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INDIAN ADMINISTRATION
TO THE DAWN OF
RESPONSIBLE GOVERNMENT
1765 - 1920



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FOR CONSULTATION ONLY

INDIAN ADMINISTRATION
TO THE DAWN OF
RESPONSIBLE GOVERNMENT
1765-1920



BY

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भाषान्तर, मणकार, प्लुटार्किना जीवन-

चरितो, &c., &c.

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PREFACE.

With the introduction of responsible government the creation of a living school of constitutional history and political philosophy trying to understand and appraise laws and institutions events and movements historically, by going backward to their causes and forward to their actual effects, becomes one of the prime though minor necessities of our intellectual and corporate life. This little book is a very humble contribution to that end. Though attempting no more than a sketch, I have tried to develop the subject-matter historically, to present each great change along with the principal influences by which it was moulded, and to indicate to some extent how far it actually came up to the aims its authors had in view. I have worked back to the original authorities as far as a student with limited resources can do so, in a country where the public libraries are so few and so miserably poor. And while giving full references, I have always named by preference such books as are likely to be accessible to Indian readers. Controversial matter has not been sought after. It has not been avoided either. Constitutional administrative and financial history is 'past politics,' even past party politics, to a greater extent than any other variety of history, and to confine one's self to a mere recital of the facts is, with such a subject-matter, altogether impossible. For it is by no means uncommon to find that one party's 'facts' are just what their opponents reject with the greatest vehemence. What claims, moreover, to be a mere recital of facts, can never amount to anything more scientific and impartial than a selection of some of the facts; so that every recital of facts, however colourless, is necessarily also an expression of opinion and an indication of the author's stand-point, even when he does not himself regard or intend it as such. In the following pages, I hope there is not a single place where the reader can charge me with avoiding the responsibility of expressing my own opinion, or indicating my own stand-point. But wherever I have had to deal with 'politics,' I have also tried to give both sides, laid stress on the grounds for a conclusion rather than on the conclusion itself, and sought, above all, to reduce the area of controversy and to let the logic of facts, the trend of the historical development, speak for itself. What these pages venture to offer is an independent account, on a method and a scale which have not been easy to determine or to adhere to, of a historical subject many-sided in its complexity



and necessarily demanding a rare ripeness and impartiality of judgment, for which mere silence can never be a substitute. If competent judges find my attempt not altogether unsuccessful, the result must be attributed, it seems to me, to my classwork with my students of the Deccan College, where I have had to deal with most of these topics, though only in outline, and continuously for a period now amounting to over seven years. M. Chailley spent over his well-known work on the Administrative Problems of our country 'twenty years of thought and ten of actual labour'; I am unable to put forth so high a claim. But College professors know the value for their own study and intellectual operations, of a fresh batch of keen young minds year after year, bringing up a strange mess of ignorance, confusion, enthusiasm, vague ideas and ideals, 'half-truths which are really whole errors,' and political discontent of all shades, picked up from partisan writings, out of which they have to mould patiently, sympathetically and by persuasive argument, the beginnings of scientific habits of thought, some regard for the relevant evidence, some sense of duty to see the other side of the shield as it is, an appreciation however rudimentary of the historical method, a realisation however evanescent of the complexities of social, economic and political phenomena, and a consciousness however dim that no educated man can really claim to judge for himself, except on matters with regard to which his own equipment insight and outlook are fairly adequate.

Several friends have kindly glanced through these pages as they were passing through the press, and enabled me to correct a few errors of fact or of opinion, inexact or carelessly worded statements, infelicities of expression, and other faults. But there are bound to be many more in a book like this. May I request my readers noticing any such to let me know about them? All such suggestions and criticisms will be fully weighed, and I shall be very happy indeed to make such changes as would clearly be improvements at the earliest opportunity.

An index and an alphabetical list of the full titles of the books, reports, etc., cited in these pages, have had to be omitted from the present edition at the last moment to make room for the Corrections and Additions at the end.

29th December 1921:
Narayan Peth, Poona City.

B. K. T.



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INDIAN ADMINISTRATION TO THE DAWN OF RESPONSIBLE GOVERNMENT

CHAPTER I

THE EAST INDIA COMPANY:—THE FIRST CENTURY

§ 1. *Foundation.*—On the 31st December 1600 Queen Elizabeth granted a charter to the Earl of Cumberland and over two hundred London merchants—‘our well-beloved subjects, Sir John Hart, of London, and others’—to trade by sea with all countries from the Cape of Good Hope to the straits of Magellan for fifteen years. The grant was for ‘the honour of the nation, the wealth of the people, the increase of navigation, and the advancement of lawful traffic to the benefit of the commonwealth.’ The Earl and his associates were incorporated in the name of the ‘Governor and Company of merchants of London, trading into the East Indies.’ They were to hold a Court or general assembly, which was empowered to make such laws and regulations for the better advancement of their affairs and for the discipline and government of their own factors, masters, mariners, and other officers, apprentices and servants, as were reasonable and not contrary to English law and custom. The power of inflicting punishment by fine or imprisonment was specially included. The ‘general court’¹ was to elect a Governor,

1 The ‘general court’ is, in modern language, the ordinary annual meeting of the shareholders of the company; which the Charter required to be held on the first of July or within six days after that date. The board of ‘committees’ corresponds to what we now call a board of directors. The first Governor and directors are named in the Charter. ‘Committees,’ says Mill, ‘meant persons to whom something is committed or entrusted.’—*History* Bk. IV, ch. I.



Deputy Governor, and twentyfour 'committees', to form their standing executive, and this body was to wield the whole power of the Company. English subjects who did not join the Company and yet tried to trade by sea in these regions, were declared to be guilty of contempt of the crown, and were to be punished by confiscation of all their goods, ships &c., half the value of which was to go to the Company, and further by such imprisonment and other punishment as the Queen and her successors might consider to be necessary. If any places in these regions of Asia, Africa and America were in the 'lawful and actual'² possession of a Christian prince or State in 'league and amity' with England, the Company was not to trade with it unless allowed by that power to do so. The Charter also granted the necessary concessions and facilities about ships, munitions and mariners, customs duties, re-export of goods brought into England, and the export of coin and bullion. And it was finally provided that the Charter would be cancelled if not found profitable to the country on a notice to the Company of two years to wind up their affairs, but that, on the other hand, if the adventure answered expectations, it might be renewed on a petition from the Company, for another period of fifteen years, with such alterations and qualifications in its terms as experience might suggest to be required.

Mukharji, i pp. 1-20,—the text of the Charter.

Hunter, i ch. 6, indispensable for a full understanding.

Ilbert, pp. 3-13.

§ 2. *In Western India.*—The East India Company began as a Regulated Company. For the first eleven years

² These adjectives mean 'effective occupation'. Hunter i pp. 220, 246-47, &c. Also Roberts p. 23. The Elizabethan petitioners themselves asked only for leave to trade in the East 'where Spaniards and Portuguese have not any castle, fort, blockhouse, or commandant.' They thus ignored the rights founded merely upon a Papal Bull, but recognised effective occupation. See also Cambridge Modern History IV ch. 25, p. 732.



the members clubbed together at will for a voyage, each voyage being treated as an independent venture. This is known as the period of 'separate' voyages. Some continuity of policy and unity of direction were soon discovered to be indispensable, and from 1611 all the members contributed to the joint stock or treasury of the Company, out of which voyages and other undertakings came to be provided. But in this new system, each joint stock was still for several years only. Each was treated as a separate account, and its profits were divided when the ships of the last voyage furnished out of it had returned and the goods they brought in had all been disposed of. And 'separate' voyages were also undertaken during this period at various times.¹ It is only after Cromwell's Charter of 1657 that these confusing practices finally disappeared, and the Company became a Joint Stock Corporation in the modern sense of the term.

Factories, docks and landing-places, and other property began to accumulate in India almost from the beginning. The Company first obtained what land it needed for such purposes by lease from the petty local authorities. They also approached the Grand Mogul by embassies from the King of England. John Mildenhall, the first of the English ambassadors to the paramount power in the India of the seventeenth century, started from England in 1599 and travelling overland from the Levant reached Agra in 1603, and remained there till late in 1605. He claimed to have been successful in obtaining from Akbar a *firman* granting to the English trade facilities on terms similar to those which the Sultan of Turkey had granted.² The

1 Hunter, ii pp. 177-9, footnote 2, gives a summary survey of the Company's voyages and joint stocks from 1600 to 1660.

2 Vincent Smith, *Akbar the Great Mogul* (1917): pp. 292-5. For the distinction between *parwana*, *nishan*, *firman*, *sanad*, and *treaty*, see Hunter ii p. 51, text and footnote.



ambassadors who followed him,³ however, did not know anything about this *firman*. In the meanwhile events happened which predisposed the Mogul rulers in favour of the newcomers. The great Mogul Empire even at its zenith was very weak at sea, and it was a matter of high policy with its rulers to have skilled mariners and naval fighters belonging to some other nation, if possible, to play off against the Portuguese. In November and December 1612 the Company's ships under Captain Best defeated a superior Portuguese squadron off Swally Roads at the mouth of the Tapti. Thereupon the Governor of Surat readily granted the Company permission to have factories at Surat and three other places on the Gulf of Cambay, a permission ratified by the Governor of the province of Gujrat. The Portuguese tried to regain the ground thus lost and put forth the whole of their strength in the Arabian Sea against the Company in 1615. But the narrow and tortuous channels between the shoals and silt-banks at the mouth of the river handicapped their galleons, their far greater gun-power and man-power could not be brought to bear, and Downton, against heavy odds, won victories no less impressive than those of 1612.⁴ Sir Thomas Roe, the sixth ambassador, reached Jahangir's court at Ajmer at the end of 1615, and his courtly ways secured a favourable consideration for the Company's petitions and grievances for some years thereafter.⁵ Moreover, the Portuguese power

3 Hawkins, at Agra, 1607-11; Canning, 1613; Kerridge, 1613-4 Edwards, 1615. Strictly speaking, 'ambassador' is too high a title for these four; more than one of them, moreover, made himself, and his nation, ridiculous at the Mogul court.

4 For a graphic account of Best's and Downton's actions see Principal Rawlinson's recently published *British Beginnings*, ch 4.

5 Roe's great service to the Company lay in the sound advice he gave which the Company adhered to as the cardinal principle of their policy for many years. "The Portugal" he said, "never profited by the Indies, since he defended them. Observe this well. It has been also the error of the Dutch, who seek plantation here by the sword. They turn a wonderful stock, they prowl in all places, they possess some of the best. Yet their dead payes consume all their gain. Let this be received as a rule that if you will profit Seek it at Sea, And in quiet Trade; for without controversy, it is an error to affect garrisons and land wars in India." *Hunter* II 242; *Rawlinson* ch. 5.



and influence in the Arabian Sea declined very rapidly after 1615, and the East India Company was very convenient to the Grand Mogul as his sea police suppressing piracy and keeping the route to Mecca open. Surat rose rapidly as the emporium of world-trade with Northern India, and the Company's factory there prospered and soon became their principal factory in India. The coasting trade from the Indus to Goa also came more and more into their hands. And in 1635, five years after the treaty of Madrid nominally establishing peace between England and Portugal throughout the world, the President of the factory at Surat made an arrangement with the Portuguese Viceroy at Goa, which secured to the Company four shiploads *per annum* of the richer spices from Goa and other Portuguese ports more to the south.

Hunter i chs. 7, 8; ii ch. 2.

§ 3. *Bay of Bengal.* On the eastern coast of India the Company succeeded, after two ineffectual attempts elsewhere, in establishing a factory in 1611 at Masulipatan, then the chief port of the kingdom of Golconda. Eventually, the Sultan gave them a *swarna-patta* firman: "Under the shadow of Me, the King, they shall sit down at rest and in safety" (1632). But he had little effective power to enforce his authority at the extremities of his dominions. And he, too, like the Mogul rulers, would not allow a fort to be erected. Francis Day went south, therefore, and about thirty miles beyond the Dutch stronghold of Pulikat, obtained (1639) a piece of land with the right to build a fort from the Raja of Chandragiri, Sri Ranga Rayal, a petty chieftain claiming descent from the great Vijayanagar dynasty. The Raja's motives for the grant are highly instructive to the student of history. First, merchants and trade, he believes, will bring wealth to his country. "Secondly, he desires (for his money) good horses from Persia. Thirdly, that yearly he may send a servant into the Bay Bengalla to buy him hawks,



apes, parrots, and similar baubles ... And, lastly, the fort, being made substantial and strong, may be able to defend his person on occasion against his insulting neighbours."¹ Day christened his fort after the patron saint of England, and Fort St. George became the principal factory on this coast from 1642. The Company raised it to the position of an independent presidency in 1653, and placed the Bengal and Coromandal coast settlements under it from 1658.

Meanwhile, one of the Company's vessels had entered Harishpur at the southern mouth of the Mahanadi and obtained permission from the Governor of Orissa to trade, erect factories and build ships throughout the province (1633). A similar license was obtained from the Governor of Bengal seventeen years later. Here Hugli, the imperial port, became the principal factory, but subordinate in its turn to Madras. The advance in the Company's trade and position in this part of India was much slower. They began fairly well while Prince Shuja was governor, with whom Boughton, the surgeon, had some influence.² But Boughton died, their own factors at such distance from all supervision and control went to the bad, and Shuja himself was routed by Aurangzeb and driven out of the province (1660). Shaista Khan, the new viceroy, confirmed their earlier grants only in name; there was little chance for profitable trade under his viceroyalty. The Company obtained a *firman* from the Emperor in 1680, but it made little change in Shaista Khan's dealings with them. Only two alternatives remained: either to abandon

1 Foster, *English Factories* 1637-41, p. 184.

2 See for Boughton W. Foster *Factories* the vols. for 1642-45; 1646-50; 1651-54; also his articles in *Ind. Antiquary*, September 1911 and May 1912. For Shaista Khan's dealings, see *Firminger*, Introduction ch. 3. in *Fifth Report*. Hugli was assigned to him as his *jagir* and he invested the annual proceeds with the traders of the place at high interest. Naturally, these traders would be supported by him in trying to engross the entire trade of the place. Hence the Co.'s complaints about exactions and high-handed dealings are only one side of the shield.



Bengal altogether, or to see if they could not win better treatment by force of arms. After repeated supplications which the Viceroy ignored, the Company increased the garrison at Hugli (1686). But the Mogul commandant of the place immediately surrounded the English factory and established a strict blockade. A little hesitation and delay, and the tragedy of 1756 might have been enacted seventy years earlier. Job Charnock, however, abandoned the factory in time and sailed away, taking with him all he could in his crowded boats. Twentyseven miles lower down, the river deepens and broadens out into a splendid anchorage, the western bank is low, and the eastern is so protected all round by fens and swamps, and the older channel of the Adiganga, that a naval power holding the anchorage and the approach to it from the sea, could protect that bank against all enemies from the land. This is Calcutta, and here, mainly through the persistence of Charnock, the company started a factory from the 24th August 1690.³

Hunter ii chs 3, 4, and 7.

§ 4. *In England.* The Company obtained a fresh Charter from James I in 1609 with ampler powers granted to them in perpetuity, and the support of many courtiers and men of rank enabled them to collect larger sums for their voyages and build their own ships. The Company raised joint stocks, each of them for a number of voyages in succession. On the other hand, the Dutch grew more and more hostile to them in the East Indies, and the King granted licenses to adventurers who behaved in Eastern seas like pirates, and the native rulers held the Company responsible for the injuries these 'interlopers' inflicted upon their subjects. During these early years the Company experienced many ups and downs of

³ The district had the further advantage of being under the direct jurisdiction not of the Nawab but of one of the feudatories, the Raja of Burdwan (Orme Bk. VI vol. II p. 16).



fortune, and but for the footing they had more or less accidentally won at Surat and Madras, they might have been overwhelmed even before they had made a fair start. Another important factor that enabled them to weather the storms and squalls of these early years was the long period for which they entrusted their helm to one and the same individual as chairman. Sir Thomas Smythe the first Governor of the Company was re-elected every year upto 1621; Sir Morris Abbot was Governor from 1624 to 1637; and William Cockayne, from 1643 to 1658.¹

In 1635 Charles I granted a license to Sir William Courten and others to trade with the East, and the rival company thus started involved the East India Company in serious losses and troubles for years, for which no redress could be had either from King or Parliament. Moreover, as soon as the Civil War began, the Roundhead section of the Parliament, sitting at Westminster, seized the Company's cannon, and took from them a forced loan of £ 5000. By 1647 even the Governor and 'committees' lost heart and seriously thought of winding up their affairs. But better days soon dawned. When the Commonwealth declared war against Holland the Company's wrongs at Amboyna and elsewhere figured amongst the causes. And the treaty of 1654 awarded the Company £ 85000 damages from the Dutch. The treaty with Portugal, a little later, also threw open the Portuguese East Indies to English ships. Earlier still, the Commonwealth Council of State had compelled the Company and Courten's Association, or the Assada Merchants (as they had come to be called), to arrange a compromise themselves, and the Parliament had resolved "that the trade to the East Indies should be carried on by one Company and with one Joint stock...under such

¹ Sir Morris Abbot was one of the founders of the E. I. Company. He was Deputy Governor from 1615 to 1623, and had been a 'Committee' for some years when elected Deputy Governor. William Cockayne had been a 'Committee' from 1629 and Deputy Governor from 1639. And after 1658 he served again as a 'Committee'.



regulations as the Parliament shall think fit, and that the East India Company should proceed upon the agreement made between them and the Assada Merchants until further orders" (1650). Outside merchants also continued to clamour for permission to share in the Eastern trade, both individually and in associations. Licenses were granted to some of these petitioners also, but eventually the Commonwealth authorities examined the whole subject thoroughly and were convinced that unless England was prepared to protect by diplomacy and by force of arms every English adventurer into the East, and also to keep a curb upon his actions at the same time that it accepted full responsibility for them as a State, the only alternative to "open trade" was a system of monopoly.² This was therefore the basis upon which Cromwell granted a fresh Charter on the 19th October 1657, which insisted upon the Company having "one continuous Joint Stock." Under this Charter the Company themselves made regulations by which any one could join them on payment of an entrance fee of £ 5, the minimum subscription for a shareholder was fixed at £ 100, each holder of £ 500 stock was to have a vote in the 'general court,' any holder of £ 1000 stock was eligible for election as a 'committee,' eight of the twentyfour 'committees' were to retire every year, and no one was to be Governor or Deputy-Governor for more than two consecutive years. Thus was the East India Company born again: "trans-

2 "The form of monopoly, which later times resented, seemed natural to the men of the time. Nor, indeed, was the claim to some kind of monopoly unreasonable, in the special circumstances. If the State had no settled revenue for the purpose of extending the area of the national influence, and if the individual trader left to himself was powerless to encounter the risks, the Company which provided against these might well ask in return some compensation; for the private trader, if able to trade in peace because of the security afforded by the Company's ships and forts, would by his freedom from such expenses be enabled to undersell the Company in the home market."—*Cambridge Modern History IV*, ch. 25, p. 730.

formed," says Hunter, "from a feeble relic of the mediæval trade-guild into the vigorous forerunner of the modern Joint Stock Company."

Hunter i ch. 7; ii chs. 1, 5 and 6.

§ 5 *To 1707*.—Charles II gave the Company several Charters. The first (1661) conceded to them wide powers over their subjects in the East, servants and others; allowed them to have ships of war, munitions and forts; and permitted them to make war and peace with non-Christian States. The same year he obtained Bombay as a wedding gift from Portugal and sent a small fleet to take possession, but the Portuguese Governor raised the objection that the gift did not include Thana and Salsette. The dispute lasted over three years' and over three hundred out of the four hundred soldiers and sailors died in the meanwhile of scurvy and the climate. The royal officer in command waived the claim in order to save the remnant of his little band and obtained possession of Bombay Island in 1665. The king, however, found the new acquisition a white elephant and transferred it to the Company; and with it he granted a Charter (1669) creating the first European regiment of the Company's army out of the officers and soldiers who were there. This Charter also empowered the Company to make laws and regulations, and invested them through their Governors and officers with extensive powers of civil and military government over their subjects. The Company induced

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1. The real motive of the Portuguese was, they thought Bombay Harbour too valuable to part with; "the best port," wrote the Portuguese Viceroy (to his king), "Your Majesty possesses in India, with which that of Lisbon is not to be compared."—*Malabari Bombay in the Making*, p. 94. Also when the final orders were received, "I foresee the great troubles that from this neighbourhood will result to the Portuguese, and that India will be lost on the same day on which the English nation is settled in Bombay."—*Gazetteer of Bombay City and Island* ii pp. 45-49.



Indian merchants and artisans to migrate from Surat, adopted a liberal policy towards cultivators who were drawn within their limited boundaries from the surrounding districts, and Bombay grew rapidly almost from the first. Charles's third Charter was similarly occasioned by his transfer of St. Helena to the Company and was equally liberal in its concession of powers. Moreover both at Bombay and at Madras there were rebellions and factious squabbles leading to bloodshed and disorder, and the Directors, finding their powers under these Charters inadequate, had to send out Commissioners with still wider exceptional powers to restore order. Hence the Charter of 1683 gave to the Company very nearly all the powers of a State, subject only to a reservation of the 'sovereign right power and dominion' of the Crown, 'when We shall be pleased to interpose Our Royal Authority thereon.' And the power to coin money at Madras and Bombay had been granted by an earlier Charter. James II further empowered the Company to raise naval forces (1686) and authorized them to establish a Municipality² at Madras (1687), who were to provide, among other things, 'a schoolhouse for the teaching of the native children to speak, read and write the English tongue and to understand arethmetick and merchants' accompts'. The Company's factories during all these years were under Surat, and the continuity of Government and policy that is secured by long rule under one and the same individual, we discover at this stage of the Company's history in the long tenures of office of the Surat Presidents. Sir George Oxenden filled the post from 1662 to 1669. Gerald Aungier succeeded him on his death and died at his post in turn in 1677. He is the real founder of Bombay. Under his firm tolerant and sympathetic regime the revenue of the place increased threefold

² The Mayor and two of the Aldermen were to be English, but of the other ten, three were to be Portuguese, and seven Musalmans or Hindus.



and the population sixfold. Sir John Child was President from 1682 and he too died at his post in 1690. The transfer of the Company's headquarters from Surat to Bombay took place in his time in 1687, so that he may be looked upon as, in a sense, the first of the long line of the Governors of Bombay.

For about a generation after the amalgamation with the Assada merchants, the Company followed a fairly liberal policy towards outsiders. Any Englishman was free to settle at any of its factories, its own servants were allowed to trade privately within reasonable limits and to settle in India after leaving service, and it also conceded licenses to the ships of adventurers to visit and trade at its settlement pretty freely. Nevertheless, the outside public were not satisfied. They wanted a perfectly open trade. And there were sympathisers with this view in the Company itself. A proposal was brought forward in 1681 to wind up the Joint Stock of 1657 and invite subscriptions for a new one from the public at large. This was defeated, however, and from this point onwards the Company became stricter in asserting and maintaining its privileges and keeping 'interlopers' at arm's length. Charles II's Charter of 1683 authorized the Company to set up admiralty courts which could confiscate the ships and goods of all interlopers. The matter was fought out first in the law-courts.³ The defeat of open trade there, however, served only to excite public opinion the more. And English *swadeshi* (स्वदेशी) opinion was also hardening fast against the calicoes, muslins, shawls and art fabrics of India. The struggle was transferred to Parliament and in January 1690 a committee of the Commons heard both sides and reported that there should be 'a new Company and a new Joint Stock established by Parliament'; but until it was established, the East India Company was to continue, all its privileges unimpaired. The next House of Commons was

3 E. I. Co. v Sandys (1683-5).



Tory, but it also decided against the retention of the Company in its exclusive character, and asked the King 'to dissolve it and issue a Charter to a new one on such terms as His Majesty might see fit' (1692). The next year the Commons repeated this resolution emphatically, asking the King to give the Company the necessary notice. Instead, what the Company obtained, however, from the King's ministers was a new Charter for twenty-one years⁴; the only concession in it to outsiders was that the Company's capital was to be increased by 744,000 l. new subscriptions. The Commons were naturally angry, and took advantage of the detention of an interloper's ship⁵ by the Privy Council at the instance of the Company, to declare 'that all Englishmen have equal right to trade to the East Indies unless prohibited by Act of Parliament (1694). The King, too, thereupon revoked all the articles in his recent Charter against interlopers. Obviously, the matter could not be allowed to remain in such a mess. As soon as the war against France was over, Parliament passed an Act for raising a loan of two millions sterling at eight *per cent.* and for settling the trade to the East Indies by founding a new Company, each subscriber to the loan to have the right of contributing a share in the Company's stock proportional to his subscription (1698). To this loan the East India Company promptly subscribed 315,000 l., the largest single subscription. The most prominent of the other subscribers, however, combined together into a joint stock company, as the Act allowed, and on a petition the King granted them an ample charter in the name of the "English Company trading to the East Indies." Perhaps the most noteworthy novelty in this charter, which owing to subsequent events came to be the foundation-stone of the United East India Company's privi-

4. The result was due to Sir Josia Child's bribes, both heavy and discreet. The secret service money account of the Company placed before the House of Commons Committee in 1695 showed that 23,467 l. were expended thus between 1683 and 1692, and 80,468 l. in 1693.

5. The *Red Bridge*.



leges, is the following: "All ministers (of religion) shall be obliged to learn within one year after their arrival the Portuguese language, and shall apply themselves to learn the native language of the country where they shall reside, the better to enable them to instruct the Gentoos that shall be the servants or slaves of the Company, or of their agents, in the Protestant Religion. "

Both Companies were soon convinced that they must come to an understanding and amalgamate. In India the efforts of the new Company to establish the same three Presidencies as the old had created, and in the same places too, brought no gain to themselves and involved the old Company in great difficulties. In England the doubled imports glutted the markets and raised the *swadeshi* opposition to a height. Parliament penalised the wearing of Indian silks and imposed heavy duties upon their importation (1700). And a union appeared more and more imperative as the War of the Spanish Succession drew near. It was effected at last, exactly a week before the outbreak of the hostilities, in the form of an Indenture Tripartite between the Crown and the two Companies (1702). The new Company had subscribed 1,662,000 l. of the loan, the old Company had subscribed 315,000 l. The first condition of the Union therefore was that the old Company was to take over 673,500 l. of the loan from the new, so as to equalize the shares of both. On the other hand the deadstock, houses, factories and forts of both the Companies together were valued at 400,000 l., of which the senior Company's share was worth 330,000 l., and so the new Company was to pay 130,000 l. to it, to equalize matters. Secondly, on the new board of directors each Company was to elect twelve and this joint board was to be supreme from the date of union. And, thirdly, seven years were to be allowed to each Company to wind up its separate affairs. The Act of Parliament⁶ constituting this

6 This Act, the Charter to the English Company, the Indenture Tripartite, and all resolutions of parliament on the Company's affairs from 1694 onwards should be printed in full by compilers of source-books.



"United Company of Merchants of England Trading to the East Indies," took from it a further loan of 1,200,000 l. in return for the privilege, and also provided that they were thereafter to receive annual interest for the whole amount of 3,200,000 l. at the rate of five *per cent.* only (1707).

Hunter ii chs. 7, 8 and 9.

Libert pp. 13-30.

Roberts chs. 3 to 7, the best brief account of the first century.

CHAPTER II

THE EAST INDIA COMPANY:—THE SECOND CENTURY

§ 6. *Farrukh-siyar's Firman.*—From the constitution of the United Company to the War of the Austrian Succession in Europe, the East India Company enjoyed nearly forty years of steady growth in resources, experience, influence, and power. The period of peaceful penetration and local consolidation enabled the three Presidencies¹ to train up a body of men who knew their work and surroundings thoroughly, and were quite prepared to face the greater problems and difficulties of the troubled times that followed. The great Mogul Emperors had administered their major provinces by a system of triple or quadruple establishments which served as checks upon one another. The Nawab, who was titular head of the province, had but a limited power confined to functions strictly circumscribed. The Diwan of the province was an independent officer with his own establishments in city and zilla, which exacted a strict

¹ Calcutta became finally independent of Madras, 1707.



account of all the revenue and expenditure and rendered it direct to the imperial treasury. The customs revenue of the province was within the Diwan's direct control, and when the larger *jagirs* of the greater functionaries and feudatories (to none of whom the Emperors allowed more than a life-interest) fell vacant on the death of an incumbent, it was the function of the Diwan rather than the Nawab to take possession. The judicial administration, again, such as it was, was in civil cases in the hands of *kazis*, whose dependence upon the Nawab was slight. And, lastly, even in military-matters, the strong fortresses in the province as also the imperial ports were entrusted each to a Governor, who was not a subordinate of the Nawab. This system, however, had been breaking down during the last decades of Aurangzeb's reign, and soon after his death one and the same officer, styled the Subahdar, everywhere combined in his own person the duties of Nawab and Diwan, and succeeded in becoming the absolute ruler of his province in everything but the name. If he forwarded to Dehli more or less regularly a sum in commutation of the annual revenues of the province, and knew how to keep the influential ministers and courtiers surrounding the Emperor well-disposed towards him, "he had nothing to fear but an army from Dehli, which was always coming but never came."² All persons and powers, great and small, throughout the extensive empire, from village communities, trading castes, and industrial guilds, up to the great hereditary Rajas in Rajputana, felt the change that had come over the spirit of the Empire, and reacted towards it in one and the same way for the preservation of their rights from the growing exactions and tyrannies of the local magnate, and the increasing insecurity of their surroundings. They strengthened themselves as best they could, and also sought by all means in their power a

² Orme, *Dissertation* (vol I, p. 28). See on the subject, Sarkar, *Mughal Administration* (1920); Moreland, ch. 2.



clearer definition of their rights from the highest authority. The Company too had no other option. The *zamindari* rights over the district surrounding Calcutta³ were purchased (1698), and the fortifications of Fort William were strengthened (1707-14). And they sent an embassy to the emperor Farrukh-siyar. The President of Fort William in his petition for redress, called the Emperor "absolute monarch and prop of the universe," and compared himself to "the smallest particle of sand with his forehead at command rubbed on the ground."⁴ The grievances complained of related to all the three presidencies. And they were lucky in getting full redress—on paper—on all the main points within the short space of two years. This was the result of the Mogul fear of the Company's strength at sea. Bombay, unable to stand any longer the excessive exactions of the Governor of Surat, withdrew the factory from that port in 1717, which instantly excited serious alarm. For it was remembered that the last withdrawal of the kind had been followed by the Company's fleet preying upon Mogul shipping wherever found throughout the Indian seas.⁵ Farrukh-siyar's firman

3 Sutanuti, Govindpur and Calcutta. Fort William was built at Govindpur as soon as the Zamindari was acquired. Prince Azim-ush Shan, Farrukh-siyar's father, was Nawab at the time, and granted the Co. all they asked for, "having bent his chief attention to the amassing of a treasure, against" the contest for the succession, certain to break out on the death of Aurangzeb.—Mill IV ch. 1 p. 26.

4 Roberts p. 62.

5 In 1686-7, when the loss inflicted was valued at over £ 1,000,000, and the trade from Surat and other ports was dislocated until peace was made, 1690. Orme (Bk VI), Mill (Bk iv ch. i) and other writers following them attribute the success of this embassy in some part to the influence of Hamilton, a physician who happened to cure the Emperor of some illness. But he treated the Emperor during October and November 1715, while the firman was not granted till July 1717. Orme's own account shows that at the most the physician's influence only saved the embassy from a dismissal soon after their arrival, although this they had fully earned by their stupid disregard of the Vazir, the only proper official through whom to approach the Emperor. Again, Mill's language about the "public spirit" and "generosity" of Hamilton, who "preferred the Company's interest to his own," is hardly justified. The Emperor celebrated his recovery by a public *darbar*, 30th November 1715, at which he rewarded Hamilton with a splendid *poshak*—diamond rings, *kalgis* with precious stones, gold buttons set with jewels, a miniature gold set of medical instruments, &c., and also an elephant, a horse, and Rs. 5000—Auber, quoting from the reports of the embassy to Calcutta, Vol. I, p. 20.

allowed the Madras Presidency to take possession for an annual quit-rent of some villages round Madras, which the Subahdar of the Karnatak had granted but again resumed. The Bombay Presidency obtained the valuable right of exemption of their imports and exports at Surat from inspection and delay; they had only to pay a fixed annual sum in commutation of customs. The cargoes of English ships wrecked anywhere along the Mogul coasts were to be protected from plunder. And Calcutta obtained exemption from stoppage and examination of all goods and ships certified by the President's *dastak* (दस्तक signature i. e. signed certificate) as belonging to the Company. This was a most valuable privilege which the Company tried to stretch to the uttermost. The Subahdar of Bengal refused to recognise the validity of the President's *dastak* in the internal trade of the province, or in goods passing up or down by land. On water, however, the Company was strong, and the effect of the firman was to enable them to quickly monopolise the entire riverine and inter-provincial trade of this rich province. The President granted his *dastak* not only to the Company's goods, but also to the goods of the Company's servants, who traded largely on their own account, and were allowed by their masters to do so in many articles, since the salaries paid to them were miserably low. And the Company's servants began to earn large commissions besides, from the native merchants, merely by extending to them also the protection of the President's *dastak*. The volume of the goods thus entrusted to them for transport rose very rapidly, and the Company further improved their gains by increasing their own shipping. The Emperor his ministers and his courtiers, it may be noted in passing, could not possibly have realised that their firman would thus enable a foreign Company to engross so high a proportion of the trade and shipping of the richest province of the empire. When the *firman* reached Calcutta, Madras and Bombay the presidents and council received it with regal honours 151 guns from the fort and the broadsides of every vessel



In the port roared forth their jubilant welcome. Orme called it the Magna Charta of the Company, and it certainly gave them an assured legal status and constitutional rights derived from the highest authority in India. The very fact that the Company habitually exaggerated the worth and significance of such grants and concessions as they had hitherto obtained, shows the high value rightly attached to a *firman* of the Emperor under the Mogul system.

Roberts, ch. 8.

Mill. Bk. iv ch. 1.

§ 7. *New Era*.—Thus a hundred and fifty years after their foundation the East India Company were rulers at Bombay but only zamindars at Madras and Calcutta, and mere traders at their factories inland. But a new era began in their fortunes with the war of the Austrian Succession and in the short space of twenty years (1745-65) transformed them into a powerful State ruling over extensive provinces. And when once they began to mount up the ladder of power they ascended the steps easily and rapidly, until before long they were firmly established on the summit. Many causes contributed to this result, which was as unexpected and unforeseen by the Company themselves as by any one else.

The main internal cause was that the Mogul Empire had broken down, political conditions in India had become chaotic, and the country was in the throes of an "internal revolution," "a state of chronic war and mutual plunder," during which "authority had fallen on the ground and lay there waiting to be picked up by somebody."¹ Wars, it must be noted, can only be carried on for many years at a stretch when the theatre of warfare can itself be made to supply in abundance the men and resources so essential to prolonged operations; but a state of internal revolution is also a state of chronic warfare just because it fulfils these conditions.



The main external cause was that England had already won a position of maritime supremacy in the world, and every effort made by her European rivals singly and in combination to challenge and weaken this, enabled her on the contrary to strengthen it more and more throughout the eighteenth century.² The principal rival of the English in India was the French East India Company, which was by far the weaker of the two in every respect. Even if the two Companies had been left to fight it out by themselves, the English Company was certain to win. And it so happened that France was also the principal rival of England in Europe and America. Thus although the E. I. Company was in fact only a petty monopolist body of a few hundred traders—not all of them Englishmen—its cause nevertheless assumed a national aspect, and England as a State gave it a fairly consistent support at this critical stage of its fortunes in war and in diplomacy.

Nor should some remarkable traits of the English character be forgotten. The history of no other people shows such uniform good luck; perhaps because (1) the English have extraordinary staying-power, (2) they discern and seize opportunities, and (3) in the moment of success they restrain themselves, they keep cool, and are content with appropriating less of the legitimate fruits and spoils of victory than almost any other people. The history of no other nation shows such uniform good luck; perhaps also because while few—very very few English statesmen soldiers or admirals have been men of genius, (4) the proportion amongst their empire-builders has been surprisingly large of administrators, who, as even Mill was constrained to admit in the case of Warren Hastings, “excelled in applying temporary expedients to temporary difficulties; in putting off the evil day; in giving a fair complexion to the present one.”³ At any rate, it is a

² Mahon, *Sea Power*, esp. ch. 7 pp. 273-9, ch. 8 pp 305-310 and ch. 12.

³ Mill, Bk. V, ch. 8, last paragraph.



historical fact that the Indians of that century soon discovered something subtle behind the Company which they called her 'Star' and came to repose more and more faith in it.

To pass on to causes and influences not so difficult to appraise. The Indian States pitted against the Company were under a system of personal rule. A particular ruler might be able and trusted by his people and army, and might have a clear far-seeing policy to which he resolutely clung; but on his death there might be a war of succession, a minority, or a successor who was incompetent or distrusted or hampered by palace intrigues, or one who, though free from such difficulties and able himself, might have other aims or methods. ⁴ A corporate authority might also be distracted by personal jealousies and differences: the ill-success of the French in India was to some extent at least due to this cause. But even prejudiced students of the history of the East India Company must admit that it showed less of this defect than might have been expected. A united front was maintained on the whole, a fairly continuous policy was evolved, although the field of operations must have looked to the foreign eyes of these pioneers bewilderingly various and tropically prolific of surprises. The French have more practical originality and less colour prejudice than any other "white" people, and it was in the fitness of things that they should have been the first to try and test the experiment of imparting the weapons and discipline of the European art of war to Indian soldiers. It was also quite as natural that the English should reap the full harvest of what others had sown, merely in an experimental farm, as it were. For, supposing for the sake

4 A very good instance of this last is the remarkable change that came over the war of the Karnatak immediately on the death of Haidar Ali. Tipu was also a strong and able ruler, but of a type altogether different from his veteran father, who sensitively shifted his sails to every breeze that blew.



of argument that the French had not been knocked out of the ring at so early a stage:—there would have been a French zone in India defended by an army mainly Indian; the organisation of that force would have been very different from that of the Indian army created by the English East India Company; that part of India would in all probability have been annexed to the mother country at an early stage of its history, and would have become as integral a part of France as is Algiers. There would thus have been a super-imposition of the French culture upon Indian, and this might have developed one knows not what disorders, tumults and horrors; and, lastly, even supposing them all successfully surmounted, that zone would have remained un-Indian for one knows not how many centuries. Finally, with Chanda Saheb began a long line of Indian rulers and adventurers who saw the European art of war exemplified by armies composed mainly of Indian soldiery, and grasped its supreme importance for success as soon as they saw it. The greatest in this line of succession were Sadashivrao Bhau, Mahadji Shinde (Sindhia), and Ranjit-Sing,—each of whom acquired far more of it than his predecessor. But none, not even the last, could master it fully. And no wonder. Generalship, strategy, tactics; the provision of the necessary forts, ordnance, munitions; the training of the unit, the company, the army-corps; the proportion of the various arms; their proper use at the right moment and point in the right manner; the keeping of an army in being in peace and in war, in victory as well as in defeat; not to mention inventions or improvements:—it is too complex a matter to be mastered without several generations of a continuous tradition. The army at the front needs to be fed continuously, and not with food only; and that means factories and military colleges, and behind and supporting it all, a highly developed stable political social and economic system. In one word, the army scientifically trained and equipped, is, to use an Indian figure, the mace of Bhima; but Bhima the Pandawa alone can wield it and smash his foes with it. In some



less hand, it invariably smashes up both him and itself to pieces. Thus it was that the miracle of an all-red India came about quite un-miraculously in the course of the sanguinary century between the petty and chance encounter at St. Thome (1746) and the great artillery battle at Gujrat (1849).

§ 8. *The Diwani.* Within twenty years of the deposition and murder of Farrukh-siyar Nadir Shah's invasion reduced the Mogul Empire to a mere name, and Subahdars in the outlying provinces became independent. The founders of these new kingdoms were self-made men trained to arms and administration in the hard school of personal ups and downs and while they lived their sway over the provinces they had seized and were holding together was a reality. But the moment their eyes were closed chaos began. Dupleix and Bussy tried to turn the situation to the profit of the French Company at Arkat and Haiderabad and failed (1748-61). Clive at Murshidabad and Patna succeeded (1757-65). Siraj-ud-doula was deposed. Mir Jaffar was placed on the *masnad*,¹ but soon discovered that he could neither control his foreign allies, nor satisfy their greed, nor maintain himself without their support. All North India went in daily dread of Ahmad Shah Abdali's movements. Shahzada Ali Gauhar, moreover, appeared with an army on the borders of Bihar, appointed Subahdar of Bengal, Bihar and Orissa by his father the Emperor. Mill is of opinion that the English might now have transferred their support from Mir Jaffar to him. "On what side justice lay," he remarks, "is

1 "The revolution of 1756-7 was... the overthrow of a Muhammadan Government by the trading and financial classes, Hindu and British; both the latter gained commercially, though the British took the predominant part in the actual events, and alone succeeded to the political sovereignty"—Roberts, p. 130. The parties to the conspiracy against Siraj-ud-doula were three: Mir Jaffar or rather, I should say, Miran and the Muhammadan leaders in the army, the sheths, and the English. The statement that the Hindu trading and financial classes also gained by the revolution requires proof.



evident enough. On what side policy, is a more subtle inquiry." ² The people concerned, however, from Shuja-ud-doula of Oudh and Ramnarayan of Bihar downwards, ³ no longer considered it obligatory to pay any respect whatever to the rights and firmans of the Emperor—who was a mere tool in the hands of Vazir Gazi-ud-din, or to the claims of a Prince, who had constantly plotting against him that unscrupulous Vazir as his mortal enemy. In the course of his second invasion, however, he had himself, on his father's death in November 1759, become Emperor as Shah Alum, and after the decisive battle of Panipat (1761), Ahmad Shah Abdalli had acknowledged his title and recommended his restoration to Dehli to Shuja-ud-doula, Najib-ud-doula and the other Muhammadan princes of Hindustan. The East India Company therefore thought it prudent to regularise the position in the lower provinces. Although they had defeated him in battle, they invited him over to Patna, where Mir Kasim (who had replaced Mir Jaffar) rendered him homage, and it was agreed that an annual tribute of Rs. twentyfour lacs was to be paid to him. The Emperor at the same time offered the *diwani* of the provinces to the Company and requested their aid for his advance upon Dehli. But the general instructions of the Court of Directors were "to act with the almost caution" and both the adventure and the offer were declined. ⁴

This offer of the Diwani had indeed come as early as 1758. The Dehli treasury had been receiving from the lower provinces an annual revenue of Rs. fifty lacs before the breakdown of the Mogul administration, and it was

2 Also—"To oppose him was undisguised rebellion." Bk. IV ch. 6.

3 *Seir*, Section IX. The author also notes the reluctance of the English, at first, to appear in arms against the Shahzada; and observes that it was because they were "uninformed of the real state of affairs in Hindustan"—Vol. II, p. 326. Roberts' views of this raid of Ali Gauhar's (*India*, p. 146), as well as of his next (p. 158), are quite different.

4 *Seir*, Section X (II 404-409); *Auber*, I 79-84.



only natural that the Emperor and his ministers should still cast longing eyes at such an income, and be always ready to pass the deeds in favour of any one at all likely not only to accept but also to fulfil the responsibility of a more or less regular remittance. But power has its duties no less than its spoils, and the spoils of power must sooner or later drop out of the hands that have lost the ability to discharge the duties. Clive had referred to this offer in his letter to Pitt (1759) and expressed his own view in no uncertain terms that it would be a magnificent acquisition for the Kingdom of England, whereas "so large a sovereignty may possibly be an object too extensive for a mercantile Company."⁵ Pitt however was not to be tempted, although Clive's agent told him that "if the State neglected it, the Company in process of time would secure it, that they would even find themselves under a necessity to do it for their greater quiet and safety, exclusive of gain." If Mir Jaffar had shown greater capacity, or if the Company's servants had proved less rapacious, if the Company's arms had been less irresistible, or even if Clive had not with the audacity of genius completely extinguished the political influence of the French and the Dutch in this part of India, the fulfilment of this forecast might have been delayed. As it was, Mir Jaffar was deposed, Mir Kasim was driven into a war, the first was re-installed, and on his death, not his grand-son and heir, but his second son was elevated, and it was stipulated, moreover, that all his power was to be actually exercised by a *Naib* (deputy) chosen by the Company. Thus the Nawab, whose jealousy of the Company acquiring an independent status was one reason for their hesitation in the past, sank into a mere puppet and ceased to count. On another point also the Company were now prepared by eight years of close contact and crowded experience to judge and act for themselves.

⁵ *Firminger*, pp clv-clvi.



The Emperor, the Nawab Vazir, the Rohilla and other Muhammadan chiefs, their actual power and their mutual relations, their designs and their methods, the Company were now able to estimate and utilise for their own ends, and so as to suit their own peculiar constitution. While the Indian princes with whom they had to deal were thinking only of the situation in India, the Company had to consider no less their own position in English law and polity, and England's relations with other European powers. Hence, they wanted a legalised status within the Indian political system, the status not of a sovereign but of a subordinate under the *chhatra* (umbrella) of the Emperor and the Nawab, and yet they also wanted an absolutely free hand within the territory they occupied, and, lastly, a land frontier or barrier not imposing upon them too great a strain to defend. After the decisive battle of Baksar, and especially after the skirmish near Kora (May 1765), when Shuja-ud-doula's last ally, Mulharji Holkar, "galloped up and down like one desirous to do something, but confounded and appalled by the English fire, put spurs to his horse and galloped away altogether,"⁶ the Company could have seized the whole of their enemy's territories; or they could have accepted the Emperor's proposal to take Gazipur and Benares for themselves, and let him have the rest. There must have been other proposals also from Balwantsing of Benares, Sitab Rai, and other friends and counsellors. But the Company were bent upon securing—not as large a territory as they could seize, nor the position of a sovereign—but something far more modest and serviceable: reliable friends, a stable frontier, an unimpeachable title, and, behind these, years of peaceful and profitable trade. This is the meaning of the Diwani treaties between the Company, the Emperor, the Nawab Vazir, and the Raja of Benares, though the whole proceedings had to outward appearance an unreality, which historians, from the author of the *Seir*



Mutakherin downwards, have not scrupled to ridicule. If a definite time point be desired from which to date the beginning of the British power in India, it is far more accurate to fix it at the 16th January 1761, when Pondicheri changed hands, or at the 10th February 1763, when the Treaty of Paris was signed, or at the 23rd October 1764, the date of the decisive battle of Baksar, or finally at the 12th August 1765, the date of the diwani firman, rather than at the third battle of Panipat with which the English had nothing to do, or at the flight of Siraj-ud-daula from Plassey, which even military enthusiasts cannot magnify into a battle.

Alchison, I 227 gives the text.

Roberts, chs. 13 and 14.

Mill, IV chs. 3, 5 and 7.

Firminger, ch. 8.

§ 9. *The Regulating Act* :—We have seen how Farrukh-siyar's firman was interpreted and how immensely the East India Company prospered under the concessions granted in the lower provinces. These arrangements, however, had left the internal trade and all the land trade in the hands of the inhabitants and subject to such duties and regulations as the Nawab might impose. And disputes and differences between the Company or its servants on the one hand and his subjects on the other, went to the Nawab and his courts for settlement. But as soon as the revolution of 1757 was accomplished and Mir Jaffar became Nawab, the logic of events placed the East India Company and their servants and agents, English and Indian, above the government of the country. "Neither the Nawab nor his officers dared to exert any authority against the English, of whatever injustice and oppression they might be guilty. The *gumastas* or Indian agents employed by the Company's servants not only practised unbounded tyranny, but overawing the Nawab and his highest officers, converted the tribunals of justice themselves into instru-



ments of cruelty, making them inflict punishment upon the very wretches whom they oppressed and whose only crime was their not submitting with sufficient willingness to the insolent rapacity of these subordinate tyrants...The crimes of the English and their agents" went unpunished, "and the unhappy natives lay prostrate at their feet."¹ Did not the Company's trade prosper all the more? It is quite impossible for trade to prosper, if industry and labour of all kinds languish, as these must, where there is no justice to be had, and where there is no security that the worker will himself reap the legitimate fruits of his own industry and skill. Besides, the Company's servants of every grade were only too eager to imitate the unworthy example set by Clive and his associates, and all and each plunged into the tempting task of accumulating princely fortunes as rapidly as possible. And these India-returned 'Nabobs' bought country seats and rotten boroughs, speculated in the Company's shares and on the Exchange, and thrust themselves into society and parliament. The evil was of a cumulative nature, the entire tone of life, public, social and private, was threatened, and no defence or remedy was possible unless the rank growth could be cut at its economic roots, and the roots themselves dug up and destroyed. Some of the most clear-sighted men in Parliament applied themselves resolutely to the task. "If sovereignty and law," said Colonel Burgoyne, "are not separated from trade, India and Great Britain will be sunk and overwhelmed, never to rise again."² And they honestly believed it to be an essential part of their patriotic task to

1 *Mill* IV ch. 7. Compare *Lecky* ch. 12:—"Never before had the natives experienced a tyranny which was at once so skilful, so searching and so strong. Every Sepoy in the service of the Co. felt himself invested with the power of his masters. Whole districts which had once been populous and flourishing were at last utterly depopulated, and it was noticed that on the appearance of a party of English merchants the villages were at once deserted, and the shops shut, and the roads thronged with panic-stricken fugitives." And *Adam Smith* IV ch. 7.

2 *Roberts*, p. 163.



make an example of Clive himself, the most eminent of the 'Nabobs.' The Court of Directors, too, tried every means in their power to forbid, to penalise and to end finally and for ever all private trade by their servants. But the only instruments through whom they could work were their own servants in India, and the magnitude of the temptations and opportunities which these had so suddenly thrust before them, tainted the whole class. It is sometimes said that the Company were not liberal enough to raise their salaries to a pitch demanded by the altered circumstances. But the change brought about had been so sudden and revolutionary in character, that it was not easy to readjust salaries all at once. Nor would a mere increase in the salaries, however great, have answered the purpose; what was really wanted was a new class of servants, drawn from a higher stratum of society and with a higher outlook and sense of duty; and this it was not in the power of a body of traders to supply. And besides, for one and the same corporation to be both a trading body and a ruling power responsible for the welfare of millions of subjects, was in itself a combination of a vicious character, radically unsound, and certain to give rise to incurable anomalies and iniquities. Such were the deeper ideas and motives seeking to guide the action of Parliament—and of the British ministry—on Indian questions, from the moment that the Company ceased to be mere traders; ideas and motives which continue to gather force until they achieve their triumphs in the great Charter Acts of the next century.

In the beginning, however, it is not at all surprising that even the best advocates of these ideas did not see very clearly all that was implied, or how to apply their own notions of what was ultimately right and proper to the complex concrete and urgent problems presented by the Company. As the value of their stock rose in the market the proprietors had insisted upon better dividends.³

³ 1755 to 1766-6 %; 1767 to 69-10 %; 1770-11 %; 1771-12 %; 1772 and first half of 1773—12½ %.



The Government, too, had as a temporary measure imposed upon the Company an annual tribute of £ 400,000, in return for a permission to keep the territorial revenues to themselves.⁴ Lastly, 1769-70 was in the lower provinces a year of famine so severe that the starvation and the pestilence which followed carried off over a crore of people, at least a third of the usual area ceased to be cultivated, and the after effects continued for over twenty years, until at last the country made a fresh start from the date of the permanent settlement of Lord Cornwallis. The Presidency of Madras had also got into a tangle of grave embarrassments,⁵ and the Company's finances in England could no longer stand the strain. Their credit was exhausted, their tribute for 1772 could not be paid in full, and, at the end of their resources, they were forced to petition the ministry for a loan of one million pounds (August 1772). The Parliament and the general public had been taking increased interest in the affairs of the Company since 1757, and the many personal enemies Lord Clive had made wanted to punish and dishonour him. The Parliament had already appointed a Select Committee for a thorough investigation into the affairs of the Company, and now appointed a Secret Committee. The evils revealed by the reports of these Committees were—(1) vast sums had been obtained by the Company from the native powers as compensation for losses and military operations, (2) and by the Company's servants as presents,⁶ (3) revolutions and wars had been

4 By an Act of 1767 followed up by another, April 1769, which prohibited any higher increase of dividends than at one *per cent. per annum*, or any increase beyond 12½ %. The E. I. Co. had also been paying customs duties upon their exports and imports annually amounting to not less than 1½ millions.

5 Neither was Bombay better off; in 1773-4, e. g., its expenditure was £ 347000 as against a revenue of £ 109000, although it had an army of only 6400 men as against Madras—20,000, and Bengal 27000 (Burgess).

6 "A great part of these gifts, going to minor servants for procuring minor promotions, have never been traced."—Lecky, ch. 12.



frequent with the result that the country was unsettled and the military and other expenditure exceeded the revenues, (4) the plunder and oppression of the people were alarming to contemplate, (5) the servants of the Company were devoid of all sense of subordination, discipline, or public spirit, and pursued their own selfish interests and private quarrels in such a manner as often to risk the total loss of the Company's possessions in India, (6) the three Presidencies went each their own way without any unity of aim or policy or mutual co-operation, and in England itself (7) the proprietorship of the shares changed hands frequently, without any genuine sale or purchase, merely to influence the voting, and (8) the board of directors, too, were a changing miscellaneous body inherently incapable of any steady influence or continuity of policy.

As a consequence two Acts were passed. The first granted the Company a loan of £ 1,400,000 at 4%, dropped the annual tribute until this loan was repaid, restricted the Company's dividends, and obliged them to regularly submit their half-yearly accounts to the Treasury. The second is the well-known Regulating Act, which came into force in England from the 1st October 1773 and in India from the 20th October 1774, the three new councillors named in and appointed by the Act not reaching Calcutta till the preceding afternoon.⁷

The most successful of its provisions were those which related to the organisation of the Company in England. The Act raised the qualification for a vote at the meetings of proprietors or share-holders from £ 500 to £ 1000, and provided that in future each director was to hold office for four years, only six of the number retiring at the end of each year. These changes increased the authority of the Court of Directors, made them less dependent upon the proprietors, and more amenable to the

⁷ Auber, I p. 446.



influence of the Ministers. These latter were also to be furnished with copies of all important communications from India, so that they could keep continuously in touch with Indian affairs, if only they chose to do so. Thus was taken the first step, a tentative one, from which, as we shall see, the ministry advanced within a few years to direct guidance of the policy of the Company.

The three presidencies in India were independent of one another. This Act made the presidency of Bengal supreme. The other two were not to make war or peace (except in a case of absolute urgency) without the previous sanction of Bengal or of the Board of Directors in England. They were to keep Bengal (as well as the Directors in England) regularly and fully informed, and to attend to and carry out the orders from Bengal as promptly and dutifully as those from England. And Bengal was given the power to suspend in case of need the President and council of any of these presidencies.

This unification of authority in India was a great step in advance, and it did not come a moment too soon, although its full effects could only be realized as communications by land between the three presidencies came to be developed. It so happened, moreover, that the new order had to be given effect to in the midst of a war (the first Maratha War), as to which the Bombay Presidency were fully determined to listen to no opinion adverse to their own; and historians of India have, as a rule, been so taken up by the varying incidents of this war, and by the conflict of views about it between Bombay, and Hastings' councillors, and Hastings, and the Directors in England, that they have failed to appreciate the fundamental importance and soundness of these common-sense provisions.

The three presidencies in India had hitherto been ruled by a Governor or President, assisted by a Council (of all the senior servants of the Company) who rarely numbered less than twelve or more than sixteen. But



Most of these were often absent from the capital, being also chiefs of the principal factories in the various cities of the province. All questions were decided by the president and council jointly, and by a majority of the votes of those present. As the affairs of the Company in each presidency increased in importance and complexity this system appeared more and more defective and unsatisfactory.

For Bengal the Regulating Act substituted for it a Governor General and four Councillors, armed with supreme authority in India, to decide all affairs by a majority. The Governor General was only given one vote out of five, and a casting vote only in case of a tie, but this could not occur unless one of the four councillors was absent or there was a vacancy in the council. All five were to hold office for five years, and none of them could be removed in the meanwhile, except by the King on a representation from the Court of Directors. The Act appointed the first Governor General and Councillors by name: two of these, Hastings, appointed the Governor General, and Barwell, appointed Councillor, were then in India, and had risen to the highest posts in the Company's service from the bottom, but the other three had no Indian experience whatever.

These three, however, came to India full of prejudices against the Company and its servants, and resolved to act together and to concentrate the whole power of the Company in India into their own hands. They also conducted themselves in a reckless and unscrupulous manner in order to achieve this object. Thus until one of them, Clavering, died, in November 1776, they created a lot of muddle and mischief, which Hastings and Barwell were impotent to check or remedy.

The salary of the Governor General was to be 25,000 £, and that of a member of his council 10,000 £ a year.⁸ No servant of the King or of the Company was to receive any

⁸ Clavering received another 6000 £. as Commander in Chief. The Chief Justice was to receive 8000 £. and each of the other judges, 6000 £.



presents, and all private trade was forbidden to the Governor General, the members of his Council, and the judges of the supreme Court to be presently mentioned.

Far more radical than any of the above changes, was the power which the Act conferred upon the Crown to charter a Supreme Court of Judicature at Calcutta, consisting of a Chief Justice and three other Judges to be appointed by the Crown, and with full power to exercise all civil, criminal, admiralty, and ecclesiastical jurisdiction. This court was given jurisdiction over all British subjects and all servants whether of the Company or of British subjects, in the Company's territories. The Governor General and the Councillors were also subjected to the jurisdiction of this Court for treason or for felony but for these offences only. And the Court was also given jurisdiction in cases arising out of contracts between British subjects and natives of India, if the latter had agreed in the contract to accept such jurisdiction.

Now, since 1726, Mayor's Courts had existed at the presidency towns, and the president in council had entertained appeals from these and had also exercised criminal jurisdiction⁹. Final appeals went up from both to the Privy Council in England. In Bengal, moreover, *diwani* (civil) and *faujdari* (criminal) courts had been established in each district and the superior Sadr Diwani Adalat and

9. The president and five of the senior members of council, as justices of peace were empowered to hold petty and quarter sessions for the trial of criminal offences. The Company had also established *zamindari* courts wherever they had acquired *zamindari* rights. And when they decided to "stand forth as *diwan*" and deprived the Nawab and his Naib of their *nizamat* jurisdiction also, Hastings established the *adalats*. See next footnote.



Sadr Nizam-at-Adalat at the capital.¹⁰ What was to be the relation of these courts and their jurisdiction to this new creation?

Lastly, the Governor General in Council was empowered to make rules, ordinances and regulations for the better government of the Company's territories, which were to be registered and approved by the Supreme Court; and if so approved, they were to go into effect at once. But power was reserved to the King in Council, who, on appeal, could disapprove any of them within two years.

These parts of the Regulating Act have been justly censured for their vagueness. What law was the Supreme Court to administer? As between the Governor General in Council and the Supreme Court what were the limits of the powers and jurisdiction of each? And what about the civil and criminal courts mentioned above? The Regulating Act was silent on these and similar matters of grave importance. And Hastings and the first Chief Justice Sir Elijah Impey had to evolve such practical compromises as were possible, until decisions of the Privy Council and further

¹⁰ These District and *Sadr* courts were the creation of Hastings. In the civil district courts the Collector presided and was assisted by the *diwan* or native revenue officer for the district. In the criminal district courts the collector was assisted by the *kazi* and *mufti* of the district; two *moulavies* also attended. The appellate court for civil cases at the capital was presided over by the President himself; and he was helped by two of the members of council, the *diwan* of the *khalasa* lands, the head *kanungoes*, and other *kacheri* officers. The appellate court for criminal cases at the capital was presided over by the Daroga Adalat (the deputy of the Nazim) and he was helped by the chief *kazi*, the chief *mufti*, and three *moulavies*. Hastings had thus continued "with scrupulous exactness the constitutional forms of judicature" to which the people had been accustomed. The *mufti* was the expounder of the law; but the *kazi* and the *moulavies* were also learned in the law, and if they disagreed with the *mufti's fatwa*, the matter went to the court of appeal, and if necessary, even the whole body of the learned in the law might be consulted.—Auber I pp. 425-8.



legislation¹¹ by parliament gradually created a more satisfactory system.

Mukarji I pp 20-28, the text.

Ilbert pp 38-44.

Roberts ch. 16.

Lecky in ch. 12 the *Affairs of the E. I. Co.*—shows that although the Regulating Act passed by large majorities, there were important sections of opinion which viewed even such a 'half-measure', and indeed the entire proceedings of the Ministry with reference to the Company from 1766, as a high-handed invasion of its rights and property as a Chartered Company.

Firminger ch 13, a learned and discriminating defence of the Act.

§ 10 *Pitt's India Act.* The elder Pitt had rejected Clive's suggestion that the lower Provinces be annexed to England, mainly because he thought that such a step must increase enormously the influence of the Crown in the English constitution, and this influence the Whigs of the day held even apart from any increase to be so large as to be a danger to the liberties of the country. But this influence had been considerably reduced by the course of events which ended in the failure of England in the war against the revolted colonies and in the resignation of Lord North; and the second Rockingham Ministry, which came into power in spite of the King, reduced it still further by several great measures securing the purity of elections and the independence of parliament. Then followed the Coalition, in spite of the greatest possible efforts on the part of the King to entrust the helm to some other combination of parliamentarians. The Company's affairs, meanwhile, had shown no improvement. Madras and Bombay had been on the brink of destruction and had been reduced to a pitiful condition by wars which it was difficult to believe were either unavoidable or properly conducted; and in Bengal the Regulating Act itself had

11. The Amending Act of 1781 removed a few of the most glaring of these defects and difficulties but a really satisfactory system was not established till after 1833.



created grave problems and difficulties. After the peace of Paris was signed and a strong administration came into office, the subject of a better regulation of the affairs of the Company could no longer be postponed. Fox's bill, however, had the unpardonable defect of going too far. It proposed to set aside the Company, its directors and its proprietors altogether, and hand over all their powers for four years to two new bodies, one of seven men and the other of nine, named in the Act, none of the first removable except by the Crown on an address from either house of parliament, none of the second removable except in the same way or by the concurrence of five out of the first body. Such a measure naturally excited intense opposition. It was iniquitous both as a wholesale confiscation of the Company's chartered rights, and as a shameless manoeuvre on the part of the ministry to prolong their own lease of power by grasping and controlling for their own ends in that lax and corrupt age, the entire wealth and influence of the Company. Both the objections were doubtless considerably exaggerated in the heated debates which followed, but they were sound in the main, and it was the second that appealed particularly to people at large. If corrupt influence wielded by the Crown for defending and strengthening its prerogatives was a danger to be guarded against and attacked by all constitutional means, how much more dangerous and how utterly indefensible would be an influence, far greater than George III ever had, in the hands of a knot of politicians, whose past record was there to show how corrupt and unscrupulous they themselves were! But public opinion in those days was slow to move, and parliament, too, did not respond to it easily. The Commons passed the measure by majorities of two to one. In the Lords, however, the King used his personal influence for all it was worth, and obtained 95 votes against 76 to put an end both to the bill, which he so feared, and to its authors, the Coalition Ministry, whom he so hated. After months of stormy debates, memorable chiefly for the mistakes of



of conceited veterans on the one hand and the consummate skill of young Pitt on the other to profit by them to the full, parliament was dissolved, and at the new elections the country gave him an overwhelming majority.

This episode is of more than historical interest. It illustrates for all time, and in a dramatic fashion, how fundamentally the logic of what may be called practical politics differs from the abstract logic of the Schools. The scholar in his library might not have thought much of the objections urged against Fox's Bill. The question is further complicated by the fact that no measure of this magnitude can spring from only one set of motives as its sole inspiration.¹ But it encountered passionate opposition from several quarters. The East India Company and the other chartered companies cried out that their sacred property rights were being assailed. The King and the Tories denounced it as a characteristically Whig fraud to claim the highest patriotism and philanthropy as if these noble virtues were their exclusive property, and to help themselves the while to money, patronage and power to the exclusion of the other rightful partners under the constitution. And both Fox and North had created many personal enemies² by their careers, while their unexpected and

1. Fox wrote,—“ If I had considered nothing but keeping my power, it was the safest way to leave things as they were, or to propose some trifling alteration, and I am not at all ignorant of the political danger which I run by this bold measure; but whether I succeed or no, I shall always be glad that I attempted, because I know I have done no more than I was bound to do, in risking my power and that of my friends when the happiness of so many millions”— i. e. Indians—“is at stake.” Quoted in Lecky, ch. 15. See also for the whole episode *Hunt* pp 244-254.

2. English politics in the Georgian age was still to a very great extent a matter of personal ties. Personal loyalty was the one univarsally and instinctively recognised bond of political co-operation; disloyalty, infidelity, ingratitude, the grossest of political sins. That Fox and North should join together to seize power was an offence that stank in the nostrils of their contemporaries. This worst and most infamous ‘deal’ in an age of deals proved the last, just because it so shocked the conscience of the time. Young Pitt in routing this old gang also annexed to himself the entire credit of being the creator of a purer type of politician, the generator of a higher level of public duty. And this is how contemporary political reputations are made or are blasted, more or less in every age and clime:—a lesson, this too, which the young student ambitious to cultivate independence of judgment ought to learn from such classical examples at a pretty early stage in the course of his own career



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unscrupulous coalition only added to their numbers and their virulence. The Bill failed not because of its inherent merits or defects, nor because the motives of its authors were altogether base, but because of a combination of all these hostile elements. And its failure entailed a further consequence, no less inevitable. In practical politics urgent matters cannot wait until a solution perfect from every point of view and universally acceptable is ripened. The East India Company were saved from Fox's bill, but only to find that they had to proclaim their willing acceptance³ of whatever regulations the enemy of their enemy chose to impose upon them. Thus the question how far the State was justified in interfering with the Company in the exercise of their power over territories they had won, was decided not by logic, or the philosophy of jurisprudence, or by the forced interpretation of vague, hoary and inapplicable texts, customs or precedents,—but by the Company themselves surrendering at discretion. The State, on the other hand, willingly waived for the moment all interference in their trade or in the appointment of their servants, and showed a truer appreciation of their financial position than hitherto by dropping all reference to a tribute. This is the more remarkable as the claim of England to the Company's territories is now for the first time unequivocally asserted. They are called "the British possessions in India" in the title of the Act, and "the territorial possessions of this Kingdom in the East Indies" in the preamble, and the same style is adhered to throughout. On account of the acute and prolonged differences between Hastings and his Council the number

3. "And though on a former occasion he had been derided, when he comforted himself with the idea that in every departure he should propose from the charter, he should have the consent and concurrence of the Company, he still continued to find great consolation in the reflection that he did no violence to the Company; for no violence could be said to be done by regulations, to every one of which the Company most cheerfully consented."—Pitt's speech. See Auber II pp 1-9 for an interesting summary of the first draft of his Bill, with the remarks of the Directors upon it.



of the Governor General's council is reduced by one. Madras and Bombay are also given the same form of Government by a Governor and Council. The attempt to appoint councillors direct from England is given up. All appointments except those of Governors-General, Governors and Commanders-in-Chief are to be made from the Company's servants, and all, including these highest also, are to be made by the Company. The King only reserves under the Act, a concurrent power of recalling or removing any servant of the Company or of declaring any appointment void or any office or place vacant. The demanding or receiving by a servant of the Company (or by a servant of the King in India) of any gift or present, whether for his own use or for the use of the Company or of any other person,⁴ is declared to be extortion and is to be proceeded against and punished as such. The power of the Governor General and Council to "superintend, control and direct" the other presidencies, and the duty of the other presidencies to obey the orders from Fort William are defined more clearly. In particular, no Governor is to make war or peace or negotiate any treaty without express orders from England or from Calcutta—except in cases of sudden emergency or imminent danger, when it would imperil safety to postpone action; and every treaty entered into by him is "to contain a clause for subjecting the same to the ratification or rejection of the Governor General and Council." And this supreme organ of government in India is also to exercise similar self-control; in these matters of high policy, unless forced to act on his own responsibility by sudden emergency or imminent danger, he is to do nothing without express orders from England; for, says the Act, "to pursue schemes of conquest and extension of dominion in India, are measures repugnant to the wish, the honour and policy of the nation."

4. Hastings received presents "for the use of the Company," Clive in his second administration, "for the use of other persons."



All these changes are well-judged improvements in details. Pitt's cardinal innovation is a revolution in the character and constitution of the supreme authority in England. He kept unaltered with scrupulous care the outward form and appearance of this authority. All orders and despatches issued as before from and in the name of the Directors. But in matters relating to the revenues, the civil and military administration, and the foreign and diplomatic relations of the Company with Indian States, Pitt's Act handed over the supreme authority to a new body which came to be known as the Board of Control. It was an annexe of the Ministry, changing in personnel as the ministry changed, and was to consist of the Chancellor of the Exchequer, a Secretary of State and four privy councillors. The Secretary of State, or the Chancellor of the Exchequer, or the senior of the other 'Commissioners for the affairs of India,' with two of the others were to exercise the entire powers of the Board. By earlier enactments the Directors had already to communicate to the ministers both all the correspondence and proceedings bearing on the above topics which they received from India, and the orders, instructions and despatches which they themselves sent out to India⁶. These were now to be communicated to this new Board. And if the Board wanted alterations made in the orders or communications to India, which the Court did not approve of, they were to take the grounds of objection into consideration, but finally the decision of the Board was to prevail. The Board could also of their

5. Subsequently modified to any two of the principal Secretaries of State, the Chancellor of the Exchequer and two Privy Councillors. The 'Commissioner named first in the letters patent' was the senior 'Commissioner' and he as president practically wielded the whole power of the Board. And by the Charter Act of 1793 instead of two privy councillors, any two persons could be appointed upon the Board. Salaries were also granted: to the three Commissioners 5000 l. a year to their office establishment, 11000 l.

6. This latter obligation was imposed upon the Directors by the Charter Act of 1781.

own initiative frame any communications which the Directors were to forward as their own. And finally there was to be a secret committee of three Directors, and all matters of high policy, such as war and peace and the relations with Indian States, were to be similarly dealt with by the Board and this secret committee only; all secret communications from India were to go before these only, and the other Directors were not even to know anything about it.

The Board of Control was very lucky in the moment of its inauguration. If weak ministries with a short lease of power had continued in England at this juncture, the policy of the Board would also have shown weakness and vacillation. It so happened, however, that Pitt turned out to be one of the strongest prime ministers known to English history, remaining in power for an unusually long period. The Board of Control had thus every thing in its favour and began to exercise its full powers from the first. Chesney's view, therefore, does not appear to be sound that the Act made only a "nominal" change, and that "the amount of power which the Court of Directors continued to exercise was sufficient to justify in great measure the popular opinion, which always continued to identify them with the Home Government of India."⁷ Mill's view is clearly the more correct, that of "bodies, when one has the right of unlimited command, and the other is constrained to unlimited obedience, the latter has no power whatsoever, but just as much, or as little, as the former is pleased to allow."⁸ Moreover, it was no part of the business of the Board to interfere in the details of the administration, and it was an essential element in Pitt's scheme that the position and prestige of the Court of Directors should continue just the same as before to all outward appearance.

7. *Indian Polity*, pp. 42-3.

8. Book V. ch. 9



One word more. The rapid extension of the Company's territories in India after 1784, and the ease with which it sprang into the position of the paramount power, were no doubt due to some extent to the personal character of governors-general like Wellesley⁹, and to the subordinates whom such governors-general trained up in their own ideas and left behind. And the chaotic condition of India after the downfall of the Mogul Empire is without doubt the principal explanation of all that subsequently happened. Still, in so far as suitable political machinery for direction and control has influence over the course of events, Pitt deserves no little credit for evolving the Board of Control out of the seed originally planted by the Regulating Act. The rhetorical descriptions of Macaulay and other historians asking us to observe with wonder the extraordinary spectacle of a merely trading company winning an empire more extensive than any known to history and with such marvellous speed, do not take sufficient account of the secrecy, the unity and the efficiency of this small central supreme body that Pitt created for the guidance and control of the East India Company,

Mukharji I pp 28-58, the text, and extracts from Pitt's speech at the first reading.

Ilbert pp. 59-66.

Lecky in ch 15 *Coalition Ministry*.

§ 11 *To the end of the Century*. For a real improvement in the Company's administration of India, statesmen and soldiers and a better qualified class of public servants drawn from a higher social stratum and animated by higher aims were at least as essential as improvements in

9. Wellesley, too, would have been stopped and recalled some where in the middle of his career if he had been in fact, as in outward form, merely a servant of the Directors. But the Court was not sure that the Board would permit his recall, and it was the support of the latter, which maintained him against the growing opposition of the Court.



the constitutional and administrative machinery. English public men who had been looking more or less closely into the matter in connection with parliamentary debates and select and secret committees recognised this need also, and England soon began to send out some of her best sons to India in various capacities. Thus began a long roll of worthy empire builders, administrators, missionaries, scholars, lawyers, educationalists, industrialists, engineers and medical men, who in various positions and separated from one another in far distant stations, willingly devoted themselves to years of patient toil and high endeavour in our tropical country, and to whom we owe not a little of the astonishing transformation that has been brought about in the short space of less than a hundred and fifty years in this vast and ancient land of deep-seated wounds difficult to probe, and elemental agonies hard to heal. One of the first of this new type to be chosen for England's civilising mission in India was Lord Cornwallis. It was Henry Dundas who remarked in naming him to parliament "as the fittest person in the world for the Government of India:—‘ Here there was no broken fortune to be mended ! Here was no avarice to be gratified ! Here was no beggarly mushroom kindred to be provided for ! No crew of hungry followers gaping to be gorged ! ’" This was in 1783. Three years later the offer was actually made and Cornwallis asked for power to act on his judgment even though the whole of his Council were of a different opinion.² And this discretionary power was conceded to him for special cases by an amending Act. This autocratic power was afterwards given to all Governors-General and Governors by the Charter Act of

1. *Mill*. V ch. 9.

2. In a Council of 4, one of them the Governor General having also the casting vote, with one Councillor supporting him the Governor General with his two votes has a majority of votes on his side. Thus the need for the exceptional power mentioned above arises only when all three Councillors differ from him.

1793 and limited by that enactment in two ways: it was available only for such exceptional "cases of high importance as essentially affected the public interest and welfare," and under it the head of the Presidency could only take such action as was within the legal powers of his Government.

The last Charter Act (1781) had extended the term of the Company's privileges to three years' notice after March 1, 1791. As these privileges really meant nothing more after Pitt's Act than the Company's trade monopoly, there was little opposition to the Charter Act of 1793 mentioned above, which continued them for another term of twenty years. The constitutional administrative and financial provisions of the Act merely consolidated the existing law and practice with a few minor alterations such as the one specified above. Finally, an Act of 1797 reduced from three to two the number of puisne judges of the Supreme Court at Calcutta.

Mukharji. I pp 58-78, the text of the Charter Act of 1793.

CHAPTER III

THE EAST INDIA COMPANY TO THE TRANSFER TO THE CROWN.

§ 12 *The Charter Act of 1813.* The first thorough investigation by the legislature into the position and affairs of the East India Company appears to have been the one held under the Commonwealth Government. The inquiries preceding the Act of Union, the Regulating Act and Fox's Bill have also been mentioned. These took the form of select and secret committees of parliament which published voluminous reports full of carefully tested and valuable information. The impeachment of Hastings—10th



May 1787 to 23 rd April 1795—added to this pile.¹ Wellesley's extensive conquests won by armies operating simultaneously in several theatres of war raised the Company at one bound into the lofty position of the paramount power in India, but at the same time accumulated a debt almost too heavy to bear, and the Company had again to approach parliament for relief. A committee was thereupon appointed which again made a searching investigation into the Company's affairs, laboured at its task for five years, and submitted several reports. As the end of the term for which the last Charter had been granted approached, parliament also received many petitions from the merchants and manufacturers of a number of towns and ports praying for the abolition of the Company's monopoly of trade. On the one hand, the growing manufactures of England were in need of new markets. On the other hand, Napoleon's Berlin decrees closing European ports to English trade and shipping, compelled these powerful interests to seek other outlets, and India and the East Indies were a field, which—now that the sea-routes were rendered perfectly safe by the recent capture of the Cape of Good Hope, Macao and Goa, the Isles of France and Bourbon, Java and the Spice Islands,—the monopoly of the East India Company alone prevented them from turning to their own profit; a field, too, which the general ignorance of the time enabled them to paint in the brightest hues of hope, as certain to yield untold wealth the moment it was thrown open to their enterprise.² The doctrine of free trade, as

1. But this addition included, as was natural under the circumstances, "an immense quantity of rubbish and trash" (Thurlow, quoted in *Rulers of India: Hastings*, p. 209).

2. For instance, take this passage from the petition of Sheffield, abridged. "If the trade to the East Indies were thrown open, such new and abundant markets would be discovered and established as would enable them to defy every effort to injure them by that sworn enemy to prosperity and the peace of Europe, the present unprincipled ruler of France. If the trade of this United Kingdom were permitted to flow unimpeded over those extensive, luxuriant and opulent regions to the wealthy, enterprising, honourable, and indefatigable British merchant no obstacle would prove insurmountable, no prejudice invincible, no difficulty disheartening; wants, where he found them, he would supply; where they did not exist he would create them, by affording the means of gratification.—*Thornton*, IV 216.



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presented by Adam Smith, was growing in popularity, and these petitioners as well as an increasing number in both houses of Parliament assailed the Company's privileges as injurious to the country and indefensible in principle if not altogether unnatural. In the course of the debate one of the leaders of the opposition did not fail to expose the hollowness of this plea.

"Their general principle was (he said) that England was to force all her manufactures upon Indian and not to take a single Indian manufacture in return. It was true, they would allow cotton to be brought; but they having found out that they could weave by means of machinery cheaper than the people of India, they would say, 'Leave off weaving; supply us with the raw material, and we will weave for you.' And these merchants and manufacturers called themselves the friends of India! If they professed themselves as enemies instead, what more could they do than advise the destruction of all Indian manufactures?"

But the ministers had a large majority and they were, quite willing to take the popular line in this matter, only providing such precautionary safeguards as the evidence of their experienced administrators, a number of whom were examined, showed to be indispensable. Lastly, men like Wilberforce in the House of Commons seriously and conscientiously thought that they would be guilty of a neglect of duty, unless they made an attempt to bring the benefits of education, civilisation and Christianity within the reach of the Indian population, whom they sincerely pitied as savages given over to dark heathen rites and practices. These various influences were reflected in the famous thirteen resolutions which Parliament adopted preliminary to legislation; and the principles so laid down were embodied in the Charter Act of 1813.

3. *Thornton*, IV 241-2. Again in 1833 Sir Charles Forbes said in Parliament:—"As to trade with India, that was to be increased only by that House, Let ministers begin by reducing the duties upon the commodities of India. A small duty was imposed upon English manufactures; and a heavy one upon Indian commodities. Was that reciprocity? Was that free trade? *Id.* V 253.



The necessary relief to the Company's finances was provided by arrangements for a reduction of the debt, and by restraints in respect of dividends, salaries and pensions as also of the number of His Majesty's regiments to be employed in India.

The Company had tried to show that the expenses of administration were greater than their revenues, and that their only source of profit was the trade monopoly. Their accounts, however, were so confused that it was impossible to discover from them what profits were made, except from the trade in tea and the trade with China. And, moreover, these two elements in the Company's monopoly were discovered to stand on an exceptional footing altogether. Tea had become a necessary of life in Great Britain, the duties upon it yielded to the State a regular annual income of four millions sterling, and it was not at all desirable to attempt changes in the standing regulations about the trade of such an article, when England was straining every nerve in her desperate struggle against a mighty foe. The China trade, again, was still in such a condition that it could only be carried on profitably under a system of monopoly. China hated foreigners, allowed only a certain number of her subjects incorporated into a single body called the Hong to trade with them, and that too only at a single port, Canton. Besides as if not satisfied with these restrictions, the Chinese Government often placed an embargo for indefinite periods upon all shipments whatever. It required all the experience, tact and influence of the Company's factory at Canton to keep the trade open.⁴ Free trade in these two matters was thus out of the question, and this Charter continued the Company's monopoly to that extent, but to that extent only. The trade with India was thrown open, but as it was strongly urged even about this that grave dangers and difficulties might result if Englishmen were

4. Wilson.



allowed to flock to India and visit any part altogether unrestrained, it was provided that Englishmen wishing to avail themselves of this freedom were to obtain a license from the Company.⁵

Pitt's Act had reserved to the Crown the power of recalling any servant of the Company. This was first exercised when Lord Grenville's ministry recalled Sir George Barlow in 1806. And it has been stated above that amongst the leaders in parliament and in the country there was a section who seriously held that over and above amendments in the constitution of the Company, it was no less vital to go on improving the entire class of servants in every grade who were sent out to India in increasing numbers as required by their annexations and the growth of their administrative system. In the course of the debate on the resolutions Lord Grenville, for instance, urged that all the civil and military appointments under the Company should be thrown open to competition, so that men educated in the public schools, sons of deceased officers, and other candidates from similar classes of society could be selected by merit.⁶ Earlier still, Wellesley had attempted to introduce a similar improvement but in quite a different way, by starting a College at Calcutta where the young men sent out by the Directors could improve their education and acquire a proper training before being appointed to any responsible post. His scheme was too ambitious,⁷ but it led eventually to small and practical institutions or other arrangements at Calcutta, Madras, and Bombay to enable young civil servants entering upon their careers to acquire a knowledge of oriental languages. And in England the Haileybury College was started in 1805 and the Addiscombe Military Seminary in 1809. The

5. During the next eighteen years no more than 1324 licenses were granted (*Roberts*, p. 278).

6. *Thornton*, IV 233.

7. *Owen* pp. xxxvi-xxxvii and 718-755.



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Charter Act of 1813 provided that all such institutions were to be under the Board of Control and that no one was to be appointed a writer who had not studied for four terms at the Haileybury College to the satisfaction of the College authorities⁸. And the patronage of the Directors was also curtailed at the upper end: Governors-General, Governors, and Commanders-in-Chief were to be appointed by the Court, "subject to the approbation of His Majesty, to be signified in writing under his Royal sign-manual, counter-signed by the President of the Board" of Control.

Even more serious was the departure involved in the creation of a church establishment of which the expenses were to be paid out of the Company's revenues, and in the permission granted to "persons going to and remaining in India to introduce amongst the natives useful knowledge and religious and moral improvement." This was the starting point in India of Christian missionary enterprise as licensed by the State, with its twin fruits of western education and Christian propaganda. The sections dealing with this subject emphatically affirm that the Company's policy of 'perfect freedom to the natives in the exercise of their religion be inviolably maintained.' Moreover, an annual grant of one lac of rupees was to be "applied to the revival and improvement of literature and the encouragement of the learned natives of India, and for the introduction and promotion of a knowledge of the sciences."

With these radical changes and innovations the Company was continued in the possession of its territories revenues and powers for another twenty years.

Wilson, (continuation of Mill), Bk. I ch. 8, and Appendix X which gives the 13 resolutions.

Ilbert, pp. 71-79.

8. Auber, *Analysis*, pp. 165-171.



§ 13 *The Charter Act, 1833.* Although the Act of 1793 consolidated all preceding legislation, the feeling was still there and persisted in some minds at least even upto 1813,¹ that the measures England was adopting on the subject of India were all more or less tentative and temporary experiments. By 1833, however, all such lingering doubts had completely disappeared, and the leading statesmen, Whig as well as Tory, were prepared to fashion out of the existing arrangements a suitable instrument for the Government of the people of India in their own interests. The Company were also quite willing to fall in with the ideas of Parliament in this respect, but pointed out in the defence of their property, rights and privileges that their territorial revenues had generally proved insufficient, and they had been obliged to make good the deficit out of their commercial profits, which had all been devoted, beyond a regular dividend on their capital to the general purposes of the administration.² The difficulties of the China trade, they also pointed out, continued just the same as they had been in 1813. But English public opinion in favour of free trade had grown so strong during the interval that these arguments had no effect.³ The Company's plea that the administration of India could not be carried on without a contribution from outside, either in the form of their com-

1. E. g. Lord Grenville—see summary of his speech, *Thornton*, IV 231.

2. Lord Ellenborough thought that this had amounted to as large a sum, on an average, as the sum disbursed as dividends, i. e. £ 630,000 per year for 16 years. Another estimate, that of a professional accountant, put it higher by about £ 100,000. *Thornton*, V 257, 282-5; and *Wilson* III 483.

3. Thus one consequence of the Charter Act, 1833, was:—the Company's factory at Canton was replaced by an English Superintendent, English traders sold opium in ever increasing quantities to China, the Chinese laws prohibiting the import of opium were strengthened, and there followed the Opium War, which resulted in England acquiring Hong Kong, and China being forced to throw open five ports to foreign trade.



mercial profits or in some other form, was brushed aside. A territory, so extensive and so richly endowed, it was universally felt, ought to be able, by suitable economy and management, to yield a revenue sufficient for its own needs.⁴ The Company were thus driven to limit their demands to an adequate guarantee for their own capital and interest. And this was granted. It was provided that a dividend at ten and a half *per cent.* was to be a first charge on the revenues of India, and that whenever, at some future date, it was decided to extinguish the Company as a corporate body, a sum of £ 12,000,000⁵ was to be paid to the proprietors.

From the date of the first administration of Lord Cornwallis the Company had made fair progress in the performance of their duties towards the people of India as their rulers. Mistakes had been made, there were still defects some of them grave,—the police were indescribably corrupt and oppressive, the decisions of the law courts depended mostly upon the vagaries and idiosyncracies of the individual judge,—but the country had settled down, agriculture was spreading, population was increasing, trade was reviving, beneficial public works were being undertaken, efforts were being organised for the extirpation of evils like *thaggi* (1830), and signs of a new renaissance being near at hand—signs like the Hindu College (1816) and the *Samachar Darpan* (1821) were coming to light. Lord William Bentinck's record as a Governor General from 1828 was at this juncture of incalculable benefit to the reputation of the Company. Peel remarked that "their administration redounded greatly to their honour, and contrasted favourably with that of any other colonial establishment that had ever existed."⁶ Macaulay contrasted

4. *Auber* II 684.

5. The Company's capital was £ 6 millions; but they had been paying 10½ % dividends for many years; so this rate was continued; and the price for buying the Company off was fixed in view of the high market value of the Company's stock.

6. *Thornton* V 258.



"the doubtful splendour which surrounded the memory of Hastings and of Clive, with the spotless glory of Elphinstone and Munro." He admitted that "if the question were what was the best mode of securing good government in Europe, the merest smatterer in politics would answer, representative institutions." But he reminded parliament that even an extreme advocate of that form of polity like James Mill, who was besides a thoroughly competent witness in Indian matters, "when asked before the committee whether he thought representative government practicable in India," was obliged to reply that it was "utterly out of the question." It followed that to dispossess the Company would be to leave all the powers and patronage of a despotic government over a territory more extensive than Western Europe with a population of ten crores, a standing army of two lacs and an annual revenue of £ 22,000,000, in the hands of the Board of Control or some other Board of Commissioners, who would be the creatures of the ministers of England. It was perfectly true that the ministers were responsible to parliament. But "a broken head in Cold Bath Fields produced a greater sensation among us than three pitched battles in India..... Even when my right honourable friend the President of the Board of Control gave his able and interesting explanation of the plan which he intended to propose for the government of a hundred million of human beings, the attendance was not so large as I have often seen it on a turnpike bill or a railroad bill." A check was required upon the authority of the Crown over India, and parliament "could not be that efficient check....What we wanted was a body independent of the Government, and no more than independent; not a tool of the Treasury, not a tool of the opposition. No new plan which had been proposed would give us such a body. The Company, strange as its constitution might be, was such a body. It was as a corporation neither Whig nor Tory, neither high-church nor low-church." Even when the country had passed through a period of unprecedented and stormy agitation, the Com-



pany had held on its course unruffled, acting "with a view not to English politics but to Indian politics, and preserving strict and unexpected neutrality." ⁷

The Board, the Court, and the Governor General were thus continued for a fresh term of twenty years as the supreme Government for India. The last was now to be styled the Governor General of India and he was given full power and authority to superintend direct and control the presidency Governments in all points relating to the civil and military administration. The presidencies were to transmit regularly to Calcutta copies of all their orders and proceedings and communicate timely intelligence of all transactions of any importance. Thus even as to the matters which the Governor General left to the local Governments, the latter were always to furnish him with evidence sufficient for him to judge about their conduct, and to check and correct them promptly whenever necessary. The local Governments were to continue to correspond with the Court of Directors as before, but the supreme Government was to receive copies of these letters also and to forward its own remarks upon them to the Court. Questions of peace and war were to be decided upon by the supreme Government alone; and even the diplomatic relations with the native States and the conduct of particular negotiations were to be concentrated in the hands of the Governor General as far as possible. ⁸

The relations between the Governor General and his Council were more clearly defined. The power of the Governor General to act at his discretion against the view of the majority of his Council was continued, but it was

7. *Macaulay, Misc. Writings and Speeches* (Popular Ed. 551-572).

8. This could only have been carried out fully if the Bombay, Madras and Bengal armies had all been amalgamated into one; but that reform was not thought of till long after the Mutiny; it was not practicable either until the main trunk lines of the Indian Railway System had been built.



THE CHARTER ACT OF 1833

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enacted that he was to exercise it only when he thought that the safety tranquillity or interests of the British possessions in India were essentially affected, and in every such case both the Governor General and the members of Council were directed to exchange in writing, under their respective hands, to be recorded at large on their secret consultations, the grounds and reasons of their respective opinions. The court of Directors pointed out, however, in their covering despatch that the exercise of this ultimate power was to be resorted to in extreme cases only, and as the only refuge from the possible evil of distracted counsels and infirm resolutions. For dealing with the ordinary business of the Governor General in Council the presence, besides the Governor General, of more than one member of Council was not required, and both for such ordinary business and for the legislative business to be mentioned presently, the Court were to frame rules of procedure which were to be approved by the Board of Control, and then to be laid before both houses of parliament, and such rules of procedure were to have the same force as if they had been enacted by parliament.

As the Court of Directors ceased, under the Act, to have any further commercial business to transact, the Board of Control were given full power and authority to control and direct all their acts: the entire property of the Company was also to be treated as held in trust for the Government of India. The patronage or right of appointment to various offices which under previous enactments the Court of Directors had possessed independently of the Board, was continued to them unabated, but they were, with the approval of the Board, free to delegate it to the Governments in India and through them to heads of departments, commanding officers, and similar responsible persons. Lord Cornwallis had excluded Indians from employment under the Company as far as possible, except in the meanest posts. And he had done so for two reasons. In the first place he wanted to raise the level of the



services in integrity, capacity, and sense of public duty. And in the second place he wanted the young Englishmen he appointed really to learn their work and to do it themselves; for Warren Hastings's experiment of duplicate appointments, an experienced Indian without any power along with an ignorant Englishman with all the power attached to the post, although intended to achieve the same result, had in many cases failed altogether: the indolent Englishman had remained ignorant, and the unscrupulous Indian had felt perfectly safe under his powerful protection, and had fleeced and oppressed the people all the more. Nay, there was worse than indolence to be guarded against; in spite of the covenants, and although the emoluments of the service had been considerably increased, Lord Cornwallis on reaching India must have found many of the civilians using their Indian colleagues and subordinates as "tools and ready made instruments of extortion"⁹ for the purpose of filling their own pockets. How could it be otherwise, indeed, when Clive and Hastings had themselves behaved in ways not very dissimilar, and when many prominent Directors and proprietors were themselves more or less directly interested in the gains piled up by hook or by crook by their nominees in India?

Lord Cornwallis cut the pestilential weed of a corrupt tradition and cleared the ground. Wellesley and his circle sowed the seeds of worthy aims, high ambitions and noble ideals. The parasitic filaments of jobbery extending across the seas from Leadenhall Street, Cannon Row, Windsor Castle, and Westminster shrivelled up at the source. Decades passed, decades crowded with the careers of exemplary civilians. And by 1828 a pure and high-minded civil service had become an established institution in the Government of India. It was, however, an extremely costly institution.¹⁰ And a progressive

9. *Kaye*, p. 420; see also *Roberts*, 222-227; *Cornwallis* 74-84; etc.

10. "Even after the change [Bentinck's retrenchments], the average income of a civilian ranging from member of Council to writer (the lowest grade), was still as high as £ 2000 a year. *Roberts*, p. 302.



administration necessarily means a more or less continuous increase in the number of posts. Bentinck, therefore, decided to give up Cornwallis' policy of exclusion as no longer necessary or practicable, and began to appoint qualified Indians to grades higher than had been hitherto open to them. On this departure from past practice the Charter Act set the seal of its approval by the well-known clause—

“No native of the said territories, nor any natural born 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 place, office, or employment under the Company.”

In their covering despatch the Directors lay as much stress upon the employment by the Government of “natural born subjects of His Majesty resident in” India, as upon that of Indians. The trade monopoly and the prohibition against Englishmen about going to India without a license¹¹ or about acquiring landed property being at an end, it was anticipated that they would go to India and settle there in increasing numbers, and that amongst them Government might find persons seeking Government posts who might be better qualified than the Indian candidates. Hence arose, the despatch observed, “a powerful argument for the promotion of every design tending to the improvement of the natives, whether by conferring on them the advantages of education, or by diffusing among them the treasures of science, knowledge, and moral culture.” And the despatch said, in more general terms, “that the object of this important enactment is not to ascertain qualification, but to remove disqualification. Its meaning we take to be that there shall be no governing caste in

11. For proceeding into the more recently acquired and less settled parts of British India, the foreigner still needed a license from the Government of India, but such parts were also to be thrown open from time to time.



British India. Fitness, wholly irrespective of the distinction of races, is henceforth to be the criterion of eligibility. To this altered rule it will be necessary that you should, both in your acts and your language, conform; practically, perhaps, no very marked difference of results will be occasioned."

Another step forward in the civilising mission of England in India was taken by this Act in the duty it laid upon the Governor General in Council to legislate for the purpose of ameliorating the condition of slaves and of abolishing the status of slavery throughout British India as soon as possible, but by such practical measures as offered no undue violence to the customs and sentiments of the people. The Indian Slavery Act (Act V of 1843) and later measures were the result of this injunction.

The presidency of Bengal had become too large for efficient administration from one centre. It was also obvious that the Governor General of India and his Council had to be relieved of the direct responsibility for any one presidency if they were properly to discharge their duties towards British India as a whole. The Act provided for the appointment of a Deputy Governor for Bengal and for the creation of a new presidency of Agra, under a Governor or a Governor in Council. But these provisions were not acted upon and the matter was dealt with again by subsequent legislation.

Lastly, the Board of Control and the Ministry were fully alive to the highly unsatisfactory if not chaotic condition of the law and the law-courts in the Company's territories. First, there were several distinct bodies of statute law in force. The Charter of George I had applied to British India the whole body of English statute law; all subsequent Acts of Parliament also applied in so far as expressly extended to any part of India.¹² The Governor

12. There was room for difference of opinion here, sometimes involving grave issues. For instance, was the Supreme Court justified in applying the English statute on forgery (1728) in Nandkumar's case? See *Libert* pp 32-3, and 353.



General in Council had been issuing a set of Regulations from 1793 which were applicable to Bengal, and the other Presidencies had issued similar Regulations for their own territories, Madras from 1802, Bombay from 1827. A uniform codification, preserving only such local peculiarities as were found necessary on careful consideration, was desirable. Secondly, the various law-courts and their jurisdictions needed reform. The *zamindari* and *adalat* courts mentioned above were merely a heritage of Mogul India, and as the country settled down a civilised administration was bound to provide better law, more qualified judges, a systematic procedure. The Supreme Court had taken the place of the Mayor's and the sessions courts at Calcutta, and similar Supreme Courts had been established at Madras (1801) and at Bombay (1824) for these presidencies, but what was wanted was a properly graded system of courts covering British India and administering the same laws on a uniform system. Thirdly, the Hindus, the Muhammadans and smaller sections of the population had their own laws and customs governing important spheres of life, and the legislature had ordered the courts to respect these and protect the rights of defendants in accordance with their own laws and customs. There were law books and commentaries and collections of customs¹³ and the opinions expressed by the *Kazis* and *Pundits* of the courts. But in spite of these and to some extent, perhaps, also because of these, the first generation of the Company's judges and law officers found it very difficult indeed to ascertain what precisely was the law on the particular point they had to decide. "The consequence was," as Macaulay said, "that in practice the decisions of the tribunals were altogether arbitrary....And judge-made law, where there was an absolute Government and lax morality, where there was no bar nor any effective public opinion, was a curse and a scandal not to be endured."

13. For instance, Borrodaile's collection of the caste customs of Gujrat, (1827), is a rich mine of information today for the student of social customs.



Better qualified lawyers and law officers and a uniform procedure are a product of time. Legislative fiat cannot create them in a day. But a better system of law-making and a properly graded system of courts, their jurisdictions covering the entire field without clashing with one another at any point, could be so constructed. Moreover, as India was now thrown open to Europeans it was anticipated that Englishmen would go and settle there in numbers, and it was necessary to protect them and their rights, as also Indians from their high-handedness, ¹⁴ "through the medium of laws carefully made and promptly and impartially administered" not only at the presidency towns but also in the interior.

The power of the presidencies to make Regulations was taken away; greater power, to legislate, was given to and concentrated in the hands of the Government of India. For this purpose the President of the Board of Control proposed in his original scheme a Legislative Council at the Government of India. This, however, was dropped, and the Act provided an additional member of Council whose function was to help the Council and vote at it only when it was legislating, and a Law Commission with this member of Council as its chairman. While the quorum for the Council's other business was fixed at the Governor General and one member, the quorum for the legislative business of the Council was fixed at the Governor General and three members. The Directors in their covering despatch laid stress upon the need for full inquiry, publication both in English and in the necessary vernaculars,

14. The covering despatch says "eagerness for some temporary advantages, the consciousness of power, the pride of a fancied superiority of race, the absence of any adequate check from public opinion, the absence also of the habitual check supplied by the stated and public recurrence of religious observances and other causes may occasionally lead" to unguarded acts; "much more may acts of outrage or insolence be expected from casual adventurers" and run-aways from "Europe released from the restraints which in this country the over-awing influence of society imposes on all men not totally abandoned."



and due deliberation in the framing and passage of all legislative measures. These laws were to have the same force and effect as parliamentary statutes. The supreme power of parliament to legislate for India also was reserved; and the Court (acting as usual under the control of the Board) were granted the power of disallowing any laws now to be made by the Government of India or any parts of them at discretion. Of course, the Government of India were told expressly that in the new capacity thus conferred upon them they were only a subordinate legislature, and could not repeal any Act of Parliament or make any law going against any such Act, or touch any law-court established by the King, or indeed legislate at all on any of certain specified subjects. Still, this was the most important of the innovations introduced by this Charter Act, as not only making the right beginning towards providing a remedy for the evils and solution of the difficulties indicated above, but as also sowing the seed of the Legislative Councils of the future.

Mukharji I 84-112, the text and the covering despatch of the Court of Directors.

Ilbert pp. 81-89 and 353-362.

Macaulay's Speech in the House of Commons on the 10th July 1833.

Wilson Bk. III ch. 9.

§ 14. *To the Mutiny.* An Act of 1835 gave power to separate the North-West Provinces from Bengal and place them under a Lieutenant-Governor. The Charter Act of 1853 gave power for the appointment of a Lieutenant-Governor for Bengal itself, unless and until a Governor was appointed for the presidency. It also authorised the creation of one more presidency, either under a Governor in Council, or under a Lieutenant-Governor. And in 1854 another Act enabled the Government of India to take any territories of the Company under their immediate authority and management and provide for their administration. Under this Act Chief Commissioners were



appointed for Oudh, Ajmer-Merwara, Assam, the Central Provinces, Burma, Berar, Baluchistan, Coorg and the Andamans; the Governor General in Council being relieved of the necessity for detailed supervision over the administration of these minor or outlying provinces also.

The Charter Act of 1853 also introduced several other changes, some of them of capital importance. The number of the Directors of the Company was reduced to eighteen, of whom six were to be nominated by the Ministry.¹ The law member was made a full member of the Governor-General's executive council, and all four Councillors, as well as the Councillors at the presidency Governments, were to be appointed under the Royal-sign manual. The Directors, supported by the Court of Proprietors, had themselves proposed in 1833 that the Haileybury College should be closed and that the necessary number of young men required for service in India should be selected annually by "a system of public examination sufficiently high to secure adequately qualified parties."² Their reasons were the great expense of the College and "the disadvantage which resulted from confining the associations of youth destined for foreign service to companions all having the like destination." The proposal was now adopted, and the first regulations for the Indian Civil Service examination were drawn up by a committee with Lord Macaulay as chairman in 1854. The Charter Act continued the existence and authority of the Company, not for another term of twenty years, but "only until Parliament shall otherwise provide."

The President of the Board of Control had proposed in 1833 that each of the presidencies should send a member to the council of the Governor General, one or two specially selected lawyers should be added to the Council

1. "This enabled the Government to appoint to the Court retired servants of the Company.....and thus to leaven the directorate with first hand Indian experience."—*Roberts* p. 383.

2. *Auber II* pp. 703-4.



from England, and that this enlarged Council should legislate for British India as a whole.³ This had been negatived because of the extra expense and reduced to the addition of a single law member, while the executive councils at the presidencies which he had proposed to abolish were allowed to continue, on the ground that the Governors coming fresh from England needed the advice of administrators who had long experience of India. In 1853, Charles Grant's original proposal was adopted with two improvements: the Chief Justice and another judge were also to be added along with a member appointed for the purpose by each of the four provinces, and the Governor-General's Council thus enlarged to twelve members was to be the Legislative Council for India; no law or regulation made by the Council was to have force or was to be promulgated until it had been assented to by the Governor General. The power of the Court to disallow a law even after it had been so assented to continued unaltered. The Legislative Council thus developed out of the single law member of 1833 was a purely official body; its meetings were to be open to the public and its proceedings were to be officially published.

Mukharji I 122-134.

Ilbert pp. 89-94.

§ 15 *The end of the Company.* It has been stated above that the constitution of the Company was, so to speak, standardised in 1833. By 1853, however, new points of view had arisen. In the debate on the Charter Act of that year, John Bright, for instance, quoted with approval the criticisms of George Campbell, and J. W. Kaye,¹ and condemned the "double government" by the Board of Control and the Court of Directors as "a

3. *Wilson* III pp. 528, 535.

1. George Campbell's *Modern India, A Sketch of the system of Civil Government* was published in 1852, J. W. Kaye's *Administration of the East India Company*, in 1853.



system of hocus-pocus," which "deluded public opinion, obscured responsibility and evaded parliamentary control." He thought that whereas there was no chance of the important subject—how India had best be governed?—receiving full and proper consideration in Parliament in 1784, because of "the fight of faction," nor in 1813 because it was "a time when the country was involved in desperate hostilities with France," nor in 1833, because the subject came up "immediately after the hurricane which carried the Reform Bill"; in 1850 there was no such complication or difficulty, and Parliament could and was therefore bound to deal with such a grave and solemn matter quietly calmly and with due deliberation, making all necessary inquiries, even if the decision was thereby delayed by a year or two.² He spoke however to listless members and to empty benches. So did all others who had anything to do with the subject on that occasion, either in the Commons or in the Lords. A quiet time might be ideally the best for elaborating a great measure. But in actual practice a representative assembly rarely puts forth on any subject the earnest will and the driving power necessary to carry a great measure through, unless public opinion is keenly exercised upon it at that particular moment.

Then came the cataclysm of the Mutiny, and suddenly all was changed. It was not only the dynasty of the Grand Mogul that was destroyed. The prime minister of England informed the Court of Directors as early as the 19th December 1857 that the East India Company was also to be destroyed, that a bill was to be brought before Parliament at an early date to take over the administration of British India under the direct authority of the Crown. Legislation on the subject was actually introduced on the 12th February 1858, and it passed through strange vicissitudes. An Italian conspirator had, a little earlier, thrown bombs in Paris at Napoleon III, who

2. Speech in the Commons, 3rd June 1853.



escaped unhurt, but the incident had in a few days this surprising result that the prime minister of England was driven from office, dragging his party down with himself. His Government of India Bill could not survive the catastrophe. But, as Bright remarked, "the conscience of the nation had been touched on the question, and it came by a leap,—as it were by an irrepressible instinct—to the conclusion that the East India Company must be abolished." The weak Ministry that succeeded Palmerston had no alternative but to legislate on the subject and on the same principle. Their bill, drawn up by their President of the Board of Control, Lord Ellenborough, contained clauses which excited universal derision. No third Ministry was possible; for England is not, like France, accustomed to ministries succeeding one another with bewildering rapidity. It is not at all an easy matter, of course, to keep a weak ministry in office in spite of its manifest ineptitude on a measure of capital importance. But where there is a will there is a way. It so happened that Lord Ellenborough committed another blunder also; this served the turn. He alone resigned; the rest of the ministry remained. They tried to strengthen themselves by offering the vacancy to Gladstone.³ If he had accepted, he would have had his own way, and one feels morally certain that in arranging the transfer to the Crown he would have introduced some effective checks upon the autocracy of the supreme government of India, to safeguard the interests of the people of India. But it was not to be. Lord John Russell had meanwhile come to the rescue of the ministry by suggesting that it would be better to begin afresh by first deciding all the main principles to be embodied in the new constitution. This course was adopted, resolutions were proposed and discussed, and a

3. This was at a later date. But he said that was the only course from "the moment the House of Commons met this Session."—Speech on the 24th June 1858.

4. Morley's *Life* I 583-591.

third bill was placed before parliament by the new President of the Board of Control, Lord Stanley, in June; and this at length passed both the houses, with some important amendments, and received the royal assent on the 2nd August.

This *Government of India Act, 1858*, substituted for the Board of Control and the Court of Directors and the Court of Proprietors, a Secretary of State for India and a Council, who were to wield all the powers of those bodies, stand towards the Governor General and Governors in Council in the same relation, and rule over India on behalf of and in the name of the Crown. Eight members of the Council, which was styled the Council of India, were to be nominated by the Crown, seven were to be elected, in the first instance by the Court of Directors, and later by the Council themselves, and the nominations and elections were at all times to be so managed as to secure as Councillors at least nine persons with a ten years' period of service or residence in India to their credit, who, moreover, had not left India more than ten years before their appointment. Once appointed they were to hold office during good behaviour, but were removable upon an address of both Houses of Parliament. They were not to sit or vote in parliament. The object of these provisions was to give advisers to the Secretary of State who would have expert knowledge and might be enabled to be independent of him and of party influences in the performance of their duties. A Council so numerous was thought necessary because expert knowledge connected with all the presidencies and the various civil and military branches of the administration in India, as also the mercantile and other interests independent of the services, were to be represented upon it, and it was also hoped that a large Council, with a permanent personnel changing only very gradually, would soon develop an *esprit de corps*.⁵

5. See Lord Derby's speech, 16th July 1858.



The powers conferred upon the Council were, however, not at all adequate to bring about these results. It is possible that the great position which the Court of Directors filled in outward appearance misled Parliament, and their complete subordination in reality to the Board of Control during the last twentyfive years of their joint existence was overlooked; or else, the responsibility of the Secretary of State to parliament was itself thought to be quite a sufficient check for all practical purposes. Anyhow, the Secretary of State was to be bound to act according to the view of the majority of the Council only in certain specified matters: viz. the election of a member of Council; the division and distribution of the power of making appointments among the several authorities in India and the disposal of appeals against such authorities by aggrieved parties; contracts, sales, purchases, raising loans, &c. on behalf of the Government of India, and all matters connected with the property and all real and personal estate whatsoever of the Government of India; and, last, all matters connected with the expenditure and revenues of the Government of India. In all other respects the Council was only an advisory body and the Secretary of State was free to send orders to India and to act and to abstain as he thought fit, though he had to place on record the reasons for his decisions. Five members constituted a quorum, weekly meetings were to be held, and the Secretary of State was to form committees out of the Council and allot the various departments of business amongst them.

Audited accounts of the revenue and expenditure were to be annually submitted to Parliament accompanied by a statement prepared from detailed reports in such a form as would best exhibit the moral and material condition and progress of the country. And it was also provided that the revenues of India were to be applied and disposed of solely for the purposes of the Government of India, that they were not to be applied to defray the ex-

penses of any military operation beyond the external frontiers of British India without the consent of both houses of Parliament,⁶ and that whenever an order was sent directing the actual commencement of war by the Government of India, Parliament, if sitting, was to be informed within three months, or if not sitting at the end of such three months, then within one month of the beginning of its next session.

Nana Saheb was not driven across the Rapti into Nepal before the end of the year. It was April 1859 before Tantia Topi was captured. But Queen Victoria was, in consequence of the above Act, proclaimed all over India on Monday the 1st Nov. 1858. The Proclamation, read out on the occasion both in the original and in the vernacular of the district, to the assembled thousands everywhere, was couched in terms of rare felicity, struck the right note, and instantly went straight to the hearts of the millions of India. The Queen had desired it to "give them pledges which her future reign was to redeem, explain the principles of her government and point out the privileges which the Indians would receive in being placed on an equality with the subjects of the British Crown." It was one of her personal acts, if any public act of a constitutional monarch, performed in his (her) capacity as a constitutional monarch, can ever be rightly regarded as a personal act. Or, perhaps, it would be better to say that while it was unquestionably a personal act, it was at the same time, more than a merely personal act. It was she who spoke but the pledges and the assurance of new and valuable privileges⁷ were given to the people of India by the Eng-

6. This clause was due to Gladstone—*Morley* I 593.

7. I copy from Charles Ball's *History of the Indian Mutiny*, vol. II pp. 525-6 a portion of the comments upon the Proclamation pronounced by two Indian journals of the time :—

The Bombay Standard—If we apprehend rightly the meaning of the Proclamation the promises it conveys of internal and civil reforms



lish Nation speaking through the lips of their august sovereign.

A Royal Proclamation at ascending the throne or when annexing territory is so essential a part of the ceremonial appropriate to the occasion, that one rarely thinks of tracing any particular announcement of the kind to its source. But the contents of this one are not at all of the usual character; and the policy they breathe will be found more than foreshadowed in the great speech John Bright delivered on the second reading of Lord Stanley's bill in the House of Commons.

Mukharji I 134-175 the Act and the Speeches of Lord Palmerston and Lord Derby; also I 431-435, the Proclamation and how it was drafted.

Libert pp. 94-7.

Bright: Speeches on June 3, 1853; May 20, 1858; June 24, 1858.

R. Paul. History II 138-178, 184-5.

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will have, in their performance, the greatest influence on the future destinies of this country. We cannot but see in the words Her Majesty is made to use, a solution, an effectual solution, of the difficulty adverted to by Lord Stanley in his last speech—namely, the difficulty of administering from a constitutional country the government of a despotism. In our apprehension, Her Majesty's declaration that the obligations which bind her to all her other subjects shall be fulfilled faithfully and conscientiously with regard to the natives of her Indian territories, seems to imply, at the very least, the grant of such a constitution as those other subjects, all and each, are in the present enjoyment of. . . . We do not wish to imply that a copy of the British Constitution will be given to this country; but we confidently expect that. . . .

The Friend of India—The act of mercy is a graceful commencement of a new regime. We perceive with pleasure that it is so extensive. India is sick of slaughter; . . . The revolution in the government of India is one, the vastness of which only the next generation will appreciate. It is the principle of our government, not its external form, which has been changed; and to the mass of men, a new principle is as imperceptible as the soul. . . . India has become part of the British dominions; this is all that has happened; but this is not the insignificant all that the enemies of Englishmen would have them believe. Nothing was changed, save a name, when the Convention announced the abdication of James II. The monarchy was untouched. The prerogative remained unimpaired. The law remained unmodified. . . . A new principle had been introduced, and the consequence was the difference between the England of the Stewarts and the England of Victoria. India has also changed a name; and a century hence, men will date the history of progress from the Proclamation of the Queen.



CHAPTER IV.

THE SUPREME GOVERNMENT.

§ 16. *Meaning of a Constitution.*—Governments are either absolute or limited. In an absolute government there is no legal limit to what the Head of the government might do, or order, or permit. Governments in which the powers of the Head are not absolute, but limited through and by law and custom are also called constitutional governments, because the laws, institutions, customs and conventions which limit the powers of the titular Head and lay out the channels along which they flow, are collectively spoken of as the Constitution of the State.

Such constitutional states are further subdivided into States with constitutions that have *grown*, and States with constitutions which have been *made*. The differences between constitutions which have grown and constitutions which have been made are many and important.

Constitutions of the second variety rest on written documents—Acts of the Supreme Legislature or Declarations of the Supreme Head, or Treaties between the smaller states which combine together to form a large complex federal state.

The documents attempt a logical and complete view of the whole duty of government and provide for it, by a system of correlated and mutually limiting laws, institutions and departments. In such constitutions the executive, the legislative, and the judicial functions of government,—as also the organs entrusted with them,—are sometimes clearly separated from one another, and arranged so as to form mutual checks. The fundamental liberties of the individual are moreover defined and safe-



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guarded as far as legal and administrative provisions can do so.

Some written constitutions also include provisions laying down a special process or machinery by which alone they could be amended. This gives them a *rigidity* not possessed by the *flexible* or *elastic* constitutions which make no distinction between amendments to the constitution and ordinary legislation.

Constitutions that have grown up have none of these features; they are not all written out, not logically constructed, not conceived and constructed as a whole to cover the entire range of governmental functions, they do not clearly differentiate the executive, the legislative and the judicial functions and organs of government from one another, their legislative organs are not limited in power but can and do effect fundamental changes in the constitution whenever necessary, nor are they rigid. They are always in a state of flux, and even before all the changes involved in the last great effort of public opinion have been fully and definitely secured, they are moving on to some other great change.

The Indian Constitution partakes of the merits and defects of both these types. The British Sovereign and Legislature being the ultimate authority in regard to it, its sovereign will is expressed from time to time in the form of Acts from 1858, and previous to that date, of Charters and Acts. And this Sovereign created a dependent legislature for India by the Charter Act of 1833 and later enactments, which has also expressed its own will, within the province allowed to it, in the form of Acts.¹ Thus to this extent our constitution is like a constitution made. But even the whole set of these Acts and Charters taken together

1. Presidencies recovered legislative power by the Act of 1861, which established presidency legislative councils on the same lines as the legislative council of the Government of India.



does not give the whole of the Constitution. The Executive Government has also concurrent legislative authority,—at least in so far as the King in Parliament permits its exercise,—so that the regulations, ordinances and resolutions of the Government of India have to be taken along with the above body of laws, in order to arrive at the written law-made constitution of British India. Secondly, the Executive Government has and actively exercises all the residual powers of an absolute sovereign; not merely the limited powers of a King in a modern European representative democracy, but the unlimited arbitrary powers of an Oriental monarch, which it claims by right of conquest and succession to the last great paramount power in India, viz. the Grand Mogul. Thirdly, the charters and Acts and other written expressions of the will of the State mentioned above, are occasional only, each merely attempting to redress a particular grievance, or supply a particular want or correct a particular defect, not in a thorough or logical manner, but only in a haphazard practical way. And, lastly, the British people are very very gradually learning more and more about India, they are very very gradually educating India and preparing it for self-government, and they are very very gradually extending the rights and privileges and institutions of a modern civilised self-governing people to India, as a part of their Empire. In these respects, then, our constitution is in a state of growth and flux.

Marriot : English Political Institutions, ch. 1 and 2.

Dicey : Law of the Constitution, pp. 1-34.

§ 17. *Supremacy of Parliament.*—The Act of 1858 created a constitution for British India which, from that date to 1920, remained the same in essentials, in spite of alterations in details. The Supreme Government thus established for India consisted of the Governor General in Council in India, the Secretary of State for India and his



Council in England, and the King in Parliament over both. The mutual relations of these three are not very easy to grasp, because in actual working the legal provisions leave a latitude which gave the individuals in office at any time a certain amount of discretion or independence of action according to their own judgment, as it is very desirable that political machinery should. And because of this personal freedom or discretion the two principal officials—the Secretary of State for India and the Governor-General—appeared like Rulers armed with great powers, almost equal and concurrent, except where the two disagreed, or where parliament chose to impose its will. The first question, therefore, with reference to this Supreme Government of India established from 1858, is—What, under it, is the nature and extent of the supremacy of parliament?

The word 'parliament' is used in various ways. Sometimes it means the Crown and the Ministry and the two houses of parliament all taken together, although when this is meant the more correct expression to use is 'the King in Parliament.' This, of course, is the legal or constituted sovereign over the whole of the British Empire, and therefore over India also as included within the Empire. Every act of government anywhere in the Empire or done anywhere in the name and on behalf of the Empire, is due directly or indirectly to the authority of the King in Parliament. But the question of parliamentary supremacy before us refers not so much to this formal matter of the final source of all government activity, as to something less universal, more particularly connected with India, and more definite in meaning. What we have to examine is the nature and extent of the supremacy in Indian matters of parliament as such.

Under the English constitution the mutual relations between the legislative power and the executive power are peculiar. The Ministry are the executive, the houses



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of parliament are the legislature, but the two are so far from being separate, that, when parliament is sitting, they continuously act and react upon each other. The ministers are also members of parliament and take the lead in the debates. The Ministry have usually so much fresh legislation to get from parliament, and there is so much of other government work of primary importance—such as the annual budget—to be got through, that nearly all the time that parliament can devote to legislation of a public character is controlled by the Ministry. Both in the selection of topics for legislation and in the provisions of any particular measure the ministry have of course to conduct themselves in full view of public opinion as expressed both in parliament and outside. But this healthy influence of parliamentary and outside criticism on the legislative programme of a ministry is exerted more upon the programme as a whole than upon particular items of it, and in matters on which English citizens and their parliamentary representatives are indifferent, the Ministry are left practically free to do anything or nothing at their own sweet will. Again, even if through some circumstance India and Indian affairs come into temporary prominence and some legislation is undertaken, the Opposition have as a rule treated the matter as lying outside party politics. There has usually been, so to say, a working understanding or a tacit conspiracy between the two “front benches,” which made it almost impossible for independent members like Henry Fawcett or Charles Bradlaugh, inspired by a pure sense of duty towards the dumb millions of India, to achieve anything. Thus the supremacy of parliament in the Government of India has been exercised in legislative matters, during this period of sixty years from 1858 to 1920, only in and through the Ministry of the day.

Acts of the Administration and the general policy pursued by it come under the executive functions of a government. The houses of parliament are generally



thought of as the supreme legislature of the Empire, and so it might be supposed that parliament would be found to exercise its supremacy much more in legislation than in executive matters. But just as in legislation, so also in this branch of the activity of a government, the actual facts are different and highly complex. Under the English Constitution, the executive is not independent of the legislature but responsible to it even for the discharge of its own proper function. And this responsibility or dependence of the executive takes effect in a variety of ways, in the day to day influence which the Ministry and the houses of parliament exert upon one another while parliament is in session. No Ministry can accept office or maintain themselves there, unless supported by a majority of the members of parliament, especially of the house of commons. The English Ministry are an "indirectly selected" and an "informal but permanent caucus of the parliamentary chiefs of the party in power." The King appoints the ministers, but that is only a formality. The Prime Minister selects the other ministers, but, he too, in forming his ministry, can exercise very little freedom of choice. Most of his colleagues must be veterans who have had careers as long and nearly as distinguished as his own, who were ministers along with him when their party had been in power on one or more occasions in the past. John Bull is a political animal and the incessant political cogitation and agitation and canvass going on in parliament and in the country, and coming to a head every now and then in general elections, casts up leaders, who by virtue of their effective participation in that process get selected as ministers of the Crown, when their party obtains a majority in parliament. Thus the legislature and the executive are in sympathy with one another when both begin their career at the inauguration of a new parliament, and the general policy pursued by a



ministry with a strong parliamentary majority is as much that of the country and of the legislature, as it is their own. Under the peculiar parliamentary system of England, executive power and political responsibility to parliament and country are thus fused together into a unity, and the general policy pursued by a Secretary of State for India is pursued by him as the selected and trusted agent not only of the Ministry but also of the supreme parliament. Hence, in this section also, if and in so far as the elector and his representative in parliament are indifferent with reference to any province of their imperial obligations or determined to keep it outside the range of party and within the discretion of the supreme executive for the time, the Ministry and the Secretary of State, despite their theoretical subordination to parliament, are practically free to do anything or nothing at their own sweet will. The military burden—in men and money—that India has had to bear, the despatch of Indian troops to China or Malta, Egypt or South Africa or East Africa, France, or the Dardanelles or Mesopotamia, the forward policy in Baluchistan, Afghanistan, Persia, Arabia, Tibet, Burma, or Siam, the share imposed upon India of the expenditure in each case, annexations or withdrawals, and all similar matters inseparable from high policy, have been thus decided throughout this period from 1858 to 1920 by the British Ministry and the Secretary of State for India, and the parliament as such has done very little indeed to exercise any check as the trustee under Providence of Indian interests.

In this sphere, too, independent members have now and then raised their voices, but it was only on one occasion, 1879-80, that the Indian policy of the Government of the day was checked and then reversed, and even this single instance cannot be claimed as an exception in which the parliament asserted its supremacy as such. The check and reversal in Indian frontier policy was brought



about as part and parcel of an entire reversal of the foreign policy of the conservative party under Lord Beaconsfield by the liberal party under Gladstone, who first opposed them in parliament and then brought about a general election in which they secured an overwhelming majority.²

Particular acts of the Administration, as distinct from general policy, come under the supervision, criticism and control of parliament in a variety of ways, when, as a result of the question or debate or the vote, the particular matter is remedied or the officer concerned dealt with as might be necessary, after full opportunity has been afforded to the Executive to place before parliament all that could be urged in explanation, extenuation or defence. The opportunities for thus bringing pressure upon the executive "are manifold. There is first the address in answer to the King's speech at the opening of the session; then the questions day by day give a chance if not for direct criticism, at least for calling the ministers to account; then there are the motions to adjourn; the private members' motions; the debates on going into the Committees of Supply and Ways and Means; the discussions in the Committee of Supply itself; the debates on the Consolidated Fund Resolutions, on the Appropriation Bill, on the Budget, and on the motions to adjourn for the holidays, and, finally, the formal motions of want of confidence."³ Now, it is not possible in a brief and elementary book like this to enter upon a detailed examination of how these various opportunities have been availed of in parliament with reference to Indian topics, during such a long period as sixty years; and to point out, as a result, how even in this branch of the subject the supremacy of parliament is, as a matter of fact, merely nominal. All that can be attempted is to offer some select illustrations.

² Morley, *Gladstone*, bk VII.

³ Lowell, I 328-9.



A recent instance of the motion to adjourn the house for the consideration of an urgent matter, is the debate on the report of the Mesopotamia Commission, which occupied two days in both the houses.⁴ The enquiry had revealed that the soldiers had suffered indescribable privations and many valuable lives had been lost; the transport services had not been adequate for months and the medical arrangements had been disgracefully meagre and had, moreover, broken down. The Commission had censured certain departments and also certain high officials by name, such as the Secretary of State for India, the Governor General, the Commander in Chief in India, and the military member of the India Council. The publication of the report on June 26th excited a passionate outburst all over England, and it was because of that circumstance and that alone, that the debate compelled the executive government to take action, and important results followed. The Secretary of State for India was the official who was technically bound to take all the blame upon himself, except such as could be judicially proved against particular individuals for specific actions or omissions, and Mr. Chamberlain announced to the House of Commons at a very early stage in the debate that he had actually resigned. Lord Hardinge also resigned, but at that moment he had long ceased to be Governor General, and was holding a subordinate position as permanent secretary at the Foreign Office; no political responsibility is ever attached, under the constitution, to permanent civil servants even of the highest rank; nor could a censure based upon the way in which he had discharged his duties as Governor General in a particular episode be held to affect his competence for this later post; and his resignation was not accepted. Lastly, the Commander in Chief and the other military officers were dealt with by the Army Council.

⁴ July 12 and 13, 1917.



Private members' motions for specific executive action were never very numerous in parliament. We may note four instances. In 1889 the House of Commons passed a resolution directing the Government of India to modify their excise policy so as to discourage intemperance. Messrs. W. S. Caine and S. Smith led the way in this important question, and the result has been both fuller information on the excise administration to parliament and an effective check upon the tendency of executive departments to attach too much importance to mere increase of revenue. Another resolution the same year condemned the India Government for encouraging the consumption of opium in India, a vote that was repeated two years later. But the government appointed a Royal Commission with Lord Brassey as President, which reported in 1895 in favour of the existing system, and no change has been made.⁵ As a last instance might be noted Mr. H. Paul's resolution of the 3rd of June 1893, that the examinations for the Indian Civil Service and other non-military services should in future be held simultaneously in India as well as England. The Government, however, collected against it "the opinions of Indian officials, which were almost wholly adverse to the change,"⁶ developed the cult of an irreducible minimum of Europeans as indispensable for efficiency and demanded by the masses as well as by the more virile but less literary races of India, and did nothing.

On the 12th February 1895 Dadabhai Naoroji moved an amendment to add to the address a humble prayer to the effect that the British Exchequer should bear a fair and equitable portion of the expenditure incurred by India both in "the employment of Europeans in the British Indian Services," and "on all military and political operations beyond the boundaries of India."⁷ This led to the

5 Strachey, ch. 10.

6 Lowell, I 323.

7 *Poverty and Un-British Rule*, pp 294-304.



appointment of a Royal Commission with Lord Welby as president,⁸ but it did not report till 1900, nor did it make any 'fair and equitable' recommendations as to the standing military burdens of India or the heavy extra expenses imposed upon her from time to time by reason of wars of annexation or of Imperial policy.⁹ Every one was disappointed at the result, from Sir Henry Fowler downwards. What was worse, the Commission did recommend that England should make to India an annual contribution of £ 50,000 in aid of the charge for the India Office; and this no English Government, Liberal or Conservative, was then prepared to concede.

The constitutional objection to such proposals is that to adopt them would be to bring that part of the expenditure of the Government of India regularly before the House of Commons in Committee of Supply; that would be to subject Indian policy and administration regularly to the review of parliament; whereas, although parliament is of course ultimately the supreme authority even as regards Indian policy, checks and obstacles have been deliberately interposed between the Indian Executive and parliament, so that the intention is to leave the Indian policy of a Ministry which possesses the general confidence of parliament, free from the full force of its regular and detailed control. Parliament is of course the supreme authority whenever it chooses to assert itself; but the constitution it has deliberately framed for India is that it does not choose to assert itself, except under exceptional

8 For a brief account of this Commission with comments see R. C. Dutt, *Victorian Age*, pp. 555-561; J. R. Macdonald, *Government of India* pp. 154-158.

9 Gladstone's government contributed £5 millions to India towards the cost (£ 18½ millions: *Moral & Material Progress Statement*, 1882-3, p. 87) of the Afghan War. As Dutt notes, "it is the only instance on record of a practical recognition of the principle that the cost of Imperial policy wars beyond the Indian frontier, should not be borne by India alone."—p. 483.



circumstances. Hence it is that, to pass on to another of our illustrations, it is not parliament that settles the Indian budget. That is settled by the Governor General in Council, obtaining such fresh sanctions as might be necessary in any year from the Secretary of State and Council. The so-called Indian Budget Debate that takes place in the House of Commons on the motion (that the Speaker do now leave the Chair) to go into Committee on the East India Revenue Accounts, is "a purely academic discussion which had no effect whatever upon events in India, conducted after the events that were being discussed had taken place."¹⁰ That was why the debate took place before empty benches. That was why a busy Ministry and a parliament with far more work than it could dispose of, fixed it year after year near the end of the session, generally after the Appropriation Bill had been read a second time. It was not even obligatory to have it every year, and during the Great War it was altogether omitted more than once. But that was also the reason why members of parliament who wanted to reform this constitution of India, hit upon the expedient of an amendment to the Indian Budget motion, that "in view of the responsibility of parliament in reference to the Government of India, and in order to provide for a more effective control over Indian questions, it is expedient to place the salary of the Secretary of State for India on the Estimates." Such an amendment was proposed several times but no Ministry, liberal or conservative, could allow it to pass unless it was also prepared to alter fundamentally the character of the constitution of India as it had been fixed by the Act of 1858.¹¹

10 E. S. Montagu: in the Mesopotamian Debate, 12-7-1917.

11. Mr. Cathcart Wason's amendment was negatived in 1905 by 51 votes in a house of 181; in the first Indian Budget debate under the Liberals in 1906, Mr. Keir Hardie's amendment was negatived by 64 votes in a house of 242. There are some letters from Morley to Minto bearing on Morley's speech in this second debate. *Recollections II* pp. 172-180.



For our last illustration let us look at the pressure which Lancashire has repeatedly exerted through parliament upon the Government of India. The Secretary of State has been asked by memorials and deputations and by means of motions and resolutions in parliament to increase the quantity and improve the quality of the cotton grown in India, to push on the extension of railways in lean years as well as in fat, to pay more and more regard to the condition of the labourer working in the textile factories of India, and, above all, to avoid any such taxation and policy as might, in the Indian market, give even the local manufacturer of cloth any advantage over that of Lancashire. This is the special brand of the humanitarian free trade gospel *a la* Lancashire, warranted to bestow upon the Indian masses the triune blessing of the cheapest clothing, the highest real wages, and the most reliable famine relief. Hansard records so many discussions and resolutions on this subject that it is not easy to make a choice. But perhaps the most characteristic instance is the motion of the 10th July 1877, demanding the immediate repeal of the import duties on cotton goods (5% *ad valorem*) imposed by the Indian Tariff Act of 1875. The conservative Government was in office; they resisted it but only succeeded in inducing the house to add a qualification to the effect that repeal was to take place "without delay, as soon as the financial condition of India will permit." But just then a widespread famine was raging in many parts of India. The budget of 1878 provided for an annual saving of a million and a half as a famine insurance fund by means of increased taxation. Lastly, on the 21st November, General Sir Frederick Roberts crossed the Kuram, and began that search for a "scientific frontier," the second Afghan War. The famine insurance fund, raised by means of additional taxation of a most objectionable character, disappeared. Two millions were to be received from England as a loan towards the expenses of the war. Other loans were to be raised in India and



England to the tune of thirteen millions and a half. And yet, a general election was also fast approaching, the Lancashire voter had to be bribed whatever the cost to India, and Lord Salisbury the Secretary of State ordered a reduction in the cotton import duties, and Lord Lytton introduced the reduction in the budget, overruling a majority of his Council. Two paragraphs from the Hon. Mr. W. Stokes' minute of dissent deserve quotation.

Fifthly, because by the proposed repeal, the Manchester manufacturers would practically compel the people of India to buy cotton cloths adulterated, if possible, more shamefully than such goods are at present. The real cost of the clothing of the people would thus be increased rather than lessened.

Sixthly, because Indian newspapers will proclaim in every bazaar that the repeal was made solely in the interest of Manchester, and for the Conservative party, who are, it is alleged, anxious to obtain the Lancashire vote at the coming elections. Of course the people of India will be wrong; they always must be wrong when they impute selfish motives to the ruling race.¹²

¹² H. Fawcett, *Indian Finance*, ch. I and II; Dutt *Victorian Era*, pp. 402-415.

Also C. J. Hamilton, *Trade Relations*, ch. 9. Prof. Hamilton does not deal with the political question at all, yet says: "When Lord Salisbury demanded abolition in 1874 (i. e. from 74 onwards) he could scarcely be excused from the charge of being disingenuous in claiming to speak in the interests of India alone." (p. 234).

The case for Lord Salisbury, Lord Lytton and Sir John Strachey will be found in Lady B. Balfour: *Lytton's Indian Administration*, ch. 10 & Sir J. Strachey: *Indian Administration and Progress*, 4th ed. ch. 12. A few sentences, ending with a resolution of the house of commons April 4, 1879, may be quoted from the last:

"The application to the Indian customs tariff of the principles of greater freedom of trade might have been long delayed but for the accident that the interests of a great British industry were affected. . . . Popular opinion in India had always, in regard to questions of fiscal reform, been obstructive and ignorant; and the fact that the abolition of customs duties would be favourable to English manufacturers was enough, in the belief of many to prove that the party purpose of obtaining political support in Lancashire was the real motive of the Govt."



The Act of 1858 might, on a superficial view appear to have established the absolute supremacy of parliament in the Government of India by putting an end to the East India Company and their Court of Directors. But we have now examined the practical effect of that Act in the spheres of legislation, policy, and individual administrative acts and omissions. And the conclusion forced upon us is that the outward appearance or the mere letter of the law is often deceptive. The fundamentals of the English Constitution and the peculiarities of parliamentary procedure have so controlled the working of the Act that it really placed India under an autocratic executive, liable to be influenced by interested parties in England and in India, and unable to protect India from them, except on the rare occasions when the parliament and the people of England asserted themselves on behalf of their great but oriental and politically inert Dependency.

J. A. R. Marriott, chs. 4 and 11.

§ 18 *The Secretary of State and the Governor General.* These two high officials form together the double link that joins England to India. The Governor General is the working head of all branches of the administration, and he represents, besides, the Crown of England in India and is therefore also called the Viceroy. He is the highest

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This foolish calumny deserved and deserves no notice or reply. The opposition to the reform satisfied Lord Lytton that he must carry out the measure himself, or acquiesce in nothing being done at all. He believed that the interests of India required it, and he was not to be deterred by the imputation of base motives The step was taken by Lord Lytton in opposition to the opinion of a majority of his Council, but on my own advice as member in charge of the finances. It was approved on April 4, 1879, by the house of commons in the following resolution :

That Indian import duty on cotton goods, being unjust alike to the Indian consumer and the English producer, ought to be abolished, and this House accepts the recent reduction in these duties as a step towards, their total abolition, to which Her Majesty's Government are pledged."



personage of the State; he is the Government of India incarnate. Whatever the Government of India is empowered or allowed by law and constitutional usage to do is done in the name of the Governor General in Council, and the Governor General can, if he chooses, personally assert himself with regard to any such matter, however trivial. Innumerable instances can be quoted of his plenary power. The installation of the Nizam in 1884 with Sir Salar Jung's young son Laik Ali as minister and without any unfavourable treaty about Berar, was very probably a personal act of Lord Ripon's.¹ Lord Curzon carried personal interference in the administration farther than any other Governor General of recent times; his interference in the famine relief administration of more than one province, and his punishment of a British regiment for a crime committed by one of its soldiers against a woman of the people may be cited as instances in which his assertion of supreme power did incalculable good. As another illustration of the manner in which this masterful viceroy saw his duty and performed it may be mentioned the fact that he persuaded Principal F. G. Selby to accept the post of Director of Public Instruction in the Bombay Presidency against the latter's own inclinations, and on the high ground that it was a dereliction of the duty an able Englishman owed to the land of his adoption, to hesitate merely on the score of personal tastes when an opportunity of higher service and utility offered itself. And as a last illustration may be cited Lord Hardinge's interference in the U. P. where local Muhammadan feeling had become excited over the widening of a main road in a city, which if carried out in the ordinary way would have cut off a few square yards of space from a mosque. Of course, no such instances, taken singly or collectively, can imply that the Governor General is an autocrat like a Maharaja or a Nawab. The

¹ W. S. Blunt: *India under Ripon*. But the Governor General is his own minister for foreign affairs; see the fuller discussion of the subject further on.



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Government of British India is a reign of law and of customs and precedents which have nearly all the precision and limitations of written law. As Article 49 of the Charter Act of 1793 expressly provided, the Governor General even when setting aside the opinion of his council and acting on his own, had still no powers whatever which the Government of India as legally constituted could not lawfully exercise.

The appointment of the Governor General is made by the Crown; but that is only a formality. The Prime Minister and the Secretary of State for India make the selection. The opinion of an experienced monarch like Queen Victoria or Edward VII would necessarily carry great weight even with the greatest of prime ministers; but the responsibility for the choice rests with the last; and the Secretary of State may carry his point with his chief by a threat of resignation.²

Changes in the Ministry in England do not necessarily involve a resignation by the Governor General. Although the new ministry might belong to a different party, it might not have an Indian policy different from that of their predecessors. And even if there was such a change, the Governor General appointed by one party might continue to serve, if he had no objection to carry out the new policy. Lord Minto, for instance, was appointed by the

² Morley, *Recollections*, his letters to Lord Minto of April 29 and June 1, 1910.—“My whole point was that the impression made on India by sending your greatest soldier (Lord Kitchener) to follow Reforms would make them look a practical paradox. It will then be for Asquith to say whether he goes with me or not. If he does, then he will have to support that view in the Royal closet. If he does not, then the Indian Secretary will go scampering off, like a young horse...” Take another instance. In 1875 Lord Randolph Churchill tendered his resignation as Secretary of State for India because the Prime Minister, without consulting him, had transmitted to the Viceroy a suggestion by the Queen that one of her sons should be appointed to the command of the forces in Bombay. The appointment was not made, and Lord R. withdrew his resignation.”—*Lowell*, I p. 42.



unionists, but when the liberals came into power soon after, he continued at his post and helped in the preparation and introduction of the Morley Reforms. Lord Northbrook on the other hand, objected both to the forward policy in Afghanistan and the dictation of the Secretary of State in Indian Finance, (which the Beaconsfield Ministry and their Secretary of State, Lord Salisbury, insisted upon), and resigned. His successor Lord Lytton sympathised with the conservative policy, adopted it as his own, and when the liberals attacked the Indian measures of the conservatives as bitterly as their general policy, and, as a result of the wellknown Midlothian campaign came into power with an overwhelming majority and the conservative ministry resigned, he too resigned office along with his political friends.³ Lastly, there is the case of Lord Curzon's resignation. This arose out of a difference of opinion between him and his commander in chief, Lord Kitchener. The military department of the Government of India had at its head a soldier who was an ordinary member of the Governor General's council, and was the constitutional adviser of the Governor General on all army matters. The Commander in Chief was the head of the army, but any proposals he had were to be submitted to the Government of India through this Military Department. Lord Kitchener objected to this. The Government of India, on the other hand, were unanimously of opinion that the system was absolutely necessary to maintain the supremacy of the civil authorities over the military. The Secretary of State for India and the British Cabinet decided the issue in favour of Lord Kitchener, and Lord Curzon resigned.⁴

We pass on to a consideration of the powers of the Secretary of State for India and the mutual relations between him and the Governor General. The Secretary of

3 Lady B. Balfour : *Lytton's Indian Administration* p. 419.

4 Sir T. Raleigh : *Lord Curzon in India*, pp. xlviii to li.



State has taken the place of the former Board of Control and the East India Company and represents, besides, the supreme authority of the British cabinet and the British parliament. It is worth noting that parliament has not conferred any individuality upon the Secretary of State as such. Section 3 of the Act of 1858, following the previous enactments about the Board of Control and its President, speaks only of "one of His Majesty's principal Secretaries of State." Thus any of these members of the Cabinet can perform the duties of the Secretary of State for India. This is an excellent example of the way in which the British constitution combines individual initiative with collective responsibility. And the arrangement has its convenience on exceptional occasions also, e. g., when His Majesty visits India in person, or when the Secretary of State for India has to do so himself. The same section provides that he is the heir to all the powers of the Board of Control and the East India Company. And under section 25 of the Charter Act of 1833 he has, whenever he chooses to exercise it, "full power and authority to superintend direct and control all acts operations and concerns" "which in any wise relate to or concern the Government of India," and "all grants of salaries, gratuities and allowances and all other payments and charges whatever, out of or upon the said revenues and property," except in so far as parliament has otherwise provided with respect to any portion of this power and authority. The exception, let us add at once, refers only to such powers as have been conferred by parliament on the India Council of overriding the authority of the Secretary of State, and these we shall return to in a later section. The constitutional conventions with regard to the Secretary of State's powers of superintendence direction and control are a more difficult topic. Under the East India Company Governors-General could not wait for orders from England, and had as a rule to take action on their own responsibility even in matters of



peace and war. But in the meanwhile science was progressing and the world was shrinking up. After 1858 Governors-General could be controlled more effectively and continuously from England. The telegraph made it possible to send brief orders several times a day. The time consumed in sending full reports by post from one end and detailed instructions from the other also became progressively shorter.⁷ But the intention of the legislature was that except in foreign affairs the responsibility for the administration and progress of India was primarily that of the Government of India, and that sufficient initiative was therefore to be left with it. Thus the Government of India continued practically a great independent State, and the Secretary of State did not exercise his initiative even in matters of parliamentary legislation. The impulse given by the Mutiny produced several great Acts (which will be discussed in later chapters), and then for a time parliament and the British ministry left India to itself. The age of Palmerston was a quiescent period in England also. A new era began with the Beaconsfield Ministry (February 1874 to April 1880). And in the eighties also began the pressure of Indian opinion for greater rights and representative legislatures. After a short period of hesitation the Government of India made up their own minds about it. The Services were no longer animated by the enthusiasms of the period from Bentinck to Lawrence. The European settler was no longer a mere pioneer. He had grown in numbers and in wealth, he was socially and politically organised, he held certain great industries in the hollow of his hand and was proceeding to acquire other monopolies, and whereas in a former generation he had leaned upon and followed the lead of the Services, he was now the senior partner of the concern, and it was for the Services to follow where he led the way. In England, too, jingoism gathered force, and

7 The Suez Canal was opened in November 1869.



yarns like the *Bridge Builders* and rhymes like the *White Man's Burden* appeared, showing how genius itself was not always independent of prevailing currents of opinion and emotion. The Government of India capitulated to Anglo-Indian opinion from the time of the Ilbert Bill.⁸ Parliament itself refused in the nineties to move a single inch beyond what such opinion considered absolutely safe. Nothing could be done until England itself changed. This too happened. Campbell-Bannerman came into power in 1905 with a liberal majority behind him of commanding strength. Jingoism perished unwept, unhonoured and unsung in South Africa and elsewhere. The Anglo-Russian Agreement established the essentials of a solid peace in Western Asia.⁹ Hopes ran high in Egypt and in India. The Government of India, however, had not changed. Anglo-India had not changed. Their

8 "22nd December 1883...Mrs. Ilbert called to ask condolence. She says her husband has been abandoned by every one, and now by Lord Ripon. She blames Lord Ripon for his weakness, not the people at home. Lord Kimberley had written to her husband, urging him to stand firm, but the members of council were frightened out of their wits, and Lord R. has followed them."—*W. S. Blunt, pp. 96-7*

9 Morley, *Recollections*, Bk V ch 1 and 2, esp. letter to Lord Minto July 6, 1906,—“H. M.’s Government have determined on their course and it is for their agents and officers all over the world to accept it. If there is one among them to whom it would be more idle to repeat this a, b, c of the constitution than another, you are that man...this country cannot have two foreign policies.” This applies to the whole period from 1784 (Pitt’s India Act) to 1920. Wellesley overstepped the limits of the foreign policy approved by the Board of Control and lost their support. Curzon (Morley notes more than once) went beyond what the Conservative Cabinet approved in his Tibetan policy. Some few exceptions like that, however, in a long period do not invalidate the truth of the general statement.

The British Cabinet cares less, and less continuously, about the Princes of India. In this branch of foreign policy, then, we might expect to find greater liberty of action allowed to the Govt. of India. But even here the British Ministry have asserted themselves whenever the Govt. of India went too far. Dalhousie’s policy was reversed by the Proclamation. Curzon’s hectoring policy was followed by Minto’s quiet and soothing urbanity and Hardinge’s sympathetic friendliness.



representatives and organs in the Lords, the Commons and the English press had not changed. Morley's speeches and his letters to Lord Minto reveal the enormous friction against which he had to advance. The shibboleth of the relative position of the Secretary of State and the Government of India under the constitution, was a party cry raised by these reactionaries to maintain their privileged position intact against liberal assault. Fortunately, with the new constitution now established under the Act of 1919, the constitution as it persisted from 1858 to 1920 has become a thing of the past, and knotty questions like this have now only an historical interest. Lord Salisbury and Lord Morley are instances of Secretaries of State who exerted their constitutional power to the utmost, while, of course, Lord Curzon is the outstanding example of a Governor General whom history must hold personally responsible for a goodly proportion of the acts done by the Government of India during his *regime*.

Hibert ch 3 §§ 2, 13, 14, 21, 36, 37, 44, 48.

Sir V. Chirol, *Indian Unrest*, ch. 26

§ 19 *The Executive Council.* We have already traced the history of the Governor-General's (and Governor's) Council from the Regulating Act to the Charter Act of 1853. This last enactment converted the Law member into a full member of Council (§ 21). By the Charter Act of 1833 this was the only member whose appointment was "subject to the approbation of His Majesty, to be signified in writing by His Royal Sign Manual," countersigned, of course, by the responsible member of the Privy Council (§ 40). By the Act of 1853, the appointment of all members of Council, both in the Government of India and the Presidency Governments, was made subject to similar approbation of the Crown (§ 20). From that date to 1919 the number of the ordinary members of the Governor-General's Council has risen from four to six. The Indian Councils Act, 1861, added the fifth member (§ 3)

the Indian Councils Act, 1874, added a sixth, specially for public works,¹ and the Indian Councils Act, 1904, made him like the other four (excepting the Law member) available for any department. Ever since the Act of 1793, the Commander in Chief has been an extraordinary member of the Council (§ 32). Of the ordinary members the Law member must be an English or Irish barrister or a Scotch advocate of not less than five years' standing; and three others must have put in at least ten years in the service of the Crown in India at the time of their appointment. The Act of 1861 provided that these "shall be appointed by the Secretary of State for India in Council with the concurrence of a majority of his Council." The absence of legislative direction as to the qualifications of the other two members has facilitated the appointment of financial experts or of members of the English Civil Service. And from 1909 one Indian has been appointed to the Council.² The first two of the Indians so appointed in succession, Mr. S. P. (now H. E. Lord) Sinha and Mr. (now Sir) Ali Imam were Law members, but the third, Sir Sankaran Nair, was given a different department.

Originally, every matter was referred to the whole Council. But the Act of 1861 empowered the Governor General "to make rules and orders for the more conveni-

1 The post was not always filled. According to Sir T. Raleigh, Curzon "before he left India, obtained the consent of the Secretary of State" (p. xv) to revive the practice of filling it and there has been no break since.

2 "No Indian member had ever been appointed...Innovation in this exclusive practice was evidently of profound significance and so it was felt to be, both in India and at home. It removed one of the most conspicuous stamps of inferiority and gave Indians a new and widened share both in framing laws and in influence on daily administration. Resistance to so serious a move was natural and determined. It was more determined a thorn than among Europeans in India itself," Morley *Recollections* Bk V ch I See also his speech in the House of Lords, 23-2 1909 and his letters to Lord Minto of May 3, June 15, August 2, November 15, 1906; February 15 and 28, April 12, May 3 and 16, and August 23, 1907; December 12 1908; and January 21 and 28, February 4, 18 and 25 and March 12, 1909. Lord Lansdowne called it 'a tremendous innovation.'



THE EXECUTIVE COUNCIL

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ent transaction of business" by his Council (§ 8), and these "few words gave to Lord Canning and his successors the means of reforming"³ the system. Thus arose working by departments with a centralised secretariat at the seat of government. At the apex of each department is the Secretary to Government in that department. Matters of routine, where the case falls clearly under established rules and regulations are disposed of by him. All other matters he submits to the Member of Council in charge of the department, in a form ready for decision and with his own opinion thereon. On many of these the Member is able to pass the final orders on his own authority, but the rest are submitted to the Governor General. Personal consultations between these three or any two of them are also frequent, nor is any of them debarred from informal consultation with any other Member. Much of the most important business of a department is thus settled by the Governor General and the member for the department. But whenever the Governor General or the member of Council considers further discussion necessary, where more than one department or more than one province are concerned, where a provincial government has to be overruled, or where fresh legislation or a new departure would be involved, the matter is submitted to the Council as a whole. The system is sufficiently elastic to secure individual responsibility with a continuity of policy, but its successful and harmonious working depends to a great extent upon the personality of the Governor General.

The distribution of the entire work of the administration into departments is not very logically carried out, for at the time of Lord Canning there were only seven men available for the purpose including the Governor General and the Commander in Chief, and only one more member has been added since. The Governor General himself

³ Strachey, p. 67; see the whole discussion, pp. 62-70. Also Canning (*Rulers of India*) pp. 46, 191-4; Hunter *Life of Mayo*; *Report of the Decentralization Commission*.

takes charge of the foreign department. In all questions arising out of the relations of India and the Empire with the outside world, that is to say, in all matters of foreign policy strictly so called, the Governor General is free to represent fully to the Secretary of State in England how a particular event or a recent measure actually taken or a further step under consideration would affect India, her safety, her interests, her finances. But with that his duty ends. The decision rests with the Cabinet in England, and the Governor General has to loyally carry out their orders. He is "a 'parliamentary' Governor General responsible to parliament through the medium of the ministry", in more senses than one, some of them rather vague; but his position and his duty so far as foreign relations go have been perfectly clear throughout the period from 1858 to 1920. Internal foreign policy is concerned with Indian States, the frontier tribes, and the relations of India with Afghanistan, Persia, the Arabian coast, and the smaller powers on the frontier generally, who have hardly a recognised status in the hierarchy of international law. In dealing with these the Government of India has more latitude. The Governor General consults experts and is in constant communication with the Secretary of State on all these matters also, but in this sphere he can take decisions to some extent on his own responsibility. But here, too, it is the policy of the British Cabinet that prevails in the long run. And throughout the period under consideration the powers of the Government of India over Native States have been "exercised in four main directions:— (1) Entire control of all external relations of the States. (2) Responsibility for the safety and welfare of British subjects and of the subjects of foreign powers. (3) A tacit guarantee to the ruler that he shall not be removed by insurrection or internal disorders. (4) A tacit guarantee to the subjects of the ruler that they shall not be grossly oppressed nor misgoverned."⁴

⁴ *Holderness*, p. 163.

⁵ *Rushbrook Williams* pp. 44-5. See also *India and the Durbar* chs 3 and 8.



The Commander in Chief is now in sole charge of the Army Department. But this arrangement dates from the resignation of Lord Curzon over the Curzon-Kitchener controversy related above. Prior to that episode the military department was under a soldier appointed as an ordinary Member of Council, whom during the period of his appointment the constitution relieved of all military duties, kept permanently at the centre of the Government, and treated as a civilian.⁶ The Legislative Department is under the Law member, and besides performing the functions indicated by its title, it performs all the duties of the Government of India in connection with provincial legislation and advises the other departments on legal questions and principles, often dissuading them from courses of action not really within their competence. It also gives final shape and form to such legislative power as the Government of India possesses independently of its legislative council. The Home Department has always been entrusted to an experienced member of the Indian Civil Service. Questions of internal politics such as riots, sedition and anarchy and their prevention, the censorship and control of the press, the administration of the Arms Act, as well as the administration of law and justice, jails, police and the C. I. D., form an important part of its functions. Thus it touches the administration of the provinces at many points. The Department of Revenue and Agriculture was also for many years under the member in charge of the Home Department, but in 1905 these two were separated and Revenue and Agriculture and Public Works were joined together under one member. The Revenue and Agriculture Department, since its reconsti-

6 For additional information see *Gazetteer* IV pp 28, 360-5. The Military Supply Department then created and placed under an ordinary Member of Council looked after army contracts, army clothing, remounts, military works, ordnance, the Royal Indian Marine, and the military work of the Indian Medical Service. But it was abolished in 1909 (*Moral and Material Progress Report*, 1911-12, p. 53).



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tution in 1881, has supervised land revenue administration, agricultural inquiry improvement and education, famine relief, and the improvement of agricultural and co-operative credit. The linking together of this with the Public Works Department was facilitated by the creation at the same time of the Railway Board and the Commerce and Industry Department. The Finance Department which has sometimes been placed under an expert from England, is entrusted with the supervision and control of the general administration of imperial and provincial finance, and is specially in charge of currency and the heads of 'separate revenue'—opium, salt, excise, stamps, and assessed taxes. Lastly, in moving a Resolution in the Imperial Legislative Council in March 1910, recommending that a beginning be made in the direction of free and compulsory education and that a Commission be appointed to frame definite proposals, the late Mr. G. K. Gokhle asked that there should be a separate Secretary for Education in the Home Department in the place of the Director General of Education created by Lord Curzon, and looked forward to a time when there would be also a member of Council in charge of the department. Lord Minto by one of his last acts⁷ as Governor General responded to this by placing a member of Council in charge of education, sanitary and medical administration, and local self-government, and his successor Lord Hardinge went further still by placing this department under the Indian member of Council, Sir Sankaran Nair.

The Acts of 1786 and 1793 have been noted in an earlier chapter, which gave the Governor General "a discretionary power of acting (or forbearing to act) without the concurrence of his Council, in cases of high import-

⁷ 7 November 1910. *Gokhle's Speeches*, pp. 713 and 718. Of course Lord Minto's step was not due altogether to Gokhle's suggestion. The idea had been there ever since the post of Director General of Education was first created, 1903 (O. Browning *Impressions*, p. 160).



ance and essentially affecting the public interest, safety, tranquillity, and welfare;" the Government of India Act 1870 repeated this provision (§ 5)⁸; and it has continued in force throughout the period of our review. The proceedings of the Council are very properly kept strictly confidential, and it is not very easy to judge how often this discretionary power has been resorted to as a matter of fact, or what influence it has had on the spirit in which the Governor General on the one hand or the members of Council on the other perform their functions. Nor can we rely much, in a question of this character, upon the public utterances of the high officials concerned, inspired as they must be, more or less, by considerations of policy or of personal reputation or of loyalty to respected colleagues. It is well known that Lord Lytton acted under this provision when in March 1879 he partially exempted cotton imports from customs duty, as has been related above. But in that case every member of the Government knew in advance that the Governor General was only doing what the Secretary of State and the Ministry in power wanted him to do. Has there been any case of the Governor General exercising his discretion and overruling his Council, in which the Home authorities, originally indifferent, supported his action? Such a case would, for obvious reasons, be more instructive than Lord Lytton's to the student of Indian constitutional history. Looking at the matter from a more general point of view, Governors-General have been ignorant of India and its problems on their arrival; their members of Council, on the other hand, have been experienced administrators who have grown gray in the land and risen step by step by years of meritorious toil and achievement; they surround him, they

⁸ There was only a slight modification: the Act of 1793 required each member of the Government to record the reasons for his view in every such case; under the later Act this was obligatory only when desired by 'two members of the dissentient majority.' But one wonders whether this change affected at all the number of dissentient minutes. All such minutes could be called for to be laid before parliament.



are his eyes and ears as well as hands, the arts of the courtier are not altogether unknown to them, nor are they philosophers or anchorites indifferent to the exercise and increase of power and influence, and it is perfectly natural for the new-comer feeling his way, to rely upon the judgment of these his constitutional advisers. Even when he has been in India sufficiently long to venture to steer the ship of State by his own judgment, cases of a serious difference of principle or of opinion between him and his adviser or advisers would be rare, and rarer still those in which the majority of them went decisively against him. The supreme legislature fully intended that this provision was to be availed of under a high sense of duty in very exceptional cases only, and it may be asserted with confidence that Governors-General have respected this intention and not resorted to it lightly or frequently.

The Governors of Madras and Bombay were given executive councils in 1784, consisting of two civilians and the commander in chief of the army of the presidency. From 1793 the commander in chief came to be looked upon as an extraordinary member. A hundred years later the office was abolished and the two presidencies had an executive council from that date of only two members until an Indian member of council was added at the same time that an Indian member was appointed to the Governor-General's council. The Indian Councils Act, 1909, gave a similar executive council to Bengal, (§ 3 (1)), although it was then under a Lieutenant-Governor; and on the ground that the provincial legislative councils which that Act was creating or reforming would "throw a greater burden on the local Government, not only by reason of the actual increase of work caused by the longer sittings of the legislative councils, but also because there will be considerable responsibility in dealing with their recommendations,"⁹ it provided that other Lieutenant Governors

⁹ Letter of the Government of India to the S. S. 1-10-1908. Bengal got its executive council from November 1910.



should also have executive councils to help them. But the procedure it laid down was that such a council could be created by a proclamation of the Government of India, only if a draft of the proclamation lay on the table of parliament for sixty days during which neither House presented an Address to His Majesty against it (§ 3(2)).¹⁰ This procedure made it impossible to obtain under this section an executive council for any other province. The Government of India Act, 1912, converted Bengal into a Governor's province, and provided that Behar and Orissa also was to have an executive council; which thereupon came into existence from August 1912. The Indian members of Council had in the meanwhile proved their worth; their presence enabled the administrations to know and interpret better "the opinions the sentiments and even the prejudices" of the people; while the new executive councils of Bengal and Behar and Orissa showed that that form of government had "an element of continuity necessarily wanting to a one-man" system.¹¹ But parliament frustrated Lord Hardinge's attempt to give an executive council to the U. P. as it had frustrated Lord Minto's. The reform had to wait until the whole system created in 1858 came to an end by the Government of India Act 1919.

Ilbert: ch 3 §§ 36, 38-47, 51-54.

J. Ramsay Macdonald: *Government of India* ch 4.

§ 20 *The India Council.* We come last to that organ in the complex constitution of the supreme government for India which stands lowest in rank and importance. The Act of 1858 created this Council, as we have seen. The Government of India Act, 1869, gave the power of filling vacancies in it to the Secretary of State, and the members were to serve for ten years instead of during good behaviour. If the Secretary of State wanted

¹⁰ The procedure is repeated in the Government of India Act, 1915, § 55.

¹¹ Lord Crewe's despatch, 30-7-1914.

to reappoint any member at the end of the term, he might do so for another five years, but only 'for special reasons of public advantage,' and these reasons were to be laid by him before both houses of parliament. By the Council of India Reduction Act, 1889, vacancies were to be left unfilled until the number of members fell to ten. But this was repealed by the Council of India Act 1907, which provided that there were to be, at the discretion of the Secretary of State, not less than ten and not more than fourteen members, and that the period of service was to be seven years instead of ten. Nine out of the members were to possess the qualification of having served or resided in British India for at least ten years and not left it last more than five years before the date of appointment. As there were no other restrictions upon the choice of the Secretary of State, Mr. Morley (as he then was) appointed Mr. (now Sir) K. G. Gupta and Mr. Saiyed Husain Bilgrami as members in August 1907,¹ principally for two reasons. He had determined that the liberal promises of the free and impartial admission of qualified Indians to offices in government service given as early as 1833 and repeated so solemnly in 1858 were to be fulfilled without any further delay, and he saw clearly that the only practical method of expediting the fulfilment was to make some striking appointments to the highest possible posts. He also wanted the most experienced and the best qualified Indian opinion to exercise an influence from inside the government upon the scheme of reforms then upon the anvil. Lastly, ten years later, with the historical announcement of the 20th August, 1917, already under consideration, and with the certainty of having to follow it up as soon as the Great War ended by some radical measure of far-reaching reform, Mr. A. Chamberlain added a third Indian member to the Council on the 26th June, 1917.

1 See his 'submission' about it to the King, *Recollections* II p. 228.



The Council worked by means of weekly meetings. The members were also appointed to committees, of which there were seven, but these committees could not by themselves decide anything. All matters relating to (1) the appropriation, sale, or mortgage of revenues or property, (2) loans and contracts, (3) alteration in salaries of the highest posts, and in the furlough and sick leave rules of all government servants, (4) regulations for distributing between the various authorities in India the power of making appointments in India, and (5) the appointment of Indians to posts reserved to members of the Indian Civil Service, were to be decided by the majority. The Council acted as a check upon the Secretary of State throughout this period of sixty years from 1858 to 1920, in these matters only. But even here with regard to the appropriation of revenues and loans the Council failed to safeguard the interests of India. Expenditure depends upon policy especially upon foreign policy, and upon the wars and military establishments it imposes upon a country. The British Ministry decided policy. Wars were entered upon by them; the Council had necessarily no voice or responsibility in the decision. In fact the Secretary of State's orders to the Governor General on such matters and the latter's communications to the former about them, were "secret despatches," and these did not go before the Council at all. And when a war or a forward policy was once entered upon, all the expenditure it involved had to be provided by additional taxation and even by loans, if necessary. The only check upon the Cabinet and the Secretary of State in these vital matters of high policy was the provision introduced by Gladstone into the Act of 1858, as has been noted in the last chapter, that the fact of an order directing the actual commencement of hostilities was to be communicated to parliament, and that the expenses of any military operation beyond the frontiers of British India were not to be defrayed out of Indian revenues, without



the consent of parliament, unless it could be shown to the satisfaction of parliament that the operation had been forced upon the Government of India for preventing or repelling actual invasion or under other sudden and urgent necessity.

Again, the total strength of the army to be maintained in India was from time to time decided by the highest executive authority, that is to say, by the British Ministry on the advice of expert commissions. The numbers of the British element out of that total followed as a corollary. And the expense of obtaining, maintaining and equipping these numbers also followed as a further corollary. The people of India, the Government of India and the India Council had to accept the situation as a part of their fate, and provide revenues to the required amounts, however high, with loyal alacrity.

Matters not requiring secrecy went before the Council if they were not urgent; but if they were, the Secretary of State was free to dispose of them without reference to the Council. When placing these communications to the Government of India before the Council, he had only to add a statement specifying the reasons which led him to treat them as matters of urgency. Finally, the Council voted upon all matters which came before it at its weekly meetings. But the vote of the majority was binding only in the cases specified above. In all other cases the Secretary of State might act in accordance with the views of the Council, and as a matter of fact did so as a rule, but whenever he chose to act differently, he was perfectly free to do so.

Thus, the Council had no influence whatever on policy; in matters of administration not directly connected with revenues, expenditure, and high appointments, it was only an advisory body; the members were the constitutional advisers of the Secretary of State selected by him for that purpose because of their experience and exper



knowledge; but he was bound by their advice only in those matters of administrative detail specified above. No one can read the debates in both houses of parliament from the beginning of the session in February 1858 to the passing of the third Government of India Bill at the end of July, without feeling convinced that the intention of the supreme legislature was to create in the India Council a body strong enough to safeguard the interests of the people of India; the Government of India was to be spurred on by it to measures of progress, civilisation and prosperity; the Secretary of State was to be restrained by it from any encroachments upon the rights of the people of India and their revenues. The body actually constituted proved, however, to be too weak and ill-constructed to fulfil this noble function.

Ilbert ch 3 §§ 3-17, 20, 22-4, 28, 31-2, 80, 83, 89, 90, 94-5.

CHAPTER V.

PROVINCIAL ADMINISTRATIONS.

§ 21. *Centralisation and Deconcentration.* John Bright spoke of India as being "twenty nations speaking twenty languages." He ridiculed and he denounced the system by which India was governed as inherently incapable of producing good results: "what would be thought," he asked, "if the whole of Europe was under one Governor who knew only the language of the Feejee Islands, and that his subordinates were like himself, only more intelligent than the inhabitants of the Feejee Islands are supposed to be?" His remedy was decentralisation. He proposed "at least five Presidencies in India perfectly equal in rank. The capitals of those Presidencies would probably be Calcutta, Madras, Bombay, Agra, and Lahore."

Each Presidency was to be treated as a State by itself, "having no connection with any other part of India, and recognised only as a dependency of this country. The Government of every Presidency should correspond with the Secretary for India in England. I shall no doubt be told that there are insuperable difficulties in the way, and I shall be sure to hear of the military difficulty. Now, I do not profess to be an authority on military affairs, but I know that military men often make great mistakes. I would have the army divided, each Presidency having its own army; and I see no danger of any confusion or misunderstanding, when an emergency arose, in having them all brought together to carry out the views of the Government." ¹ These ideas could not prevail at the time. The changes thus recommended were too radical to be undertaken just after a cataclysm like the Mutiny, when the primary duty was obviously to bandage and heal the gaping wounds, remove the cause or causes immediately and directly responsible, and restore the old order. But Bright rendered a great public service all the same in pointing out in his own inimitable way that one of the cardinal vices of the old order was over-centralisation. British India had grown up rapidly by a process of accretion beginning originally at three nuclear points quite distinct from one another, Bombay, Madras and Calcutta, with three separate armies and three administrations, similar in organisation and co-equal in status. But by 1772 the great evils inherent in such an arrangement had become manifest. If the East India Company was to prosper, if it was even to preserve what it had seized, the three presidencies had to be made to follow an identical policy and maintain an identical attitude towards the princes and people of India. And the presidency of Fort William had outstripped the others in territory and in resources. It was, moreover, far safer from hostile attacks and combinations than the other two. The

1 *Speeches in the house*, 24-6-1858 and 1-8-1859.



Regulating Act was the first step in centralisation and it made Fort William the seat of the supreme British authority in India. Every subsequent enactment increased its supervision, direction and control of the sister presidencies. In the meanwhile, however, the presidency of Fort William itself became overburdened with an unwieldy mass of territories. The administration of the whole of Northern India and of districts in the East lying beyond the Indian frontier from one single centre and under the detailed control of a single individual was a physical impossibility. The first idea to suggest itself was to carve one presidency out of "Bengal," and make of it an administration like those of Bombay and Madras, leaving the rest of the Bengal territories under Fort William. But a new presidency would have been more expensive; the creation of a fourth army and a fourth civil service would to that extent have reduced the power and prospects of the Bengal establishments. So decentralisation was given up; deconcentration was resorted to instead. The N. W. P. was separated from Bengal, but merely as an administrative unit; at the head of it was placed a senior Civilian with the title of Lieutenant Governor, whose status and powers were kept inferior to those of the Governors-in-Council at Madras and Bombay. Eighteen years later, Bengal proper was similarly made another distinct administrative unit, and placed under another Lieutenant Governor. These precedents were followed in later cases also. All the same, centralisation also went on apace, though in other ways. Railways, Post and Telegraphs, and Customs became great departments under the Government of India covering the whole country. The supervision, direction and control of the presidency governments by the central went on increasing through Commissions and reorganisations; cadres became fixed for every branch of the administration, and codes and regulations minutely provided for details; even the three armies were consolidated into one; and by the end



of the nineteenth century, the presidencies practically lost all initiative and independence. Lastly, anarchist outrages began in India soon after the bubonic plague made its first appearance in the Bombay presidency, and in the measures that have had to be taken in consequence for the preservation of peace and order, some made possible by means of new legislation, others taken in virtue of powers which the government had possessed from an early date, the presidency governments have had little freedom either in choosing a policy of their own or even in the executive application to local cases and situations of the policy forged for India as a whole by the central government. Thus has evolved in the course of the period from 1858 to 1920, a great over-centralised bureaucracy, with its chiefs reigning over the length and breadth of the land from their secretariat at Simla and Calcutta upto 1911, and at Simla and Dehli since. This is the real government of India in India. Governors and Governors-General have indeed come out to India at regular intervals, nor has there been any amongst them, who when starting for India was not inspired by some ideals and ideas and hopes and dreams. They have come and placed themselves at the head of this complex organisation for a period of about five years. And now and then circumstances have favoured a particular individual, or he has succeeded by native vigour in asserting himself, and there has been in consequence a noticeable personal touch for the time in the action of the gigantic machinery. Such incidents, however, have not been frequent, and, in any case, the historian summing up an era can have no hesitation in treating them as exceptions. He knows that such deflections are not at all unnatural where the entire machinery is made up of as well as worked by human beings. And he feels quite confident that he is doing no substantial injustice to these exalted personages in asserting, that although India has throughout this period been ruled in their name, it has really been governed for the most part



by the giant bureaucratic machine. And the system has been too strong even for the strongest of its titular heads. The vice of centralisation pervades it through and through and to an extent far greater than in 1858 when Bright first noted and denounced it. The only efforts in the contrary direction have been to set up local self-government for each town and district, and to hand over the administration of certain departments—of course, to be carried out according to strict rules—together to the provincial administrations, in order that they might obtain a larger income at a lower cost, and thus have a surplus of their own to deal with as they pleased,—not, of course, absolutely at their own discretion, but according to rules. But the extent and history of these efforts at deconcentration will be dealt with in later chapters.

§ 22 *Fifteen Provinces.* Let us, at the cost of some repetition, set down in chronological order, the beginning of each provincial administration, and the vicissitudes of status it has passed through. From 1912 to 1920 British India has been subdivided into fifteen provinces as under:

Three Presidencies: Madras, Bombay and Bengal.

Four Lieutenant-Governorships: The United Provinces of Agra and Oudh, generally called by its short title U. P., the Punjab, Burma, and Behar and Orissa.

Eight Chief-Commissionerships: Ajmer-Merwara, Coorg, the Andaman and Nicobar Islands, the Central Provinces or C. P., British Baluchistan, the North-West Frontier Province or N. W. F. P., Assam, and Dehli.

I *The Presidencies.* The East India Company's factory at Madras was a mere agency until it was raised to a presidency in 1653. The island of Bombay, ceded by Portugal to Charles II on his marriage with the Infanta Catherina (1661), was handed over to the East India Company in 1665, and the Presidency of Bombay begins really from this date, although we find that the first

"Governor of Bombay" had been appointed as early as 1662. The "Presidency of Surat," which had begun from 1612-3, gradually sank into a subordinate position. The Bengal factories began in subordination to Madras. They were raised into a separate presidency with the headquarters at Calcutta in 1707. The Regulating Act of 1773 (§ 9), made Madras and Bombay subordinate to Bengal, and the Governor and Council at Calcutta were raised into the "Governor General and Council of the Presidency of Fort William in Bengal." The Charter Act of 1833 (§§ 39, 41), changed the title into the present one of the "Governor General of India in Council."

The present boundaries of the Madras Presidency practically date from the time of Lord Wellesley, when on the fall of the brave Tiger of Mysore during the storm of Shriranga-pattanam (May 4, 1799), a large portion of his dominions was annexed, and on the death of Umdat-ul-Umra, Nawab of the Karnatak (1801), his territories also were brought under the direct administration of the Company. Chengalpat District had been acquired as a *jagir* in 1763, the Northern Circars had been acquired by a firman from the Mogul Emperor in 1765 and again by a treaty with the Nizam a little later, but full dominion over them was not obtained till 1823. The territory of the Nawab of Karnul was annexed in 1839.

The Bombay Presidency was built up more gradually. Sindh was annexed in 1843, Aden in 1839, and the other parts of the Presidency had all become British by 1818 as the result of the various wars and treaties with the Marathas.

The Company obtained a clear title over the "lower provinces," when the Mogul Emperor granted to them the Diwani. Benares was annexed in 1775, Orissa and several districts in the north-west in 1803, and Assam, Arakan and Tenasserim in 1826. The Charter Act of 1833 provided for a new Presidency of Agra to be separated from



"Bengal." This was altered in 1835 into an authority to appoint a "Lieutenant-Governor of the North-Western Provinces" and a "Deputy Governor of Bengal." But this last provision was altered again by the Charter Act of 1853 (§ 15), which authorized instead the appointment of a "Lieutenant Governor of Bengal." Thus there were lieutenant-governors at the head of the presidency of Bengal from 1854 to 1911. In area and population it was too extensive a charge for a single administration. But nothing was done until in 1905 Lord Curzon turned it into two lieutenant-governorships. His arrangement, however, not only cut the Bengali nationality into two, but also yoked each of the two sections with a backward and more numerous population. The Muhammadans and Assamese were in a permanent majority in the new eastern province called Eastern Bengal and Assam, and the Biharis and Ooriyas similarly outnumbered the Bengalis in the western section. Such a partition necessarily gave birth to an unprecedented agitation,¹ and it was given up at the Coronation Durbar on the 12th December 1911, when H. I. M. King George V announced that—

on the advice of Our Ministers tendered after consultation with Our Governor General in Council, We have decided upon the transfer of the seat of the Government of India from Calcutta to the ancient Capital Dehli, and simultaneously and as a consequence of that transfer, the creation at as early a date as possible of a Governorship for the Presidency of Bengal, of a new Lieutenant-Governorship in Council administering the areas of Behar, Chhota Nagpur and Orissa, and of a Chief-Commissionership of Assam, with such administrative changes and redistribution of boundaries as Our Governor-General in Council with the approval of Our Secretary of State for India in Council may in due course determine.

Thus the presidency of Bengal as we know it now only came into existence on the 1st of April 1912.

¹ See E. S. Montagu's vigorous criticism of the Curzonian partition:—speech at Cambridge, 28-2-1912, and speech in the house on the Govt. of India Bill, 22-4-1912.



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II *The Lieutenant-Governorships.* The most senior of these is that which is now known as U. P. It was first constituted in 1836 under the Act of 1835 mentioned above. When Oudh, annexed in 1856, came to be added to it (1877), the original name of the "North-Western Provinces" was changed to the "North-Western Provinces of Agra and Oudh." The present name dates from 1901, when Lord Curzon created a new province beyond the Punjab called the North-West Frontier Province.

The Punjab was annexed in 1849 and placed by Lord Dalhousie under a Board of Administration. This soon gave place to a single Chief Commissioner. After the mutiny Dehli was separated from the N. W. P. and added to the Punjab, and the province was placed under a Lieutenant Governor from 1859.

Arakan and the Tenasserim coast were annexed by the treaty of Yandabu (1826), Pegu and Martaban were annexed in 1852, and these provinces of Burma were formed into a Chief-Commissionership from 1862. Upper Burma was annexed in 1886, and eleven years later the entire Burmese territory on the eastern frontier of British India was constituted into the province of Burma and placed under a Lieutenant Governor.

The circumstances under which the Lieutenant-Governorship of Behar and Orissa came into existence in 1912 have already been indicated above.

III *The Chief-Commissionerships.* Whenever territory was conquered or otherwise acquired it was natural to provide for its administration by annexing it to one of the three presidencies. But in this way the presidency of Bengal grew altogether unwieldy. Lord Dalhousie's expedient was to constitute a Board of Administration for each new accession of territory. And such a board was soon after replaced by a single head called a Chief Commissioner. An Act passed in 1854 expressly empowered the Governor General in Council with the



sanction of the higher authorities in England to take any part of British India under his direct authority and management and provide for its administration in any suitable manner (§ 3). And the Indian Councils Act, 1870 (§ 1), expressly refers to the heads of such provinces by name as Chief-Commissioners. The administrative organisation of this type of province in British India has thus a sanction in parliamentary legislation of the same character as the two higher types of provinces, under a lieutenant governor, or under a governor in council. Dehli was the last of these Chief-Commissionerships to be constituted. The announcement at the coronation durbar of the transfer of the capital of British India from Calcutta to Dehli has been quoted above. The motive for the change was no mere desire for something spectacular and striking to mark the unique event of H. I. M. the King's visit to India. Lord Hardinge's Government were firmly convinced that steady political progress in India at the pace and in the direction desired by a rapidly awakening people, would necessarily bring about the transformation of the Indian constitution at no distant date into a federation, the provinces becoming representative governments all but autonomous in provincial matters, and the Government of India standing a head and shoulders above them all, maintaining its supremacy as well as its impartiality unimpaired in all matters of pan-Indian and Imperial concern.¹ The emancipation of the Government of India from all merely provincial and local influences was thus a cardinal factor of their policy. Dehli and a few hundred square miles of territory were

1 The Coronation Durbar Despatch, 25-8-1911; Lord Crewe's reply, 1-11-1911. Compare also the speech of E. S. Montagu (then under-S. of S. for India) at Cambridge, 28-2-1912; as he says the despatch shows "the general lines of our future policy in India", "the goal, the aim towards which we propose to work-not immediately, not in a hurry, but gradually."

therefore separated from the Punjab² and given the status of an independent province from the 1st October 1912.

The Chief-Commissionership of N. W. F. P. arose out of the necessities of frontier policy. The Mohmands and Afridis, the Orakzais Waziris and Mahsuds, and the other fierce and barbarous tribes inhabiting the No-Man's Land on our borders from the Gomal Pass in the south to Kashmir in the north, crossed over into British territory every now and then, for loot or vendetta or mere fun. The unscrupulous gun-running traffic which European greed carried on more or less surreptitiously with Muscat and other places on the Oman and Mekran coasts, gave them a plentiful supply of modern arms and ammunition. The annexation policy of the Forward School might have provided a permanent cure for this evil, only, it was too costly a policy for any responsible government to adopt. On the other hand, the Masterly Inactivity Policy of the other school of frontier experts could not possibly be always adhered to, in the face of repeated affronts and raids. Every now and then, moreover, the entire frontier would be in a blaze, and a government that really wanted nothing better than to concentrate itself on problems of famine and plague, railways and irrigation, education and internal development, and had no earth-hunger or blood-thirst whatever, would still be driven to leave all aside for the moment, and undertake a large scale expedition. This compromise between the two policies just mentioned, came to be known as the Hit and Retire Policy. The tribes would be bled more or less profusely every now and then, all their arms would be seized, and peace would be reestablished on the frontier for a time. But only for a time. The plucky barbarians recovered with amazing rapidity, and the whole series of incidents and events

² The area taken from the Punjab—528 sq. m.; from the U. P., 45 sq. m.



would begin once more and march on again to the inevitable catastrophe of another punitive expedition on a large scale. How to escape this round, is one of the most urgent problems of British Indian high policy. The Chitral (1895) and Tirah (1897) expeditions, especially, necessitated a departure on fresh lines, if only as an experiment. The frontier districts were separated from the Punjab and constituted into the N. W. F. P. (1901), and a policy of economic penetration by irrigation, light railways and the expansion of trade has been steadily pursued. "Production without possession, action without self-assertion, development without domination,"³ until the savage outgrows his savagery, is indeed a panacea for all intercourse between people in different stages of civilisation, provided only that the people believing itself higher in civilisation was capable of practising the principle steadily with absolute sincerity and selflessness.

The remaining Chief-Commissionerships need not detain us long. They were merely the outcome of conquests or acquisitions of territory in other ways. Whenever any new territory could not be conveniently attached for administrative purposes to one of the presidencies or lieutenant-governorships, it was natural to provide for it as a chief-commissionership by itself. Thus Ajmer-Merwara was constituted in 1818, Coorg in 1834, the Andaman and Nicobar Islands in 1858, and British Baluchistan in 1887. Assam, annexed in 1826, was separated as a chief-commissionership from 1874. At Lord Curzon's partition (1905), it was merged in his eastern province. But, as has been noted above, it became a chief-commissionership again from 1912. Lastly, C. P. includes contiguous territories annexed in 1818 and 1854, with two districts added from the N. W. P. in 1861, when it was raised to the status of a chief-commissionership; and Berar—under British administration since 1853, but as a separate unit—has been attached to it from 1903.

³ This is one of the aphorisms of Lao Tzu, the Chinese philosopher statesman.



Some of the minor Chief-Commissioners have other duties also. Thus the C.-C., N. W. F. P., is also Agent to the Governor-General (A. G. G.) for political relations with the frontier tribes between British India and Afghanistan. The C.-C., Ajmer-Merwara, is also A. G. G. for Rajputana. The C.-C., British Baluchistan, is also A. G. G. for Baluchistan. The C.-C., Coorg, is also the Resident at Mysore. And the C.-C., Andaman and Nicobar Islands, is also Superintendent of the penal settlement at Port Blair.

§ 23 *Area and Population.* In the annexed Table opposite the provinces with a population under one million are not entered. On the other hand, the Native States with a population of one million or more are entered. And as statistical comparisons are often paraded between India or some Indian province and some other country, the right half of the Table gives the area and population of the principal members of the British Empire and of some other prominent countries and empires.

§ 24 *Governors, Lt.-Gs., C.-Cs.* As Governors-General and Governors have been chosen persons of high rank and some experience of public life, either in parliament or in the diplomatic or colonial service of the Crown. Out of the fourteen Governors-General from Canning to Chelmsford Sir John Lawrence alone had previous Indian experience as a civilian who had risen rapidly to the highest posts. There have been more Indian civilians and soldiers as Governors at Madras and Bombay; but none out of that class has been appointed even as a Governor for the last forty years. The Lieutenant-Governors and Chief-Commissioners, on the other hand, have all been Indian civilians. Their appointment is not like that of a Governor General, Governor, or member of the executive council—by warrant under the Royal Sign Manual. Even the Lieutenant-Governors do not correspond with the Secretary of State, and the Chief-Commissioners are merely agents of the Governor General. It

Name.	Population in 000000	Area in 000 sq. miles.	Name.	Population in 000000	Area in 000 sq. miles.	NOTES.
U. P.	... 47 ...	107	Ceylon	... 4 ...	25	† These figures are only estimates.
Bengal	... 45.5 ...	79	United Kingdom	... 45.4 ...	122	
Madras	... 41 ...	142	Egypt	... 11 ...	350	
Behar and Orissa	... 34.5 ...	83	England	... 34 ...	51	†† For these see L. Curtis: Commonwealth of Nations, Part I. The total for Muhammadans in the Br. Empire does not include the African Muhammadans in Nigeria, East Africa, Gold Coast, etc.
Punjab inclg. Delhi	... 20 ...	106	Afghanistan	... 6† ...	250†	
Bombay	... 19.7 ...	123	Canada	... 8 ...	3730	
C. P. and Berar	... 14 ...	100	Union of S. Africa	... 6 ...	473	
Burma	... 12 ...	231	Australian Comm.	... 5 ...	2975	
Assam	... 6.7 ...	53	Rhodesia	... 1.6 ...	439	
N. W. F. P.	... 2.2 ...	13	New Zealand	... 1.1 ...	105	
British India	... 244.3 ...	1124	Br. Emp. : White Popln.	60†† ...	—	
India	... 313.55 ...	1833	Br. Emp. : Grand Total	440 ...	12755.5	
Muhammadans in India	... 66.65 ...	—	Br. Emp. : Muhammadans	80.5†† ...	—	
Native States	... 69.25 ...	709	Muhammadans in the World	300† ...	—	The Indian figures are from the fifth Decl. Re- port on Moral and Mate- rial Progress and Condi- tion, 1913, embodying the population figures of the 1911 Census.
Hyderabad	... 13.4 ...	83	United States	... 93.4 ...	3575	
Mysore	... 5.8 ...	29.5	Philippine Isles	... 9 ...	120	
Travancore	... 3.4 ...	7	Japan	... 53 ...	149	
Kashmir	... 3.16 ...	84	Jap. Empire	... 74 ...	261	
Gwalior	... 3.1 ...	23	France	... 39.6 ...	207	
Jaipur	... 2.6 ...	15.6	French Empire	... 80.6 ...	4746	
Jodhpur	... 2.06 ...	25	Italy	... 34.7 ...	111	
Baroda	... 2.00 ...	8	Italian Empire	... 36 ...	702	
Reva	... 1.5 ...	13	The Netherlands	... 6 ...	12.6	
Patiala	... 1.4 ...	5	Dutch Empire	... 54.4 ...	794	The rest are pre-War population and area fig- ures, as near to 1911 as possible.
Udaipur	... 1.3 ...	13	China Proper	... 300† ...	1532	
Indore	... 1 ...	9.5	Nepal	... 5† ...	54†	



was only by the Government of India Act, 1915 and 1916, that Chief-Commissionerships obtained the status of local governments (§ 134), although, as a matter of fact, C. P. and Berar is a province quite as important as a Governor's, while the Chief Commissioner of Assam is hardly inferior to a Lieutenant Governor. But these distinctions, petty and anomalous at first sight, wear, perhaps, a new aspect when we look at the matter historically. We have seen that British India grew up by accretion from three nuclear points. A district on annexation would be more or less unsettled. Its administration would have to be, for some time at least, of a semi-military character, and entrusted to energetic individuals armed with plenty of discretion, who must decide quickly and be content with maintaining order and enforcing a rough and ready kind of justice. Local ways and customs, which the people understood and were attached to, must also be allowed to continue in force, in so far as they were not clearly against fundamental principles of humanity or public policy. Out of these obvious needs arose what came to be known as the Non-Regulation system of administration with the Chief Commissioner at its head. As the territory settled down, it became a fresh nuclear point, annexations in the vicinity would be added to it, and while these must for a time be subjected to the non-regulation system, the older and more settled districts would be advanced to "regulation" status, and the whole placed under a Lieutenant Governor. The three presidencies had come to be called 'Regulation Provinces', because, upto the Charter Act of 1833 whatever laws were wanted had been issued as Regulations of the president in council.¹ This power of legislation by regulations was continued even after the single law member of Council (1833) developed into one or more legislative councils. But these regulations were *ex hypothesi* too elaborate and advanced to be applied to

¹ Governor General in Council for Fort William, Governor in Council for Madras and Bombay.

new annexations, and, instead, very much simpler instructions coloured to a large extent by local variations were drawn up for the guidance of the district officers. The first districts to be actually called 'non-regulation', were the Saugor and Narmada territories, annexed in 1818; and the name and the system were thenceforward applied to every new annexation until it settled down and was brought under the higher type of administration by laws and regulations.² Other peculiarities of the non-regulation system were necessarily connected with the one that gave to it its name. The deputy commissioner at the head of each district held all the reins of power and administration, military, executive, judicial, revenue, police, excise and customs, public works, and even education—in his single hand; military officers were freely employed as deputy commissioners and in other civil capacities; and in the subordinate services the separation of departments or even of the judicial duties from others was not carried to the same extent as in the regulation provinces.

Ilbert ch 3 §§ 37, 49, 55-6; ch 2 pp 141-2.

§ 25 *Districts and Divisions: Administrative Departments.* The unit of administration in British India is the DISTRICT. Several contiguous districts are combined together to form a DIVISION, and, on the other hand, large districts are subdivided for administrative convenience into *taluks*, *tahsils*, or *mamlats*. There are nearly two hundred and seventy districts in British India. In the Bombay Presidency, Bombay City and Aden¹ are not subdivided; each of them may be called a division by itself. Of the fifteen provinces the three smallest—Coorg, Andamans and Nicobars, and Dehli—are not subdivided. In Madras

² Chesney pp. 57-9, 63-4, 67-9. *Dalhousie* (Rulers of India Series) pp. 184-9. See also Temple, *Men and Events*, chs. 4 & 5; a bright account sufficiently brief of the non-regulation administration of the Punjab by the Lawrence brothers, the best concrete illustration of the system.

¹ Transferred to the British Foreign Office, 1919.



DISTRICTS AND DIVISIONS

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17

The districts are not grouped together into divisions. In Bengal there are no subdivisions of a district smaller than the sub-district.

Many of the districts have the advantage of being geographical, economic, linguistic, ethnic, and historical as well as administrative units; but of course there also are, as there must be in a vast territory like British India, not a few districts which have been artificially created into administrative units, merely from considerations of convenience. And the arrangement arose primarily in response to the administrative needs in connection with the collection of land revenue, the preservation of internal order and the judicial settlement of claims and disputes. These are the three primary *Departments*, which the government of a mainly agricultural country must organise more or less efficiently; its revenue collectors and land surveyors, its police officers and its judges must be distributed all over the country, having their headquarters amongst the people in convenient centres, from which they could tour about each in his beat, or to which the people from the surrounding area could easily resort. And these central capital towns with their district areas once established, if the government undertakes other functions which it desires to perform steadily, systematically and uniformly for the entire population, the new departments thus arising also follow the same pattern, as far as possible. But, obviously, it is not at all possible for some departments. The income from land revenue and from such properties as the State possesses is rarely enough to meet all needs; one of the easiest modes of supplementing it is to tax imports and exports; and this function has to be performed at the frontiers, as the goods are entering into or leaving the country. The customs officers must thus be located at the frontiers of the State and in direct subordination to the central executive. Railways and posts and telegraphs are other departments which it is better to direct and control centrally. For although the operations

of the first penetrate into many districts and those of the second into all, they are, so to speak, so elementary and simple in character, the efficiency and economy of their administration gains by direction and control from one centre and does not suffer at all by mere distance from that centre, however great. The departments of Forests, Irrigation works, and ordinary Public Works stand on a different footing. Forest areas are not equally distributed throughout the land, nor are irrigation facilities. A province may have so little of either that it would be unnecessary to divide the work into many divisional charges or to subdivide every one of the latter into district charges. In these cases both the divisional and district charges would have to be fewer in number and larger in area than the divisions and districts of the other departments. Or the work of either department, but not of both, may be as heavy almost in every district as that of the ordinary department; thus, Burma is a forest province, while the Punjab is a province of canals. Or, thirdly, the irrigation work in an entire province or in any large portion of it may be comparatively less exacting, and in such cases it could be entrusted as an additional duty to officers of the ordinary public works department, which exists in every province and is organised by way of divisional and district charges, generally coinciding with the districts and divisions of the revenue department.² Education and Medical and Sanitary Administration are other important departments which adhere to the district and division arrangement in their organisation. Thus a model district in British India, would have revenue, judicial, police, medical, educational and engineering officers stationed and working in it under the supervision of the higher divisional officers and the highest provincial authorities. It would also have post and telegraph officers working under the supervision of the

2 In N. W. F. P. and British Baluchistan military public works preponderate, and the civil public works are entrusted to the military works officers.



Government of India officers of the department, and it might or might not have residing and working in it officers of the Railway, Forest, Customs, Army, and other departments, according to circumstances.

§ 26 *The Services.* Indian youth of the literary castes took to English education with a will the moment it was introduced and the numbers with a fair knowledge of the language and literature of the rulers as well as of modern subjects acquired through that medium increased rapidly. The wonderful application and receptivity of the students acted upon the teachers and upon the administrators and promoters, and both the quality of the instruction provided and the solidity and excellence of the attainments acquired, at least in some subjects, went on improving at a rapid pace. As Sir Henry Maine remarked of this first generation of Indians who had surrendered themselves body, mind, heart, and soul to the influences of Western culture in the true spirit of Eastern discipleship, "the thing must be seen to be believed. I do not know which was the more astonishing, more striking—the multitude of the students, who if not now, will soon be counted not by the hundred but by the thousand; or the keenness and eagerness which they displayed. For my part, I do not think anything of the kind has been seen by any European University since the Middle Ages."¹ The employment of qualified Indians in government service in posts of comparatively superior responsibility and emoluments began with Bentinck. Hardinge placed the action of the administration upon a definite principle. "The Governor General having taken into consideration the existing state of education in Bengal, and being of opinion that it is highly desirable to afford it every reasonable encouragement by holding out to those who have taken advantage of the opportunities afforded them a fair prospect of employment in the Public Service and

1 At the convocation of the Calcutta University, 1866.

thereby not only to reward individual merit, but to enable the State to profit as largely and as early as possible by the result of the measures adopted of late years for the instruction of the people, as well by Government as by private individuals and Societies, has resolved that in every possible case a preference shall be given in the selection of candidates for public employment to those who have been educated in the institutions thus established, and especially to those who have distinguished themselves therein by a more than ordinary degree of merit and attainment."² And to raise the quality of the education as high as possible in all directions and to standardise it the establishment of a University was proposed as early as 1845.³ Sir Charles Wood's despatch of 1854 and the foundation of the presidential Universities followed in due course. As the departments indicated in the preceeding section came to be started extended and progressively improved, the forecast of the Directors in 1834, quoted on a previous page, that "practically, perhaps, no very marked difference of results will be occasioned," ceased to apply. The number of Indians in government employment increased and they came to be appointed by promotion or by direct selection as tahsildars (mamlatdars) and deputy assistant collectors (extra assistant commissioners), fojdars and inspectors, munsiffs and subordinate judges, engineers, district forest officers, headmasters, deputy inspectors and lecturers, and to equivalent grades in almost all the departments. Gratitude, it has been said, is appreciation of benefits small and great, actually received; loyalty, the anticipation of substantial benefits to come; nor is the

² Resolution of the 10th October, 1844.

³ By Mr. C. H. Cameron, President, Council of Education, Calcutta. His proposal is dated the 25th October. Extracts from it and from the opinions on the subject recorded by the Select Committees of the Lords and the Commons, 1852-3, will be found in *Saiyed Mahmud, History of English Edtn. in India, 1781-1893*, ch 16. See also *H. R. James Edtn. and Statesmanship in India, 1797-1910*, ch. 6.



philosophical analysis presenting these results to be altogether condemned as presenting too mean or one-sided a view of human nature. It all depends upon the character of the benefits contemplated. These need not always be of a purely materialistic type. To seek to elevate one's mother country to a high level of prosperity and civilisation; to look upon the decision of stricken fields as the judgment of over-ruling Providence, to grasp fully and firmly both the halves of this double concept of a Divine Judgment—as a deserved punishment to us for our sins, as *our* Karma (कर्म), and as a no less deserved reward to the victors, as *their* Karma; to judge the paramount power and its agents by the best actions and the best thoughts and aspirations of their best representatives; to accept their professions about working for the prosperity and civilisation of this country as genuine, nay, as inspired, and as doing them infinite credit; to accept their diagnosis of our downfall, at least as a working hypothesis; to exhibit the cosmopolitan fraternity (भ्रातृभाव) and wide toleration of Hindu culture at its best by refusing to misunderstand even the excesses of proselytising zeal; to accept the missionaries in spite of their narrowness and prejudices as sincere and active friends and as helpful checks upon the greed, cruelty and assertiveness natural to politicians and soldiers armed with unlimited power in a land bleeding and prostrate; knowing that half-hearted service was worse than none and that sullen non-cooperation was worse than disloyalty open, active and manly, to serve every representative of the ruling power fully and faithfully in any and every capacity, however servile; and, finally, to apply themselves with all their might to English education and social reform, the purification of religion from superstitions and from corruptions, the removal of caste and local prejudices and limitations, the creation of a public opinion on public questions, and the training up of the people in the adoption of constitutional methods for the



removal of grievances and the progressive improvement of their position from the status of conquered subjects to that of equal citizens: these were the ideas which animated the best Indians of that generation: these were the ideas which enabled them to sow the seeds of Modern India. The motives and actions sprouting up out of a thought-bed of this description cannot be classed as mean or self-centred or materialistic or servile or denationalised. To suppose that these men, our grandfathers, merely pocketed their higher salaries and fees, that they merely caught the vices and rudeness of the unwashed sections of Anglo-Saxon humanity, that they merely learned from the foreign tyrants above them how to tyrannise more oppressively over their own countrymen below them, and to question either their warm sentiments of loyalty to the British Raj, or the strong bonds of sympathy that grew up between them and the best of the local representatives of that Raj, is to be altogether blind to recorded history, or to discolour it most unjustifiably by the violent prejudices and passions of to-day.

Raja Ram Mohan Roy, Lord William Bentinck and their contemporaries created a tradition of mutual sympathy between England and India which passed on as a legacy to the next generation. The excesses of the Mutiny months, excesses quite as inhuman on one side as on the other, gave it a rude shock. But the almost uniformly firm and noble behaviour throughout that extremely trying period of a few men in the highest positions, like Lord Canning, made it easy for India to forget and to forgive; and the hand of fellowship so graciously extended by England's Queen, a lady whose every word proclaimed her a woman pious, humane, loving, and loyal to her own conception of her duty, was eagerly and most gratefully and humbly clasped by all India. The first occasion for suspicion and disquietude arose soon after. The Indian Civil Service Act, 1861, made the covenanted service a close service and enumerated the highest civil appoint-



ments below the rank of members of the executive council and upto the grade of assistant collectors in the regulated provinces, as reserved for those only who were successful in the open competitive examinations held annually in England under such rules and regulations, as were drawn up by the examination commissioners, approved by the Secretary of State in Council, and not disallowed by parliament. The men selected were placed on a list in order of merit; they were to stay on a year in England studying Indian subjects and were encouraged to spend the period at a university; then they were examined in these subjects and arranged in a final list according to merit. The Secretary of State in Council ceased to have anything to do with their appointment to particular posts or places in India. The selection being made on the result of an open examination, and the subsequent posting and promotions being left to Indian authorities, patronage, jobbery, and political or party bias of every kind were completely excluded. The subjects for examination, the standard for each, the age limits, and other conditions were so arranged and altered from time to time, as to secure "men who had received the best, the most liberal, the most finished education"⁴ available in England. And not satisfied with the express provision that the scheduled posts were reserved for these 'competition-wālāhs', parliament also provided that if under exceptional circumstances the authorities in India had to give any of these posts to an outsider, the appointment could only be a temporary one, the India Office were to be informed about it at once, and if they did not approve of it within twelve months, it was to be taken as cancelled (§ § 2-3). Thus, on the one hand the highest legislative authority had ordered that no Indian was to be excluded from any government post in India by reason only of his being an Indian, and, on the other hand, as soon as the educational qualifications possible to Indians in India, began to approach English university

⁴ Strachey, ch. 6.



levels, the same authority ordered again that assistant collectorships, assistant sessions judgeships, and higher posts were strictly reserved for those only who competed within rigid age limits and against the best talent of English universities. This was, as some of the best English statesmen and administrators themselves felt, 'evasion,' 'cheating,' 'stultifying the Act and reducing it to a dead letter,' 'breaking to the heart the words of promise uttered to the ear'.⁵ The only real remedy was to repeal these sections of the Act of 1861, tear up the schedule, and hold the competitive examination in India alone or rather in India as well as in England. And if this last course had been adopted, the progress of the Indian universities would have been accelerated from that moment, and they would have become in a short decade or two amongst the best universities in the world, so that it would have ceased to be necessary to import many experts into India from outside. The industrial and economic progress of India would also have been accelerated to an incalculable extent. This course however was not adopted. The practical effect of the steps actually taken was that, as India realised more and more fully the determination of England not to move in this matter beyond a certain point, she felt that the generous promise of the Charter Act and the Queen's proclamation had been torn up instead. This sore feeling did not remain unnoticed; and remedies were attempted. The first was the Government of India Act, 1870,⁶ which recognised

⁵ The expressions quoted were actually used by Lord Lytton in a note on a confidential despatch of the Government of India to the Secretary of State, May 30, 1878.

⁶ The East India Associations, founded by Dadabhai Naoroji in England, with affiliated branches and associations in India had presented a memorial to the Secretary of State on the subject in 1867, asking for simultaneous examinations and for scholarships to promising young Indians to enable them to obtain the highest education in England. In 1868 Mr. Fawcett had moved a resolution in the Commons for simultaneous examinations at London, Calcutta, Bombay and Madras. The first Gladstone Government had come into power, December 1868, with the Duke of Argyll as Secretary of State for India.



the expediency of providing "additional facilities for the employment of natives of proved merit and ability" in some of the posts reserved for the covenanted service, subject to rules framed by the Governor General in Council and sanctioned by the Secretary of State in Council. The rules were made by the Government of India, after repeated pressure from the Secretary of State, in 1879, and thus came into existence the Statutory Civil Service, appointments to which were made for ten years. The experiment proved ill-starred. It could not satisfy Indian public opinion; the C. S. treated it as a poor relation is usually treated by the upstart rich; the men appointed were themselves too few and heterogeneous and scattered, nor had the service sufficient time given to it to develop a tradition and an *esprit de corps*. A fresh start was made on different lines. The Government of India appointed a Public Service Commission in 1886 with Sir Charles Aitchison as president. The result was that Government service was split up in most departments into Imperial, Provincial, and Subordinate: and recruitment to the first of these was to be through examinations in England, from the most important of which Indians were excluded either by a racial bar, or almost excluded practically by the rules and regulations under which they were held.⁷

7 To the examination for the superior posts in the Police Department held in England from 1894, no one was admitted except British subjects of European descent. Cooper's Hill College was established in England, and from 1872 to 1906 men came out from it to fill the higher appointments in the Public Works, Forest, and allied departments. India paid the net annual cost of the institution. Yet Indians who could not lay claim to European descent had difficulty in obtaining admission, and of the total annually selected from it for service in India, the number of Indians was not to exceed a small percentage. Besides, because Cooper's Hill supplied so many, and so many of the other higher posts were to be filled by Royal Engineers, and still others were treated as merely temporary posts outside the cadre, which were filled by Europeans and Anglo-Indians selected locally; only a very small number fell annually to the share of the Colleges at Rurki, Bombay, Sibpur, and



This system came into force from 1895 and has been maintained since to the end of the period under review. The justification advanced for it on behalf of the privileged services by themselves and their admirers, amongst whom might be included more than one Governor General, has been briefly noted already in an earlier section. But perhaps it would be better to give it here in the words of one of themselves. "Let there be no hypocrisy," writes Strachey, "about our intention to keep in the hands of our own people those executive posts—and there are not very many of them,—on which, and on our political and military power, our actual hold of the country depends."⁸ Secondly, "although this system [of competitive examinations] has, on the whole, worked well with Englishmen, it is open even with them to objections and drawbacks, and to think of applying it to the natives of India is nothing less than absurd. Not the least important part of the competitive examination of the young Englishman was passed for him by his forefathers who, as we have a right to assume, have transmitted to him not only their physical courage, but the powers of independent judgment, the decision of character, the habits of thought, and generally those qualities that are necessary for the government of men, and which has given us our empire."⁹ Thirdly, "I must not say this of Englishmen only, for it is also, in a great measure, true of the more vigorous races of India, although their time has not come for competitive examina-

(Concluded from 125)

Madras. The age limit for the I. C. S. was reduced in 1876 from 21 to 19; this change materially reduced the chances of success of competitors from India. The age limit for the I. M. S. was 27, which was too high for Indians. One reason why young Indians going to England for education came back to India intensely discontented and with their faith in British justice almost shattered, was that all such facts relating to every Government department were constantly brought before their eyes by their Indian fellow students in England from all parts of India, pursuing various lines of study.

8 p. 547.

9 p. 544.



tions." ¹⁰ "To suppose that the manlier races of India could ever be governed through the feebler foreigners of another Indian country, however intellectually acute,—that Sikhs and Pathans, for instance, should submit to be ruled by Bengalis—is to suppose an absurdity." ¹¹ And, fourthly, the peace established in India is the English peace. "The English in India are the representatives of peace compelled by force. The Muhammadans would like to propose to every one the alternative between the Koran, the tribute, and the sword. The Hindus would like to prevent a low-caste man from trying or even testifying against a Brahman; and Muhammadans, and Hindus and Sikhs would all alike wish to settle their old accounts and see who is master. No country in the world is more orderly, more quiet, or more peaceful than British India as it is; but if the vigour of the Government should ever be relaxed, if it should lose its essential unity of purpose, and fall into hands either weak or unfaithful, chaos would come again like a flood." ¹²

Even while Sir John Strachey, Sir James Stephen and their autocratic fraternity were piecing together this defence of a system that was to them as the breath of their nostrils, the system itself was being profoundly altered by forces which could not be foreseen, still less counter-acted. We will go into that in a moment. Let us first complete our account of these services from the district and divisional authorities upwards to the provincial executives at the summit. These higher grades were filled exclusively by the *corps d'elite*. The young Englishmen selected from the institutions and by the methods indicated above were first posted as assistant collectors, assistant sessions judges, assistant superintendents of police, civil surgeons,

¹⁰ 545.

¹¹ p. 548.

¹² P. 557. This is a quotation from Sir James Stephen with which Strachey concludes his book. I transcribe it condensed.



assistant district engineers, headmasters, and to similar appointments in all the other departments, and rose step by step each in his department. Almost every one rose some steps. The best rose continuously until they ended at the top of the tree, the revenue men as members of council, or chief commissioners, or lieutenant governors, a few of them even becoming on their retirement, members of the Secretary of State's council, or—the luckiest of them, governors at Madras or Bombay. Now, the intermediate grades of this official ladder of honour and advancement may be skipped. It would be sufficient for our purpose to attempt a brief statement about the provincial SECRETARIATS and HEADS OF DEPARTMENTS, and, moreover, to confine it to the nine larger provinces only; Dehli, Ajmer-Merwara, Andaman and Nicobars, and Coorg are too small to offer a scope for any elaborate administrative structure; British Baluchistan and N. W. F. P. have been and will long remain frontier provinces, where the ruder non-regulation system of administration must not be reformed in a hurry. They are out-posts, rather than integral parts of India. Assam has a secretariat of three persons, one being the secretary for the Public Works; an Inspector-General of Registration and a Director of Land Records and Agriculture are at the head of the revenue department; an Inspector General is at the head of the police department; a Sanitary Commissioner at the head of the medical and sanitary; a Director of Public Instruction is at the head of education; and there also are a Senior Inspector of Factories and a Legal Remembrancer. The other provinces also have Directors of Public Instruction and Inspectors-General of police; and Legal Remembrancers, though these officers are not known everywhere by the same title. But in all the other arrangements there are variations. The Medical and Sanitary Department is under two men in some provinces but under three in the majority, who are styled, Inspector General of Prisons, Sanitary Commissioner, and Inspector General of Civil



Hospitals or Surgeon General. The Public Works Department is under two men, called Secretaries to Government in the P. W. D., or Secretaries and Joint Secretaries, or Secretaries and Under-Secretaries; everywhere they are both working heads and members of the secretariat; or for sections of their work which are directed and controlled from the central government, e. g. Railways, they have the same ambiguous position with reference to their provincial governments and secretariats, that the Railway Board has with reference to the central government and secretariat. The Punjab has three public works secretaries, two being required there for Irrigation. The greatest variations are to be found with reference to the land revenue, survey, customs, salt, opium, and excise departments. We find Directors of Agriculture, Settlement Commissioners, Financial Commissioners, Directors of Land Records, Commissioners of Customs, Salt, Opium, and Excise, Registrars, and Members of the Board of Revenue. The offices are variously combined and no province has all these ten men. Bombay, has four, one for customs, one for salt, opium, and excise, and two for the land revenue. Madras, not having divisional commissioners at all, has seven men, four of them forming a Board of Revenue. Bengal and Behar and Orissa have Boards of Revenue of only one member each, and, respectively, only three and two other officers who divide the rest of the work between them. U. P. has two members of the Board of Revenue, C. P. has a Registrar and a Financial Commissioner, and two other officers; but the U. P. also has six Registrars. Burma and the Punjab have a single Registrar, and four other officers. Lastly, we come to the provincial secretariats. The members are called Chief Secretaries, Secretaries, Deputy Secretaries or Under-Secretaries. And, omitting the Public Works Secretaries, the numbers vary from two in Burma, to five in Bengal and C. P., four in Bombay, and three elsewhere.

Throughout this official hierarchy, from the district upto and including the executive council, the I. C. S. man is the recognised leader and uncrowned king; he is the *guru* (गुरु) whom they all look up to; it is his to tackle problems, read situations, plan policies, solve difficulties; he is the *paterfamilias*, the *dādāji* (दादाजी) or *ājōbā* (आजोबा),¹³ whose slightest look or gesture, whim or failing are noted by the members of the family; he is to be kept informed about every thing, fully, truthfully, and in good time; not a pie can be spent, not a man can be employed, not a suggestion can be offered to the higher authorities, nor can any discretion be exercised in carrying out their orders, without reference to him. The vigour and efficiency, the intelligence and foresight, the tone and sympathy, the popularity and driving power of the administration—such as they are from time to time—are derived ultimately from him. The I. C. S. men are the brains and the will power of the bureaucracy; the I. C. S. men are the government in India. The Secretaries of State, Viceroys and Governors are but short-time figureheads; they come and they go; it is the I. C. S. men who go on for ever.

§ 27 *From generation to generation.* The improvement of the civil service by Cornwallis and Wellesley and the foundation of the Haileybury College have been mentioned in an earlier chapter. The closing of the College and the beginning of the competitive examinations have also been noted. The men who came out to India during the first half of the nineteenth century may be called the first generation of our rulers. The first generation of the competition-wālāhs may be taken to end at about 1880; this for our purposes is the second generation. The third generation came to an end about 1910, with the introduction of the Morley reforms. And we are now in the middle of the fourth generation.



The first generation were the road-makers and the bridge-builders; superstitions and abominations like *thuggee* and *sati* and human sacrifices at flood-time and harvest and female infanticide they discovered to be rampant; and they pursued them with the energy of a righteously militant civilisation fighting barbarism.¹ They created the land-revenue and the judicial systems, and knew the people of their district in their various social grades as thoroughly as it is possible for foreigners ever to acquire such knowledge. They were lonely men separated from one another, with little of Europe in their bungalows and their tents. They were exiles in the full sense of the term, but exiles with absorbing occupations which evoked every ounce of faculty and required every second of time, and they lived dedicated lives. If the roots of British rule have gone deep into the soil of India, if mediaevalism be really going to be uprooted hence and to make room for the upgrowth of modernity to a long and vigorous prime, it is they who have created the miracle, their husbandry, their faith, and their devotion. The Stracheys and the Stephens are perfectly justified in their contention to this extent, that but for this first generation modern British India could never have blossomed forth.

The second generation saw the cutting of the Suez Canal and the replacement of the sailing vessel by the steamer, and with these began the invasion of India by the *memsabs*. There were of course Englishwomen in India almost from the first, but there were hardly any European homes except at the capitals and the big military cantonments, prior to the sixties of the nineteenth century. And gymkhanas and clubs now invaded the mofussil as well as European homes. The spread of the railways tended more and more to bridge the chasm that in the past had separated the mofussil and the capital, and the vogue began of hill stations and of long and frequent furloughs. Codes came to be drawn up, departments

¹ See for a brief account of all this noble work—J. W. Kaye, *Administration. E. I. Co.* (1853), Part IV. ch 2, 3, 4 and 5.

grew up fast, secretariats directed all and wanted to know more than all. The individual was dwarfed, the system throve. The individual was very probably much better educated than in the former generation: but it is certain that his own development through his work and surroundings failed to reach the heights that had been then attained. For a change had come over the spirit of his devotion to his work. Because of the more frequent and quicker intercourse with the outside world, and because of the European homes and clubs he and his wife had set up, his life was fuller and more civilised than had till then been possible in India. But his discontent with it was the more poignant. The exiles, his predecessors, who were exiles indeed, grasped that fact as part of their fate, and so rose superior to it. Their work obtained the full measure of devotion possible for a human being to bestow; and placed as kings over vast masses of alien populations, they conducted themselves as kings indeed. These successors of theirs, on the other hand, just because there was already so much of European in their daily life, wanted to have still more of it, and were discontented because they could not have enough. Their work obtained from them only a fraction of their selves. Moreover, they had now to do it more and more as agents under the direction of superiors, and more and more had to be recorded with reasons as well as done, so that more and more of that portion of their time and their self which these men of the second generation gave to their work, came to be given, pen in hand, at the desk. The written record of the work grew in bulk and improved in quality; the departments multiplied, their network became more and more elaborate as it spread over the land; the system grew and improved from the secretariat point of view, until its own logical development and completion became an end in itself, by the time that the Stracheys and the Stephens were in the seats of the mighty at Simla and Calcutta, at the end of the period here assigned to the second generation.



India, too, the field of their work, had begun to throb with new life. The blood-letting of the sanguinary eighteenth century had reduced the poor blind giant to a state of coma. But district after district, as it passed under the British Flag, had rest and peace; the village homes were repaired, the jungle and the wild beasts receded, intercourse between more and more distant parts began at a brisker pace and in larger volume than ever before, security, justice and industry were established on a firmer basis than ever. Education followed; foreign not merely in outward look and form, but foreign through and through to the spirit of Indian culture; preaching the supremacy of the individual conscience, the right as well as the duty of individual action and individual judgment, the dignity of the individual soul; an education mundane, political, democratic; recognising nothing higher than the reason of man and the experience of mankind, and conveyed through romantic art, unsettling philosophy, the triumphs of experimental science, and the history of rebellions. That laws and governments were human contrivances, that they were of primary importance for the life and happiness of the people, that self-government was a blessing of incalculable potency, that foreign domination was unjustifiable even when not a curse, that submission to it, however necessary, dwarfed and degraded the spirit of man,—these and similar ideas were new to the Indian mind, but they began to sink deep into it almost from the first. As education has spread, as more and more young Indians have crossed the seas to drink the pure waters of Western culture at the source, and as India has come to know of and been brought into contact with world-movements more and more, this thirst for self-government as for the mystical waters of the fabled spring of eternal life has claimed Indian youths in ever growing numbers.

Modern Japan began its career during what we have called the period of the second generation. But India knew little about it until Japan made her war upon China.

and emerged victorious. Near the end of the second generation occurred the incident of the cotton duties already related, and the suspicion that England was exploiting India began, a suspicion which later happenings have solidified into an axiomatic first principle in many minds. Lytton's Press Act, the Ilbert Bill controversy, the attitude of the Civil Service and the Indian government towards the Congress, the failure of the Congress efforts to get parliament to reform the Indian constitution, and the Curzonian *regime*, wounding to the quick by its blatant assertion of a superiority inherent and unalterable, because of race, may be mentioned as successive Indian incidents covering the period of the third generation of civilians almost continuously. To these must be added growing economic unrest and increasing appreciation by large masses of the population of the treatment accorded and the attitude rigidly maintained by white colonials towards Indians all over the Empire. As to world movements, Indian nationalism was not born when Greece won her freedom early in the century, but the thought and career of the outstanding leaders in every subsequent nationalist success or struggle in Europe, and the Asiatic upheaval that began with Japan and became more pronounced in the last years of the nineteenth and the first years of the twentieth century have had an influence on Indian nationalism which ought not to be overlooked, however difficult it might be for the historian to estimate the degree of that influence.

And, in the meanwhile, were the civilian administrators of this third generation better adapted than their predecessors to cope with an India moving so fast? The influences already noted as affecting the second generation for the worse were still in operation and acted with increasing force in each succeeding decade. The *corps d'elite* became more and more self-conscious, more impatient of criticism as criticism increased, retired within its shell—the self-sufficient European life and society it had



created with its rapid growth in numbers at an increasing number of centres, and became a caste of white Brahmans more exclusive than any caste had ever been even in India. We have seen that the separation of England and India from each other merely because of the distance had become a thing of the past, and thought currents of English politics flooded the minds of the English administrators here also. Jingoism held increasing sway in England from about 1875 onwards for the rest of the century, and many of this third generation of our rulers here were Jingoists. Some amongst them carried this superior attitude of mind to an extreme, called themselves the followers of Nietzsche, and posed as super-men. And finally, the average of ability vigour and understanding was certainly lower than in the second generation, for the best talent of England was no longer attracted to India.² If this historical review of the changes that have come over the spirit of the I. C. S. and allied services from generation to generation has any basis at all in fact, the claims of the Stracheys and the Stephens that the 1858-1920 system of an irresponsible bureaucracy out of which Indians are excluded, is the best possible form of government and administration for India, were not quite admissible even when they were first formulated, and the progressive advance of India and the simultaneous deterioration of the services since, have made them less and less tenable decade by decade. From this point of view it only remains to add, in conclusion, that the authoritative announcement of the Secretary of State for India in the House of Commons on the 20th August, 1917, came not a moment too soon, that "the policy of H. M.'s Government, with which the Government of India are in complete

² Moreover the rapid increase in the numbers drawn from England necessarily lowered the average. A wellknown member of the Calcutta University Commission put the same thing from another point of view when he wrote,—“India has been for a long time a heavy drain upon the resources of England in brain power” (9-11-1917).

accord, is that of the increasing association of Indians in every branch of the administration and the gradual development of self-governing institutions with a view to the progressive realisation of responsible government in India."

Strachey: chs 6 and 25

Chesney: ch 11.

J. Ramsay Macdonald: ch 8.

Abdur Rahim: Minute of Dissent, Islington Commission Report.

CHAPTER VI. LEGISLATIVE COUNCILS.

§ 28 *The Indian Councils Act, 1861.* The Regulating Act had given the Governor General in Council at Fort William the power to make rules, ordinances and regulations for the better government of the Company's territories (§§ 36-37). Such Regulations had been issued in consequence not only by the Bengal government, but also by the Madras presidency from 1802 and the Bombay presidency from 1827.¹ The Charter Act of 1833 made a beginning in the direction of a regular law-making organ. (§§ 40, 43-8, 51, 53-5, 59, 66). A law member was added to the Bengal executive council-Macanlay was appointed the first law member, a board of Law Commissioners was appointed to help him in giving to the measures required a form in which they could be brought before the Council ready for decision, the quorum for law-making was fixed at the Governor General and three members, and the subordinate presidencies were deprived of their power of making Regulations. While making laws under these provisions the executive council of the Governor General was thus his legislative council for the whole of India. The Charter Act of 1853 (§§ 22-26), made the distinction clearer by adopting the suggestion, made by Charles Grant

¹ See *Ilbert* pp 84, 147.



in 1853, of additional members, selected for their expert qualifications and helping only when the Council proceeded to law-making. All these measures have been dealt with already in earlier chapters. Then followed the enactment of 1861 remodelling the British Indian legislature altogether. The Indian Legislative Council created in 1853 had conducted itself like a miniature House of Commons, questioning the executive and its acts with great freedom and forcing it to place even confidential papers on the table. The Indian executive were obviously at a disadvantage in dealing with such a legislature, not being free to force it, like the Cabinet in England, to proceed to a vote of want of confidence, if it dared, nor was it free to use the final argument of resigning and appealing to the country. Sir Charles Wood had proposed to parliament the Charter Act of 1853 which had established this legislature. And in introducing this new measure in 1861, he was obliged to say, "I have seen a measure which I myself introduced in 1853, with one view, changed by the mode in which it was carried into execution, so as to give it an operation totally different from that which I intended. The mischiefs resulting from that change have been great." The powers of this remodelled legislative council were therefore severely restricted to legislative matters only, and powers were reserved to the Governor General to make ordinances, without his Council, which were to be in force for six months. Further, the Governor General in Council had in the past made regulations by executive order for the Punjab and other Non-regulation provinces, had extended the regulations of the lower provinces to Benares, and had empowered the Administrations of Lower Burma and the N. W. P., to administer those provinces in the spirit of the Bengal regulations. Questions had subsequently arisen as to the strict legality of these acts. The present Act validated them all.

Moreover, this Act restored the legislative power of the Bombay and Madras governments, and constituted a

legislative council for each of them, on the same lines as the legislative council of the Governor General. It was further provided that there were to be legislative councils for Bengal, the N. W. P., and Punjab also. Under these provisions Bengal obtained its legislative council in 1862, and the N. W. P. in 1886. The numbers for these local legislatures were to be not less than four nor more than eight, besides the Advocate General of the province. The "additional members" in the central legislature were to be not less than six and not more than twelve. All these additional members were to be nominated, each for two years, and not less than one-half in each council were to be non-officials.

The nomination of non-official members was a departure of historical importance. The experience of the Mutiny had taught the need of a better knowledge and understanding of the opinions, sentiments and prejudices of the people, and it was hoped that Indians of wide experience and great weight coming up to the legislative councils as nominated members would not only enable government to learn how projected measures were likely to strike Indians and how they could be modified so as to suit them better, but that advantage could also be taken of their stay at headquarters through the medium of free and informal conversations, of eliciting their opinions and their points of view on various matters of more or less importance. It was soon discovered however that it was not possible to secure this latter advantage. Until the Universities, then just established, produced a class of Indian leaders and representatives of a modern type, the only people available for nominations were Indian Chiefs, their diwans or darbaris, hereditary landed gentry or religious leaders, and government pensioners who had retired from the highest posts open to Indians. And the representatives of these classes were, in the sixties and seventies of the nineteenth century, too conservative for what the Englishman calls social intercourse, and too cautious,



INDIAN COUNCILS ACT, 1861

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diplomatic and urbane for really free interchange of views. It was second nature to them to divine what it would please the inquirer to hear and in most cases to reply accordingly. The Indian Raja or Diwan of the past had the same difficulty in eliciting the real views of the people,¹ but then they knew the nature and the gravity of the difficulty, and also knew how to put people at their ease, and gave the time and the trouble necessary to get to the bottom of their minds. The foreigner, of course, had neither this knowledge nor these arts. It should also be noted, however, that while the Raja of that generation was quite content to leave the Indian world exactly as it had been for hundreds of years, the British ruler was inspired with the dream or the mission of creating a better and a progressive India; he wanted to create it by legislative and executive processes; his conception of the State, both as to the powers it ought to exert and as to the limits beyond which it ought not to travel on any account, was also quite novel to the Indian mind; and the questions which puzzled him at every step were in consequence questions which few Indians of that day could have understood in all their bearings. In one word, the nomination of Indians² to the legislative councils was a bold step in advance of the time. It is necessary to understand this to realise how fast India has progressed, or rather, how utterly unprepared India was for Western political methods and institutions in 1861. A chronicler of that time, echoing the impressions current amongst well-informed contemporaries, has remarked that "during the last thirty years India has so much changed that except for the colour of the people, and perhaps the

1 The analogy of the Indian Raja's 'court' will be found in Sir Bartle Frere's well-known minute of 1860 on the subject.

2 Non-official Europeans of the mercantile and settler classes were also nominated; these men, too, were then little better than exponents and champions of their own class interests and privileges.

climate, you would hardly recognise it as the same."³ And the change has gone on at an increasing pace, decade by decade.

The business to be transacted at the council meetings was expressly limited to the consideration and enactment of legislative measures, no motion was allowed except in reference to a bill, which was being introduced or under consideration; no measure was allowed to be introduced by a private member, except with the previous sanction of the Governor General, that might affect the national debt, or the public revenues, or imposed any charge upon revenue, or affect the military and naval forces, or their discipline, or the religion or religious rights and usages of any section of the people. The rules of procedure were left to the executive. The power of parliament to legislate for India was reserved; the council was not to legislate so as to repeal or in any way affect any parliamentary legislation about India; nor so as to affect the authority of parliament, or the sovereignty or dominion of the Crown, over British India, or the allegiance of any subject to the Crown. Laws passed by the Council were not to have validity if the Governor General withheld his assent to them.⁴ Laws passed but reserved by the Governor General for the pleasure of the Crown, were not to have validity until the assent of the Crown had been notified through the Secretary of State in Council. And laws assented to by the Governor General went into force but became null and void again, if the Crown through the

3 I. T. Prichard, *Indian Administration, 1859-68*, 2 vols., published in 1869; I p. 131. See also his introductory chapter. For an earlier witness see Kaye, *Administration E. I. Co.*, published 1853:—"The physical improvement of the country and the moral improvement of the people are advancing, under our eyes, with a rapidity which would fill the bygone generation of Indian administrators with as much astonishment as the ancient race of soldiers would experience at the sight of the magnificent dimensions of our Indian Empire" (p. 267).

4 This power appears to be the analogue of the G. G.'s power to do what he thought fit in spite of a unanimous council.



Secretary of State in Council disallowed them. These limitations and restrictions are important, as they were maintained upto 1892, and the relaxations since, which will be noted as they occurred, were none of them of a radical character. The restrictions may be summed up into two cardinal statements. Though establishing these legislatures the authorities in England were careful not to relax in the slightest degree the subordination to themselves of the executives in India. They were also careful to guard against all possibility of the new organs weakening these executives in any way whatever. The councils had a standing official majority, and a preponderance of the executive out of all proportion to that majority. They were merely advisory bodies and even their function of humbly tendering advice was rigidly circumscribed. People expecting a legislature to be in some degree independent of the executive and able to exercise some check upon it, not merely by the indirect process of compelling the executive itself to reconsider matters but in some ostensible manner, were naturally disappointed with it, and thought its title a misnomer.⁵ The forms, delays, discussions, inquiries, and publicity necessary to good law-making were introduced; but the will behind the laws that came to be made was the will of the executive. And, in consequence, parliament was able to hand over to the executive, within the bounds of its delegated authority, plenary powers of legislation. The Indian legislative council had power to make laws for all persons, all courts, and all places and things in British India; for Indian subjects, soldiers and campfollowers in any part of the world, and for British Indian subjects and government servants anywhere in India.⁶ And these laws superseded laws and regulations made by any other authority in India. The powers of the local legislatures were restricted in the same way as those of the central council; they were further debarred

5 *Prichard* I pp. 113-4, 119-121, II pp. 225-6.

6 Some of these powers were added later.

from legislating about the tariff, currency, post and telegraphs, patents and copyright, the Indian Penal Code, and other matters exclusively under the control of the central executive; and the laws passed by them and assented to by the Governor were not to have validity until also assented to by the Governor General. Finally, the practice soon grew up for the Government of India and the provincial governments to refer a bill to the Secretary of State and the government of India respectively, before its introduction into the legislative council.

Mukharji I 191-222: the text and Sir Charles Wood's speech 6-6-1861.

Ilbert pp 99-103 and ch 3 part VI.

Report on Indian Constitutional Reforms *§§ 56-65.

§ 29 *The Indian Councils Act, 1892.* Although exceptional men like Raja Ram Mohan Roy had begun to appear, the Indian people outside Bengal and the bigger towns were still, in the decade of the Mutiny, what we have called them in an earlier chapter, dumb and altogether oriental or mediaeval in their outlook. But English education spread fast, a "native" press began its political mission in province after province, a new literature was born in one vernacular after another growing more and more modern in tone method and aims, and the English language and railways began to transform and unify Indian thought, aspiration and outlook. The numbers swelled to hundreds in every province of men who began to envisage the Indian political problem as a whole, to criticise the actions and resolutions of the executive from day to day, and to follow events in the outside world also and estimate their bearings. The proceedings of the English parliament and the vicissitudes of the party struggles there came to be a topic of absorbing interest to growing numbers in every Indian town. Above all, there was the increasing pressure from above of a foreign

*Referred to henceforth in this book as Report I, C. R.



bureaucracy getting more and more unsympathetic and supercilious, and there also were two masses of the population in the Indian continent,—the Muhammadan in the North, the Maratha in the Deccan, who cherished memories of the bygone days of their own power and glory. India's demand that England do fulfil her deliberate legislative promises and solemn royal pledges, began as a continuous petition urged in a voice ever growing in volume and rising in pitch, from about the seventies. And, curiously enough, the first Indian who came to be recognised and revered as the spokesman of India was the exceptionally modest, simpleminded and inoffensive Dadabhai Naoroji. Another short decade and the local political simmerings gave rise to presidency organisations, and out of them leapt into the forefront the all-India annual gathering of the Indian National Congress. By the material test of numbers, resources, structure, or even output of work, it looked a negligible an almost contemptible little thing for so vast a country to put forth as its accredited representative. But the average Civilian would have done well to see, as did the few Humes, Wedderburns and Cottons who formed a dwindling minority in the order, that the new institution was endowed with life and growth, and that the better mind of India would be behind it more and more.

The Indian National Congress asked for representative legislatures with wider functions, from the very beginning of its career in December 1885. If the Government of India were ever inclined to favour the idea of a real transfer of power, however limited, to the people and their elected representatives, it could only have been for a very short time. But they were not unfavourable to elected representatives. And they as well as the Anglo-Indian opinion set forth by chambers of commerce and other bodies, desired that greater and more regular opportunities should be afforded to the people to state their grievances and seek information, and to the executive

to explain policy and reply to criticisms and attacks due to ignorance and misunderstanding. At the Jubilee celebrations, February 1887, Lord Dufferin indicated that government were thinking of enlarging the imperial council and widening its functions. He appointed a committee to frame proposals, and these were submitted to the Secretary of State in 1888. Lord Lansdowne, who succeeded, submitted similar proposals in the following year. It was obvious that nothing could be done without a fresh parliamentary Act, as the Act of 1861 had provided for nominated members only and laid down strict restrictions as to numbers and powers. The Indian National Congress organised public opinion on the subject both here and in England, and asked that half the members of each legislature should be elected representatives, that the annual budget should be regularly submitted to the legislatures, that the members should be allowed to interpellate government, and that the Punjab should also have its legislature.¹ Charles Bradlaugh was present at the Bombay sessions of the Indian National Congress (December 1889), and introduced a bill on the subject into the House of Commons early in the following year. The Secretary of State also introduced a bill on the same subject in the House of Lords in the same session. Both were crowded out by other parliamentary business. The Secretary of State made a second attempt in 1891 without success. At length at the third attempt in 1892 the bill, as it had been amended by the House of Lords in 1890, became law. The principle of election was not embodied in the Act, as Lord Cross would not have it. During its passage through the House of Commons it excited keen interest. The following extract from the speech of Mr. (now Lord) Curzon, then Under Secretary of State for India, at the second reading of the bill, puts the whole matter briefly and clearly.

1 First I. N. Congress, Resolution III; II Congress, Resolutions II-V; III Congress, Resolutions II, N. IV Congress, Resolution I; V Congress (1889) Resolution II; VI Congress, Resolutions I and VIII; VII Congress, Resolutions II, XII, XIII. Bradlaugh died January 30, 18 91.



Mr. Curzon: Coming to the concluding question, the mode in which these additional members were to be appointed, he noticed that the Hon. Member for North Manchester (Mr. Maclean) had on the paper an amendment declaring that no reform of the Indian Councils which does not embody the elective principle could prove satisfactory. But the Bill, he had to point out, does not exclude some such principle, be the method election, or selection, or delegation, or whatever particular phrase they liked to employ. The 4th sub-section of Clause I runs as follows:—

“The Governor General in Council may from time to time, with the approval of the Secretary of State in Council, make regulations as to the conditions under which such nominations, or any of them, shall be made by the Governor General, Governors, and Lieutenant-Governors respectively, and prescribe the manner in which such regulations shall be carried into effect.”

Lord Kimberley himself had elsewhere, in an earlier stage of this Bill, expressed himself with reference to this Clause as follows:—“I express my own satisfaction because I regard this, as, to a certain extent, an admission of the elective principle...I myself believe that under this Clause it would be possible for the Governor General to make arrangements by which certain persons may be presented to him, having been chosen by election, if the Governor General should find that such a system can be established.”

Mr. Maclean: Does the Government accept that view of Lord Kimberley?

Mr. Curzon: Undoubtedly, Sir, the opinions expressed by Lord Kimberley are also shared by the Secretary of State.

Gladstone in winding up the debate for his party, agreed that the wording of the sub-section was so peculiar that it could not but mean an intention, a genuine and sincere intention, to leave room for the adoption of the principle of election, if it was at all found possible to do so. If so, the question arose—should parliament prescribe election in so many words, or should it leave the matter to the discretion of the Governor General in Council? This question Gladstone decided against Maclean and his liberal pro-Indian friends, and in favour of the Government of India. Hence, although he said he felt “justified in looking forward not merely to a nominal but

to a real living representation of the people of India," he deprecated a division, he felt it might convey a wrong impression, and concluded: "I certainly could not take part in any division hostile, or apparently hostile to the Bill.... We should do well to allow this Bill to receive the unanimous assent of the House."

On the more important issue of powers and functions, the Act only widened the opportunities of non-official members for "criticism, suggestion, remonstrance, and inquiry."² So ended the first effort of educated India. Since 1861 a whole generation had passed by; a generation during which Universities and law courts had grown up from their first small beginnings into the most cherished of the modern institutions that England had sympathetically planted into India; a generation during which English had become the common language in India of the upper ten thousand, during which English literature and English history and politics were studied with an utter reverence beyond description, and Indian youths were crossing the *kala pani* in ever increasing numbers to drink of the fountain at the source. This spirit, this attitude of India towards England, has gone, never to return. The failure of parliament to seize the psychological moment and make a genuine beginning, however small, of representative institutions in India has changed all that, once for all.

However, the leading Congressmen both in India and in England bowed to the inevitable. The new Act gave—

(1) Larger councils, and also, gradually, councils for some provinces hitherto without them.

The maximum number of "additional members" for the central council was raised from 12 to 16. For the provincial councils the maximum was fixed at 20 in the

² Lord Dufferin.



case of Madras, Bombay, and Bengal, and 15 for U. P. Councils were established later for the Punjab and Burma (1897) with 9 additional members.³

(2) The right of interpellation.

Any member might ask a question, if it was a request for information only, if its wording was not argumentative, hypothetical or defamatory, after due notice; the president might disallow any such question; and, lastly, there was to be no discussion on the reply.

(3) The right to discuss the annual financial statement.

A printed copy was to be supplied to every member some days in advance, and at the meeting any member might discuss and comment upon any part of it, and offer suggestions, and the financial member, heads of departments (if nominated additional members), and the president might reply and wind up the debate. But no resolution could be formally proposed or the house divided upon it.

Under the 4th sub-section of clause I, quoted above, rules were framed under which ten non-officials (and not eight only) were nominated to the Governor-General's Council; viz., those recommended, i.e. elected for the purpose, by the Calcutta Chamber of Commerce (1), and by the non-official additional members of the provincial councils (one each from Madras, Bombay, Bengal and U. P., and later from the Punjab, Burma, and Eastern Bengal and Assam also), and those others selected by the Governor General with a view to the legislative business before the council, and the due representation of all classes. To have nominated more than ten non-officials would have exposed the council to the risk of a non-official majority.

³ When Eastern Bengal and Assam was separated from Bengal (1905) it was given a council with 15 additional members for legislative purposes. Punjab and Burma were treated as 'minor' or 'backward' provinces i.e. the legislatures there established were of the 1861 pattern.



In the Bombay Council, under the rules framed, eight of the non-official members were nominated on the recommendation of the Bombay Corporation, the Bombay University, municipalities, district boards, and other bodies. The Governor nominated other non-officials also, and the total number of the non-officials was to be at least 10 out of 20. The Bombay Government soon ceased to nominate the full complement of additional official members (10), so that for several years before 1909, the Bombay legislative council was working with a non-official majority. The regulations for the "nomination" of non-officials at Madras and Calcutta were similar; but in the last province, on a revision in 1908, one seat was given to the Zamindars.

Mukharji I 228-245: the text and extracts from the speeches of Mr. Curzon and Mr. Gladstone.

Ilbert p 107 and ch 3 part VI

Report I. C. R. §§ 66-71.

§ 30 *The Indian Councils Act, 1909*. In 1813 and 1833 we have seen the influence of the thought currents predominant in England on the growth of the Indian constitution. Lord Ripon, again, during his viceroyalty was but the agent of English liberalism in trying to rear the plant of public life in India by his Local Self-Government Act of 1882. For the twenty years that followed the conservative party was in the ascendent in England, and it was a period of stagnation in India. We have just seen how the principle of election was not introduced in the Act of 1892, although the Government of India was not against it. During the latter part of this period and especially after 1905 India was, as Gokhale said in the central council, "drifting into chaos."¹ But the liberal party won

1 The Prime Minister (Mr. Asquith) referred to this statement in the debate on the second reading (April 1909) and added, "I do not say that the aspirations of Mr. Gokhale are met by this Bill, or those of his friends; but it is a step which will avert the serious danger which has been confronting us for the last few years."



a sweeping victory in the general election of December 1905, and John Morley became Secretary of State for India in Sir Henry Campbell-Bannerman's ministry. His first measures had to be repressive,² as Lord Curzon's *regime* and especially his partition of Bengal had given rise to widespread discontent. But he very soon came to the conclusion that a further step in advance was also necessary, such as would render the administration progressively sympathetic and give the people themselves a growing influence and a larger voice in the deliberations by means of which a modern state shaped its public policy. The friction and delays he overcame were immense, in order to be able to overcome them at all he had to reduce his scheme to the indispensable minimum, to claim for its character, tendency and effects very much less than was justly due to it, and to keep his own authorship of it in the background, and his ripe statesmanship shone at its best in this strategy. Larger employment of Indians in the higher posts upto the highest and decentralisation on an extensive and effective scale, so that local self-government organs would be really self-governing and the provinces would develop from mere agencies and administrations into governments, were as essential parts of his scheme as the enlargement of the legislatures and their elevation from the position of mere advisory adjuncts to that of essential limbs of the government, wielding an influence, certain to grow full soon into directing power and control. But he retired from the helm before the recommendations of the Decentralisation Commission could be worked out and even before the Islington Public Service Commission was appointed. Even his scheme for the legislatures the Government of India modified in the fundamental particular of communal electorates. Still, it

² Deportations (under the Bengal State Prisoners Regulation of 1818) May 1907 and later. Prevention of seditious meetings, by ordinance, followed up within six months by an Act—November 1907; Explosive Substances Act and Incitements to Offences Act, 1908; newspaper prosecutions; &c.

is not too much to say that the vessel of state was drifting on to disaster when Morley took the helm, and it was his foresight, firmness, and liberalism, coupled with the unique respect and confidence he inspired in the minds of all concerned (from the Cabinet and the radical and labour M. P. 's in England, down to the leaders amongst the Civil Service as well as the moderate, Muhammadan, and nationalist parties in India), which enabled him to make a fresh start, to make even the Civil Service realise that a centralised bureaucracy and Curzonian bumptiousness were evils of the first magnitude, and that, moreover, repression alone or in excess of a proved specific need, would never be tolerated by parliament or by England as their settled policy towards India. Thus, it is not too much to say that to him belongs in an exceptional degree the credit of saving the cause of progressive constitutional reform in India.

The bill was introduced into parliament on February 17 and received the Royal assent on May 25, 1909. It took the form of an Act amending previous enactments on the subject, and left a great deal to be provided by regulations and rules which the executive connected with the particular legislature was to frame, and the next higher authority was to sanction. All such proclamations, regulations and rules, other than rules made by a Lieutenant Governor for the more convenient transaction of business in his Council, were also to be laid before parliament as soon as made. The Act provided that amongst the additional members there were to be both nominated and elected members, and fixed their maximum at sixty for the council of the Governor General, fifty for the council of each of the major provinces,³ and thirty for the

³ Eastern Bengal and Assam was counted as a major province; Punjab, Burma and any other Lieutenant-Governor's province 'where a legislative council might be constituted hereafter' were counted as minor provinces. With the repartition of Bengal in 1912, Bihar and Orissa took the place of Eastern Bengal and Assam.
(See page 151)

rest. And the Act further provided that rules shall be made authorising at these Councils (a) the discussion of (1) the annual financial statement and (2) any matter of general public interest, and (b) the asking of questions, under prescribed conditions and restrictions.

The Secretary of State in Council had pointed out in their despatch (No. 193, 27-11-1908) that in the provincial legislatures an official majority might be dispensed with, but that a substantial official majority must be permanently maintained in the central body (§ § 17-22). Under the rules and regulations the councils were so constructed from the first as to carry out both these principles.

The elected members of the central council were returned by (a) the non-official members of the provincial,

(Concluded from 150)

place of Eastern Bengal and Assam, and Assam itself ranked as a separate minor province. The Government of India Act, 1912 (passed June 25), enabled legislatures to be formed for provinces under Chief-Commissioners. The regulations for all legislatures were then revised, the Assam Council was established, November 1912, and the C. P. and Berar Council, November 1913. The maximum numbers, as after 1913, are shown in the following table:—

Class of Member	India	Madras	Bombay	Bengal	B. and O.	Assam	U. P.	Punjab	Burma	C. P. & B.
Head	2	1	1	1	1	1	1	1	1	1
Executive Council	7	3	3	3	
Nominated Offl.	28	17	15	16	1	9	20	10	6	10
Total Offl.	37	21	19	20	19	10	21	11	7	11
Nomniated non-offl.	3	5	7	4	4	4	6	6	8	4
Elected	27	21	21	28	21	11	21	8	1	7+3
Total Non-Offl.	30	26	28	32	25	15	27	14	9	14
Experts-offl. or Non-offl.	2	2	2	2	1	1	2	2	2	1
GRAND TOTAL.	69	49	49	54	45	26	50	7	18	26

* The 3 Berar members elected by municipalities, district boards, and landlords, one each.

councils of Madras, Bombay, Bengal, and U. P., two each, and those of the other five provinces, one each; (b) the landholders of Madras, Bombay, Bengal, U. P., Bihar and Orissa, and C. P., one each; (c) the Muhammadans of the same five provinces, excepting C. P., one each, and another by the Muhammadans of U. P. or of Bengal at alternate elections; and (d) by the two Chambers of Commerce Bombay and Bengal : total, 27.

The twentyeight elected members of the Bengal council were, under the regulations, returned by (a) the municipalities, district and local boards, and Muhammadans 5 each; (b) the landholders of the four divisions, excepting Chittagong, one each; (c) the municipalities or landholders of the Chittagong division, one member at alternate elections; (d) the Calcutta Corporation, the elected commissioners of the same Corporation, the Calcutta University, the Calcutta Trades Association, the tea-planters, and the Chittagong Port Commissioners, one each; and (e) two by the Bengal Chamber of Commerce.

The twentyone elected members in the Madras, Bombay, U. P., and Behar and Orissa Councils were similarly elected by municipalities, district boards and corporations, Muhammadans, landholders, commerce industrial, or mining associations, and universities.⁴

4. The details in parallel columns:—

Madras.	Bombay.	U. P.	Behar & Orissa.
The Corporation of M. 1	Do. of B. 1	Larger municipalities in rotation 4	Municipalities 5
Municipalities and District Boards 9	Municipalities and District Boards 4	Smaller M. and Dist. Boards 9	District Boards 5
The University 1	Do. 1	Do. 1	Do. 1
Muhammadans 2	Do. 4	Do. 4	Do. 4
Landholders 5	Landholders 3	Do. 2	Do. 5
Planters 1			Do. 1
M. Chamber of Commerce 1	B. Do. 1	Upper India 1	
M. Trades Asstn 1	Karachi C. 1	Chamber of Commerce 1	
	The Indn Commercial Community 1		The Mining Community 1
	Millowners of Bombay and Ahmadabad 1		