



isolated rebellions connected with it, and the disturbances to which it gave rise among the civil population. Before the story of the greased cartridges was circulated, there was no definite plot for a general rising of the Bengal army, and it is improbable that such a plot was formed even after the first mutinies. For, though Cracroft Wilson, the judge of Moradabad, collected evidence which convinced him that 31 May had been fixed for a simultaneous revolt, and that the plan was marred by the premature outbreak at Meerut, John Lawrence found in the numerous intercepted letters written by sepoys not the faintest hint of an organised conspiracy, while none of the faithful sepoys, none of the condemned mutineers who might have saved their lives by disclosing it, if it had existed, knew anything about it. In reply to questions put to prisoners in the North-Western Provinces, the cartridge, and it alone, was named as a grievance.

While the mutineers lacked a head, many were half-hearted and fought reluctantly against the leaders whom they had been accustomed to obey; and between the various groups there was a want of concert. Sikhs, Panjabis, Gurkhas fought whole-heartedly against them. Even so, however, the prospects of the British would have been almost desperate if Indian princes—particularly the rajas of Patiala, Jhind and Nabha—had not given invaluable aid. Colin Campbell made serious mistakes and lost precious opportunities; but his critics, who contrasted him with the men who, without help from England, had repelled the first onslaught of the mutineers, and complained that with forces enormously superior he was slow in extinguishing the revolt, forgot that his task, in itself even harder than theirs, was rendered still more difficult by the delay in offering an amnesty and by the confiscation proclaimed by Lord Ganning.

Although many whose pride was offended by the domination of an alien and infidel race, or who had personal objects to gain, desired the overthrow of the British raj, diversities of race, rank, status, aim and, above all, religion made it impossible for them to combine. Aggrieved chiefs, such as Kunwar Singh, dispossessed land-holders, villagers who objected to taxation, hereditary thieves, budmashes of every kind took advantage of the prostration of authority to redress their grievances, to rob, or to gratify private animosities; but civil disturbances, except in a few isolated regions and on the part of a few embittered or fanatical groups, never amounted to rebellion. After the Mutiny broke out, the titular king of Delhi was proclaimed head of a movement by which Muhammadan zealots hoped to regain supremacy; but this probably deterred many to whom Muhammadan rule was abhorrent from supporting the mutineers. The Nana, profiting by the military rising which he had helped to encourage, became the representative of those Marathas who desired to restore the power once exercised by the Peshwa. Among the states which Dalhousie had annexed rebellion broke out in Jhansi and Oudh





alone, and in Oudh it was due not to annexation, but to the harshness with which the talukdars were treated, to the failure of Havelock's earlier attempts to relieve the residency, to the abandonment of Lucknow, justifiable though it may have been, by Sir Colin Campbell, to the errors which he committed during the siege, and to Canning's impolitic proclamation. These rebellions arose in consequence of the Mutiny, and there is no evidence that any of the rebels, except the Nana, conspired before it began.

Dalhousie, except in so far as he had failed to remedy the indiscipline of the army, which was rather the business of the commander-in-chief than of the governor-general, and had neglected to safeguard Delhi and Allahabad, was unjustly blamed, and has been fully vindicated. Even the annexation of Jhansi would have been harmless if it had been supported by armed force; the increase of European troops, for which he had in vain pleaded, would have at least averted the worst calamities of the Mutiny; while by the construction of roads and telegraphs, and by the administration which he bestowed upon the Panjab, he contributed much to the power by which the Mutiny was quelled.

Even before the reconquest of Oudh an event had occurred which, while it marked the restoration of British supremacy, inaugurated a new period of Indian history. The East India Company, upon which all political parties in England agreed in throwing the blame of the Mutiny, was abolished; and India was to be ruled in the name of the queen. A proclamation, prepared under her direction, announced that the government of India had been assumed by the queen; that Lord Canning was to be the first viceroy, and that all officers who had been in the service of the Company were confirmed in their offices; that all treaties made by the Company with Indian princes were to be maintained; that the queen desired no extension of territory, promised full religious toleration to her Indian subjects, and would always respect their ancient usages; that she offered pardon to all rebels and mutineers who had not directly taken part in the murder of Europeans; and that she would constantly endeavour to promote the prosperity of her Indian dominions.





## THE HOME GOVERNMENT, 1858-1918

THE government of India is an amazingly complex and dual form of administration. It has two chiefs, the secretary of state here, the man at the desk and on the front bench in this country; and the viceroy, the man on the spot in India. It is the latter who, at any rate in India, is invested with paramount power; but the final responsibility rests with the secretary of state.<sup>1</sup>

In his *British Government in India* Lord Curzon further observes:

This dualism has arisen not merely from the simultaneous existence of one half of the government in England, and the other half in India, for that is a feature of the administration from a sovereign centre of all dependencies or dominions, but from the subdivision of that authority both in England and in India.<sup>2</sup>

The subject of this chapter is the history of the London branch of British administration in India from 1858, the memorable year which was marked by the end of the Mutiny and the proclamation of Lord Canning as first viceroy and governor-general for the crown, to 1918, the year which saw the conclusion of the great war.

In February, 1858, a weighty and dignified petition<sup>3</sup> was presented to both houses of parliament on behalf of the East India Company. It failed to avert the impending sentence, but certainly influenced subsequent legislation.

The petitioners assumed that the minister of the crown who would henceforward conduct the home portion of the administration of India would be assisted by a council composed of statesmen experienced in Indian affairs. The knowledge necessary for governing a foreign country, and in particular a country like India, could not possibly be possessed by anyone who had not devoted a considerable portion of his life to the acquisition of it. The council should be qualified not only to advise the minister, "but also by its advice to exercise a certain degree of moral check". The minister would generally be unacquainted with India and would constantly be exposed to solicitations from individuals and bodies

either entirely ignorant of that country or knowing enough of it to impose on those who knew still less than themselves and having very frequently objects in view other than the good government of India.

British public opinion was necessarily unacquainted with Indian affairs and therefore liable to be misled. The responsible minister's council should, therefore, derive sufficient weight from its constitution

<sup>1</sup> Lord Curzon, Hansard, 13 July, 1917, xxv, 1027-8.

<sup>2</sup> II, 67.

<sup>3</sup> Hansard, 1858, cxlviii, Appendix.





to be a substantial barrier against inroads of self-interest and ignorance in England from which parliament could hardly be expected to afford a sufficient protection. The council must be so constituted as to be personally independent of the minister, and should feel itself responsible for recording an opinion on any Indian subject and pressing that opinion on the minister whether it was agreeable to him or not. The minister when overruling his council must be bound to record his views. Thus the council would be a check and not a screen. Otherwise it would merely serve to weaken the minister's responsibility and "to give the colourable sanction of prudence and experience to measures in the framing of which these qualities have had no share".

A council composed of crown nominees would not preserve the independence of judgment which had marked the court of directors. If a substantial portion of the old spirit was to remain, a majority at least of the council which would assist the new minister for India should hold their seats independently of his appointment. That body should not be smaller in numbers than the existing court of eighteen directors. The petitioners went on to plead for the continuance of the existing system, to urge that the present home government of India was not really a double government, as the final word always rested with the cabinet, and that a new arrangement which in any way checked the minister's discretion would be liable to a similar reproach. This reproach, however, originated

in an entire misconception of the functions devolving on the home government of India, and in the application to it of the principles applicable to purely executive departments.

The executive government of India was and must be situated in India itself. The court of directors was not so much an executive as a deliberative body. Its principal function and that of the home government generally was not to direct the details of administration, but to scrutinise and revise the past acts of the Indian government; to lay down principles and issue general instructions for their future guidance and to give or refuse sanction to great political measures which were referred home for approval. Such functions admitted of and required the concurrence of more judgments than one. They were more analogous to the functions of parliament than to those of an executive board; and it was considered an excellence in parliament to be not merely a double but a triple government. The petitioners ended by praying that no change should be made in the constitution of the Indian government until the conclusion of "the present unhappy disturbances or without a full previous enquiry into the operations of the present system".

But both the great political parties in parliament were resolved that there should be no delay in completing the process which had definitely begun in 1853. It was an obvious anachronism that a





chartered company should take part in administering a great empire. It was wrong that there should be a Company's army and a royal army, an Indian and a royal navy. In India itself the prestige of the Company had lately suffered irretrievable damage.<sup>1</sup> Immediately after the presentation of the Company's petition, Lord Palmerston, then prime minister, introduced his bill for transferring the government of India entirely to the crown.<sup>2</sup> But when the bill had been read a second time he was turned out of office on the Conspiracy to Murder Bill, and was succeeded by Lord Derby. Then Disraeli, who came in as Derby's chancellor of the exchequer, introduced a new bill which provided the Indian minister with a council composed partly of crown nominees and partly of persons to be elected by two constituencies, one consisting of men who had served in India or possessed financial interests in that country, the other made up from the parliamentary electors of the leading commercial cities of the United Kingdom, London, Manchester, Liverpool, Glasgow and Belfast. These proposals, for which Lord Ellenborough, then president of the Board of Control, was largely responsible, were received with general ridicule<sup>3</sup> and were dropped. Ellenborough's dispatch to Canning regarding the Oudh proclamation caused his own resignation. His successor, Lord Stanley, piloted certain resolutions through the House of Commons which formed the basis for a measure destined to regulate the government of India from London for sixty-two years.<sup>4</sup> Its main provisions were:

(a) The place of the Board of Control and court of directors would be taken by a secretary of state in council. The new secretary would be assisted by a "Council of India" consisting of fifteen members, of whom eight were to be appointed by the crown and seven were to be elected by the directors of the East India Company. The majority of both appointed and elected members were to be persons who had served or resided in India for ten years at least, and had not left the country more than ten years before their appointment. Future appointments or elections were to be so regulated that nine at least of the members of council should hold these qualifications. Future vacancies in crown appointments would be filled by crown nominees; vacancies among the seven members elected by the directors would be filled by persons co-opted by the council. No member could sit or vote in parliament. All would hold office during good behaviour and could be removed only on petition by both houses of parliament.

(b) The council would conduct Indian business transacted in the United Kingdom and would correspond with the Government of India, but would not possess the initiative which had all along rested with the court of directors. It could give its opinion only on questions

<sup>1</sup> Martineau, *Life of Frere*, I, 230.

<sup>2</sup> Hansard, 1857-8, CXLVIII, 1276.

<sup>3</sup> *Idem*, CXLIX, 1675; cf. also 1677.

<sup>4</sup> Monypenny and Buckle, *Life of Disraeli*, IV, 138, 164-5.





referred to it by the secretary of state, who would preside over meetings with power to overrule should he be unable to obtain agreement. In such an event he might require that his opinion and the reasons for it should be entered in the minutes of the proceedings, and any member who had been present at the meeting could exercise the same privilege.

(c) The secretary of state might constitute committees of his council for the more convenient transaction of business, and might distribute departments of business among those committees. He would direct the manner in which all business should be conducted. The council would meet once at least every seven days and could do no business without a quorum of five.

(d) Communications from the secretary of state to the governor-general, and orders proposed to be made in the United Kingdom by the secretary of state, must, subject to certain provisions, be either submitted to a meeting of the council or be deposited in the council-room for seven days before issue. Any member of council might record his opinion on any such communication or order in a minute-book kept for the purpose, and a copy of such entry would be sent forthwith to the secretary of state. If a majority minuted against a communication or order, the secretary of state must, if adhering to such communication or order, record his reasons.

(e) Orders of the secretary of state relating to expenditure and loans required the concurrence of a majority of the Council of India. The revenues of India, which would be charged with a dividend on the Company's stock and with their debts, could only be used for the purposes of the government of India. Clause 41 of the act provided that no grant or appropriation of any part of such revenues or of any property coming into the possession of the secretary of state in council should be made without the concurrence of a majority of votes at a meeting of the council. All powers of issuing securities for money in the United Kingdom vested in the secretary of state in council must be exercised by the former with concurrence of a majority of votes at a council meeting.

(f) The salary of the secretary of state and the cost of his office would be charged to the revenues of India. A statement of "moral and material progress" would be annually submitted to parliament. The secretary of state would every year lay Indian accounts before parliament, on occasions which became famous as "budget debates", although in fact they were simply reviews of Indian affairs.

(g) It was provided that urgent communications or orders which did not, under the terms of the act, require the concurrence of a majority of council votes, might issue on the authority of the secretary of state alone without reference to the council. But in such cases the secretary would record the reason for urgency and give notice thereof to the members of the council.

(h) Orders concerning the levying of war or the making of peace,





or the treating or negotiating with any prince or state, which virtually gave effect to cabinet decisions and did not require the support of a majority of council votes, might be marked as "secret" and sent off on the authority of the secretary *alone* without any notice or reference to the council. "Secret" dispatches from the governor-general in council or the governors of Madras or Bombay relating to such matters need not be communicated to the Council of India.

(i) Appointment to the offices of governor-general and governors of presidencies vested in the crown. The governor-general would appoint lieutenant-governors to provinces subject to the approval of Her Majesty. Members of the various councils in India would be appointed by the secretary of state in council.

(j) The naval and military forces of the Company were transferred to the crown, their separate local character being retained. It was directed by clause 55 that except for the purpose of preventing or repelling invasion, or under other sudden or urgent necessity, Indian revenues should not be applicable for military operations outside India without the consent of parliament.

The basic principles of the bill were fully discussed in parliament.<sup>1</sup> The object was to vest full charge of the government of India in the crown "in order that the direct superintendence of the whole empire might be placed under one executive authority". The new secretary of state would be a member of the cabinet. His individual responsibility was essential. His decision would be final on all matters. But he should not be allowed to choose all his councillors, for the council should possess considerable independence.<sup>2</sup> It must exercise "moral control".<sup>3</sup> As Sir Henry Maine subsequently observed, the ultimate power of the secretary of state was regarded with apprehension by certain speakers in the House of Commons. On 23 June the directors drew up a letter criticising the bill and stating that in their opinion the council should have more than a consultative voice in all questions regarding expenditure. In such cases the secretary of state should not be able to exercise his overruling power. Precautionary provisions were then engrafted on the bill and appeared as clauses 41 and 55.<sup>4</sup>

The semi-independent status accorded to the Council of India by the cabinet was approved by Mr Gladstone for the opposition.<sup>5</sup> In order "to clothe this new body with all the moral weight and influence that was consistent with retaining intact the responsibility of the secretary of state", he recommended that its first members should be named in the bill. Each nomination would thus receive the express approval of parliament. This would give the council a start which would secure for it a good character hereafter. It needed all possible weight at this time of transition from one form of government to

<sup>1</sup> Hansard, 1858, CXLIX, CL.

<sup>2</sup> *Idem*, CL, 2066.

<sup>3</sup> *Idem*, CLI, 323.

<sup>4</sup> Unpublished memorandum, dated 8 November, 1880.

<sup>5</sup> Hansard, CLI, 470, 757-8.





another, and there were precedents for such procedure. The proposal was rejected by the cabinet, mainly on the ground that, if accepted, it would deprive the court of directors of the power of electing any members of the new body. The government wished to avoid needless changes. It had found in the court of directors a council in being which consisted partly of crown nominees and partly of persons elected by the Company's court of proprietors. It would practically continue this council, increasing the number of nominees and reducing the number of elected members so as nearly to equalise the two varieties.<sup>1</sup>

Both the cabinet and parliament desired to deal tenderly with the Company which had fallen before "the inevitable consequences of time, change and progress",<sup>2</sup> and to set up a substantial barrier against inroads of unbalanced sentiment and attempts to debit the revenues of India with unfair charges. India must not be brought into the cockpit of party politics. The members of the Council of India must be "neither the masters nor the puppets but the valuable advisers of the new minister".<sup>3</sup>

While, however, the council would be invested with an appreciable degree of independence and would be so large as to represent the various presidencies and public services in India, it would have no powers of initiative, and would, in the main, confine its attention to such questions of policy and matters of first-class interest as were laid before it by its president, who in "secret" affairs could act by himself entirely apart from his councillors.<sup>4</sup> He was a member of the cabinet which could not be forced to take into its confidence any given number of persons whom it did not wish of its own accord to consult. The president of the Board of Control had always possessed the privilege of communicating with the governor-general through the secret committee of the court of directors in regard to "secret" business.<sup>5</sup>

Secret orders, however, concerning the levying of war and other matters might involve considerable expenditure from Indian revenues. It was somewhat difficult to see how members of council could in such cases discharge their statutory responsibilities.

While it was hoped that all these arrangements would conduce to the better government of India, the cabinet was convinced that, in Lord Derby's words, "the government of India must be, on the whole, carried out in India itself".<sup>6</sup> Interference should be on as small a scale as possible; although, apart from the large amount of Indian business which was necessarily transacted in England, since parliament was responsible to the nation for the administration of India, it must discharge its responsibilities conscientiously.

<sup>1</sup> Hansard, CLI, 759-60.

<sup>2</sup> *Idem*, CLI, 1454-5.

<sup>3</sup> Lee-Warner, *Dalhousie*, I, 107-8.

<sup>4</sup> *Idem*, CXLIX, 820.

<sup>5</sup> *Idem*, CLI, 1457-8.

<sup>6</sup> Hansard, CLI, 1448.





The Act "for the better government of India" (21 & 22 Vict. c. 106) received the royal assent on 2 August, 1858; and a month later the directors issued their last instructions to their servants in the East and in memorable words commended their splendid trust to the care of the sovereign of Great Britain.

Let Her Majesty appreciate the gift—let her take the vast country and the teeming millions of India under Her direct control; but let Her not forget the great corporation from which she has received them nor the lessons to be learnt from its success.

Lord Stanley, afterwards Earl of Derby, who, as president of the Board of Control, had piloted the bill of 1858 through the House of Commons, was the first secretary of state for India. With the board's two secretaries, he migrated to a new India Office which took the place of the Company's East India House.<sup>1</sup> The secretaries became the first Parliamentary and Permanent Under-Secretaries of State for India. Resigning in 1859 with the Conservative cabinet, Stanley was succeeded by Sir Charles Wood, who, as president of the Board of Control, had been responsible for the Charter Act of 1853 and the education dispatch of 1854, and now held office till 1866 with excellent results. He was a single-minded man,<sup>2</sup> of great knowledge, patience and judgment, and was largely responsible for the success with which Indian affairs were conducted during a very difficult period of transition and reconstruction. The arrangements for the councils of the governor-general and those of the governors of Madras and Bombay, the setting up of new High Courts of Judicature, the reorganisation of finances, the codification of the law, railway extension, the amalgamation of the queen's and the Company's British regiments, the determination of the number of British troops to be quartered in India, the adjustment of numerous conflicting interests, all demanded careful consideration in London. The council was a very strong one, including ex-directors and men who had earned distinction in the Mutiny period. Although there were necessarily differences of opinion and outlook from time to time, although the transaction of business by committees sometimes caused irritating delays, although time was sometimes wasted over trifling financial questions which could better have been decided in India,<sup>3</sup> some years after quitting office Wood, who had meantime become Lord Halifax, told the House of Lords that any secretary of state who firmly and honestly discharged his duties would never experience the slightest difficulty with his council.<sup>4</sup> On a subsequent occasion he

deprecated any measure which could diminish the independence and self-respect of the council, for a strong council was needed to give the secretary of state the support requisite for resisting party pressure, a pressure not always applied in a manner beneficial to India.<sup>5</sup>

<sup>1</sup> Foster, *East India House*, pp. 153-4.

<sup>2</sup> Cf. Hansard, CXLVIII, 1298.

<sup>3</sup> Martineau, *op. cit.* I, 447.

<sup>4</sup> Hansard, CXCv, 1085.

<sup>5</sup> *Idem*, CXCvi, 693.



In 1866, however, a more brilliant and impulsive, but less patient and experienced, secretary of state presided at the council-board. Lord Salisbury (then Lord Cranborne), while in office, avoided an open breach with his council. But afterwards, when speaking in the House of Lords as Marquis of Salisbury on 11 March, 1869, on "the Governor-general of India Bill", he expressed his belief that the "tutelage" in which the secretary of state for India was held by his council was injurious to the good government of that country. In such matters as railway guarantees and other commercial affairs the council's "veto" was a protection, but, with that exception, responsibility should lie with the secretary of state alone. Opportunity should be taken of another bill then pending to clear up "the mystery" which enabled the council, under cover of vetoing money questions, to interfere in every other measure on the plea that it involved money considerations and thus to become "an incubus on the minister".<sup>1</sup>

On this occasion Lord Salisbury was followed by his successor in office, the Duke of Argyll, who assured him that there was no mystery. The true interpretation of the law was that the secretary of state was "absolutely supreme" in financial, as in other matters, and could overrule his council whenever he thought fit to do so. The duke was aware of no case in which the council had set up its authority in opposition to the will of the secretary of state. On 19 April, in bringing forward the "Government of India Act Amendment Bill", he explained to the House the history of clause 41 in the act of 1858 which had given rise to Lord Salisbury's contention. Considerable discussion followed, and extended over 29 April, when the bill was read a second time, to 13 May, when Lord Salisbury moved and withdrew an amendment. The subject revived in a debate in the House of Commons on 17 August, 1880, when it was raised by Fawcett, the economist, afterwards postmaster-general.<sup>2</sup> The view eventually taken was that the true intentions of parliament in enacting clause 41 of the act of 1858 were to impose constitutional restraint on the powers of the secretary of state with respect to the expenditure of money, but by no means to extend the effective assertion of this restraint to all cases, especially where imperial questions were concerned. The secretary of state was a member of the cabinet and in cabinet questions the views of the cabinet must prevail. It was never intended that the council should be able to resist the cabinet by stopping supplies. *Vis-à-vis* the secretary of state, as representing the latter, the Council of India possessed no veto. As Sir Henry Maine expressed it, "any such power given to the council and exercised by it would produce before long a combination of both the great English parties to sweep away the council itself".<sup>3</sup>

In the course of the debate in the House of Lords on 13 May, 1869,

<sup>1</sup> Hansard, CCXIV, 1074.

<sup>2</sup> *Idem*, CCLV, 1452.

<sup>3</sup> Unpublished memorandum.





the Duke of Argyll stated<sup>1</sup> that Lord Salisbury had been moved to raise the question by the opposition which his council had offered to a project put forward by certain commercial bodies to which the secretary of state had agreed. The council had been supported by the Government of India, but had eventually given way. In any case, clause 41 of the act of 1858 survived Lord Salisbury's assault.

The "Government of India Act Amendment Bill", which produced the Lords debate of 13 May, 1869, contained proposals for altering the life-tenure of members of the Council of India to one of ten years, which might, for reasons of public advantage, be extended to fifteen years. The secretary of state justified his recommendation by the rapid changes which were taking place in India, largely as a result of extending railway communications, and by the need of not only intimate but recent Indian experience on his council.<sup>2</sup> His views were accepted by the House. Lord Salisbury moved an amendment to the bill proposing that in future all members of the council should be appointed by the crown. None should be co-opted by the council itself. The amendment was carried and embodied in the bill, together with a provision transferring from the secretary of state in council to the crown the right of filling vacancies on the councils of the governor-general and governors in India. The general effect of the legislation and debates of 1869 was to strengthen the position of the secretary of state *vis-à-vis* his council. His position *vis-à-vis* the Government of India was fortified by the completion in 1870 of a direct telegraph line between India and England by submarine cable through the Red Sea. He could thus less than ever be confronted with accomplished facts.

For years after 1869 the history of the Council of India was uneventful. When Lord Salisbury again presided over the India Office (1874-7) his Afghan and North-West Frontier policy, especially the occupation of Quetta and the separation of the trans-Indus districts from the Panjab, was strongly opposed by members of his council who followed Lord Lawrence's lead.<sup>3</sup> But a secretary of state who could rely on cabinet support could now certainly get his way. Although, according to Lord Salisbury's biographer, he was a believer "in the virtue of a single inspiration and in the evil of hampering it by the intrusion of competing ideas", he was exercised by the problem of combining an independence of initiative in the government of India with his own responsibility for final decision, and considered that it could be solved only by private correspondence between himself and the viceroy.<sup>4</sup> He carried this doctrine to lengths to which Lord Northbrook refused to follow him.

Lord Northbrook recognised the subordinate position of the viceroy but held that parliament had conferred certain rights, not only on the viceroy, but on his

<sup>1</sup> Hansard, cxcvi, 700.

<sup>2</sup> *Idem*, cxcv, 1077-8. Cf. Martineau, *op. cit.* I, 356-7.

<sup>3</sup> Lady Gwendolen Cecil, *Life of Lord Salisbury*, II, 159.

<sup>4</sup> *Idem*, pp. 65-6.





...which differentiated the latter in a very notable degree from subordinate officials.

This does not appear to have been the practice of some of his successors. Lord George Hamilton, who first as under-secretary and afterwards as secretary of state introduced thirteen Indian budgets in the House of Commons, writes that the Council of India was really a cabinet with the important exception that its procedure and powers were prescribed by an act of parliament. It had absolute control over Indian expenditure. It preserved an unbroken record of the reasons for expenditure of all kinds and performed the business of checking far more effectively than the treasury, obtaining better results from the expenditure sanctioned.<sup>2</sup> Lord Randolph Churchill found the council "an invaluable instrument".<sup>3</sup>

As regards the general policy of the India Office in the latter years of the nineteenth century, although relations between India and England had become more intimate, involving a constantly increasing degree of interference, and though the cases in which final orders could be passed in India had become less frequent, yet the secretary of state did not constantly interfere in the ordinary work of Indian administration, but mainly confined his action to answering references from the Indian government. Apart from great political or financial questions, the number or nature of these references depended on the character of the governor-general for the time being. The secretary of state initiated almost nothing. In domestic affairs the Indian government was almost independent so long as it was content to carry on without largely increasing the cost of existing establishments or incurring new and heavy charges. The secretary of state had no disposition to interfere needlessly in the details of administration in India, but was sometimes subjected to pressure which could with difficulty be resisted. On such occasions the council was extremely useful. It further assisted in preserving continuity of administrative principles in India where the official personnel was necessarily always changing.<sup>4</sup>

The views of the majority of the Council of India on the subject of divided control of the India army provoked the impatience of Lord Ripon who, at the close of the first year of his viceroyalty, complained of the increasing interference of the India Office which he ascribed to the "subordinates", and the fact that Lord Hartington, then secretary, was overworked with other than Indian business. But had the same

<sup>1</sup> Mallet, *Life of Northbrook*, p. 91.

<sup>2</sup> *Parliamentary Reminiscences and Reflections* (1874-1880), pp. 307-8.

<sup>3</sup> Winston Churchill, *Life of Lord Randolph Churchill*, I, 475.

<sup>4</sup> Strachey, *India*, pp. 74-81 (1911 ed.).





viceroy received the warning drawn up by Sir Henry Maine, the most prominent member of the then existent Council of India, relating to the projected Ilbert bill, he might have been saved from a course of action which he lived to regret bitterly. The council had in 1883 desired Lord Hartington, then secretary of state, to transmit Maine's "secret" memorandum to the viceroy; but this was not done, and they were subsequently consoled by Lord Kimberley, Hartington's successor, with the just reminder that they should formally have conveyed the warning themselves.<sup>1</sup>

Meantime the constitution of the council was slightly altered. In 1876 the secretary of state was allowed to appoint not more than three special experts (legal or financial) on the old tenure of good behaviour. In 1889 he was allowed to abstain from filling vacancies until the number of members should be reduced to ten. Reduction was asked for in the interest of economy. In the previous year the council had been joined by one of its most distinguished members, Sir Alfred Lyall, described by Lord George Hamilton as his "right-hand adviser", who held office for fifteen years and has left us some passing impressions of its proceedings. Fresh from governing great provinces he wrote:

The India Office is comfortable and convenient, but rather depressing: in the first place, death visits the council rather frequently: secondly, we have all rather the look of old hulks laid up in dock, and are men who have said good-bye to active service; thirdly, the distance and difference between London and India makes one feel as if looking at things through a glass darkly, and not face to face, and in a year or two I shall begin to distrust my own judgment. . . . In council we stand up and orate, which breaks down desultory discussion, but is no good for thrashing out questions.<sup>2</sup>

Again, he says "one can prevent some mischief but do little good on the council". A year later, however, he liked his work, found that it gave him enough to do and even more than he cared for. In 1894, with all his colleagues, he protested vainly and vigorously against the exclusion of cotton goods from the general import duty of 5 per cent., as a serious concession to British interests which would damage Indian confidence in the British Government.

Neither parliament nor the secretary of state was inclined to interfere with the administration of India as long as all went well and Indian affairs hardly touched British politics. Between 1880 and 1905 so little did parliament seriously concern itself with Indian domestic business that in 1889 and 1891 the secretary of state was able to disregard resolutions of the House of Commons relating to the opium trade,<sup>3</sup> and in 1894, after consulting the Government of India, he declined to take action on another resolution of the same House in favour of simultaneous examinations in England and India for ad-

<sup>1</sup> Wolf, *Life of Ripon*, II, 137-9.

<sup>2</sup> Durand, *Life of Lyall*, p. 322.

<sup>3</sup> Debates of 3 May, 1889, and 10 April, 1891, Hansard, CCCXXV, CCCLII.





mission to the civil service.<sup>1</sup> The general feeling in this country was that Indian affairs were safe in the hands of the Indian government; and as late as 1904 Lord Curzon, after his first term of office, struck no jarring note when he asked that his government might not be bothered with "an excessive display of parliamentary affection" and declared that the ideal party in England for people in India was the party which would act "both as the impartial umpire as well as the superior authority in the disputes that sometimes arise between us, and that will not unduly favour the home country at our expense".

A year later, however, the viceroy resigned in consequence of a difference with the Home Government and secretary of state, the bitterness of which is recalled by some of his last words.<sup>2</sup> The quarrel came as a climax to various disagreements, and at one time Lord Curzon, with evident injustice, ascribed to the members of the Council of India "a desire to thwart and hinder his work".<sup>3</sup> After his departure a new era began. The partition of Bengal produced a violent agitation; a revolutionary movement gradually emerged into view; a scheme of wide constitutional reform was projected; and in 1907 John Morley, then secretary of state, desiring to add two Indian gentlemen to his council, introduced and carried through parliament a bill which empowered him to increase the strength of that body from twelve to fourteen. No member would be appointed who had been absent from India for more than five years; and no member would hold office for more than seven years. Salaries of members were reduced from £1200 to £1000.

General J. H. Morgan says that no more autocratic secretary for India ever reigned at Whitehall,<sup>4</sup> none ever consulted his council less, and none ever admonished a viceroy more. It must be remembered that Morley was subjected to considerable pressure from the left wing of his own party. But there is ample evidence to support General Morgan's views, both in a letter from Lord Minto to Lord Stamfordham dated 5 July, 1910,<sup>5</sup> and in Morley's own *Recollections*. Yet it is evident that at one time Morley was anxious not to depress but to elevate the position of the Council of India. In August, 1907, he invited Lord Cromer to join<sup>6</sup> it and Cromer consented. Then the secretary of state discovered that the act of 1858 forbade the appointment of anyone "capable of sitting and voting in parliament". He wrote to Minto on 23 August, 1907, that he would propose to the cabinet that the law should be altered, for Cromer would "give to my council a strength and authority in the public eye, of which, if we are in for troublesome times, we shall stand in much need". The project, however, unfortunately fell through; and Morley was left with councillors, none of whom individually carried weight in parliament.

<sup>1</sup> Pp. 368-70, *infra*.

<sup>2</sup> Ronaldshay, *Curzon*, II, 237.

<sup>3</sup> Buchan, *Memoir of Lord Minto*, p. 311.

<sup>4</sup> *British Government in India*, II, 255.

<sup>5</sup> John Viscount Morley, *an appreciation*, p. 32.

<sup>6</sup> Morley, *Recollections*, II, 233.





Regarding some of these as reactionary, he opened his doors wide to irresponsible advisers;<sup>1</sup> and finding no particular difficulty in getting his own way, absorbed in the fascination of his task, gathered more and more power into his own hands, much to the vexation of a long-suffering viceroy.<sup>2</sup>

The close of the Morley régime found the late Mr E. S. Montagu, as parliamentary under-secretary, enquiring into the conduct of business at the India Office. The Marquess of Crewe, its new head, introduced proposals for reform which appear to have largely emanated from Montagu, and were rejected by the Lords after an illuminating debate.

On 31 July, 1913, in answer to a question put by Viscount Midleton, Lord Crewe announced his intention of introducing proposals for legislation which would facilitate and quicken India Office procedure by making the transaction of council business by committees exceptional and no longer usual.<sup>3</sup> Members of council would now be attached to particular departments. They would be reduced to eight or ten, the two Indian members being retained, and would become whole-time servants, their salaries being raised once more to £1200. They must possess recent experience, and, if qualified by official service, would sit on the council in the concluding years of their active service and not in the first years of their retirement. The secretary of state emphasised the value of the council, which assisted him by enabling matters to come up for decision in a more compact and concentrated way than they did in other offices. He derived marked advantage in case of a difference of opinion and a discussion on a particular subject in council, from being obliged to present that subject in a more accurate form than he probably would do if he had only to argue the pros and cons of it with himself. Moreover, and this was by no means the least important point, the council greatly strengthened the position of the secretary of state in dealing with the government of India, especially if he were a new-comer to office.

If the existence be conceived of a viceroy backed by a body of local experts of long practical experience, then, I think, the secretary of state would need to be a Bismarck to hold his own in any controversy against so powerful a combination as that, and the only result, as I think, would be that India might be brought more often than it is into the cockpit of parliamentary politics.

The council's financial powers were such that in theory it might make the government of India under our parliamentary system almost impossible; theoretical possibilities, however, need not alarm practical men who were anxious to agree if they could. A proof of this was that in matters not financial "in which the secretary of state could overrule his council", such a step had been taken only "on the very rarest occasions". In 1914 Lord Crewe introduced a "Council of India"

<sup>1</sup> Cf. Hansard, cxcv, 1083. <sup>2</sup> See Buchan, *op. cit.* p. 312. <sup>3</sup> Hansard, xiv, 1574-86.





and based on these views and including two novel proposals: (a) for imposing statutory obligation to appoint two persons domiciled in India to the council, selected from a list drawn up by the non-official members of the imperial and provincial legislative councils in British India; (b) for amplifying the list of "secret" matters with which, under the act of 1858, the secretary of state could deal exclusively.

The bill was rejected by a large majority of the Lords. It was strongly condemned by Lord Curzon as designed to withdraw from the council's cognisance an enormous number of questions covering the whole sphere of Indian government and to reduce that body, which by its passive acquiescence in the removal of the capital from Calcutta to Delhi had already shown itself flexible and pliant, to "an impotent and costly sham".<sup>1</sup> In proposing to compel the secretary of state to choose two Indian politicians as his councillors, it was forgotten that the council was a body of experts, not one of politicians or public speakers.

Lord Curzon's reference to the Delhi policy takes us back to certain incidents of the year 1911 which formed an extraordinary episode in the constitutional history of British India.<sup>2</sup>

In 1876 Disraeli's government introduced a Royal Titles bill which was intended to mark the new relation which, since 1858, the sovereign had occupied towards her subjects in India. The bill passed through parliament by a very large majority; and in Mr Buckle's words:

The world understood that a new pledge had been given of the determination of the British crown to cherish India; and her princes and peoples understood that their sovereign had assumed towards them a nearer and more personal relation.<sup>3</sup>

At a great durbar held at Delhi on 1 January, 1877, Queen Victoria was proclaimed "Queen-Empress of India". On 1 January, 1903, at a second Delhi durbar her successor was proclaimed "King-Emperor". On 12 December, 1911, there was a third Delhi durbar, distinguished beyond its predecessors by the presence of the sovereigns themselves and by the remarkable announcements which were made, on the advice of his ministers, by the king-emperor. Up to that time all changes of signal importance in the government of India had taken place after full discussion in parliament and under parliamentary sanction. Now, however, changes of great moment were proclaimed of which parliament had no previous cognisance. At the durbar His Majesty announced that the capital of India would henceforward be Delhi and not Calcutta; the partition of Bengal, which had caused such bitter controversy, would be revoked; Bengal would be one province under a governor in council; a new province of Bihar and Orissa would be created; Assam would once more be the charge of a chief commissioner. These measures, which necessarily involved heavy expenditure and far-reaching consequences, naturally pro-

<sup>1</sup> Hansard, xvi, 484.

<sup>3</sup> *Life of Disraeli*, iv, 93, 167; v, 471.

<sup>2</sup> Curzon, *op. cit.* II, 119.





voked the criticism that the cabinet had "used the authority of the sovereign to settle in their own way an issue of an acutely controversial character".<sup>1</sup> They originated with the governor-general in council, found favour with the secretary of state and the Asquith cabinet, and were therefore accepted by the Council of India, who can hardly have obtained an opportunity to give even a passing thought to the large issues and heavy expenditure involved. Approval was transmitted to the governor-general; and parliament only became aware of all that was contemplated after His Majesty had made the announcement. Lord Crewe argued *inter alia* that in fact the action taken was administrative and did not require parliamentary sanction. The original partition of Bengal had been carried out without reference to parliament. But in fact these later changes were of far greater moment even than that ill-starred measure.

In the third year of the last war, the Council of India and the India Office came prominently before the nation. The management and conduct of the campaign in Mesopotamia had been originally entrusted to the government and military authorities in India. The commission of enquiry which was appointed, after the capture of Kut-el-Amara by the Turks, and sat in London, commented unfavourably on the India Office organisation and on the substitution of private telegrams from the secretary of state to the viceroy for public telegrams which would have passed through or been communicated to the Council of India. The practice had so much developed of recent years as to make the private telegrams "almost the regular channel of official inter-communication".<sup>2</sup> There were strong and obvious objections to this procedure. The private telegrams, moreover, did not always remain in the office, for Lord Morley had taken his away. Neither the Council of India nor the governor-general's council had been kept in touch with the varying fortunes of the Mesopotamian expedition, the control of which had been

narrowed down to two high officials, both heavily charged with many other anxious and pressing duties, and both permanently stationed in localities which had little, if any, private or personal touch with the forces campaigning in Mesopotamia.<sup>3</sup>

The conclusions of the commission were debated in both houses of parliament and led to the resignation of the secretary of state, Mr Austen Chamberlain, who had succeeded late to a situation created by others. His predecessor, Lord Crewe, contended in the House of Lords that the policy of the expedition all through was a matter for the cabinet and the cabinet alone.<sup>4</sup> His own private telegrams of importance relating to this matter had been made official and were preserved at the India Office.

Lord Islington, under-secretary of state, admitted that private telegrams had been excessively employed.<sup>5</sup> In future they would be

<sup>1</sup> Lord Curzon, *op. cit.* Hansard, xi, 142.

<sup>2</sup> *Report of Mesopotamia Commission*, p. 102.

<sup>3</sup> *Idem*, p. 103.

<sup>4</sup> Hansard, xxv, 929.

<sup>5</sup> *Idem*, 952.





fewer and wherever possible would be made "official" after dispatch. The India Office was not established or equipped for the conduct of an extended campaign outside India.<sup>1</sup>

Lord Curzon said that without the machinery of private letters and telegrams the government of India, an "amazingly complex and dual form of administration" which had two chiefs, could not go on. Still these communications should not be employed to such an extent as to leave the Council of India at home in ignorance of what was being done. The secretary of state and the viceroy must not become "a kind of concealed duumvirate". They would gain by acting with, and not without, their councils. In the Commons Montagu, who was then out of office, had attacked the government of India as too wooden, inelastic and antediluvian for modern purposes. The British democracy had never enjoyed an opportunity of trying to rule India. Even if the House of Commons were to give orders to the secretary of state, that minister could be overruled by a majority of his council in vital matters. He knew of one case in which

it was a very near thing, where the action of council might without remedy have involved the government of India in a policy out of harmony with the declared policy of the House of Commons and the cabinet.

The whole system of the India Office was designed to prevent control by the House of Commons, for fear that there might be too advanced a secretary of state. The statutory organisation of the office produced an apotheosis of circumlocution. The whole system of governing India must be explored in the light of the Mesopotamian Commission Report.<sup>2</sup>

Mr Chamberlain explained that both Lord Crewe and himself had acted in relation to the Mesopotamian campaign as spokesmen of His Majesty's government. Supreme control had been exercised by the secretary of state on behalf of and by direction of the cabinet. The India Office was not organised to conduct military operations and never attempted to do so. It would therefore have been better if from the first the control exercised on behalf of His Majesty's government had been vested in the General Staff or Army Council. All the private telegrams on which the commission had commented related to the levying of war, and might, under the act of 1858, have been marked "secret" instead of private, and then the commission's criticisms in this connection would have gone by the board. Nothing but injury could come to national, imperial and Indian interests by mixing up a debate on a military breakdown, or alleged military mismanagement, with the question of the whole future fabric of Indian government. His Majesty's government were already considering a dispatch from the Government of India on reforms in the political system of that country.

<sup>1</sup> Hansard, xxv, 956, 1027-8.

<sup>2</sup> *Idem*, xcv, 2199-210.





Immediately after the Mesopotamia debates Mr Austen Chamberlain resigned and was succeeded by Mr Montagu. The declaration of 20 August, 1917, shortly followed, and late in the same year, at the invitation of the viceroy, Lord Chelmsford, the secretary of state arrived in India. After preliminary conferences at Delhi, he toured to Calcutta, Madras and Bombay, accompanied by the viceroy, the home member of the governor-general's council and two members of the Council of India, one British and one Indian. On the conclusion of the tour, further consultations were held; and it was not until about the end of April, 1918, that Mr Montagu returned to England. The purpose of his visit had been to determine on the spot, and in consultation with the viceroy, what steps should be taken in the direction of establishing in India government responsible to the Indian peoples. The joint report of Mr Montagu and Lord Chelmsford, published in July, 1918, was framed after prolonged discussion with the council of the governor-general and met with unanimous support from the Council of India as "on the whole recommending the measures best adapted to ensure safe and steady progress in the desired direction". It formed the basis of the act of December, 1919, which materially changed the constitution under which India had been governed since the end of the Mutiny.

We have noticed the parting advice of the directors of the East India Company and the main principles which underlay the legislation of 1858. It was parliament which deliberately organised the system denounced by Mr Montagu in 1917. It was parliament which, desiring to accord all possible independence to the Council of India, arranged for that body to contain first an elected and then a co-opted element. When the legislation of 1869 had invested the secretary of state with power to appoint all his councillors and with certain other powers of appointment, the council declined in importance, but for long maintained a strong position as an advisory and, in some measure, a controlling body. Under the Morley régime a further decline set in, which apparently accelerated rather rapidly.

While defending his proposals to the House of Lords in 1914, Lord Crewe asked consideration for "the perpetual and in some respects ever-increasing control of parliament, the ever-increasing force of public opinion in India, and the power of the press in England and India". With regard to the influence of parliamentary control on the working of the India Office, Lord George Hamilton remarks:

The moment a crisis occurs, then the department affected which, for the time being, is working at the very highest tension, is bombarded with questions, interpellations, and demands for returns, which not infrequently absorb many hours of attention from the very officials who are best qualified to deal with the emergent subject.<sup>1</sup>

But in pre-war days crises were infrequent, and Lord Crewe's plea

<sup>1</sup> *Parliamentary Reminiscences and Reflections* (1886-1906), p. 259.





changes which cut at the root of the basic principle of the act of 1858 is hardly reconcilable with the testimony of the Montagu-Chelmsford Report that parliamentary interest in India was neither well-informed nor well-sustained.

Parliament, according to Mr Montagu and Lord Chelmsford, should have devised a substitute for the prolonged inquests which preceded periodical renewals of the Company's charter. Its omission to do this was largely responsible "for our failure, in the face of a growing nationalist feeling in India, to think out and work at a policy of continuous advance".<sup>1</sup> Was this omission then a grave mistake?

The parliamentary inquests of pre-Mutiny days did much good. They belonged to times which were more leisurely than our own, when the East India Company and its servants were well represented in parliament, and some front-rank statesmen carefully studied Indian affairs. Several speeches, for instance, delivered in the House of Commons on the East India Company bill of 1853 are remarkable for their intrinsic value as well as for the position of the speakers in public esteem. It is instructive to compare the debates on that measure with the debates on the Government of India bill of 1919. In 1853 the bill, which had been prepared after long enquiries by committees of both houses, was brought in on 9 June after three nights of discussion distinguished by remarkable speeches by Wood,<sup>2</sup> then president of the Board of Control, by John Bright and by Sir James Hogg, chairman of the court of directors. The second reading lasted four nights.<sup>3</sup> Among the speakers were Macaulay, Cobden, Bright, Disraeli and Lord John Russell. The bill was afterwards before a committee of the whole house for eight nights, and was read a third time and passed on 29 July.<sup>4</sup> The Government of India Bill of 1919, on the other hand, was presented to the House of Commons on 29 May, was read a second time on 5 June<sup>5</sup> and was on that day sent to a joint committee of both houses on which the lower house was represented by seven members. The bill was recommitted on 3 December, 1919, considered by the Commons on that day and the next, and was read a third time on the 5th.<sup>6</sup> The president of the Board of Education was the only member of the cabinet beside the secretary of state who made any contribution to the debates. The leaders of the Independent Liberal and Labour parties made brief speeches. There was little inclination to examine in detail the weighty recommendations of the joint committee. The debates were meagre.

Between 1858 and 1914 two processes were accelerating. In England, domestic, Irish and foreign affairs were making more and more insistent demands on the time and thoughts of members of parliament; in India administration was becoming more elaborate

<sup>1</sup> Report on Indian Constitutional Reforms.

<sup>2</sup> Hansard, CXXVII, 1093, 1095, 1195, 1230, 1277, 1299, 1352.

<sup>3</sup> *Idem*, CXXVIII, CXCIX.

<sup>4</sup> *Idem*, CXXIX, 1009-45.

<sup>5</sup> *Idem*, CXVI, 2295-411.

<sup>6</sup> *Idem*, CXII, 429-538, 649-790.





and complex. There was no longer a court of directors with representatives and friends in the House of Commons. Secretaries of state for India were increasingly left by preoccupied cabinets and over-busy parliaments to shape their own policy. They gradually emancipated themselves from their council and became more absolute until, shortly after the close of our period, a secretary of state<sup>1</sup> ventured on a remarkable departure in policy without cabinet sanction and was compelled to resign office. It is certain that none of his predecessors desired that periodical parliamentary inquests of the old kind should be renewed. The idea was considered and abandoned by Lord Morley,<sup>2</sup> who was fully aware that whereas those enquiries were held in an atmosphere altogether remote from India, in widely different times, and were therefore unproductive of any racial excitement in that country, conditions so favourable to searching and fruitful investigation had gone for ever. Perchance, too, he had read these weighty words of Sir Henry Maine:

It would not be thought a very safe or happy constitutional rule for any civilized European country that all its political, judicial, administrative and even social institutions (for these last in India cannot be wholly separated from the others) should be thrown into the crucible every twenty years. But if this experiment is to be tried, why of all countries should it be tried on India?

Maine argued that in view of the intense conservatism of the Indian masses, of their singular liability to agitation and panic, they were unlikely to be favourably impressed by the knowledge

that everything connected with the system under which they lived was to be brought into question and that everybody was to be heard against it. Such enquiries were formerly comparatively innocuous because in fact the people of India knew little about them. But India had now been brought close to our shores by the electric telegraph and the canal, and there are many agencies, unknown even in 1853, which spread through the people more or less distorted representations of what is doing in England.<sup>3</sup>

He went on to suggest that the remedy for parliamentary ignorance of Indian affairs might be the constitution of a joint committee of both houses, which would be brought into contact with Indian finance and would create gradually a class of members familiar with Indian questions.

Such a joint committee now sits. But if the parliaments of the period of 1858-1918 failed, for obvious reasons, to study Indian affairs with much care or thoroughness, they kept their eyes firmly fixed on some essential principles of policy. They trusted their agents and treated their servants with fairness and consideration. They dealt in a generous and non-party spirit with such proposals for constitutional reform as were put before them by responsible ministers. In financial questions they desired to treat India with ample fairness. There is no more striking instance of this than the attitude of parliament in regard

<sup>1</sup> The late Mr E. S. Montagu.

<sup>2</sup> Morley, *Indian Speeches*, pp. 22, 50.

<sup>3</sup> Minute by Sir H. Maine, 8 November, 1880.





to the apportionment of the cost of employing Indian troops outside India on occasions when the interests of the people of that country did not appear to be directly affected.<sup>1</sup> Even in the financial year 1913-14 the contribution of India toward the upkeep of the imperial navy, from which she was soon to benefit so feelingly, was only £164,000.<sup>2</sup> This considerate spirit met with a just and welcome reward when on the outbreak of the great war a resolution was moved by a private member on the viceroy's legislative council and carried unanimously, stating that India would "desire in the present emergency that she should be allowed not only to send her troops but to contribute the cost of their maintenance and pay".<sup>3</sup>

It is certain that no measure ever passed by parliament has better fulfilled its purpose than the Royal Titles Act. Lytton Strachey remarks of our English polity that it was in the main a common-sense structure; but there was always a corner in it where common sense could not enter, where, somehow or other, the ordinary measurements were not applicable and the ordinary rules did not apply. "So our ancestors had laid it down, giving scope, in their wisdom, to that mystical element which, as it seems, can never quite be eradicated from the affairs of men." It is certain that like our own mind, and to a far greater extent, the Indian mind craves for "an unexplored inexplicable corner" in a polity. And if there is something which awakens a feeling of the bonds which unite mankind in the thought of the connection between the Indian people and ourselves, it is certain that without a symbol of unity which will appeal to both alike, that feeling would rapidly dwindle. The crown worn by Queen Victoria and her successors has been far more than a mere symbol of unity. It has been a strong power<sup>4</sup> and a reconciler in India.

<sup>1</sup> Cf. Hansard, 1882, CCLXXIII, 255-307. <sup>2</sup> *Idem*, 1914, LX, 347. <sup>3</sup> *Idem*, LXVI, 956.

<sup>4</sup> Cf. Maconochie, *Life of an Indian Civil Servant*, p. 125; Lawrence, *The India We Served*, 239-41.





## CHAPTER XII

## THE INDIAN GOVERNMENTS

THE CENTRAL AND THE PROVINCIAL GOVERNMENTS  
IN INDIA, 1858-1918

THE chief of the government in India, the man on the spot there, was first styled "viceroi and governor-general" in the famous proclamation of 1858. The title of viceroy was not conferred on the governor-general by any parliamentary statute although it is used in the warrants of precedence and in the statutes of the knightly orders. Where the governor-general is regarded as the representative of the sovereign he is spoken of as viceroy; where he is referred to as the statutory head of the Government of India he retains his original title.<sup>1</sup>

The superintendence, direction and control of the civil and military administration were still vested in the governor-general in council, who was now required by the Government of India Act of 1858 (21 & 22 Vic. c. 108) to pay due attention to such orders as he might receive from the secretary of state. One of the most arduous tasks before Lord Canning and his council was the preparation of proposals for reshaping the central government and the governments of Madras and Bombay. New machinery for legislation had also to be considered.

## THE NEW EXECUTIVE COUNCILS

The changes to be made in the executive councils, and more particularly in his own council, had for some time engaged Canning's anxious thought. He corresponded first with Stanley and then with Wood on the subject, and, although the letters exchanged were private and confidential, their drift can be clearly gathered from minutes preserved in the India Office and from Canning's correspondence with Lord Granville.<sup>2</sup> He was evidently dissatisfied with the Bengal civil servants who had been his original councillors; and it was only when James Wilson arrived from home as financial member, and Bartle Frere joined the council from Bombay, that his ideas gradually changed. He was still more dissatisfied with the system of collective business which he found in operation. The council was working as a board and deciding all questions by a majority vote, the governor-general possessing an overruling power in matters of grave importance. Canning wrote to Stanley that, as he was personally

<sup>1</sup> Curzon, *British Government in India*, II, 49; Strachey, *India*, p. 50.

<sup>2</sup> Fitzmaurice, *Life of Granville*, vol. I, chaps. vii, xiv.





responsible for everything, he would manage better if he were relieved from the necessity of discussing questions with a council. Let the government of India be vested solely in the viceroy and let him be able to appoint secretaries to assist him. He would consult the secretary of the department concerned as to particular business, and should there be a conflict of opinions, he would admit other secretaries to the discussion. To such an arrangement there were two objections—first the impossibility of leaving a glorified secretary to carry on the supreme government in Calcutta when the governor-general left the Bengal Presidency, and second the difficulty of providing for the conduct of relations with the legislative council and for the management of that council. He made suggestions for overcoming these obstacles.

Stanley was inclined to agree in principle and laid the matter before a committee of his council, which, on 23 May, 1859, decided by a considerable majority that the executive councils at Calcutta, Bombay and Madras, should all be remodelled on this basis. The "officers of the departmental secretariats" would be the responsible advisers or councillors of the governor-general and of local governors. But methods for carrying this idea into effect had still to be considered. On 18 June, 1859, Stanley gave place to Wood, who appointed a fresh committee to deal further with the matter. A majority of this committee held that the main principle had been accepted. The government of India should be vested by law in the governor-general alone. He should be assisted by as many secretaries as might be thought necessary. The pay of each secretary would be 65,000 rupees per annum.

Secretaries would be nominated by the governor-general, subject to confirmation in office by the secretary of state. The governor-general would be able to consult any or all of his secretaries as he pleased, but would take decisions himself.

These resolutions, however, provoked strong memoranda from H. T. Prinsep, the protagonist of the Orientalists in 1835, who was now one of the dissentients. He pointed out that in fact Canning's proposals went far towards "unmitigated bureaucratic despotism", and that "for the sake of independence" the advisers of the governor-general or governor ought always to be selected by superior authority. He urged other considerations. The confidential reports of the two committees were sent out to India and were strongly criticised there, notably by Frere, who minuted on 29 December, 1860, that what the governor-general had always wanted was not fewer and less responsible but more and more responsible advisers, always preserving the power to act entirely on his own view without hindrance from their dissent. There should be a proper division of labour, each councillor having his own department to which he could devote his continuous attention instead of all consulting or pretending to consult





on every matter, great or small, as used to be the theory and pretended practice. Canning had already effected an improvement in procedure.

In a letter to Wood of 15 May, 1860, Frere had already urged that the proposals of the two Council of India committees would, if adopted, both add to the governor-general's work and seriously diminish his ability to do it. They would also tend to draw more power to England, rendering it impossible for the governor-general to take any important step without the approval of a majority of the council of the secretary of state, a most undesirable *dénouement* as India was changing even faster than England and the Indian experience of even ten years ago was misleading. He did not speak of the experience of such statesmen as Mountstuart Elphinstone, whose wisdom was never obsolete.

Frere showed his letters to Canning; and combined with actual experience of intervention from the India Office his arguments went far to change the viceroy's mind.<sup>1</sup> Canning had introduced the portfolio system of doing business into his council. The ordinary work of departments was now distributed among the members and only the more important cases were referred to the governor-general or dealt with collectively. Moreover the reform of the legislative council was now bulking largely before his eyes. In a letter to Wood of 4 February, 1861, he abandoned the proposal that secretaries should take the places of councillors. The main point would now be that each councillor should be identified with a department and should be able to deal with something more than technicalities. Boxes would no longer go round carrying papers which could be disposed of without circulation. "We have", he wrote, "reformed ourselves a good deal, but I should like to see the new status of members recognised by Act of Parliament." The dispatch was going by that mail. The proposals were in "as quiet a form as possible". The reform of the legislative council was "now far more pressing than that of the Executive Council".

Wood had originally contemplated a bill for each of these reforms but instead on 6 June, 1861, introduced one which dealt with both. The Mutiny, he said, had aggravated the difficulties of administration. In fact it would be folly to shut our eyes to the increasing difficulties of our position in India, and for this reason we should put all our institutions there on the soundest possible foundation. In the Lords Earl De Grey and Ripon,<sup>2</sup> under-secretary of state, explained that the policy was "to limit the changes as much as possible and to make those only which experience showed to be necessary".

The Councils Act of 1861 (24 & 25 Vic. c. 74) established a governor-general's executive council of five ordinary members. In 1853 the

<sup>1</sup> See Canning to Frere, 24 October, 1860, *Life of Frere*, I, 358.

<sup>2</sup> Afterwards secretary of state for India, 1866; viceroy of India, 1880-4. Hansard, 9 July, 1861, p. 586.





legal member had been permitted to sit and vote at all council meetings. He had become a fourth ordinary member. But the disorganisation of public finances caused by the Mutiny had led to the appointment of a trained financier as fourth member. A jurist, however, was also needed, as the law was in process of codification, and even the Penal Code, which had originally been drafted by Macaulay, was still incomplete, so a fifth member was added to the council. Of the five members three must have served the crown or the Company in India for not less than ten years. One of these was a military member, always a distinguished soldier; the other two were civil servants who up to the year 1859 had always been selected from the Bengal Presidency. The fourth member was a financial expert, who might or might not have served the crown or the Company previously; and the fifth or legal member was a barrister of England or Ireland, or a member of the Faculty of Advocates in Scotland of at least five years' standing. The commander-in-chief might be, and in practice always was, an extraordinary member who divided with the military member the responsibility for the military administration of the country. He was the executive head of the army and was charged with its organisation and preparation for war as well as with questions of promotion. His office was known as army headquarters and was distinct from the military department of the government which, presided over by the military member, concerned itself with the control of supply and transport, with ordnance, remounts, clothing, medical stores, military works and military finance, and above all with the preparation of the military budget. Proposals for military reform or expenditure went from army headquarters to the military department of the Government of India where they were noted on, and, if involving expenditure, further proceeded to the finance department. Finally they reached the viceroy through the military member of council. If the viceroy, the military member and the commander-in-chief were in general agreement, the proposals were carried out. But if there were disagreement a proposal was either referred back for further consideration or was laid before the governor-general in council, debated on, and accepted or rejected by a majority of votes.

Every ordinary member of the governor-general's council, assisted by a secretary, under-secretaries and a sufficient office establishment, presided over certain departments of the central government. The governor-general himself held charge of the foreign department which conducted the correspondence of India with neighbouring powers; he kept the London cabinet informed on questions of Asiatic policy connected with India, and supervised the affairs of the native states. The British representatives at the courts of ruling princes were the agents of the governor-general and not the representatives of the Government of India.

The distribution of departments among ordinary members of





council was a matter of custom, not of law. The act of 1861 conferred on the governor-general the power to make rules and orders for the more convenient transaction of business in his council other than the business at legislative meetings, and provided that every order made and every act done in accordance with such rules and orders must be treated as being the order or act of the governor-general in council.<sup>1</sup> Canning's reforms in the conduct of business were thus sanctioned by statute and the portfolio system was firmly established. Councillors were able to dispose of unimportant cases belonging to their departments in the name of the Government of India. Cases in which two departments differed, or a member proposed to overrule a local government, or important issues were involved, were laid before the viceroy together with the views of the members in charge and of their secretaries. Differences of opinion between a member and the viceroy were referred to a full council, where decision was taken in accordance with the views of the majority. If opinions were equally divided the president had a casting vote. But if a measure were proposed which seemed to the governor-general to affect essentially the safety, tranquillity or interests of "the British possessions in India", he could overrule the majority of his council. In such cases any two members of the dissentient majority might require the transmission to the secretary of state of the decision taken together with their minutes of dissent. This overruling power of the governor-general's, which came down from the acts of 1786 and 1793, was reaffirmed and slightly expanded by an act of 1870. But however widely the views of a viceroy might originally differ from those of a majority of his councillors, there was almost invariably a compelling desire for compromise.<sup>2</sup>

If the governor-general in council declared it to be expedient that he should visit any part of India unaccompanied by his council, he could in council appoint a member to preside at meetings held in his absence, with all the powers of the governor-general except those relating to legislation.<sup>3</sup> Should the governor-general be absent from a council meeting through indisposition, the senior ordinary member presided.

Thus the Government of India became a cabinet government presided over by a governor-general, business being carried on departmentally and the governor-general taking a more active and particular share in it than is taken by a prime minister in a Western country or than had been taken by any of his predecessors. The system remained unaltered during our period. But a sixth ordinary member was provided, by act of parliament, in 1874, to preside over the depart-

<sup>1</sup> Ilbert, *Digest*, sec. 42 (2), p. 103.

<sup>2</sup> See, for instance, Wolf, *Life of Lord Ripon*, II, 50. Lord Curzon wrongly adds the abandonment of Kandahar to the instances in which a viceroy overruled his council (*op. cit.* II, 73).

<sup>3</sup> Ilbert, *Government of India*, pp. 187-8, clauses 45-6.





ment of public works. In 1904, on the recommendation of the secretary of state, the power of appointing a member to this particular department was converted into a general power, and the public works member was replaced by a member for commerce and industry.

The next change in the personnel of the council came after warm discussion and led to the resignation of Lord Curzon in 1905. The commander-in-chief, Lord Kitchener, had advocated the abolition of the military member and the replacement of the military department of the Government of India by an army department presided over by the commander-in-chief. This proposal was strongly resisted by the viceroy and the ordinary members of his council on the ground that, if adopted, it would concentrate military authority in the hands of the commander-in-chief and would subvert the supremacy of the civil power by depriving it of independent military advice. Lord Kitchener, however, maintained his views, urging that proposals from the commander-in-chief should not reach the Government of India through any second military adviser, who must necessarily be his junior in rank and his inferior in experience. Eventually Lord Kitchener's contention was in substance accepted and was followed by Lord Curzon's resignation. The commander-in-chief became the viceroy's sole adviser on all military questions. For a short period there was a military supply member of inferior status to the former military member; but this arrangement, as Lord Morley said, "proved good neither for administration nor economy". It ceased in 1909, and the vacancy at the council-board was filled in 1910 by a newly appointed member in charge of education and sanitation. For the closing years of our period and throughout the great war the council consisted of

- (a) the commander-in-chief (extraordinary),
  - (b) the home member,
  - (c) the financial member,
  - (d) the legal member,
  - (e) the commerce and industry member,
  - (f) the education member,
- all holding office for five years.

In the year 1909, on the recommendation of the viceroy and the secretary of state, a distinguished Hindu barrister, Mr (afterwards Lord) Sinha, was appointed legal member by the crown. He was succeeded by a Muhammadan barrister; and when the latter had completed his term of office, a Hindu high court judge was appointed education member of the central executive.

The viceroy and governor-general, although invested with paramount power in India, was the governor-general in council and, unlike the secretary of state, possessed a very limited power of separate action. Rarely, however, did viceroys wish to dispense with the assistance of their colleagues. John Lawrence was much vexed by





## THE INDIAN GOVERNMENTS

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opposition from certain councillors; but he came to the viceroyalty a tired man,<sup>1</sup> had long been accustomed to govern alone in the Panjab, and was worried by the atmosphere of rapid evolution and frequent argument which he found in Calcutta. There is much truth in a sentence of Frere's on 20 March, 1868:

no Governor-General since the time of Clive has had such power and opportunities; but he fancies the want of progress is owing to some opposing power which only exists in his own imagination.<sup>2</sup>

Lord Minto complained on 3 July, 1910, that he had

constantly felt that he must depend upon himself alone with the exception of one or two advisers he had managed to secure and that the councillors sent him by Lord Morley were not only useless but mischievous.

But Minto evidently wrote under the influence of intense irritation with a secretary of state who "arrogated to himself complete independence" in making appointments to the council and would give little or no weight to the governor-general's objections.<sup>3</sup> As a general rule, viceroys and their councillors were drawn together, not only by identity of aim but by force of circumstances, by the logic of the palpable facts which encompassed all alike. Unity was generally achieved, for without it lay no salvation. Thus we see one of the strongest of viceroys, Lord Northbrook, jealously upholding the statutory rights of his council and refusing to be led into courses which might infringe those rights.<sup>4</sup> We find Lord Ripon, even when fully conscious of serious differences which separated him from the majority of his councillors, observing "There is a very strong desire to support the Viceroy, of which I have much proof".<sup>5</sup> We see Lord Curzon emphasising the gain to a viceroy of acting with, and not without, his council,<sup>6</sup> and Lord Minto asserting, in opposition to Lord Morley, the right of the Government of India, *as a body*, to be consulted about the Anglo-Russian agreement.<sup>7</sup> There were extremely few decisions for which the viceroy's council did not share responsibility with their president. Notable exceptions were the abolition of import duties on the coarser kinds of cotton cloths in Lord Lytton's days and the levy of a countervailing excise duty on Indian cotton goods in the time of Lord Elgin. In both instances the viceroy's action was due to pressure from the London cabinet; and on the second occasion his council protested so strongly against a measure which they considered unjust to Indian interests that the secretary of state, Sir Henry Fowler, considered it necessary to convey a weighty warning.

<sup>1</sup> Bosworth Smith, *Life of Lord Lawrence*, II, 429-41, 589.

<sup>2</sup> *Life of Frere*, II, 40 (Frere to Florence Nightingale).

<sup>3</sup> Buchan, *Memoir of Lord Minto*, p. 311.

<sup>4</sup> See Mallet, *Life of Lord Northbrook*, p. 91.

<sup>5</sup> Wolf, *op. cit.* II, 50.

<sup>6</sup> Curzon, *op. cit.* II, 74, 112-19.

<sup>7</sup> Morley, *Recollections*, II, 178-9.





"A Government", he wrote, "whether in Downing Street or Calcutta, must act as a homogeneous body, not as representing certain political opinions, but as representing an executive authority which cannot act, whether in administration or legislation, efficiently unless they act unitedly.... The existing law subjects the Government of India to the control of the Imperial Government, and the Secretary of State, who exercises that control, is responsible to Parliament. He cannot hold office if the House of Commons disapproves of his official conduct. India is by the Act of Parliament governed by and in the name of the Queen, and she governs by the advice of a responsible minister.... So long as any matter of administration or policy is undecided, every member of the Government of India is at liberty to express an opinion; but when once a certain line of policy has been adopted under the direction of the Cabinet, it becomes the clear duty of every member of the Government of India to consider not what that policy ought to be, but how effect may best be given to the policy that has been decided on; and if any member of that Government is unable to do this, there is only one alternative open to him.... The Cabinet have decided that the English precedent applies, and therefore that the members of the (Viceroy's) Executive Council must, just as members of the Cabinet do here, vote together (at legislative meetings) in support of Government measures. If they are unable to do this, then the English precedent applies and the objecting Member resigns before he either abstains from voting or votes against the measure."<sup>1</sup>

These instructions were followed by the governor-general's councillors; but time brings its revenges, and in 1916 the reversal of the policy imposed on the Government of India in 1894 was initiated by that government and assented to by the secretary of state.

### THE NEW LEGISLATIVE COUNCILS

No government can govern effectively unless it can legislate. The subject of machinery for legislation was anxiously considered in Calcutta and in London. In 1853 Wood, as president of the Board of Control, had proposed and carried through parliament a measure designed to provide that the governor-general's council, enlarged for legislative purposes, should be simply a body which would assist the supreme government in making laws.<sup>2</sup> But Dalhousie started this body off with 136 standing orders and a Hansard of its own. Its debates were public. Of its additional members one was the Chief Justice of Bengal, another was one of the judges of the Supreme Court. The remaining additional members were officials from distant provinces who were not indisposed to import fresh ideas into the close atmosphere of Calcutta.<sup>3</sup> Somewhat to the consternation of Wood the council soon showed signs of considering itself "the nucleus of a constitutional parliament".<sup>4</sup> Dalhousie, one of the most arbitrary of governors-general, had viewed the prospect with no qualms.<sup>5</sup> But, as time went on, his successor found the debates sometimes embarrassing. He thought it "to be regretted that the Council was on its

<sup>1</sup> Mrs R. Hamilton, *Life of Lord Wolverhampton*, pp. 315-17.

<sup>2</sup> Wood to Dalhousie, 23 December, 1854 (Lee-Warner, *Life of Dalhousie*, II, 237).

<sup>3</sup> See *Life of Frere*, p. 309.

<sup>4</sup> See speech by Lord Ripon, under-secretary of state, Lords' Debates, 9 July, 1861.

<sup>5</sup> See Lee-Warner, *op. cit.*, II, 234-5.





first creation invested with forms and modes of procedure so closely resembling Parliament".<sup>1</sup> Frere, who had to pilot government bills through the council, agreed and considered that the judges did the mischief.<sup>2</sup> In writing to the secretary of state he illustrated this view and found his correspondent entirely sympathetic. The existing council must go. But what was to take its place? Even as late as 18 February, 1861, Wood was uncertain. No one in 1853, he wrote, had dreamt of "a debating body with open doors and even quasi-independence". Lord Dalhousie began wrongly and everything had gone in the direction of fostering the notion of the council's being "an independent legislative body". It was all wrong and very unfortunate because there was always a sympathy in England for independent deliberation. Representative bodies, in any real sense, were impossible in India, and he did not think that "any external element would really do good". It might satisfy the English at Calcutta to have an English merchant or planter in the council, but he was not sure that it would improve the legislation; and Indians could not be put in who were "in any sense the exponents of active opinion, or who could take any part in the deliberations".

Frere, on 10 April, 1861, drew a vivid picture of racial tension which had followed on the Mutiny and of European non-official impatience of official legislation, urging strongly that it was impossible to recede<sup>3</sup> and that, in view of the course of events since 1853, Dalhousie was in the main right. Had he not taken the line which he took, things would have been worse than they were. The proper course now was to assist the viceroy with a sort of senate able to advise him in framing laws which could be of general application to all parts of India and in confirming or annulling laws shaped by the provincial legislatures which had been abolished in 1833 but must now be restored. Whether "any external (legislative) element" on the governor-general's council would really do any good or not was no longer a debatable question. Such an external element was essential.

"The days", he wrote, "are gone when you could govern India without much caring what the Europeans and Europeanised community say or think of your measures, and unless you have some barometer and safety-valve in the shape of a deliberative Council, I believe you will always be liable to very unlooked for and dangerous explosions."

He also urged that the new legislative bodies would make fatal mistakes unless they were assisted by Indian members.<sup>4</sup>

Canning agreed with Frere, and Wood largely accepted these views, but in a pessimistic mood. Writing to Frere on 17 August, 1861, he ended thus:

<sup>1</sup> The governor-general to the secretary of state, 9 December, 1859.

<sup>2</sup> Frere to Wood, 21 April, 1861 (*Life of Frere*, 1, 331. See also pp. 327 and 356).

<sup>3</sup> Correspondence, *Life of Frere*, 1, 336.

<sup>4</sup> *Idem*, pp. 336-41.





The future government of India is a problem of the most serious import, utterly unexampled in history, and one of which it seems to me very difficult to foresee the progress.

In addressing the House of Commons on 6 June, 1861,<sup>1</sup> he had pointed out the impossibility of reverting to a system by which the executive government alone legislated for India. Nor could the English in India have a representative body to frame the laws by which they should be governed. It was equally impossible to assemble in India in one place persons who would be real representatives of the various classes of the Indian populations. The residents of the towns no more represented the general Indian population than a highly educated native of London represented a highland chieftain or a feudal baron of six centuries ago. The legislative arrangements which he proposed were based on Canning's recommendations. They became law and were these.

For purposes of legislation the council of the governor-general was reinforced by additional members, not less than six or more than twelve, nominated by the governor-general and holding office for two years. Of these additional members not less than one-half were non-official (in no government service). Should the council meet for legislative purposes within a lieutenant-governor's province, the lieutenant-governor became an additional member. The functions of the council when meeting for legislative purposes were strictly limited to the consideration and enactment of laws. It could transact no other business. It could entertain no motion except one for leave to introduce a bill or having reference to a bill actually introduced. Measures relating to the public revenue or public debt, religion, military or naval matters, or foreign relations could be introduced only with the sanction of the governor-general. His assent was required to every act passed by the council; and any such act might be disallowed by the sovereign, acting through the secretary of state. While the legislative power of the governor-general in council was wide, it should not affect certain parliamentary enactments, or the general authority of parliament, or any part of the unwritten laws or constitution of the United Kingdom whereon the allegiance of the subject or the sovereignty of the crown might depend. In order to remove all doubts respecting the validity of rules or regulations sanctioned by executive orders of the governor-general in council for the more lately annexed or non-regulation provinces, a clause was introduced declaring that no such rules or regulations should be deemed invalid by reason of not having been made in conformity with the provisions of the charter renewal acts.

Mr A. H. (afterwards Sir Henry) Layard proposed in the House of Commons to insert an injunction directing that a certain number of the additional members of the council, when sitting as a legislative

<sup>1</sup> Hansard, CLXIII, 638-9.





body, should be natives of India.<sup>1</sup> But the secretary of state considered it undesirable to make statutory distinction in this connection between different classes of Her Majesty's subjects.<sup>2</sup> Some of the additional members appointed would certainly be natives of India.

The act conferred on the governor-general one power of a novel character. He was enabled to frame and issue on emergency, without his council, ordinances which would not remain in force for more than six months. Such a power had been urgently required on certain occasions in 1857-8. Long afterwards ordinances were resorted to in the first month of the great war, when the legislative council was not sitting and immediate action was required in certain directions. The power of issuing ordinances was vested in the governor-general alone in order that the responsibility might be solely his. But the reasons for such exceptional procedure should always be recorded and should be submitted to Her Majesty's Government together with the ordinance itself.<sup>3</sup>

The power of legislation which had been taken from the governors in council of Madras and Bombay by the Charter Act of 1833 was restored in 1861. For legislative purposes these councils also were expanded by additional members. No line of demarcation was drawn between subjects reserved for the central and those allotted to the local legislatures; but while local legislation in certain cases could not be undertaken without sanction from the governor-general, all acts of local legislatures required his subsequent assent as well as that of the local governor and were subject to disallowance by the crown. The governor-general was directed to establish a legislative council in Bengal and empowered to set up similar councils in the North-Western Provinces and the Panjab when the time was ripe. Councils were established in Bengal in 1862, in the North-Western Provinces in 1886, and in the Panjab and Burma in 1898.

The legislative councils established by the act of 1861 were committees by means of which the executive government obtained advice and help in legislation. While the government enacted the laws through its council, the public had a right to make itself heard, and the executive was able to defend its legislation. When the laws were once made they were binding on the government as well as on the public. They had been made in a manner which ensured publicity and discussion and could only be changed by the deliberate and public process by which they had been made. The councils could only deliberate on the legislation immediately at issue. They could not call for information on other subjects or impugn acts of the administration.<sup>4</sup>

In the year 1870 there was a discussion<sup>5</sup> between Lord Mayo's

<sup>1</sup> Hansard, CLXII, 1016, 18 June, 1861.

<sup>2</sup> *Idem*, p. 1027.

<sup>3</sup> Ilbert, *Digest*, pp. 215-16, 566, para. 26, Wood's dispatch of 9 August, 1861.

<sup>4</sup> See *Report on Constitutional Reforms*, 1918, p. 54.

<sup>5</sup> See *Accounts and Papers*, 15, *East India*, 1876, LVI, 6-10.





government and the Duke of Argyll, then secretary of state, the former claiming that they had been endowed by section 22 of the 1861 Councils Act with legislative discretion which they should exercise to the best of their judgment. The secretary of state could, of course, disallow any law which they passed. *They could not, however, be expected to introduce any measure of which they disapproved.*

Any other view would invest the Secretary of State with the character of the legislator for British India and would convert the Legislative Council into a mere instrument to be used by him for that purpose.

On 24 November, 1870, the duke replied that theoretical inconveniences were inseparably connected with the working of such a machinery of government as that through which the empire of India was ruled from England, but these could in practice be reduced to a minimum by mutual respect on the part of those concerned. *One great principle underlay the whole system. The final control and direction of affairs in India rested with the Home Government. It made no real difference if its directions related to legislative affairs.* If the crown's interposition were limited to a veto on acts passed in India, the queen's government would be helpless to secure legislative sanction for any measures, however essential it might deem them to be, for the welfare or safety of the Indian Empire. It followed, then, that this government must hold in its hands the ultimate power of requiring the governor-general to introduce a measure and requiring the members of the Indian government to vote for it. This was the practice in all parts of the queen's dominions where the authority of the legislative body was not derived from the principle of popular representation. It was a question of abstract right, not of ordinary procedure. It was only necessary to bear in mind where the seat of ultimate authority was placed in order to secure on both sides that fairness and moderation without which no political constitution could work with smoothness and success. Lord Mayo's government on 1 February, 1871, accepted this doctrine, as it defined a principle which they had never intended to question; they were glad, however, to hear that the ruling would not be applied to ordinary procedure but only "with great deliberation and on the rarest occasions".

The enlargements of the legislative councils in 1892, 1909 and 1919 are described in later chapters. Those of 1892 were made in response to the demands of "a limited but important section of Indian opinion" and established the *fact* of election to the councils by certain public bodies; but the government nominated a majority of the members of each council and maintained official majorities on the ground that no administration which did not possess sufficient power to carry out whatever measures it considered to be for the public interest could remain at the head of affairs among the different Indian nationalities.<sup>1</sup>

<sup>1</sup> See Lord Dufferin's picture of the India of his day, *Report on Constitutional Reforms*, 1918, p. 117.





The Morley-Minto reforms were the first real breach in the system of 1861. The king's proclamation of 2 November, 1908, had announced that "the principle of representative institutions which had from the first been gradually introduced" would now be "prudently extended". The reforms conceded non-official majorities on the provincial legislative councils composed mainly of elected members, but also of persons nominated by the governments concerned. They allowed any member to divide his council on financial questions and all councils to discuss matters of public importance and to make recommendations to the executive governments. But on the imperial legislative council the official majority was retained. This reservation was justified by Morley on the ground that the new councils were not designed to pave the way to the establishment of a parliamentary system, a goal to which he would not "for one moment aspire".<sup>1</sup> But by establishing non-official majorities on provincial legislative councils and by admitting an Indian gentleman to a seat on the governor-general's executive council, the core of authority in India, a step which was taken, with some searchings of heart,<sup>2</sup> on the viceroy's recommendation, the way was prepared for further developments which were to follow with unexpected rapidity under the pressure of movements which are described in later chapters.

### THE PROVINCIAL GOVERNMENTS

The following are now the major provinces of British India:

Province	Population (1921)
Madras ... ..	42,300,000
Bengal ... ..	46,700,000
United Provinces of Agra and Oudh	45,600,000
Bihar and Orissa ... ..	34,000,000
Bombay ... ..	19,300,000
Assam ... ..	7,600,000
Panjab ... ..	20,700,000
Central Provinces and Berar ...	13,900,000
Burma ... ..	13,200,000

The minor provinces are:

The North-West Frontier Province	2,250,000
British Baluchistan ... ..	422,000
Ajmer-Merwara ... ..	496,000
Coorg ... ..	164,000
Andaman and Nicobar Islands ...	27,000
Delhi ... ..	486,000

Thus the total population of British territory in India is 247 millions.

Between the years 1858 and 1918 changes were made in the titles, boundaries and governments of certain provinces originally without any friction or difficulty, but on one occasion resented by a local

<sup>1</sup> Morley, *Indian Speeches*, p. 92.

<sup>2</sup> See Morley, *Recollections*, II, 301-3.





government<sup>1</sup> and on another raising an unexpected but violent storm of local fury.<sup>2</sup>

Madras and Bombay remained under a governor in council throughout. Distinguished by the traditions of their old independence and by the presence of great seaports, they still retained some relics of their original privileges. Each government could correspond directly with the secretary of state if no financial considerations were involved. Each could appeal to him against orders of the Government of India and possessed full discretion in selecting men for important provincial offices. Both were less liable to supervision than other provinces in the administration of forests and land-revenue. In 1909, under the Morley-Minto reforms, the executive council of the governor in each was increased by the addition of an Indian member. In emergencies the governor could overrule his colleagues, but ordinarily questions were decided by majority votes.

Bengal, Bihar, Orissa and Assam remained under one lieutenant-governor until 1874, when Assam was constituted a separate province and placed under a chief commissioner.

In the year 1905 Bengal, Bihar, Orissa and Assam were converted by the ill-fated "Partition" into two provinces under lieutenant-governors, one composed of Western Bengal, Bihar and Orissa, the other of Eastern Bengal and Assam. In 1910 the lieutenant-governor of Western Bengal was given an executive council of two British civil servants and one Indian non-official.

In 1911 Lord Curzon's partition was set aside. The two new provinces became three. Bengal became the charge of a governor in council; Bihar and Orissa were placed under a lieutenant-governor in council; Assam was entrusted to a chief commissioner.

At the commencement of our period the present United Provinces of Agra and Oudh were two provinces under separate administrations. The Agra Province was known as the North-Western Provinces and was under a lieutenant-governor. Oudh was the charge of a chief commissioner. In 1877 the offices of lieutenant-governor of the North-Western Provinces and chief commissioner of Oudh were united in the same person. In 1902 the provinces were named the United Provinces of Agra and Oudh in order to avoid all confusion between their title and that of the then newly-created North-West Frontier Province.

The chief commissioner of the Panjab became a lieutenant-governor in 1859. In 1901 the frontier districts of the Panjab beyond the Indus were formed into a separate charge under a chief commissioner and called the North-West Frontier Province.

The Central Provinces were formed in 1861 by combining the Sagor and Nerbada territories with the Nagpur territories in one charge under a chief commissioner. Berar was placed under the same

<sup>1</sup> See Ronaldshay, *Life of Lord Curzon*, vol. II, chap. viii.

<sup>2</sup> *Idem*, chap. xxiv.





administration when, in 1902, it was leased in perpetuity to the British by the Nizam of Hyderabad.

Lower Burma became the charge of a chief commissioner in 1860. In 1886 the kingdom of Upper Burma was added to it after the third Burmese War, and the whole was called the province of Burma. In 1897 the chief commissioner became a lieutenant-governor.

The six minor provinces are under chief commissioners. The North-West Frontier Province was carved out of the Panjab in 1901. British Baluchistan was incorporated in British India in 1887. The Andaman and the Nicobar Islands were united under a chief commissioner in 1872. The city of Delhi with a small area surrounding it was constituted an "administrative enclave" under a chief commissioner in 1912 when the imperial capital was transferred there from Calcutta.

#### RELATIONS BETWEEN THE CENTRAL AND THE PROVINCIAL GOVERNMENTS

The central government necessarily kept in its own hands functions which concerned the whole empire. It also exercised financial, legislative and administrative control over the provincial governments.

The Charter Act of 1833 had centralised the administration of the country's finances in the hands of the Government of India. The act of 1858 vested the superintendence of the revenues and expenditure of the country in the secretary of state in council. More than £42,000,000 were added to the public debt by the troubles of 1857-8; all branches of the administration needed reorganisation, and improvements of every kind were called for. An efficient system of public accounts and strict financial control was absolutely necessary; and James Wilson, financial secretary to the treasury, was dispatched to India as member of the governor-general's council and lived just long enough to lay the foundations of a system under which the central government was to retain in its own hands an extensive measure of financial control. Rules of great stringency were imposed. But the central government possessed neither time nor knowledge sufficient to exercise such far-reaching responsibility in many details which should have been left to the discretion of local governments; and much wrangling and waste of time resulted from these rigid arrangements. For some years the central government, which was itself subject to the secretary of state in all such matters as related to borrowing, changes of taxation and general fiscal policy, maintained this meticulous control. But friction increased; and after careful deliberation, a system of financial decentralisation was inaugurated by Lord Mayo which was afterwards developed with beneficial effect. Even at the end of our period, however, special





Revenues were assigned to each province by the central government, and were shown with corresponding expenditure in the imperial budget while each provincial budget required the approval of the central government, whose sanction was requisite for proposals involving large expenditure and the creation of posts. The responsibility of that government to the secretary of state was firmly insisted on. In 1907 Lord Morley appointed a Decentralisation Commission to simplify relations between the central government and its subordinate and co-ordinate parts; but this body proposed no material change in financial relations between the central and provincial governments. The secretary of state himself continued to hold the central government in strict financial subordination. He watched the expenditure of Indian revenues "as the ferocious dragon of the old legend watched the golden apples".<sup>1</sup> Held in such rigid subordination, expected to keep down provincial charges, sharing in provincial proceeds, controlling provincial taxation, the central government could not effectively decentralise finance.

While legislating for British India, that government also controlled provincial legislation. Local legislatures, however, made laws "for the peace and good government" of their provinces on condition that no such laws affected any act of parliament, or, without previous sanction, any act of the governor-general's legislative council. They could not, without the previous permission of the governor-general in council, consider any law affecting the religion or religious rites and usages of any class of British subjects in India, or regulating patents or copyright, or affecting the relations of the government with foreign princes or states. Their discretion was further curtailed by the fact that the field open to them was largely covered by acts of the imperial legislative council. That body still exercised its powers in matters which were handled for all provinces on uniform lines such as Penal and Procedure Codes, laws for prisons and police, for forests, mines, factories and the preservation of the public health. Every local act required the subsequent assent of the governor-general; and local governments submitted all projects for legislation to the central government and secretary of state for approval. Provincial legislatures were still in theory expansions of the executive government for the purpose of law-making.<sup>2</sup>

Every provincial government was required to obey the orders of the governor-general in council, and to keep him constantly and diligently informed of its administrative proceedings and of all matters which ought to be reported to him. He was required by statute to control all its proceedings.<sup>3</sup> The reasons for so much centralisation of authority are thus explained in the Montagu-Chelmsford Report:

<sup>1</sup> Morley, *Indian Speeches*, p. 46.

<sup>2</sup> *Report on Constitutional Reforms*, 1918, p. 98.

<sup>3</sup> See Section 45, Government of India Act, 1915 (which consolidated all previous statutes).





It is easy to see that in many respects India is one single and undivided country in which much work must be done on uniform lines. The main Services which execute the orders of provincial governments have been recruited from England on terms guaranteed by the Secretary of State, with the result that many questions affecting them cannot be determined by any provincial government. Again the development of trade and industry and science throughout India has favoured the tendency at headquarters to formulate and pursue a uniform policy. Business and industry might be seriously hampered if (even with one law for India) the provinces were left to administer such matters as statistics, patents, copyright, insurance, income-tax, explosives or mining on different lines. Particularly in the more scientific spheres—such as bacteriology, or agricultural and veterinary science—advance has tended to concentration, because the expert services were much too small to be organised on a provincial basis, and also because the experience and resources of any one institution would not be fully used unless they were placed at the disposal of the whole country. Moreover in the past the Government of India have regarded themselves as distinctly charged with the duty of framing policy and inspiring reforms for the whole of India.<sup>1</sup>

The central government, with the sanction of the secretary of state, frequently appointed commissions of enquiry to report on such questions of grave concern as famine, irrigation, police or education. After consultation with provincial governments regarding recommendations contained in the reports of such commissions the Government of India formulated decisions which were often accompanied by grants earmarked for the purpose of carrying out reforms. Such reforms sometimes included the appointment of new advising or inspecting officers at headquarters and then tended to encourage interference with local discretion. In any case the report of a commission enabled the central government to take careful stock of a critical situation, and to shape new policy.

The whole position was aptly summed up by Lord Morley's Decentralisation Commission:

Among the important matters which the Central Government retain in their own hands are those relating to foreign affairs, the defences of the country, general taxation, currency, debt, tariffs, posts and telegraphs, railways and accounts and auditing. Ordinary internal administration, police, civil and criminal justice, prisons, the assessment and collection of the revenues, education, medical and sanitary arrangements, irrigation, buildings and roads, forests and the control over municipal and rural boards fall to the share of provincial governments. But even in these matters the Government of India exercise a general and constant control. They lay down lines of policy and test their application from the administration reports and returns relating to the main departments under the Local Governments. They also employ expert officers to inspect and advise upon a number of departments which are primarily administered by the Local Governments, including Agriculture, Irrigation, Forests, Medical, Sanitation, Education, Excise and Salt, Printing and Stationery, and Archaeology.

The control of the Government of India is, moreover, not confined to prescription of policy and to action taken upon reports and inspections. It assumes more specific forms. They scrutinise, and when necessary, modify the annual budgets of the Local Governments. Every newly created appointment of importance, every material alteration in service grades, has to receive their specific approval, and in many cases reference to the Secretary of State is likewise necessary.... Moreover

<sup>1</sup> *Report on Constitutional Reforms*, 1918, p. 99.





the general conditions of Government Service, such as leave, pension and travelling allowance rules, and the Public Works and Forest Codes are all strictly prescribed by the Central Government, either *suo motu* or on instruction from the Secretary of State. Lastly there is a wide field of appeal to the Government of India, as also the Secretary of State, from persons who may deem themselves aggrieved by the action of a Local Government.

The essential point to be borne in mind is that at present, even in matters primarily assigned to the Provincial Governments, these act as agents of the Government of India who exercise a very full and constant check over their proceedings.

Public policy and legislation were everywhere controlled by the central government which was, in its turn, dominated by its responsibility to parliament through the secretary of state. Both policy and laws were latterly much influenced by Indian councillors; but the last word and the whole responsibility lay with the British government. The basic principle was defined by Lord Dufferin:

It is absolutely necessary, not merely for the maintenance of our own power, but for the good government of the country and for the general content of all classes, and especially of the people at large, that England should never abdicate the supreme control of public affairs, or delegate to a minority or a class, the duty of providing for the diversified communities over which she rules.<sup>1</sup>

Tradition and practice operated to demarcate "spheres of influence" for the central and the provincial governments, but the demarcation was neither clear-cut nor legally recognised. As the major provinces were really different countries, their governments necessarily exercised considerable liberty in the management of domestic affairs. Differences of opinion periodically arose as to the lengths to which this liberty should go. Provincial governors sometimes complained of vexatious interference.<sup>2</sup> Lord Curzon, on the other hand, complained in 1901 that in respect of educational policy the local governments had become a "sort of heptarchy", and at another time proposed to reduce Madras and Bombay to the status of provinces in the charge of lieutenant-governors.<sup>3</sup> Yet no constitution can work successfully in a sub-continent so vast and various as India which does not concede a large degree of discretion to provincial rulers. The best of these were willing to trust their executive officers; and they were certainly justified in expecting a generous measure of confidence from their own superiors. This, as a rule, they received; but we find Lord Morley writing to Lord Minto on 15 July, 1909:

All that you say about lieutenant-governors fills me with sympathy, comprehension and holy rage. You have now three capable men below you, each of them bent in a more or less quiet way on having his head, and each entitled to have his views respectfully considered, and nine times out of ten probably right, but the tenth time capable of bringing things into a dangerous mess. And then there is the weak man, who is a greater nuisance than the strong uppish man.<sup>4</sup>

Lord Sydenham illustrates Morley's reluctance to rely on the con-

<sup>1</sup> Lyall, *Life of Dufferin*, II, 203.

<sup>2</sup> *Life of Freyre*, I, 441-2; Lord Sydenham, *My Working Life*, pp. 229-31, also 247.

<sup>3</sup> Ronaldshay, *op. cit.* II, 57-60, 416.

<sup>4</sup> Morley, *Recollections*, II, 263.





victions of responsible rulers in personal and daily touch with facts and realities. Morley certainly carried this feeling to excessive lengths. A uniform policy which sets the time for all subordinates is obviously necessary. But India is still the country of which Wood said in 1853, "On nearly all sides I find that there is the greatest difference between its various parts". Diversity of circumstances renders general conditions difficult to arrive at; and provincial rulers who are not backward in pressing their convictions, even at the cost of jarring on doctrines and theories conceived in a very different atmosphere, are entitled to a full and unbiassed hearing. It is still true that

there can be no successful government in India unless the fundamental fact of the immense diversities of Indian countries and peoples be recognised, and each great province be administered by its own separate government with a minimum of interference from outside.<sup>1</sup>

### THE LAST WORD

We have seen the secretary of state growing in stature as years went by, anxious at times to play an energetic part in the actual governing of India, and reluctant to think that after all this must be the task of the men on the spot. Throughout our period it was the central and provincial governments who, working through the officers of the public services among vast Asiatic communities split into thousands of sections and possessed of traditions and usages of immemorial antiquity, gave shape and living form to the policies of distant parliaments and cabinets. It was they who brought India through the supreme trial of more than four years of a world-wide war. It was the governor-general in council who designed the arrangements of 1861, initiated the discussions which led to the constitutional changes of 1892 and 1909, and suggested the momentous declaration of 20 August, 1917, although he did not frame its terms.

In Lord Birkenhead's words of 5 November, 1929,<sup>2</sup> we find an echo of the Duke of Argyll's dispatch of 1870.

"The authority and position of the secretary of state", said the late holder of that office, "are complementary of the authority and position of the viceroy. Sometimes the special atmosphere in which the viceroy lives, or the wholly different atmosphere in which the secretary of state lives, may be the corrective of a rash impulse, whether that be formed in Delhi or in Whitehall."

Differences of opinion, he added, must sometimes arise between these high authorities. With good will on both sides these were almost invariably accommodated. The last word necessarily rested with the representative of the cabinet and parliament of this country. It is much to be regretted that so great a public servant as Lord Curzon found it so hard to accept this obvious consideration. But only on these terms can viceroys discharge their heavy and harassing responsibilities.

<sup>1</sup> *My Working Life*, p. 226.    <sup>2</sup> *Strachey, India*, p. 64.    <sup>3</sup> *Hansard, Lords Debates*.





## DISTRICT ADMINISTRATION IN BENGAL

1858-1918

THE sixty years which followed the suppression of the Mutiny were in Bengal years of rapidly increasing population, of growing wealth, of expanding communications, of widely extending knowledge and contact with Western ideas. In spite of a daily burden of increasing case-work, district officers and their subordinates were constantly called on to make fresh efforts in new directions, to push forward education, vaccination, sanitary improvement, local self-government, to throw all their energies into carrying out schemes devised by higher authority. But before proceeding with the history of district administration, we must observe the succession of changes which finally transformed the old Lower Provinces (Bengal, Bihar, Orissa and Assam) into the modern provinces of (a) Bengal, (b) Bihar and Orissa, and (c) Assam.

The first of these changes was the transfer of Assam in 1874 from the charge of the lieutenant-governor of Bengal to that of a separate chief commissioner. The next in 1905 was the partition of Bengal, Bihar and Orissa into two new provinces of Western Bengal, Bihar and Orissa and Eastern Bengal and Assam. Each of these charges was committed to a lieutenant-governor; and the lieutenant-governor of the western province was from 1910 assisted by an executive council which consisted of two British members and one Indian. In 1912 Assam was again handed over to a chief commissioner; Bihar and Orissa were entrusted to a lieutenant-governor in council; and Bengal was made over to a governor in council. Each executive council consisted of two British members of the civil service and a non-official Indian gentleman.

We have seen that from 1859 the magistrate-and-collector, or district officer, once more became sole head of the district. The police were his subordinates, although from 1861 they were managed and disciplined by a British superintendent, often supported by an assistant superintendent. These officers and their men belonged to a provincial force which was presided over by an inspector-general and two or more deputy inspectors-general with whom the district officer constantly corresponded. He also conducted business with the director of public instruction, with the opium agent, with the chief engineer, and, as time went on and communications extended, with the heads of other departments which gradually came into being, such as excise, jails, sanitation, land records. He had long been subordinate to a commissioner, but now was menaced by a variety of





masters. Such a state of affairs was likely to lead to overmuch correspondence, to neglect of the real work of administration and to loss of touch with the needs of the people of his charge. Perceiving the danger, George Campbell, lieutenant-governor from 1871 to 1874, laid down emphatically the principle that heads of departments were on no account to dictate to district officers, who within their charges should, subject to the control of their commissioners, be supreme over everyone and everything except the courts of justice. The police, who were then their sole agency for all purposes connected with the peace, order and conservancy of their districts, the regulation of public assemblies and other administrative matters, must be employed with discrimination. Campbell was anxious to devise some other subordinate agency which would relieve the police of such miscellaneous duties as attention to the state of the roads; but he did not succeed in an attempt to do this. There was in Bengal no village record system, no collection of revenue by subdivisional Indian officials. It was, therefore, impossible to find sufficient employment for a new subordinate executive establishment.

The great and growing city of Calcutta was not included in a district, although it formed part of the charge of the commissioner of the principal or presidency division. Its stamps and customs were under the direct superintendence of the Board of Revenue. It possessed a special police establishment under the control of a special commissioner assisted by deputy commissioners. Criminal justice was administered by five stipendiary magistrates, and by a municipal magistrate appointed to try exclusively offences under the municipal acts.

Honorary magistrates had been appointed in some districts of the Lower Provinces in the year 1857 in order that the services and influence of land-holders and resident non-official Europeans might be actively enlisted in support of the administration. Indigo planters in Bihar had in that stormy time been authorised to raise small bodies of police for the protection of their immediate neighbourhoods<sup>1</sup> and in command of these had done good service. In 1859, when the Mutiny was over, Sir Frederick Halliday abolished honorary magistracies; but their value had been proved and on the suggestion of the Government of India, his successor, Sir John Peter Grant, appointed forty-five honorary magistrates in Calcutta and forty-five more in the *mufassal* or outlying districts. All of these were zamindars, European planters, or other persons of position; they were generally invested with power to try minor cases only, and nowhere exercised control over the police. The system was extended in 1872-3 by Sir George Campbell, and again in 1889 by Sir Stuart Bayley, with a view to promoting habits of self-government. Benches of honorary magistrates were established in municipalities. Much good work was done

<sup>1</sup> Buckland, *Bengal under the Lieutenant-Governors*, I, 74.





by the honorary magistrates, and an accumulating burden of litigation was somewhat lightened.

Municipal boards and local cess committees, established at first under strict official control with very limited powers, developed in the 'eighties into municipal and district boards with wider responsibilities, containing an official element and generally presided over by district officers. Innovations transplanted from the West, they were at first hardly appreciated or understood except in large centres of population where municipal boards formed "an oasis of popular control in the midst of an official system",<sup>1</sup> concerning themselves with roads, schools, hospitals, sanitation and vaccination. The district boards excited no popular interest partly perhaps because no attempt was made to graft them on to the village "*chaukidari*" *panchayats*, or councils of five, whose duties were still confined to assessment and collection of the local police rate levied for payment of the village *chaukidars* (watchmen).

Civil and criminal courts were subject to the jurisdiction of the Calcutta High Court of Judicature which was established by letters patent on 14 May, 1862, and took the place of the old Supreme Court and the Company's "Sadr Adalat". Small cause courts for the trial of civil suits were set up in 1860 under judges, who in 1867 were amalgamated with the "Principal Sadr Amins" and the *munsiffs*<sup>2</sup> in a single provincial department, the higher grade of which was composed of "subordinate judges", and the lower of *munsiffs*. The district and sessions judge presided over the civil and criminal courts of a district; but the district officer was expected to watch and supervise generally the proceedings of his subordinate magistrates. By Act X of 1859, to which we shall refer later on, original jurisdiction in suits between landlord and tenant was transferred from the civil courts to the (revenue) courts of the collector and his assistants. But this arrangement was cancelled by Act VIII of 1869 when suits for rent or ejectment of tenants returned to the civil courts. Suits and cases, the whole volume of work transacted by district establishments, increased very greatly during our period, particularly in Eastern Bengal, and led to proposals for the partition of certain districts which at first excited little or no popular opposition.

But gradually there came a change. With a rapid extension of communications, of intercourse with England, of Western education, lawyers grew and multiplied. Local bars increased, developing not only at district but at subdivisional headquarters. In Mymensingh, for example, the local bar in 1872 consisted of fifty-two pleaders; in 1913 it mustered 403 pleaders and barristers, 384 *mukhtars* (law-agents) and ninety-six revenue agents. The population of that district indeed had almost doubled within the period; but legal business would not have afforded a livelihood, adequate or inadequate, to so

<sup>1</sup> *Report on Constitutional Reforms*, 1918, p. 104.

<sup>2</sup> Cf. chap. ii, *supra*.





many had it not been stimulated by a liberal employment of troops. It increased enormously; and the energies of district and subdivisional officers were more and more confined to the business of trying cases. District officers were also oppressed by growing correspondence with the various provincial departments. Not only were they prevented from moving freely about their districts and becoming acquainted sufficiently with actual conditions, but the quality of their work at headquarters necessarily suffered. The eventual situation has been faithfully described by one of their number,<sup>1</sup> who wrote in 1913:

As matters stand at present, we are neglecting the work which matters most because neglect does not show; and in order that we may do the work which is intrinsically of no greater importance, but which must have the preference because it comes more immediately to the notice of the government. It is because the mass of the people are so submissive to authority, and because they cherish an old belief that the British government desires to do justice, that they do not make their voices heard, when the district officer fails to secure them from such delay in obtaining justice in the criminal courts as amounts to a denial of justice, because he has no time to control the work of the courts; when the district officer fails to give them a fair price for their homestead land acquired for a public purpose because he has no time to control the work of the "Land Acquisition Deputy Collector"... None of these defects come very prominently before the notice of government, because the people do not often complain; but the cumulative effect of these omissions, though slow, cannot fail to be far-reaching; and there is grave danger that the effect may become more rapid, now that ill-disposed people have got to work to persuade the masses that government does not care for their interests.<sup>1</sup>

Partition or rearrangement of charges was the only effective remedy for such a state of affairs, but involved considerable initial expenditure of public revenues and for this reason excited adverse criticism. As, too, every partition implied some disturbance of vested interests, some apprehensions of loss of clients, some loss of custom to shops in particular towns; as after 1905 the agitation against the partition of Bengal struck a key-note which reverberated among the Hindu educated classes in every town throughout the province; however desirable a partition might be, it was always a signal for loud newspaper protest. But we have carried this part of our narrative far, and must return to the peaceful period which followed the Mutiny.

It was recognised then that no more time must be lost in providing the Lower Provinces with improved communications, and that in order to finance a satisfactory scheme local rates must be introduced. The landlords, however, urged that when the permanent settlement was concluded, they were informed that no demand would ever be made on them, their heirs and successors, "for an augmentation of the public assessment in consequence of the improvement of their respective estates". They were therefore not liable to pay road or education cesses. The dispute was finally settled by the Duke of Argyll, secretary of state, who ruled in 1870 that

rating for local expenditure is to be regarded, as it had hitherto been regarded in all provinces of the empire, as taxation separate and distinct from the ordinary

<sup>1</sup> Report of the Bengal District Administration Committee, 1913-14, p. 24.





land revenue; that the levying of such rates upon the holders of land irrespective of the amount of their land assessment involves no breach of faith on the part of the government, whether as regards holders of permanent or temporary tenures; and that where rates are levied at all, they ought, as far as may be possible, to be levied equally without distinction and without exemption upon all holders of property assessable to the rate.

Effect was given to this decision by the Road Cess Act passed in 1871, which authorised the raising of a local rate or cess for the construction and maintenance of roads and other means of communication, prescribing a valuation of land and a registration of the holders of landed interests. Landlords, lessees, mortgagees, sub-proprietors were required to present returns of receipts, and were informed that only rents returned would be realisable by process of law. Records and valuations of all landed property liable for payment of the cess were prepared. Cesses were to be spent entirely within the districts wherein they were levied.<sup>1</sup>

Tenants generally still suffered from the absence of any system of registration of their rights and holdings. Act X of 1859, the first tenant law passed for Bengal, Bihar and Orissa, named classes of tenants whose rents were unalterable, and conferred a right of occupancy on tenants who had held the same land for at least twelve years, either personally or through predecessors from whom they had inherited their holdings. It also limited the right of distraint which till then had been exercised by landlords in a very arbitrary fashion. But while doing these things, it failed adequately to secure the occupancy rights which it created. It further failed to safeguard the power which it conferred on landlords of enhancing occupancy rents which fell below prevailing rates. Above all it made no provision for any field-to-field survey, or for the preparation of records of rights. Thus the tenants, and indeed any party to a case on whom lay a burden of proof, still suffered from serious disabilities in law courts. Tenants too were frequently shifted by their zamindars from one holding to another in order to prevent their acquiring occupancy right in any holding. In 1872 serious trouble developed in the Pubna district, where landlords habitually exacted heavy cesses from tenants and even endeavoured to obtain written agreements to pay rents swollen by such unjust demands. The victims organised themselves for systematic resistance, proclaiming that they were rebelling against their tyrants and not against the government. Disturbances took place; the neighbouring district of Bogra caught the contagion; and outward peace was only restored by the mediation of the district officers, while discussions were started which eventually led to legislation in 1885, when a new Bengal Tenancy Act superseded the act of 1859. It was based on three principles, fixity of tenure for the tenant, an adjustment of rent which would enable the landlord to obtain his

<sup>1</sup> O'Malley, *History of Bengal*, p. 458.





## DISTRICT ADMINISTRATION IN BENGAL

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fair share of increment in the value of the produce of the soil, and settlement of disputes between landlords and tenants on equitable principles. It laid down the rule that occupancy right could be acquired in all land held by a tenant provided that for twelve years previously the occupier had held any land whatever in the village, and thus put an end to the zamindars' practice of shifting tenants arbitrarily from one holding to another. It empowered the central government to order a survey and the preparation of a record of rights in any area, and permitted the provincial government to direct similar operations to be undertaken in any estate where they were asked for by either side or were considered necessary to compose disputes. A field-to-field survey, a preparation of records, and a settlement of occupancy rents began in North Bihar; and later on other surveys and settlements were begun in various Bengal districts. All these operations were conducted by a staff which worked under a director of land records. One-fourth of the cost was borne by the government and three-fourths by landlords and tenants concerned. In this way effective steps were at last taken to introduce system, justice and clarity into revenue administration in Bengal. A further act, passed by the provincial legislative council in 1895, required privileged tenants to register all changes in their holdings due to succession or transfer. Records of rights were to be revised periodically and not checked and maintained continuously after the fashion followed in the North-Western Provinces and Panjab. The results of these new measures were beneficial.

We have now examined the system and framework of district administration in Bengal and have reviewed agrarian legislation. Field-to-field survey and settlement of occupancy rents, and preparation of a record of rights, when at last ordered by the government, were carried out under the supervision of the officers of the land records and settlement departments. The outside world knows nothing of the immense debt which rural India, and by far the greater part of India is rural, owes to these men who were always selected with particular care. Their devotion, their elaborate diligence, their tireless sympathy with the people, can be adequately appreciated only by those who have seen them at work or inherited the fruits of their labours. A very accurate idea of economic conditions in a fairly typical Bengal district may be gathered from a book written by the late Mr J. C. Jack, of the Indian civil service, a brilliant and devoted settlement officer. The people of Faridpur, the district of which he wrote, are favoured by a rich soil and generally live in comfort, obtaining sufficient subsistence from agriculture and fishing, but often get into debt, mainly by reason of their improvidence and lavish expenditure on marriages and other domestic ceremonies. They pay little in taxes. Many members of the cultivating classes enter menial or domestic service. The big landlords of the province are generally absentees; the small





or ordinary landlords, the co-sharers, the lessees, the mortgagees, sub-lessees, sub-mortgagees are seldom in contact with the land and content themselves with collecting their rents, having little or no inclination for farming of any kind. The small land-holders are largely intermingled with the professional and clerical classes, and all alike are known as *bhadralok* (respectable people), who live not only in towns as in other provinces, but also in villages. The original *bhadralok* were Brahmans, Kayesthas (writers) or Baidyas (physicians); but the spread of Western education and the practical advantages of university credentials have caused many members of lower castes to adopt *bhadralok* ideals. It is the *bhadralok* who have shown that consuming passion for English education which has distinguished Bengal. It is they who have established Anglo-vernacular schools in towns and villages on a scale unknown elsewhere in India, schools attended by throngs of youths, who look to the Calcutta University as their portal to a profession and a satisfactory marriage. Mr Jack says that in Faridpur the average income of the *bhadralok* is higher than that of any other class, largely because the lawyers are all *bhadralok* and "an able lawyer will make five or ten times as much a year as an equally able doctor, while even an incapable lawyer will make a better income than most capable members of other professions". Competition, however, is keen; and in Faridpur and elsewhere many *bhadralok* live in poverty. The strong position of this class in rural areas is unchallenged by any martial caste. There are none of the army pensioners who count for so much in many districts of other provinces. The agriculturists are generally timid or apathetic; and, as we have seen, in earlier times bands of brigands batted on numbers of unresisting victims. Between the years 1905 and 1916 brigandage and terrorism were revived and practised by *bhadralok* youths known as "political" dacoits.

Internal trade in Bengal depends largely on means of communication, which improved greatly within our period, but were defective even at its close. In the eastern portion of the province trade is mainly carried on boats. Fishing and weaving are the principal industries; but weaving has suffered greatly from the introduction of factory-made goods and from the ravages of malaria among workmen absorbed in sedentary pursuits. Mr Jack observes that weavers have taken largely to agriculture or domestic service. From 1860 onwards Calcutta and its neighbourhood were largely affected by a remarkable expansion of foreign trade, a general increase of prices, and a rise in the standard of living. Large industrial works were started, conducted by machinery and affording employment to numbers of labourers who came from villages and returned to their lands at certain seasons. In 1881 there were nineteen jute mills with 39,000 operatives; in 1911 there were fifty-eight jute mills and 200,000 operatives. Coalfields were developed at Raniganj, Jherria and Giridih; but inland centres





of industry were few; the villages remained the chief units of economic life and village lands were parcelled out in small holdings. Various parts of the Lower Provinces have been visited by drought from time to time. The most notable of these visitations was the terrible Orissa famine.<sup>1</sup>

Toward the close of the viceroyalty of Lord Curzon it became increasingly apparent that the Lower Provinces generally, and the eastern half of Bengal particularly, were administratively starved. Service for Europeans in these eastern districts was generally solitary and unhealthy. Its unpopularity encouraged a tacit assumption that this rich and fertile area with its teeming populations required no more than a meagre official establishment. Its communications were bad; its government buildings were mean and inadequate; its police stations were few. It contained no troops and no mounted police. Several of its districts were too large for administration by a single magistrate-and-collector. Its agricultural population was becoming richer and more litigious; its law courts and district establishments were over-burdened with work; its scattered schools and colleges were multiplying and producing a growing throng of young men who turned their faces persistently towards government service or the overstocked bar. Disappointment bred discontent which was aggravated by political and newspaper teachings that foreign rule was the source of the mischief. Meantime civil servants, and especially those whose lot lay in Eastern Bengal, were generally tied to their desks and found little time for informal contact with the people of their districts. In the extensive Dacca and Chittagong divisions with their population of 17½ millions, there were toward the close of the year 1907 only twenty-one British covenanted civil servants and only twelve British police officers. And while Eastern Bengal was so scantily manned, the whole of the Lower Provinces needed a larger administrative staff, more liberal financing and the attention of more than one provincial administration. Thus the first partition of the old Lower Provinces came about. For reasons with which this chapter is not concerned, it was intensely unpopular with congress politicians and the leaders of the Hindu *bhadralok*. A boycott of European goods was proclaimed; schoolboys and students were enlisted in picketing operations. Within the years 1906-9 no less than 557 resultant disturbances came before the criminal courts of the new province of Eastern Bengal and Assam, and in most of these disturbances schoolboys and students were concerned. But the worst was yet to come. Young men belonging to the English-educated classes had for some time been engaged in revolutionary conspiracy, and armed with bombs and pistols commenced subterranean intermittent warfare against the government and society, organising gangs for the perpetration of "political" dacoities, the proceeds of which went to

<sup>1</sup> Cf. chap. xvii, *infra*.





finance their campaign. The terrorism which they were soon able to exercise showed that the character of the village people had altered little since the far-away days of the first Lord Minto. The principal theatre of their operations was Eastern Bengal; and the government of that province was long unable to obtain sympathetic recognition of its needs from higher authority.<sup>1</sup> As late even as 18 May, 1908, the chief secretary of Eastern Bengal and Assam addressed the Government of India in the following terms:

Every branch of education, every department of administration, makes urgent demands upon the revenues of this ill-equipped province; and the normal income barely suffices to meet the necessary items of expenditure.<sup>2</sup>

The situation grew worse and at last forced recognition from Simla and Whitehall. Adequate legislation was undertaken; the police were strengthened materially in Eastern Bengal; the number of British officers was increased, and schemes for administrative and educational reforms were under discussion when the sudden alteration of the partition in December, 1911, remanded all such plans for further consideration in altered circumstances. Bengal became one province again but was still plagued by revolutionary crime. At last on 23 October, 1913, the central government appointed a committee consisting of five experienced executive officers (one from Bihar and Orissa, one from the United Provinces, one from the Central Provinces, and two from Bengal) to examine the conditions prevailing in the districts of Bengal; to compare them with those existing in other provinces; and to report in what respect the administrative machinery could be improved,

whether by the reduction of inordinately large districts, by the creation of new subordinate agencies or otherwise, with the object of bringing the executive officers of government into closer touch with the people.

After extensive touring in Bengal and neighbouring provinces, the committee submitted their conclusions in a detailed report. They found that for some years a succession of revolutionary outrages had obstructed and unsteadied the administration of certain districts; that terrorism had been rampant; that Bengal district officers were, from causes beyond their control, somewhat out of touch with the people.

"A district officer", they wrote, "or a police superintendent who is over-worked and borne down by a load of office and inspection duties, cannot be reasonably expected either to become well acquainted with the people of his district or to exercise over his subordinates that watchful and sympathetic control that is essential to good administration. Still less can he be expected to devise or ascertain how progress is attainable. Such matters require careful and deliberate reflection and for this there is no time. The subordinate staff suffer with him, and it is idle to expect officers overburdened by routine work to spare time for tours or interviews with people whom they are not obliged to see. Their days are entirely occupied with endeavouring to keep pace with those duties which they must perform."<sup>3</sup>

<sup>1</sup> *Report of the Bengal District Administration Committee, 1913-14, chap. ii.*

<sup>2</sup> *Idem*, p. 17.

<sup>3</sup> *Idem*, p. 18.





The committee proposed the following remedies:

- (a) partitions or rearrangements of certain districts or subdivisions;
- (b) development of a village watch-and-ward and self-government organisation by means of "union panchayats" under the control of circle officers who would be subordinate to the subdivisional magistrates and would in some degree fill the place of the subordinate tahsil agencies in neighbouring provinces;
- (c) reforms in connection with the management of Anglo-vernacular schools;
- (d) measures calculated to promote industrial development;
- (e) the appointment of more European deputy directors of agriculture for demonstration work.

The report was published by the Bengal Government in 1915. The war was then in progress and money was needed in new directions. Effective measures were taken under the Defence of India Act to suppress revolutionary conspiracy; but in all other respects reform was tarrying in Bengal in November, 1918.

In no province had the difficulties of district officers been so harassing. The causes lay partly in the careless neglect with which, as we have seen, the province was treated in the far-away past under the vague impression that because its population contained no martial element its problems could wait. In later times Bengal district officers were also called on to suffer for short-sighted economy in high quarters and for an obstinate reluctance there to face facts which they never failed faithfully to represent.<sup>1</sup>

<sup>1</sup> Chirol, *Indian Unrest*, pp. 96, 315; Morley, *Recollections*, II, 212, 312; *Bengal District Administration Committee Report* (1914), p. 17.





## CHAPTER XIV

## DISTRICT ADMINISTRATION IN BOMBAY

1858-1918

IN Bombay, as in other provinces, the main features of the administrative machinery had stood the test of time, and its practical working had become stereotyped. The history of the second half of the nineteenth century is, therefore, in the main concerned with the improvement of the administrative organisation bequeathed by the Company and its adaptation to the rapid intellectual and material advancement of the people of Western India. Until very recent times the Bombay Government maintained and conducted relations with a host of petty Bhil, Rajput and other chiefs too insignificant to be dealt with directly by the Government of India. The officials charged with the duty of arranging terms with the Indian princes and land-holders in the earlier years of the nineteenth century had been persuaded to treat the *de facto* exercise of civil and criminal jurisdiction by a land-holder as an indication of quasi-sovereign status. The political agents, who were ultimately enrolled in a separate political cadre, were from the beginning chosen generally from among the officers of the Company's military forces, except in the case of small isolated states contiguous to British districts, when the collector of the district was appointed *ex officio* political agent of the state concerned. By the opening of the period under review the system had become firmly established, the functions of the agent varying from the mere giving of advice and exercise of general surveillance to an actual share in the administration of the state.

In the case of the peninsula of Kathiawar, which comprised no less than 193 separate states, the Bombay Government in 1831 established a criminal court, presided over by the political agent, to assist the durbars of the several states in the trial of serious crimes; but subject to this innovation, their interference with the judicial administration of the peninsula was restricted up to 1863 merely to diplomatic representation. By the latter date, however, the criminal jurisdiction of all the chiefs had been defined and classified, and each of the four divisions (*prant*), into which the peninsula was formed for administrative purposes, was placed in charge of an assistant to the political agent, empowered to exercise residuary jurisdiction with wide civil and criminal powers. Later years witnessed further developments, such as the appointment of a deputy to each of the four assistant political agents, stationed at the headquarters of each *prant* and exercising subordinate civil and criminal jurisdiction; the alteration in 1903 of the designation of the political agent and his four assistants





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to those of agent to the governor and political agents of the *prants* respectively; the appointment of a member of the covenanted civil service as judicial assistant to the agent to the governor, in order to assist him in the disposal of grave criminal cases, remitted to his court from the *prants*, and of civil and criminal appeals; and the appointment as *ex officio* assistant political agent of a superintendent of managed estates. The agent to the governor was also placed in control of a small police force for watch-and-ward duty in the various *thanas* and civil stations of the agency; but outside that area it has always been customary to hold the chiefs and land-holders responsible for the preservation of order and for indemnifying losses due to crime within the limits of their respective territories.

The task of administering the border states of Gujarat and Rajputana, which contain large numbers of wild tribes, was for many years one of great difficulty—so much so, indeed, that in 1838 the Bombay Government established a system of border *panchayats*, with the object of exercising a check upon continual border raids and of providing a tribunal of speedy justice for these primitive tribesmen. The experiment proved so successful that in 1876 these *panchayats* were converted into regular courts under two British officers, one of whom represents the Rajputana state and the other the Bombay state concerned. These courts still exist and meet as occasion demands.<sup>1</sup>

Another department of the administration which was established during the Company's régime and continued to function for several years after its demise was that of the survey settlement. The settlement of the revenue demand from each occupant of land under the ryotwari system was a necessary consequence of the political pacification of the country and of the increase of cultivation and internal trade thereby engendered. The ryotwari system had existed in Bombay and Madras from ancient times, but the accounts relating to it had either been lost or fallen into confusion during the later years of Indian rule. After the first few years' administration, therefore, the Bombay Government organised a Survey Department, which, after measuring and mapping every holding, proceeded to classify the fields according to depth and quality of soil, situation, and natural defects, placing each field in a class corresponding to a certain "anna valuation" or fractional share of the maximum rate calculated in sixteenths. Subsequently villages were grouped into blocks on the basis of their propinquity to markets and high roads and other economic conditions, the maximum rates for each block being fixed in relation to these conditions and to average prices. The survey department, which was established in 1835, imposed at the outset assessments which were too high and caused much distress. They were therefore reduced, and a further enquiry was set on foot, which resulted in the formulation by the department in 1847 of the principles which still form the basis

<sup>1</sup> *Imperial Gazetteer*, Provincial volume I, Bombay, pp. 86-8.





of the Bombay land-revenue system. Incidentally the operations of the department brought to light many cases of land held rent free without authority, which were subsequently investigated and adjusted by an Inam Commission appointed in 1852. The settlement of the presidency was completed in 1882, except in the districts of North Kanara and Ratnagiri, which were completed in 1891 and 1893 respectively, and the special survey department was then abolished, the future revisions of the settlement, which take place every thirty years, being entrusted to the assistant or deputy-collector in charge of the subdivision of a district.

The arrangements in Sind were different, owing to the fact that the ryotwari tenure in that region was less common than the zamindari, under which the land-holder (zamindar) supplied seed, plough, cattle and labour, divided the crop with the actual cultivator, and paid the assessment in kind out of his share of the crop, after deducting the value of the seed advanced. For several years after the annexation of the province, the revenue was collected in kind, as previously remarked; but during the governorship of Sir Bartle Frere (1862-7) cash payments were everywhere introduced, and a regular survey was commenced in 1863. The operations of the survey department and the progress of irrigation resulted in 1882-3 in the province containing three types of settlement—the original, the revised, and the irrigational, and of these the last-named, which bases the assessment of land on the method of irrigation adopted, was eventually (1902-3) applied to the whole province.

In order to avoid the huge volume of detail involved in a survey of the growth of the departmental administration of Bombay since 1858, it seems advisable to give a succinct account of the main features of the Bombay administration, as it existed in the year 1914. The outbreak of war in that year involved a variety of new burdens in the sphere of daily administration, which were successfully shouldered until the close of military operations; and the general results of the armistice had hardly had time to make themselves felt, before the whole problem of administration was subjected to revision in connection with the publication and adoption by parliament of the constitutional reforms associated with the names of Mr E. S. Montagu and Lord Chelmsford.

In 1914, then, the Bombay government consisted of a governor, appointed under the Government of India Act of 1833, and three ordinary members of the council appointed under the Indian Councils Act of 1909. Of the ordinary members two had to be persons who at the date of their appointment had been in the service of the crown in India for at least twelve years. In accordance with the spirit and letter of the Morley-Minto reforms, which underlay the act of 1909 (9 Edw. VII), the appointment of third ordinary member was given to an Indian.





In order to diminish the pressure of business, advantage was taken, in the discharge of the executive and judicial functions, of the special requirements of the different members of the government. The governor himself, for example, might dispose of the business of the political department (except civil, criminal and political cases), of the public works department (except railways), of the general department, relating to volunteers, cantonment and miscellaneous military matters, and of the legal department, regarding matters pertaining to the legislative council. The responsibility for the efficient administration of revenue, financial and railway affairs was usually accepted by the revenue member; while the work of the judicial department, in which were included all questions concerning the urban and district police, the work of the educational, marine and ecclesiastical departments, and the remaining business of the political department and of the general department—the latter including the important subjects of local self-government and public health—would be usually divided between the other two ordinary members of council. Questions which presented no special difficulty were disposed of by the members in charge of the department in which they occurred; on more important questions and in cases involving heavy expenditure, the opinion of a second member was sought; and if there were any difference of opinion, or if any case of peculiar difficulty or general public interest arose, the matter was settled according to the balance of opinion either as recorded by the different members or after discussion at the meeting of the executive council. Ordinarily the opinion of the majority was decisive at such meetings of the council. But in the case of an equality of votes on any question the governor or other person presiding had two votes or the casting vote. In any grave political emergency, however, affecting the safety or tranquillity of British rule, the governor was empowered under section 47 of the East India Company Act of 1793, which had never been repealed, to set aside even the unanimous opinion of his councillors, his orders in such cases having the validity of orders passed by the whole council.

All papers connected with public business reached government through the secretariat, where they were properly arranged and submitted to the members in charge of the departments to which they belonged, together with all available material for forming a decision in the shape of former correspondence, acts, or resolutions relating to the subject, and also with the recorded opinions of the secretary or under-secretary of the departments concerned, or of both. The secretariat was composed as follows: for the revenue and financial departments a secretary and an under-secretary who were covenanted civilians, and two assistant secretaries belonging to the uncovenanted service; for the political, judicial and special departments a covenanted secretary and an under-secretary and two uncovenanted assistant secretaries; for the general, educational, marine and ecclesiastical





Departments a secretary who was a covenanted civilian, and an uncovenanted assistant secretary; for the legal department a covenanted secretary who was also remembrancer of legal affairs, a covenanted assistant remembrancer of legal affairs who was also *ex officio* secretary to the legislative council, and an assistant secretary who was chosen from the subordinate judges of the province; and for the public works department (which included a railway branch) a secretary, a joint secretary, and two under-secretaries, who were either royal or civil engineers, and two uncovenanted assistant secretaries. The senior of the three covenanted civilian secretaries to government was styled the chief secretary. There was also a separate department in charge of the chief secretary, assisted by the senior of the civilian under-secretaries.

Reference has already been made to the relations between the Bombay government and the Indian states of the province. Up to the date of the constitutional changes involved in the passing of the Government of India Act of 1919 all the Indian states in the Bombay Presidency were under the supervision of the Bombay government, with the exception of Baroda, where the resident political officer was, and is still, an agent to the governor-general.

Under letters patent of 1865, the administration of justice throughout the regulation districts of the presidency was, and still remains, entrusted to the high court, consisting of a chief justice and seven puisne judges. This court possesses both ordinary and extraordinary civil and criminal jurisdiction, and exercises original and appellate functions. The appellate judges of the high court also supervise the administration of justice by the different civil and criminal courts of the regulation districts. Ordinary original jurisdiction is exercised in both civil and criminal matters arising within the limits of the city and island of Bombay. By virtue of its extraordinary jurisdiction the high court may remove and itself try any civil suit brought in any court under its superintendence, and may in criminal cases exercise jurisdiction over all persons residing in places within the jurisdiction of any court subject to the superintendence of the high court. Besides acting as an appeal court in civil and criminal matters, the high court also functions as an insolvency court and possesses the civil and criminal jurisdiction of an admiralty and vice-admiralty court in prize cases and other maritime questions arising in India. It has also been invested with testamentary jurisdiction, and has matrimonial jurisdiction over Christians. One of the judges of the high court officiates as judge of the Parsi matrimonial court; while matrimonial decrees by district courts require confirmation by the high court.

The high court has no jurisdiction over the province of Sind except in respect of its powers under the Administrator-General's Act of 1874, of probates and administrations, of decrees in matrimonial cases, and in respect of European British subjects. All the functions of a high court are performed by the court of the judicial commissioner,





which replaced the former *sadr* court in 1906. A separate judicial commissioner for Sind was first appointed in 1866. By the commencement of the twentieth century the judicial work of the province had so greatly increased that the court was enlarged to consist of the judicial commissioner and two assistant judicial commissioners, one of whom must be a barrister of at least five years' standing and be qualified to deal with mercantile cases. The court serves also as a district and sessions court for the Karachi district and as a colonial court of admiralty.

In addition to the high court of Bombay and the court of the judicial commissioner in Sind, four grades of courts administer civil justice throughout the presidency, namely, those of district and assistant judges and of first and second class subordinate judges. These subordinate judges date from the year 1868-9, when the old titles of *sadr amin* and *munsiff* were abolished, and when at the same time the number and limits of the judicial *zillahs* or districts were altered, the appointment of judgeships and assistant judgeships were divided into grades, and a thorough redistribution of the subordinate courts took place, in order that the boundaries of their jurisdiction might correspond as far as possible with the *talukas* or revenue subdivisions of the presidency. In 1914 the cadre of the district judicial department included seventeen judges, three joint judges, and seven assistant judges, all these officers being members of the Indian civil service except three district and three assistant judges, who belonged to the Bombay provincial service. The first and second class subordinate judges numbered respectively seventeen and eighty-nine. The regular judicial staff was also entrusted with the work performed originally by a separate staff of three judges (a special judge and two subordinate judges) under the Deccan Agriculturists' Relief Act of 1879, which was passed after the severe famine of 1876-8. Of the total staff of subordinate judges four were employed exclusively in assisting the district judges in the inspection of the subordinate courts in their respective districts and in reporting on the working of the act above-mentioned. As regards the district judges, it may be remarked that those at Surat and Poona served also as judges of the Parsi matrimonial courts in those towns; while the judge of Poona, as "Agent for the Sardars in the Deccan", decided under Regulation xxix of 1827 cases in which certain gentlemen of high rank are interested. For the easy recovery of small debts and demands, small cause courts, invested with summary powers, existed in Bombay and in six smaller towns, Ahmadabad, Nadiad, Poona, Surat, Broach and Karachi. The Deccan Agriculturists' Relief Act of 1879 was also responsible for the creation of appointments of village *munsiffs* and "conciliators", of whom the former are empowered within the area of one or more villages to dispose of petty suits up to Rs. 10 in value, and the latter endeavour to induce parties to agree to a compromise of matters in dispute or to