurisdiction in suits against inhabitants of Calcutta, Madras or Bombay as the case may be, shall, in matters of inheritance and succession to lands, rents, and goods, and in matters of contract and dealing between party and party, when both parties are subject to the same personal law or custom having the force of law, decide according to that personal law or custom, and when the parties are subject to different personal laws or custom having the force of law decide according to the law or custom to which the defendant is subject.

Additional High Courts.

113. His Majesty, may if he sees fit, by letters patent, establish a high court of judicature in any territory in British India, whether or not included within the limits of the local jurisdiction of another high court, and confer on any high court so established any such jurisdiction, powers and authority as are vested in or may be conferred on any high court existing at the commencement of this Act; and where a high court is so established in any area included within the limits of the local jurisdiction of another high court, His Majesty may, by letters patent, alter those limits, and make such incidental, consequen-

tial and supplemental provisions as may appear to be necessary by reason of the alteration.

Advocate General.

114. (1) His Majesty may, by warrant under His Royal Sign Manual, appoint an advocate-general for each of the presidencies of Bengal, Madras and Bombay.

(2) The advocate-general for each of those presidencies may take on behalf of His Majesty such proceedings as may be taken by His Majesty's Attorney-General in England.

COMMENTS.

I. History of the Courts of Justice.

The early charters of the Company gave a general authority to establish Courts of law in their possessions in India. Thus the charter of 1683 directed that a Court of judicature, consisting of a lawyer and 2 merchants, should be appointed at such places as the Company might appoint; and this was repeated in 1686 and 1698. But the necessity for a more regularly constituted judicial authority was not felt till **1726**, when the Company petitioned the King to establish *Mayor's Courts*. As a result three courts were created, one each at Bombay, Madras and Calcutta, consisting of a Mayor and 9 oldermen for the trial of actions between Europeans within those towns and their dependent factories. At the same time a sort of an appellate tribunal was created in the shape of the President and Council, who heard appeals from the Mayor's Courts; while from the Presidency Government an appeal lay to the King in Council in cases involving sums exceeding Rs. 4000. These Courts were re-established in *1753* by revised Letters Patent, and in the same year were established *Courts of Requests* for trying cases of value not exceeding Rs. 20.

This was the organisation in the Presidency Towns. As regards the Mofussil, under the Moghul rule in Bengal, the administration of justice was in the hands of the Nawab Nazim, who tried all capital cases himself, while his deputy, the Naib Nawab, tried all the other major cases, the minor cases being tried by Foujdars &c.

The Reforms of Hastings.

The series of English victories which followed the Battle of Plassey, and ended in the transfer of the powers of Government to the Company, changed this organisation. Under the arrangements made in 1765, the administration of civil justice was taken over by the Company, while that of criminal justice still remained in the hands of the Nawab. This state of things gave rise to considerable inconvenience which Hastings tried to avert by placing the organisation of justice on a more regular basis. He created a civil court—Diwani Adalat—for each district, presided over by a European Zilla Judge and aided by Hindu and Mahomedan law officers. For minor cases he appointed Registrars and Native Commissioners called Sadar Amins and Munsifs. To supervise over these he established four Civil Courts of appeal in four important centres, and over these was the Sadar Diwani Adalat or the Highest Civil Court of appeal consisting of the Governor and his Councillors assisted by native officers. As regards criminal justice corresponding reforms were effected at the same time. Nizamat Adalats—or Provincial Courts of Criminal Justice were instituted in each province, and Courts of Circuit, under the presideney of the judges of the civil appellate courts, were constituted as courts of criminal appeal. Along side the Sadar Diwani Adalat, a Sadar Nizamat Adalat was established as the Highest Court of Criminal Appeal.

The Regulating Act.

Soon after these reforms, the judicial system in India was complicated by the institution of the Supreme Court by Parliament in 1773. The new Court was a creature of Parliament, independent of the Company, and consisted exclusively of professional lawyers. It superseded the Mayor's Court but not the Court of Requests—and was vested with the most extensive jurisdiction, subject to an appeal to the Privy Council in cases involving Rs. 4,000 or more. The relations between the new Court and the Company's Courts were not defined, as also the relations between it and the Executive. At the same time the Supreme Court adopted without modification, English law and procedure, which were entirely unsuitable to the Indian conditions of the day. Hastings tried to remedy the antagonism between his adalats and the Supreme Court by appointing his friend, Sir Elijah Impey, the chief justice of the latter, to the Sadar Diwani Adalat; but his attempt failed; and by the Declaratory Act of 1781 the Supreme Court was obliged to recognise the Company's Courts, was debarred from interfering in cases relating to the Revenue or the regulation of the Government, while by the same Act the Governor-General and his Councillors were exempted from the jurisdiction of the Supreme Court.

The sequence of events in Madras and Bombay was very nearly the same. The evolution of the judicial system was worked out on the same lines. And the System established about 1783 lasted right upto 1861.

II. The Present System.

The present system was inaugerated by the Indian High Courts Act of 1861. On the establishment of the High Courts the old Sadar and Supreme Courts were abolished, and the jurisdiction of both was conferred upon the High Courts.

These were established at first in Bombay, Madras and Bengal, and later on in Agra at Allahabad, while a High Court was established for the new Province of Bihar and Orissa at Patna in 1915. The Judges of the High Courts are appointed by the Crown and hold office during the pleasure of the Sovereign. In this respect the practice in India is different from that of England, where the Judges are appointed during good behaviour. The difference between these two kinds of tenures is that, while the officers appointed during the pleasure of the sovereign can be removed by the king at any time he likes without giving any reasons, the officers appointed during good behaviour cannot be removed except if they commit such offences as render them unfit for their post in the eyes of a competent tribunal. The necessity of the independence of the Judges–to secure an impartial administration of justice, requires, that the Judges in India, as in England, be appointed during good behaviour, and be not removable except on an address to that effect by the Houses of Parliament, or by the Legislative Councils in India. Perhaps we can trace this principle of judicial appointments during the pleasure of the Sovereign to the necessity, which once existed, of the impartial authority of the Crown being given a power of removal of the obnoxious servants of the Company. That reason, of course, would not justify the present maintenance of this obsolete principle; but the composition of the Judicial bench makes it advisable that the principle be maintained even now. For at least one-third of the Judges of the High Court are members of the Civil Service; at least another third should be barristers or members of the Faculty of Advocates of Scotland, the remaining places being filled by members of the local bar. It is provided that the Chief Justice of a High Court shall always be a barrister, but that relates to the permanent occupant of the post, temporary or acting Chief Justices being indifferently drawn from the Civil Service or from the profession.

The Chief Courts and Judicial Commissioners.

The High Court is charged with the superintendance of all subordinate Courts within the Province. Corresponding to the High Courts of Bengal, Madras, Bombay, Allahabad and Patna, there are Chief Courts at Lahore for the Punjab, and at Rangoon for the province of Burma. Unlike the High Courts, the Chief Courts are established by the Governor-General-in-Council and derive their authority from him. The position and pay of the Judges of the Chief Courts are also inferior to those of the High Courts. In all other respects they are on the same level as the Chartered High Courts. In the remaining Provinces the highest judicial authority is vested in one or more Judicial Commissioners.

The Lower Civil Courts.

As regards the Subordinate Courts, the constitution and jurisdiction of the inferior Civil Courts varies from province to province. Broadly speaking, for each administrative district one Disitrict Judge is appointed to preside in the principal Civil Court of his district with original jurisdiction. Under the District Judge are the Subordinate Judges and Munsifs, the extent of whose original jurisdiction is not the same in the different parts of India. Generally speaking the Subordinate Judges are graded in three classses, with definite limitations on the powers and jurisdiction of a judge of each class.

Besides these inferior Civil Courts in the mofussil there are the Courts of Small Causes which are very important in the Presidency Towns of Madras, Bombay and Calcutta. They have powers to try money suits of Rs. 1,000, or, with the consent of the parties, suits upto Rs. 2,000 in value. The increasing pressure of original work upon the High Courts in the Presidency Towns has led to the suggestion that the jurisdiction of the Small Causes Courts be raised to money

suits of Rs. 5,000 or less, and the suggestion is at present under consideration by the Government.

Generally speaking the District Judges are drawn from the Civil Service, while the Subordinate Judges and Munsifs are drawn from the Native Bar. The high character and remarkable attainments of the native members of the judicial service in India have deservedly procured them the warmest encomiums from all contemporary observers.

The Lower Criminal Courts.

As regards the Subordinate Criminal Courts, they are divided into Courts of Session and Courts of Magistrates. By the Criminal Procedure Code, every province, outside the presidency towns, is divided into sessions divisions. A sessions division does not always correspond to an administrative district. Frequently a sessions division includes more than one district. Each sessions division has a Court of Session. presided over by a Sessions Judge, with such assistance as the size of the division and the volume of the work may require. A Sessions Judge is usually also a District Judge at the same time. The Sessions Courts are competent to try all accused persons—committed to session by the Magistrates' Courts—and to inflict any sentence authorised by law; with this modification, however, that a sentence of death by a Sessions Court is subject to confirmation by the highest court of criminal appeal within the province. Trials before the Courts of Session are by assessors or juries. The former assist the Judge in framing a judgment though their opinion is not binding upon him. In the latter the verdict given by a majority prevails, if accepted by the presiding Judge. Though the verdict of a jury is usually binding on the Judge, he has power to refer a case to the highest criminal tribunal in the province, if in his opinion, the verdict of the jury is manifestly in opposition to the facts or the weight of evidence. The prerogative of mercy is vested in the Governor-General in Council and the loca

Government without prejudice to the superior authority of the Crown in this respect.

The Courts of Magistrates like the Courts of the Subordinate Judges on the civil side, are graded into three classes, each class of Magistrate having well defined powers. The Magistrate of the first class, for instance, can inflict a sentence of two years' imprisonment, or a fine of Rs. 1,000. For offences requiring more serious punishment, the Magistrates can only hold a preliminary inquiry, and commit such cases for trial by the Court of Sessions.

In the Presidency Towns there are Presidency Magistrates, with the powers of First Class Magistrates, to try the less important offences, and to commit the more important ones to the Sessions. Each Presidency Town is a Sessions Division by itself, and the Sessions Court in a Presidency Town consists of a Judge of the High Court sitting on the original side with the Criminal Jurisdiction of the High Court. Such Sessions Courts are held three or four times a year.

Besides the Presidency Magistrates, there are Honorary Magistrates in the Presidency Towns, any two of whom can form a bench to dispose of petty cases. Such Honorary Magistrates are now created in every important town.

Besides these officers, Coroners are appointed in Calcutta, Bombay and Madras to inquire, with the aid of a Jury, in cases of sudden and suspicious deaths, and to commit suspected persons for trial before the Sessions Court. In the mofussil the work of the Coroner is done by the ordinary staff of Magistrates and Police officers unaided by Jurors.

III. The Jurisdiction of the High Courts.

The High Courts in India have full civil and criminal, original and appellate jurisdiction. Its ordinary, original, civil juris-

diction is exercised, for the Presidency towns, in respect of all suits, except the minor money suits assigned to the Small Causes Court within the Presidency Town, by a single judge. An appeal lies from the decision of a Judge on the original side to a bench on the appellate side. In the case of those towns which—like Allahabad or Lahore—have a High Court or a Chief Court, the court has no such jurisdiction, their only ordinary orginal jurisdiction being confined to criminal proceedings against a British European subject. From the jurisdiction of the Indian High Courts, the Governor-General and the members of his council, as well as the Governors of the three presidencies, together with their councillors, are exempt; they can also be not arrested in connection with any suit or proceeding before a High Court. This exemption of theirs has probably arisen from the quarrels of Warren Hastings with the Supreme Court, as in the famous Nundkumar affair; and more particularly in the Cossijurah case. On the other hand for certain specified *offences e. g.* (1) oppression of any of His Majesty's subjects, (2) wilful disobedience of the orders of the Secretary of State, (3) engaging in trade, or (4) receipt of any bribe by way of a gift, gratuity or reward are made punishable as misdemeanours by the King's Bench Division of the High Court in London.

The extraordinary original jurisdiction of the High Courts consists of (1) the right to call for returns from all Subordinate Courts, (2) and the right to remove any suit on the file of a Subordinate Court, and try the same itself, either with the consent of the parties, or merely to further the ends of justice. The High Court exercises a constant control and supervision over the working of all the Subordinate Courts within its jurisdiction by examining their periodical returns, by sending for particular proceedings, calling for explanatinos &c. All this is altogether apart from that other power of supervision, which it exercises through the cases that constantly come before it for appeal. It also issues general rules for regulating the practice and proceedings before such courts, as well as prescribes forms.

The High Courts are Insolvency Courts for the Presidency Towns, and they act as Courts of Matrimonial causes for

such of His Majesty's subjects as have their own marriage laws permitting divorce by such a public tribunal.

The Ecclesiastical Jurisdiction of the Indian High Courts relates only to the Established Church of England; while their jurisdiction with regard to offences on sea, and in connection with Prize Courts, was conferred upon them by a number of statutes and charters. In this connection it may be mentioned that for every offence committed on land, both the procedure and the substantive law to be applied are those of British India; and the same is the case for offences committed whether on land or on sea by British Indian subjects of His Majesty. The case is slightly different with regard to offences committed at sea by persons other than the natives of India. The proceedings in such a case will be regulated by the Code of Criminal Procedure, but English law will have to be applied to determine the nature of the crime and the extent of the punishment.

Under the Indian Criminal Law Amendment Act, 1908(XIV), persons accused of any of the offences specified there—chiefly offences which may be described as the terrorist attempts to overthrow the Government—may be tried in a High Court by a special bench of 3 Judges. As a rule offences are tried in the High Courts by a Judge and Jury; but in this case no jury is allowed—as also in all civil cases.

IV. The Revenue Courts.

The High Courts have no power to exercise original jurisdiction in matters concerning the revenue, or acts done in collecting the same. These cases are tried by a special set of courts, called the Revenue Courts, presided over by the chief Revenue Officers, the Collectors. The relations of these courts with the other civil courts in the country have given rise to serious difficulties in the past; and the balance of official opinion has inclined now in favour of one and now in favour

of the other. The present situation may be described thus: The civil courts are excluded from all cases concerning the assessment and collection of land revenue—and from other purely fiscal cases. But all questions of title to land—though closely connected with questions of assessment—are triable by the civil courts. And even in cases of rent disputes, *i. e.* disputes relating to the fixing and payment of rents between land-lords and tenants—the ordinary civil courts are supreme, especially in Bengal; and in those provinces where the local tenancy laws still leave such cases to be dealt with by the Revenue Courts, the procedure of these Courts is assimilated to that of the civil courts. Appeal from the Revenue Courts may be made to the Board of Revenue wherever this institution exists, and in provinces where it does not, such appeals probably lie to the officer in charge of the Land Records and Revenue Settlement.

V. The Privy Council.

As with the whole of the Empire, the final Court of Appeal for Indian cases is the Judicial Committee of the Privy Council. The prerogative of the Sovereign to hear appeals from his subjects beyond the seas, though regulated and modified by Acts of Parliament, local rules, and orders in council, is still maintained. In 1833 was constituted a Committee of the Privy Council to hear such appeals from British subjects beyond the seas. This Committee, though for all practical purposes a final Court of Appeal, adopts in its judgments the form of advising the Sovereign, who, therefore, stands out as the final dispenser of all justice. He has the right to refer any matter for advice to this Committee; but, apart from this, the conditions of appeal from India are regulated by the Charters of the High Court, and by the provisions of the Code of Civil Procedure as regards civil cases. In civil matters an appeal lies to the Privy Council from a final decree passed on appeal by the High Court or any court of final appellate jurisdiction; from a final decree of the

High Court in the exercise of its original jurisdiction; and from any other decree if the case is certified by the High Court as fit for appeal. In the first two cases the value of the subject matter of the suit in the court of first instance must be at least Rs. 10,000; and when the decree appealed from affirms the decision of the court immediately below, the appeal must also involve some substantial question of law. In criminal cases a right of appeal is given, provided the High Court certifies that the case is fit for appeal, from any judgment, order or sentence of a High Court made in the exercise of original jurisdiction, or in any criminal case where a point of law has been reserved for the opinion of the High Court. The Sovereign also may grant special leave to appeal.

VI. The Position of the European British Subject.

Every subject of the Crown is equal as far as the substantive criminal law is concerned; but in procedure certain distinctions have been maintained–thanks to the peculiar position the Company's servants occupied in India–as regards charges against, European British subjects. Upto 1836 every case, whether civil or criminal, in which a European was concerned as a defendant, could be tried only in the Supreme Court at Calcutta. This naturally gave rise to a great deal of injustice, for a European defendant or offender could compel the aggrieved party in a mofussil centre to go all the way, with all his witnesses, to Calcutta with all the dangers, hardships, and expenses of such a journey in those days, and take his chance of the proverbial blindness of justice. Under the circumstances very few natives could be found spirited and rich enough to pursue European offenders to justice. This situation was partly remedied in 1836 when the District Courts were given power to try all civil suits in which a European was concerned as a defendant. The anomaly remained intact with regard to criminal cases. An effort was made in 1872 to remove it partially, when it was enacted that European British subjects should be liable to be tried

for any offences by magistrates of the highest class—who were also Justices of the Peace—and by judges of the Sessions Court, provided that in each case the trying judge was himself a European British subject. This provision made the anomaly greater than before. For it was obvious to every one concerned with the Government of India, that natives of India, who had passed the competitive examination and entered the Civil Service, would, in the ordinary course of promotion, become magistrates of the highest class and Sessions Judges; and would yet be debarred from trying European offenders, simply because they were not born of European parents. There was of course no question of the legal acumen or judicial impartiality of such men; they had already given striking proofs of their great learning and uprightness. On the bench of each High Court were to be found native lawyers of deserved repute-who, according to the rules of seniority,-may even become acting chief justices of the highest courts of justice in the country. The anomaly was that the men who could rise to the highest post in the service were not, however, deemed competent to try a certain class of His Majesty's subjects, to whom the same laws applied as to any other class, but whose skin was of a different colour.

It was this monstrous absurdity which Lord Ripon felt most acutely, and which he tried to remove most completely. The Government of India announced in 1883 that they had decided "to settle the question of jurisdiction over European British subjects in such a way as to remove from the code at once and completely every judicial disqualification which is based merely on race distinction." No sooner was this decision announced than a storm of protest was raised by the Anglo-Indian community, the like of which has never been witnessed in India before or since. The selfish jealousy of this small but powerful community would not allow them to submit to this simple act of justice to their fellow-subjects. Their arguments for maintaining the *status quo* were the merest travesty of logic or good sense; for they assumed and maintained that Indians, with the most liberal training that India or England

could offer, having passed the most stringent tests, after a residence in England amongst English people of three or four years, could yet not understand the English mentality—the mentality of English criminals in India, while Englishmen, fresh from Oxford and Cambridge, without any acquaintance with the language, or literature, or customs, and habits of the people, without any previous training among or experience of the people, were deemed quite fit to tackle all kinds of judicial questions concerning the natives. The history of India in the last century and a half abounds in such instances, wherein the governing authority have ventured to lay hand on the unmerited and invidious privileges of this small class, and where that class has set an example of loyalty, which Indians would do well not to copy. From the day that Lord Clive forbade the Double Butta of the English officers to the day that Lord Ripon endeavoured to abolish the anomaly of a colour disqualification, the Anglo-Indian community have shown themselves prepared to maintain their rights by every means-even rebellion if need be-however injurious and unjust those rights may be. Before a strong, determined ruler like Clive they have had to yield; before weaker men, like Sir George Barlow, they have had their way. In the case of the Ilbert Bill the Government of Lord Ripon, frightened by this protest, agreed to a compromise, which is thus summarised by Sir John Strachey:- "The controversy ended with the virtual, though not the avowed abandonment, of the measure proposed by the Government. Act III, of 1884, by which the law previously in force was amended, cannot be said to have diminished the privileges of European British subjects charged with offences, and it left their position as exceptional as before. The general disqualification of the native judges and magistrates remains; but if a native of India be appointed to the post of District Magistrate or Sessions Judge, his powers in regard to the jurisdiction over European British subjects are the same as those of an Englishman holding the same office. This provision, however, is subject to the condition that every European British subject, brought for trial before the District Magistrate or the Sessions Judge, has the right, however trivial be the offence, to claim to be tried by a

jury, of which not less than half the members shall be Europeans or Americans ..... Whilst this change was made in the powers of the District Magistrates the law in regard to other magistrates remained unaltered." The disqualification of native Magistrates to try European offenders remains in practice, for in up country centres it is difficult, if not impossible, to empanel a jury of which half at least are Englishmen or Americans. The best thing that an Indian District Magistrate could do in such a case would be to depute one of his European subordinates to try the case.

At the present moment, therefore, the European British subject enjoys a privileged position in the following respects.

(1) He can only be tried, except for contempt in open court, before a judge or magistrate who is also a Justice of the Peace. Outside the presidency towns, only European British subjects can be appointed Justices of the Peace; but District Magistrates, Sessions Judges, High Court Judges and Presidency Magistrates are *ex officio* Justices of the Peace.

(2) When tried before a District Magistrate, a Sessions Judge, or a High Court, he can claim a jury of which not less than one half must be Europeans or Americans.

(3) If tried under the European Vagrancy Act he cannot be required to give any security for good behaviour under the ordinary law; but if declared a vagrant, or found guilty of certain offences, he comes under the provisions of the Act relating to Europeans who are not British subjects.

(4) He has the right to demand something like a writ of Habeas Corpus in any part of India, while the native Indian can get that protection only within the presidency towns.

(5) An order in writing of the Governor-General in council is no justification for any act complained against by an European, while such an order would be a complete justification against any Indian in any court of law.

N. B.—Europeans, whether they are British subjects or not, cannot be tried by the Courts in the Native States.

VII. The Combination of Executive and Judicial Functions.

Another question of constitutional importance connected with the administration of justice is the concentration of all the authority of Government in the hands of the same officer. The basic principle of Indian administration is the concentration of all authority with a view to promote efficiency. Thus the chief officer in an administrative unit is the head of the revenue department, directs the police, controls the Local Boards and Municipalities, and administers justice himself, or superintends his subordinates in the administration of justice.

This concentration of authority is open to attack from several points of view. Taking first the model of the British constitution, the practice in India seems to be at variance with the fundamental principles of the British constitution. Ever since King James I was foiled by Lord Coke in His Majesty's own court, the independence of the Judges was established; and the Revolution of 1688 secured it by law. The judges in England are, of course, subordinate to the sovereign authority of Parliament; but, they have nothing to do with the Executive. Between the Executive and the Judiciary in England there is no link at present, with the single exception of the Lord Chancellor, who is both a cabinet minister and a high judicial officer. But the Lord Chancellor never sits in any court of original jurisdiction; and he cannot, therefore, be placed in the awkward position of having advised certain proceedings in his capacity as executive minister, and being called upon to try the same case in his capacity as judicial officer. This is precisely what happens in India. The district officer is the head of the District Superintendent of Police, as far as the investigation of crime in a district is concerned. He is also the head of the Government pleader-the public prosecutor-of

the District. The prejudices of the investigator of crime, and the preconceptions of the prosecutor are fatal to a judicial mind; and yet the District Officer–being the District Magistrate—may be called upon to judge important criminal cases in the district. It is not inconceivable that such judges may give sound justice; but it is also not inconceivable that the famous principle of English criminal law *viz.* "that it is better that ten guilty persons should escape punishment than that one innocent person should suffer," will not be maintained. It is alleged in answer to this criticism that in practice the District Officer does not try any important cases, because he has no time to do so. But, it may be urged, even if he himself does not try important cases, his subordinate magistrates have to try them: and there is no guarantee that the subordinates–whose promotion in the service depends upon the goodwill of their superior–will not try to please him, if he drops a hint about the guilt or innocence of men awaiting their trial. We cannot, of course, adduce any instances to support the view that District Officers do interfere with the judicial independence of their subordinates; for, by their very nature, such things take place behind the scenes. But there is nothing unreasonable or unnatural in assuming that the power of control, which the District Officers have by law over their subordinates, may be used to encourage the latter in proper subordination and a wholesome desire to please. It is also pointed out, by the advocates of the existing system, that the assumption is unwarranted that the District Officer allows his judgment to be coloured by the prejudices of the investigator and the preconceptions of the prosecutor of crime. It would, indeed, be a gross mistake if we assumed that the investigator, the prosecutor, and the judge are combined in the same officer. Still it is quite possible that the head of the administration is kept informed of all that takes place in the district; and that owing to this information he may, unknown even to himself, have formed opinions on a case, not strictly according to the merits of the case, but according to the bent of that information.

Another point of principle on which the present system is objectionable is that the Magistrates are primarily

revenue officers and only incidentally judges. They are not trained lawyers, and cannot, therefore, be a match for all the subterfuges of legal practitioners. The criminal law of India, it is true, is contained in a simple code, which, after a few years' experience, any well educated man can administer. Still it is a serious handicap to a man who has never practised himself to administer even this simple code when confronted by acute practitioners. The plea that in the peculiar conditions of India a Magistrate with full local knowledge of the district would make a better judge than the lawyer pure and simple is equally inadmissible. For the bulk of the magistracy is recruited from men who know very little the language of their districts, and can therefore have but scanty knowledge of the customs and beliefs–of the psychology of the people. Moreover a professional lawyer, who is raised to the bench after years of practice. will not allow justice to suffer, either for want of common sense, or through an excessive regard for the letter of the law. For there is no profession in our modern society wherein, by constant contact with every shade of character, with every kind of villainy, weakness or virtue–men learn so well to appreciate their fellows at their proper value as in the profession of law. It is a profession which by destroying all ideals promotes one's common sense. And as regards excessive respect for the letter of the law, perhaps no one knows better than a lawyer when the letter of the law needs to be stretched, and how it should be stretched. Almost the whole of the English common law is a growth of such judicial interpretations and extension. Hence from the point of view of principle the present system is indefensible.

Even in practice there is nothing peculiar in the conditions of India to-day requiring a rigid observance of this antequated system. From the stand point of efficiency in administration the need for a separation seems all the greater. For it stands to reason that one and the same officer, encumbered with the duties of two distinct officers, will not do his work so well as two distinct officers. Both departments suffer, and a separation would make both departments benefit.

In 1899 ten leading Indian judicial officers presented a Memorial to the Secretary of State on this subject. The chief points of the Memorial were:—

(1) That the combination of judicial with executive duties in the same officer violates the first principles of equity.

(2) That while a judicial authority ought to be thoroughly impartial, and approach the consideration of any case without previous knowledge of the facts, an executive officer does not adequately discharge his duties, unless his ears are open to all reports and information which he can in any degree employ for the benefit of the district.

(3) That executive officers in India being responsible for a large amount of miscellaneous business, have not time satisfactorily to dispose of judicial work in addition.

(4) That being keenly interested in carrying out particular measures, they are apt to be brought more or less into conflict with individuals, and therefore that it is inexpedient that they should also be invested with judicial powers.

(5) That under the existing system, Collector-Magistrates do, in fact, neglect judicial for executive work.

(6) That appeals from revenue assessments are apt to be futile when they are heard by revenue officers.

(7) That great inconvenience, expense and suffering are imposed upon suitors required to follow the camp of a judicial officer, who, in the discharge of his executive duties, is making a tour of his district.

(8) That the existing system not only involves all whom it concerns in hardships and inconvenience, but also by associating the judicial tribunal with the work of the police and detectives, and by diminishing the safeguard afforded by the rules of evidence, produces actual miscarriage of justice, and creates, though justice be done, opportunities of suspicion, distrust, and discontent which are greatly to be deplored.

The points, thus summed up by the memorial, make out a strong case for the separation of the executive from judicial functions. The last Decennial Report on the Moral and Material Progress of India says, "The question of carrying further the separation of executive and judicial functions has received much consideration in recent years. In Bengal some steps tending in this direction have been taken, in the course of the natural process of administrative development, by the appointment of additional district magistrates to relieve the pressure on the district officers, and by an increase in the number of outlying judicial centres in the mofussil. The very heavy expenditure that would be involved in the complete separation of the two classes of functions is necessarily an important factor in the case." To this it may be replied that the point at issue is not merely to relieve the pressure of work upon the District Officer; it is rather to bring about a complete divorce between executive and judicial functions. Magistrates should have only judicial work and nothing to do with any kind of executive duties. Merely appointing additional magistrates will not help the situation, unless the additional magistrates are debarred from taking part in any executive duties. And as regards the "very heavy expenditure," we may calculate that for the 250 districts which make up the whole of the British territories in India, an increase of Rs. 25000 a year—quite enough to bring about a complete separation in one district—would mean a total additional expenditure of Rs. 62·5 lacs. If the question at issue is one involving a great, fundamental principle, perhaps it would not be too great a sacrifice to incur this additional expenditure, and prevent those opportunities for "suspicion, distrust and discontent" which must necessarily arise under the present system, and which cannot but be deplored.

VIII. The Law Officers and the Organisation of the Bar.

The Government of India have their most important Law Officer in the Law Member of Council. Their Legislative Department has much in common with the office of the Parliamentary Counsel in England. All Government measures are drafted by that department; all bills before the Council, when referred to a Select Committee, are discussed by that Committee under the presidency of the Law Member. It publishes all the Acts of the Government, revises the Statute Book, drafts all statutory rules, and assists other departments with legal advice in certain specified questions of a non-litigious character. Legislation in the Provincial Councils is watched and guided by the same department. In spite of these duties, however, the Law Member of Council in India, does not correspond to the Attorney-General and Solicitor-General in England, the highest Law Officers of the British Crown. Their place is taken in India by the various Advocates-General, the most important of whom is the Advocate-General of Bengal. He advises the Government in legal matters, and conducts their litigation, and assists them in their legislative work. He is assisted by standing counsel and Government Solicitor. In Bombay and Madras there is also an Advocate-General for each province, who discharges the same functions in his province as the Advocate-General of Bengal. In Bombay he is assisted by a Government Solicitor, and to the Secretariat are attached a Legal Remembrancer (a Civil Servant) and a Deputy Legal Remembrancer (a practising Barrister).

IX. The Laws Administered in India.

The early English settlers in India established themselves in the country under license from native rulers. They ought, therefore, to have been subject to the native systems

of law. But the two great indigenous systems of law are both systems of personal law, knowing no local limit, and binding upon individuals within their respective faiths, all the world over. There was, therefore, no *lex loci* to govern such aliens in race and religion which the English then were. Moreover, the system of Capitularies in force with Turkey, and recognised by the International Law of Europe in the XVII century, regarded European settlers in non-Christian countries as under the system of law in force in their own country. Hence the first Charters assumed that the English brought their own legal system in India, and the Charter of 1726 specifically introduced the Common Law and some of the older Acts of Parliament as applicable to Englishmen in India. As they grew to be a sovereign power the English inclined towards making their law the public and territorial law of India; and in 1773, with the establishment of the Supreme Court and the advent of English lawyers, they proceeded to apply the English law in its entirety to all the inhabitants within the Company's jurisdiction. The hardships which followed this indiscriminate application of English law are too well known, even to the ordinary student of Indian history, to need a detailed consideration here. In 1780 this was changed by a Declaratory Act, s. 17 of which required that Hindu Law and usage should be applied to Hindus, and Mahomedan law and usage to Mahomedans. This rule was in course of time extended to all the dominions of the Company.

The Government in India have thus accepted the indigenous systems of law, with such modifications as they thought India was fit to receive. The rigidity of the old systems has been considerably undermined by a variety of influences, the most important of which are the growth of education and enlightenment among the peoples themselves, the influence of Western ideas of Government, and of the case law emanating from courts established on English models. Acts of Parliament, and still more frequently, Acts of local legislatures, such as the Caste Disabilities Removal Act of 1850, or the Hindu Widows Remarriage Act of 1856, or the Age of Consent Act of 1893, have all tended in the same direction. Codes of

Procedure have been practically the creation of the present Government, as also the various laws relating to land-lords and tenants. At the present time, therefore, "Native law has been wholly superseded, as to criminal law and procedure and as to civil procedure, by the Indian Penal Code, the Indian Codes of Criminal and Civil Procedure, the Evidence Act and other enactments; and has been largely superseded as to other matters by Anglo-Indian legislation; but still regulates, as personal law, most matters relating to family law and to the law of succession and inheritance among the Hindus, Mahomedans, and other natives of the country". (Ilbert.)

The laws in British India may therefore, be either,

(*a*) English Common low, or } In presideney towns ap-
(*b*) some old English statutes, or } plicable to Europeans.

(*c*) Hindu and Mahomedan law } Personal for Hindus and Mahomedans

or

(*d*) Acts of Parliament.
(*e*) Acts of Indian Legislatures.
(f) Statutory rules, orders and by-laws supplementing particular enactments. } Applicable to all persons in British India.

We may note in passing that a great portion of the statutory law of India is codified. The most important of these codes are the Indian Penal Code, passed in 1860, and in force to-day with very few modifications, the Codes of Procedure, and of Evidence, and the Law relating to Contract.

X. Comparison with the English System of Justice.

All our codes and our entire judicial system are said to be based on the English model. And yet a close study of the two systems of law and justice reveals many and fundamental differ-

ences. Most of these have already been described, and some of them critically examined. In this place we shall collect together all those features of the Indian judicial and legal system which, in a comparison with the English system, constitute the peculiarities of our system.

The one peculiarity of our system that has not yet been touched upon is contained in s. 113 of the present Act.

The order in writing of the Governor General in Council for any act shall, in any proceeding, civil or criminal in any High Court acting in the exercise of its original jurisdiction, be a full justification of the act, except so far as the order extends to any European British subject; but nothing in this section shall exempt the Governor-General or any member of his Executive Council or any person acting under their orders from any proceedings in respect of any such act before any competent Court in England.

Ever since the case of the Chancellor Lord Nottingham in the reign of Charles II, who pleaded an express order of the King for having affixed the great seal to an unlawful order, the principle has been well established in England that no order of the Crown shall grant an exemption to any minister or servant of the Crown for any wrongful act done in his private or official capacity. The above section goes entirely against the spirit of this principle, and is only defensible, if at all, on the ground that it was necessitated by the peculiar position of the Indian Government under the Company.

(2) The presence on the Judicial Bench of the highest tribunals in India of men who have never in their lives been practising lawyers constitutes another such peculiarity of the Indian system. The tenure, too, of judicial officers "during the pleasure of the Sovereign" is a marked departure from the recognised principles of the English constitution in this respect.

(3) The position of the "Jury", though an English institution, is too different from that of the same institution in Eng-

land to pass unnoticed. It is employed more sparingly, and is allowed less extensive powers than in England.

(4) The immunity of high officers of state from legal liability, the special privileges of whole classes of private individuals like the European British subjects, the existence of special tribunals exclusively empowered to try specified kinds of cases are all peculiarities of the Indian system of judicial administration unparalleled in England.

(5) To these may be added the combination in the hands of one and the same officer of executive and judicial functions.

There are other cases in which the Indian system differs from the English system; but, probably, the cases enumerated here are the only cases in which the difference is fundamental, while in other cases the difference is one of details.

XI. The Indian Police and Jails System.

For the effective administration of justice the existence of some form of police organisation is indispensable, both to carry out the punishment inflicted by courts of law, as well as to prevent the possibility of crime, and thus to minimise the occasions of the exercise of the punitive authority. After describing the judicial system of India we shall now proceed to give a brief sketch of the police organisation of India.

The police force in India may be divided into the regular police force and the Village police organisation. The regular police establishment is in most provinces a single force under the Local Government, and is formally enrolled. In Bombay each district has its own seperate police organisation. The force is in each province under the general control of an Inspector-General, who may be a police officer, or a member of the Indian Civil Service. Under him are the Deputy Inspectors-General of Police, holding charge of the portions of the province, each known as a Range. The most important unit

of Police administration is the district, with a District Superintendent of Police, who is responsible for the discipline and the internal management of the force to his departmental superiors at the headquarters; while in all matters connected with the preservation of peace, and the detection and suppression of crime and its prevention he is the subordinate of the District Officer. He is assisted by one or more Assistant or Deputy Superintendents. The former are ordinarily recruited in England by competitive examination from among candidates who must be of European descent. In exceptional cases appointments may be made directly in India. The Deputy Superintendents constitute the Provincial branch of the Police service, and these officers are recruited in India partly by promotion from the rank of Inspectors, and partly by direct appointments of the natives of India who have the requisite educational qualifications. Their functions and departmental status is closely similar to those of the Assistant Superintendents. For Police purposes the district is divided into "circles" each in the charge of an Inspector; and the circle is again split up into areas in each of which there is a police station in charge of a Sub-Inspector of Police. The average area of a Police Station is nearly 200 sq. miles; and where the work of investigation is heavy additional Sub-Inspectors are appointed. In Bombay there are also subsidiary Police Stations, known as "outposts" in charge of head constables.

Besides the regular Police there is the old Indian village Police organisation, on whom the regular Police are dependent for information and assistance. Every Police Station comprises within its jurisdiction a number of villages, for each of which there is a Chokidar or watchman. This official, whether working under the orders of the village headman or directly under the regular Police officers, must report crime and aid the execution of justice. He is remunerated in different ways in different provinces, *e. g.* by fees, or by monthly payments, or by grants of free lands. Besides reporting crime, the Chokidar must keep a watch on suspicious characters, and give general aid and information to the Police.

In addition to the regular Police in the rural areas and the village organisation there are portions of the Police force in towns, organised more or less on the same lines. In the Presidency towns, however, and in Rangoon the Police are organised as a separate force, under a commissioner in each case, who is aided by a staff of European and Indian subordinate officers and constables. The Railway Police is another independent organisation, which, however, works in co-operation with the district Police. These last are, as a rule, concerned with the maintenance of watch and ward and order over railway property. The Railway Police charges are as far as possible, conterminous with the territorial jurisdiction of the local Governments, the force in each province being under a Deputy Inspector-General.

In addition to all these organisations there is the now famous Criminal Investigation Department, or the C. I. D. as it is more generally known. This department originated from the necessity to investigate those secret crimes associated with the Thugs in India. Upto 1904 there was a separate Thugee and Dacoitee Department; and, though the Thugs were wiped off the face of the earth long before that date, the duties of this department continued to be described by the title which suggested their principal original occupation before 1863. From 1863 to 1904 this department was concerned with the suppression of armed robbery in the dominions of the Nizam and of the Native States in Central India and Rajputana. In the latter year this department was abolished and replaced by a Central Criminal Intelligence Department under a Director. The duties of this department, with its provincial counterparts, is to collect and provide a systematic and full information as to important and organised crime, and to train up a small staff of detectives for investigation of crimes, the authors of which are not easily ascertainable by the ordinary Police. This department has of late earned an unpleasant notoriety by allowing its zeal to outrun its discretion in the task of securing the safety of the state and its important officers against the menace of the Anarchists, who carried on their activity in parts of India with the object of overturning the whole

machine of the present Government by assassinating isolated officials. From being a protector of the state and its officers and a help to the citizens,this department has tended in every country, organised like India, to be a terror of the people, who will never aid men suspected not only of discovering criminals, but also of manufacturing crimes and creating criminals. The State may protect and maintain, but the people will distrust, an organisation, which, instituted to unearth unknown criminals, is often unable to fulfill that duty, but tries to shield its inability or incompetence by unnecessary and unfounded accusation to prove its vigilance and to earn its promotions, reckless of the mischief it causes between the rulers and the ruled. Those in power may be entirely innocent of any complicity with or encouragement of this side of the work of the C. I. D.; but, after the revelations of some of the anarchist trials in Bengal, it is hard to believe that the C. I. D. is an unmixed blessing to the people or to the State.

XII. Jails.

Jail administration in India is regulated by the Prisons Act of 1894, and by the rules issued under it by the Government of India and the local Governments. The Indian jails must provide accommodation for prisoners sentenced to penal servitude, rigorous imprisonment or simple imprisonment as well as for persons awaiting trial, and for civil prisoners. The Indian jails are accordingly divided into three classes, *viz*, the large central jails for convicts sentenced to more than one year's imprisonment; the district jails at the headquarters of each district; and subsidiary jails and lock-ups for prisoners awaiting trial and for short term imprisonment. The jail department in each province is under the control of an Inspector-General, who is an officer of the Indian Medical Service, and the superintendents of certain jails are usually recruited from that service. The district jail is in charge of the civil surgeon, and is frequently inspected by the district officer. In large central jails there are, under the superintendents, deputy superintendents to supervise the jail manufactures; and in all central and

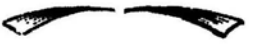
district jails there are one or more subordinate medical officers. The executive staff consists of jailors, warders, and convict petty officers.

As regards youthful offenders, *i. e.*, those under 15 years of age, the law provides alternatives to imprisonment, which consist in detention in a Reformatory School for a period of three to seven years, but not beyond the age of 18; whipping by way of discipline; discharge after admonition; and delivery to parent or guardian on the latter executing a bond for the good behaviour of the child. The Reformatory Schools are administered since 1899 by the Education department, and the authorities are directed to improve the industrial education of the inmates, to help the boys to obtain employment after leaving school, and as far as possible to keep a watch on their career.

Besides imprisonment, Indian Criminal Law provides another punishment *viz.*, transportation. At the present time the only penal settlement is Port Blair in the Andaman Islands.

CHAPTER VIII.

The Church in India.



PART X.

Ecclesiastical Establishment.

115. (1) The Bishops of Calcutta, Madras and Bombay have and may exercise, within their respective dioceses such episcopal functions, and such ecclesiastical jurisdiction for the superintendence and good government of the ministers of the Church of England therein, as His Majesty may, by letters patent, direct.

(2) The Bishop of Calcutta is the Metropolitan Bishop in India, subject nevertheless to the general superintendence and revision of the Archbishop of Canterbury.

(3) Each of the Bishops of Madras and Bombay is subject to the Bishop of Calcutta as such Metropolitan, and must at the time of his appointment to his bishopric, or at the time of his consecration as Bishop, take an oath of obedience to the Bishop of Calcutta, in such manner as His Majesty, by letters patent, may be pleased to direct.

(4) His Majesty may, by letters patent, vary the limits of the dioceses of Calcutta, Madras and Bombay.

(5) Nothing in this Act or in any such letters patent as aforesaid shall prevent any person who is or has been Bishop of any dioceses in India from performing episcopal functions, not extending to the exercise of jurisdiction, in any diocese or reputed diocese at the request of the Bishop thereof.

116. (1) The Bishop of Calcutta may admit into the holy orders of deacon or priest any person whom he, on examination, deems duly qualified specially for the purpose of taking on himself the

cure of souls, or officiating in any spiritual capacity, within the limits of the diocese of Calcutta, and residing therein.

(2) The deposit with the Bishop of a declaration of such a purpose, and a written engagement to perform the same, signed by the person seeking ordination, shall be a sufficient title with a view to his ordination.

(3) It must be distinctly stated in the letters of ordination of every person so admitted to holy orders that he has been ordained for the cure of souls within the limits of the diocese of Calcutta only.

(4) Unless a person so admitted is a British subject of or belonging to the United Kingdom, he shall not be required to take the oaths and make the subscriptions which persons ordained in England are required to take and make.

(5) Nothing in this section shall affect any letters patent issued by his Majesty.

117. If any person under the degree of Bishop is appointed to the bishopric of Calcutta, Madras or Bombay, being at the time of his appointment resident in India, the Archbishop of Canterbury, if so required to do by His Majesty by letters patent, may issue a commission under his hand and seal, directed to the two remaining Bishops, authorising and charging them to perform all requisite ceremonies for the consecration of the persons so to be appointed.

118. (1) The Bishops and Archdeacons of Calcutta, Madras and Bombay are appointed by His Majesty by letters patent, and there may be paid to them, or to any of them, out of the revenues of India, such salaries and allowances as may be fixed by the Secretary of State in Council; but any power of alteration under this enactment shall not be exercised so as to impose any additional charge on the revenues of India.

(2) The remuneration fixed for a Bishop or archdeacon under this section shall commence on his taking upon himself the execution of his office, and be the whole profit or advantage which he shall enjoy from his office during his continuance therein, and continue so long as he exercises the functions of his office.

(3) There shall be paid out of the revenues of India the expenses of visitations of the said Bishops, but no greater sum may be issued on account of those expenses than is allowed by the Secretary of State in Council.

119. (1) If the Bishop of Calcutta dies during his voyage to India for the purpose of taking upon himself the execution of his office, or if the Bishop of Calcutta, Madras or Bombay dies within six months after his arrival there for that purpose the Secretary of State shall pay to his legal personal representatives out of the revenues of India, such a sum of money as will, with the amount received by or due to him at the time of his death on account of salary, make up the amount of one year's salary.

(2) If the Bishop of Calcutta, Madras or Bombay dies while in possession of his office and after the expiration of six months from his arrival in India for the purpose of taking upon himself the execution of his office, the Secretary of State shall pay to his legal personal representatives, out of the revenues of India, over and above the sum due to him at the time of his death, a sum equal to six months salary.

120. His Majesty may, by warrant under the Royal Sign Manual countersigned by the Chancellor of the Exchequer, grant out of the revenues of India, to any Bishop of Calcutta a pension not exceeding fifteen hundred pounds per annum if he has resided in India as Bishop of Calcutta, Madras or Bombay or Archdeacon for ten years, or one thousand pounds per annum if he has resided in India as Bishop of Calcutta for seven years, or seven hundred and fifty pounds per annum if he has resided in India as Bishop of Calcutta for five years, or to any Bishop of Madras or Bombay a pension not exceeding eight hundred pounds per annum, to be paid quarterly, if he has resided in British India as such Bishop for fifteen years.

121. His Majesty may make such rules as to the leave of absence of the Bishops of Calcutta, Madras and Bombay on furlough or medical certificate as seem to His Majesty expedient.

122. (1) Two members of the establishment of chaplains maintained in each of the presidencies of Bengal, Madras and Bombay must always be ministers of the Church of Scotland, and shall be

entitled to have, out of the revenues of India, such salary, as is from time to time allotted to the military chaplains in the several presidencies.

(2) The ministers so appointed chaplains must be ordained and inducted by the presbytery of Edinburgh according to the forms and solemnities used in the Church of Scotland, and shall be subject to the spiritual and ecclesiastical jurisdiction in all things of the presbytery of Edinburgh, whose judgments shall be subject to dissent, protest and appeal to the provincial Synod of Lothian and Tweeddale and to the General Assembly of the Church of Scotland.

123. Nothing in this Act shall prevent the Governor-General in Council from granting, with the sanction of the Secretary of State in Council, to any sect, persuasion or community of Christians, not being of the Church of England or Church of Scotland, such sums of money as may be expedient for the purpose of instruction or for the maintenance of places af worship.

COMMENTS.

Ss. 115–123 (both inclusive)

The East India Company were originally opposed to any settlement of Missioaries in India, partly because they feared the action of the Missionaries would give offence to the native population, by their proseletising zeal, and partly because they regarded missionaries as the forerunners of all insubordination among their subjects. It was not till 1813 that permission was first given by the Charter Act of that year for missionaries to settle in India, and to carry on such educational and other activities as they chose. By the same Act three bishops were appointed for the cities of Calcutta, Madras and Bombay; and these provisions were confirmed by the Charter Act of 1833. The present Act retains those provisions. Hence the bishops only of the three Presidency Towns are appointed under an Act of Parliament, the remaining bishops for the Dioceses of Lahore or Nagpur for instances are appointed by letters patent.

"In the ordinary acceptance of the term, there is no established Church in India. An Ecclesiastical Establishment is maintained for providing religious ministrations, primarily, to British troops, secondarily to the European civil officials of Government and their families. Seven out of the eleven **Anglican Bishops** in India are officers of the Establishment, though their episcopal jurisdiction is much wider than the limits of the Ecclesiastical Establishment. The stipends of the three Presidency Bishops are paid entirely by Government, and they hold an official status which is clearly defined. The Bishops of Lahore, Lucknow, Nagpur and Rangoon draw from Government the stipends of Senior Chaplains only but their episcopal rank and territorial titles are officially recognised. The Bishops of Chota Nagpur, Tinnevelly, Madura, Travancore, Cochin, Dornakal and Assam are not on the Establishment. The new Bishopric of Assam was created in 1915. In its relations with Government it is subordinate to the see of Calcutta. But the maintenance of the Bishopric is met entirely from voluntary funds.

The **ecclesiastical establishment** includes four denominations—Anglican, Scottish, Roman and Wesleyan. Of these, the first two enjoy a distinctive position, in that the Chaplains of those denominations (and in the case of the first-named the Bishops) are individually appointed by the Secretary of State and rank as gazetted officers of Government. Throughout the Indian Empire there are 134 Anglican and 18 Church of Scotland chaplains whose appointments have been confirmed. The authorities in India of the Roman Catholic church receive block-grants from Government for the provision of clergy to minister to troops and others belonging to their respective denominations. The Wesleyan Methodist Church has a staff of military chaplains in India who receive a fixed salary from Government, and 25 chaplains working on a capitation basis of payment by Government. Churches of all four denominations may be built, furnished and repaired, wholly or partly at Government expense.

In the Anglican Communion a movement towards **Synodical Government** was making great progress, when, in the

course of the year 1914, serious legal difficulties were encountered. The Bishops were advised that their relations with Canterbury and the Crown precluded the establishment of synods on the basis adopted by the Anglican Church in America, Japan, South Africa and other countries where it is not established by the State. It is stated that in course of time those relations may be modified so as to admit of the establishment of synodical government in India. Meanwhile Diocesan Councils are being adopted as a make-shift measure. These Councils possess synodical characteristics, but are devoid of any coercive power.

So far as the European and Anglo-Indian communities are concerned, the activities of the Church are not confined to public worship and pastoral functions. The **education** of the children of those communities is very largely in the hands of the Christian denominations. There are a few institutions such as the La Martiniere Schools, on a non-denominational basis; but they are exceptional. In all the large centres there exist schools of various grades as well as orphanages, for the education of Europeans and Anglo-Indians under the control of various Christian bodies. The Roman Catholic Church is honourably distinguished by much activity and financial generosity in this respect. Her schools are to be found throughout the length and breadth of the Indian Empire; and they maintain a high standard of efficiency. The Anglican Church comes next, and the American Methodists have established some excellent schools in the larger hill stations. The presbyterians are also well-represented in the field, particularly by the admirable institution for destitute children at Kalimpong, near Darjeeling. Schools of all denominations receive liberal grants in aid from Government, and are regularly inspected by the Education Departments of the various provinces. Thanks to the free operation of the denominational principle and its frank recognition by Government; there is no religious difficulty in the schools of the European and Anglo-Indian communities." (Indian year Book.)

CHAPTER IX.

Local Government in India.

The subject of local Government, though not introduced in the main Act, is yet too important to be left out in any work on Indian administration. The principle of local government is far too deeply established on the Indian mind to need any historical sketch. In common with the other offshoots of the Aryan race the Hindus had a form of free local self-government long before they had a centralised state. Every village in ancient India was an autonomous political unit. The officers of the central government, when it came into existence, were content to accept the village collectively as a unit for such of their administrative duties as had reference to the inhabitants of the locality. It was of such villages that Sir Henry Maine speaks in his village communities, which endured in spite of wars and changes of dynasties, in spite of every revolution in the principles of government.

But this old-time independence and autonomy is a thing of the past. The village tribunal of local elders no longer distributes justice, for are there not the King's Courts of Law? The village chaukidar and his assistants are no longer the amateur detectives who traced criminals by their foot-prints—and professional watch keepers—who went on crying 'Khabardar' at every hour of the night, for has not the State established a new police organisation? The village council no longer estimates and assigns the local burdens, for the settlement officer has learnt the value of individual assessment. The powers which made the village organisation effective and efficient have been destroyed by the roads and the railways which would tolerate no isolation, however inoffensive, which would respect no passivity however ancient

And yet the village remains—even to-day—the first unit of administration. True the principle village functionaries, the headman, the accountant, the watchman, have become in ever increasing numbers the subsidised officials of a central government. Their functions in the administration of the village have also been altered by law. Their natural, traditional, independence has been stultified by artificial organisations-such as the Union Punchayets of Madras—which are formed to discharge specific duties. Notwithstanding all this the village endures as a unit of administration. Even in the "severalty or Raiyatwari" village, where the revenue is collected from individual cultivators, and where there is no joint responsibility of the village as a whole, government is vested in the patel or Reddi, who is responsible for law and order, and who collects the government dues. He recalls, however faintly, the primitive headships of the town or the caste which founded the village. In the joint or landlord village the position is cleared. The demand of the state used to made upon the village as a whole, its incidence upon individual villagers being determined by the local council. A certain amount of collective responsibility still remains. The village site is owned by the proprietory body, where permission is necessary for the settlement in the village of artisans, traders or others. The waste land belongs to the village, and, when required for cultivation is partitioned among the share-holders. The government of such a village, used to be by a punchayet.

The Royal Commission on Decentralisation recommended "While, therefore, we desire the development of a punchayet system, and consider that the objections urged thereto are far from insurmountable, we recognise that such a system can only be gradually and tentatively applied, and that it is impossible to suggest any uniform and definite method of procedure. We think that a commencement should be made by giving certain imited powers to punchayets in those villages in which circumstances are most favourable by reason of homogeneous conditions natural intelligence and freedom from internal feuds. These powers might be increased gradually as results warrant, and with success here, it will become easier to apply the system in other

villages. Such a policy which must be the work of many years will require great care and discretion, much patience and judicious discrimination between the circumstances of different villages; and there is a considerable consensus of opinion that this new departure should be made under the special guidance of sympathetic officers"

In accordance with this recommendation an Act was passed in 1912 to provide for the establishment of the panchayets in the Punjab. But in that province, the ancient home of the Indo-Aryans, the ideal of village self-government has never been abandoned. Custom has vested the village organisation there–even under the present regime of centralisation–with a degree of independence which is almost unknown in other provinces. It was futile to seek to strengthen this already all powerful tradition. Besides the sphere of the proposed panchayet would be larger than a village, and yet its functions would be limited to the disposal of civil suits of a petty character. The latest expression of policy on the subject is contained in the following passage of the Resolution of the Government of India of May 28, 1915. "Where any practicable scheme can be marked out in co-operation with the people concerned full experiment must be made on the lines approved by the local government or the administration concerned." In marked contrast with other parts of the same resolution–issued by the Government of Lord Hardinge–this breathes an air of pessimism which may fairly be taken to mean that the re-suscitation of the old Indian village autonomy is as impracticable as the revival of the Anglo-Saxon Shiremoot in the twentieth century in England.

I. The Municipalities.

As the villages in India have a long and sad story, so the town—now called Municipalities—have a short but a fairly glad

history. The Presidency towns of Bombay, Calcutta and Madras had received some form of local self-government as early as 1726. In the country at large, however, the Company's government attempted to introduce no new form of local Municipal institutions, nor tried to modify or develop the existing institutions before 1842. In that year Bengal got an act on the subject, but it was found to be useless—and was followed in 1850 by another act for the whole of British India. Under this Act a number of Municipalities was established, and commissioners were appointed to administer their affairs with power to levy some taxes. Since, however, the commissioners were all nominated, the act effected no great progress from the point of view of self-government. With the introduction of a scheme for the decentralisation of finances in 1870 the problemof extending self-governing institutions became more prominent, and between 1871 and 1874 new Municipal acts were passed extending the elective principle.

It was not, however, till the days of Lord Ripon that local government in India was constituted on a more scientific basis —whether in the town or in the country. "It is not primarily with a view to improvement in administration that this measure is put forward and supported. **It is chiefly desirable as an instrument of political and popular education.** His Excellency in council has himself no doubt that in course of time, as local knowledge and local interest are brought to bear more freely upon local administration, improved efficiency will in fact follow." In these famous and eloquent words was laid the foundation of the system of local government in India. Lord Ripon's Government were quite aware, to quote the same resolution,–that, "at starting there will be doubtless many failures, calculated to discourage exaggerated hopes, and even in some cases to cast apparent discredit, upon the practice of self-government itself. If, however, the officers of Government only set themselves, as the Governor-General-in-Council believes, they will, to foster sedulously the small beginnings of independent life; if they will accept loyally and as their own the policy of the Government, and if they come to realise that the system really opens to them a fairer field for the exercise

of administrative tact and directive energy than the more autocratic system which it supersedes then it may be hoped that the period of failures will be short, and that real and substantial progress would very soon become manifest." In accordance with the policy thus laid down acts were passed by the various local governments, which defined and extended the powers and functions of local self-governing bodies.

Taking the Municipalities—the three Presidency Municipalities of Calcutta, Madras and Bombay are the most important. Their constitution and functions vary considerably. Thus in Calcutta the Municipal administration is entrusted to the Corporation, consisting–under the Act of 1899–of a chairman nominated by the local government, and 50 Commissioners. Of these 25 are elected at triennial ward elections, while the remaining 25 are appointed as follows:—

The Bengal Chamber of Commerce	4
The Calcutta Trades Association	4
The Port Commissioners	2
The Government of Bengal...	15
	25

Besides the Corporation there is the General Committee, consisting of the Chairman and 12 Commissioners, 4 of whom are elected by the ward Commissioners, 4 by the other Commissioners, and 4 nominated by the local government. The entire executive power is vested in the Chairman subject to the approval or sanction of the Corporation or the General Committee. The Corporation fixes the rates of taxation and has other general functions of the kind. The General Committee is a sort-of a buffer between the Executive and the Legislative. It deals with those matters which the Corporation as a whole cannot discuss and which are yet too important to be left to the Chairman alone. The Government of Bengal, also, has the power to command the Corporation to take action under certain circumstances, while its sanction is necessary for undertaking large projects.

In Bombay the Municipal Corporation dates from 1872, and its present form is regulated by the Act of 1888 as amended. It consists of 72 councillors, 36 of whom are elected by the wards and 16 by the Justices of the Peace. The Fellows of the Bombay University elect 2, and 2 more are elected by the Bombay Chamber of Commerce. The remaining 16 are nominated by the Government. Judging from this constitution the Corporation of Bombay is the most liberal and may well be envied by other towns. The general municipal government is vested in the Corporation, while the ordinary business is transacted by a Standing Committee of 12 Councillors, of whom 8 are appointed by the Corporation and 4 by the Government. The President of the Corporation is elected by that body, but is not, like the Chairman of the Calcutta Corporation, an Executive officer. The Chief Executive Authority is the Municipal Commissioner, who is appointed by the Government, usually an I. C. S.-but is removable by a vote of 45 Councillors.

In Madras the last Act regulating the Corporation was passed in 1904. Under this Act the number of Municipal Commissioners consists of 36 besides the President. Of these 20 may be elected at divisional election, 3 are nominated by the Madras Chamber of Commerce, and 3 by the Madras Trades Association. The remaining 10 are nominated—2 each by such associations, corporate bodies, or classes of persons as the local government might direct. The President is nominated by the Government, and is the sole executive authority but removable by a vote of 28 Commissioners. A Standing Committee of the President and 8 other Commissioners is mainly concerned with finance and building questions.

Of these constitutions that of Madras is by far the least liberal, while that of Bombay with an elective majority, and elective chairman, and only one nominated official executive officer, with large discretion in administration and large powers of taxation within the limit of the law—the most advanced. In their latest resolution on the subject the Government of India seem to recognise and recommend the Bombay constitution as

a model for the Presidency Municpalities though they were not prepared to grant a similar constitution to Rangoon.

II. Mofussil Municipalities.

The total number of mofussil municipalities has altered very little in the last 15 years. New municipalities have been formed from time to time, but some also have been removed from the list. In fact between 1902–12 there was a marked decrease, the number in 1911–12 being actually less than 30 years before. This was due to reduction to "notified areas" of a large number of the smaller municipalities in the Punjab and the United Provinces. (The "notified areas" are small towns not fit for full municipal institutions, but to which parts of the Municipal Acts are applied, their affairs being administered by nominated Committees). Taking the municipalities as a whole the number of elected members in 1911–12 was rather more than half, while in 1901–2 it was slightly less than half. The proportion of non-officials and Indians, high in 1901. become higher still in 1902, Elected members are in a majority in the cities of Bombay, Madras and Rangoon and in the towns of Bengal, Bihar and Orissa, and the United and the Central Provinces. Taking the Municipalities individually some of the members are elected in most cases—election being by wards or classes of the community or both combined. Voters must be male residents of a certain age or more, possessing the requisite property of status qualification. It is interesting to note that in some municipal areas in Bombay women possessing the prescribed qualifications are entitled to vote, and in some other cases they are not expressly excluded though they seldom exercise the right. The Chairman of the Corporation is sometimes nominated and sometimes chosen by the Commissioners from among themselves. In the Central Provinces, Madras, Bengal, and Bombay there is a majority of non-official elected chairmen.

The control of the Government is exercised in a variety of ways. Thus (1) Municipalities cannot borrow without the

sanction of the local Government and beyond certain limits. (2) Municipal budgets, and changes in Municipal taxation must also obtain the previous approval of the local Government or of a Divisional Commissioner. (3) Government may provide for the performance of any duty which the Commissioners neglect, and, (4) may suspend them in case of default, incompetence or abuse of power. (5) The sanction of the Government is required for the appointment of certain officers like the Health Officer or the Engineer.

The following is a table of Municipal statistics, showing the number of members-elected or not-officials or not and the incidence of taxation.

Province.	No of Municipalities	Members			Employment.		Total number.	Incidence of taxation.	
		Ex-officio.	Nominated.	Elected	Official.	Non-official			
District Municipalities								s.	d
Bengal	111	108	531	887	190	1336	1526	2	5
Bihar and Orissa	55	78	225	469	100	672	772	1	1
Assam	18	37	98	62	50	147	197	2	4
Bombay	158	387	830	913	457	1673	2310	3	3
Madras	62	77	392	492	137	824	961	2	0
United Provinces	86	93	211	877	175	1006	1181	2	5
Punjab	94	217	419	543	237	942	1179	3	5
Central Provinces	56	9	270	483	161	597	762	2	11
Burma	44	181	282	97	198	362	560	3	2

III. Municipal Functions and Finance.

Municipal functions are classified under the heads of public safety, public health, public convenience and public instruction. Under these four heads the duties of the municipalities are many and varied. The chief of these are:–(*a*) the construction, maintenance, and lighting of streets and roads; (*b*) the provision and up-keep of public and municipal buildings; (*c*) preservation of public health by medical relief, vaccination, sanitation, drainage, water-supply and measures against epidemics; (*d*) public instruction chiefly of an elementary description.

Municipal revenues are derived from four main sources: taxation, municipal property, Government subventions and public borrowing. Of these the last is permitted under certain restrictions as to the previous sanction of the Government, specific security to the lender and the amount. Generally speaking, excluding the Presidency towns,municipalities borrow from the Government. Municipal loans, therefore, though not unknown in India, cannot be said to be of the same importance here as they are in some European countries. In those countries, the idea of Municipal trading has been carried so far that the municipalities supply not only light and water, but also bread and meat, wine and milk, amusement in the dancing house, the race-course, the lottery office and even the municipal restaurants. They build houses for their citizens on land owned by themselves, cultivate fields for procuring the raw material, work forests and mines for their profit, own baths and spas, hotels and boarding-houses, serve as tourist agencies, receive, and invest their money, act as educator, doctor and research student. In India on the other hand the utmost activity of the municipalities is confined to providing indifferently clean and irregularly copious water and some slight drainage works. While the western municipalities need large funds, which they procure without hesitation by borrowing, to carry on their vast and multifarious activities, Indian town governments whenever they desire to borrow a small loan are viewed with suspicion by the Government.