

The King in Council may, under Section 233, specify the number of appointments in connection with the Defence of India, which may be made either by himself directly, or in any manner that he may prescribe. This is without prejudice to his general Prerogative right of making all appointments in the Indian Defence Forces. This provision is probably included because of the need for coordinating the entire policy of Imperial Defence of Britain and her Dominions, with that of India. There are some appointments even now, such as that of the Chief of the General Staff in India, which are made under unwritten conventions directly from Britain, in accordance with the requirements of British Imperial Defence considerations rather than strictly those of Indian requirement. This entails a close system of co-relation in high command, and interchange of senior officers between the British Army proper and the Army in India, whether its British section or its Indian section. This may be in the best interests of Imperial Defence, Strategy, and High Command in time of war; but it may spell very little advantage for India, even from the standpoint of retaining in the country the experience gained by Military or Air Force Officers at her expense, to form a sort of trained reserve available in times of national emergency.

The differentiation between Commissions in the Army granted to officers by the King directly and those issued by the Governor-General is perpetuated by statutory provision in Section 234. All the ignominy this distinction has come to imply to Indian officers serving in the Defence Forces of their own country is accorded legal, constitutional recognition and autho-

riety. It is a little difficult for a layman to understand why this provision was necessary at all, though, in actual words, it seems no more than the possibility of granting Officers' Commissions to ordinary soldiers who had served in the ranks. Whatever that may be, the very existence of this distinction is fatal to a proper appreciation being developed in India of the motives and circumstances of British Imperial statesmanship, which inflicts such gratuitous insult upon an entire people.

Section 235 empowers the Secretary of State, acting with the concurrence of his Advisers,—or what is known under the existing system as the *Secretary of State for India in Council*,—to specify what rules, regulations and orders affecting the conditions of service of all or any of the forces serving in India shall be made only with his previous approval. This, again, seems a roundabout method of asserting the ultimate supremacy of the Secretary of State. Or it camouflages clumsily the patent fact that in the most important and expensive department in its charge, the Federal Government of India would be as much under the leading strings of Whitehall, as the Government of India under the Act of 1919 have been. The power of making such rules, regulations, etc., is given, apparently, in the first instance, to the Indian authorities,—presumably the Governor-General acting in his discretion. But the right is reserved to the Secretary of State for India, acting with the support of a majority of his new Advisers, to lay down what particular rules of service, made by the Indian authority, should have his previous approval. Any amendment in such rules would also be, presumably, similarly treated. This margin of power left to the Secretary of State seems,

in our eyes, to have no justification except to see that the Governor-General does not come to be unduly influenced by his Indian Ministers to the slightest prejudice of the British element in the Indian Defence Forces by land, or sea, or air. Whether that may not operate to the grave prejudice of assuring a proper wholesome respect for the Indian authorities in the personnel of the Defence Forces of India is, of course, not a consideration that weighs at all with those who drafted this Constitution.

### (3) Department of External Affairs

The Service in the Department of External Affairs, —as it would be styled under the new regime,—has hitherto been mixed up with that of the Political Department, in charge of the Governor-General. Says the Report of the Joint Select Committee of Parliament, considering the Constitution in its Bill form:—

“Recruitment to the Political Department is indirect, vacancies being filled by transfers from the Indian Army and the Civil Service (mainly the Indian Civil Service) and, to a smaller extent, by the promotion of subordinate political officers. The Governor-General approves transfers from the Indian Civil Service and the Indian Army; transfers from the other All-India services are approved by the Secretary of State on the recommendation of the Governor-General.

The Statutory Commission made no specific recommendations for the future organisation and recruitment of the Political Department, of which at present the Governor-General himself holds the portfolio. Its total strength on 1st October, 1933, was 108 posts. These include, on the External side, the secretariat, district and judicial appointments in the North-West Frontier Province and Baluchistan, as well as the political agencies in tribal territory; political agencies on the Persian Gulf and a proportion of Consular appointments in Persia; the Civil administration of Aden, and such other appointments as those at the legations in Afghanistan and Nepal and the Consulate-General at Kashgar. On the internal side they include the appointments to

political agencies and residencies through which the relations of the Crown with the Indian States are conducted; and the civil administration of the Chief Commissioners' provinces of Coorg and Ajmer-Merwara, and of the assigned tract of Bangalore and other British Cantonment areas in the Indian States.”\*

Under the new Constitution, the offices of Political Agents and Residents at the Indian States may become unnecessary, at least so far as those States are concerned which have joined the Federation. It is true, even after the accession of the States to the Federation, there will remain a considerable field of their relations with the Crown, for the proper conduct of which some officers may be needed who will be under the Governor-General (or the Representative of the Crown if the office is separated) exclusively. But, as the Joint Select Committee's Report puts it, responsibility for recruitment to these two branches of the Political Department, and the Department for External Affairs proper, will remain with the Secretary of State. There is a feeling among some Indian Rulers that officers conducting their relations with the Crown should be non-Indians; and it is very likely that this Department, as well as the Department of External Affairs proper, may come to be manned almost wholly by non-Indians, except, perhaps, in very subordinate positions.†

Aden having been separated from the Indian Federation, that portion of the patronage must disappear. Appointments to the Chief Commissionerships,

\*Paras. 301 and 302 of the Report.

†By Section 257, officers of the Political Department proper, i.e., that dealing with the relations of the Crown with the Indian States, are withdrawn from the operation of Part X of the Act of 1935, which relates to Public Services in general. Existing officers are allowed to hold their posts on the same conditions of service, pay, pensions, etc., as before the coming into effect of Part III of the Act dealing with Provincial Autonomy, and no change can be made by any Indian authority in these terms and conditions of service, which would be unfavourable to the officers concerned.

will remain with the Governor-General under the supervision of the Secretary of State. These, it may be added, might quite possibly be separated from the Political Department proper, and be merged in the Civil Service, or appointments to Civil Posts made by the Secretary of State, as the Chief Commissionerships are within the *discretionary* authority of the Governor-General. Appointments in the Tribal areas,—in Baluchistan, as well as in the North-West Frontier,—will likewise remain with the Governor-General; and here, too, the problem of Indianisation may provoke as much criticism among the Indian people as in the other reserved departments.

#### **Diplomatic, Consular and Trade Commissioners' Appointments**

External Affairs proper would, thus, be concerned with such Legations and Consulates in Afghanistan, Nepal, Kashgar, and Persia as the Government of India under the new Constitution are allowed to appoint directly. We have, however, no Indian Diplomatic or Consular Service. Such appointments may, therefore, will be made for years to come by an outside authority from among non-Indians, no matter how the interests of India might suffer thereby.

Trade Commissioners,—four in all so far, including one in Japan,—and their staffs, are another branch of this Service, which will also remain exclusively with the Governor-General. Though hitherto recruited from among the Indian Civil Service Officers, these officers might, quite conceivably, be recruited from the special services created under Section 244. The vital interests of India involved in the due observance of such Trade Treaties require that Indians experienced in matters of

the country's foreign trade should alone be appointed to such posts. At the present time, it is by no means an unfamiliar criticism of the Indian Trade Commissioners in European countries, like Italy or Germany, that they are unable to safeguard the interests of the Indian merchants trading with those countries, on such occasions, as, for example, the limitation of credit available for Indian imports into Germany, especially in contrast with the corresponding action of the British Government in protecting the similar interests of British merchants. Experienced Indians in such posts might also not, on similar occasions, be able to defeat Britain's one-sided move to the prejudice of Indian merchants. But they might help to make the case much stronger for the full Indian control of those posts, if the interests of India are to receive something better than step-motherly treatment.

#### **(4) Ecclesiastical Department**

The Ecclesiastical Department,—another excluded concern of the Governor-General,—is, relatively, unimportant. Its maximum expenditure being practically fixed under Section 33 (3) (e) at 42 lakhs, it is, even from the financial standpoint, not of great importance. Its importance, however, lies in the injustice implied to the Indian people, in that the religion of a microscopic minority,—and, at that, of alien origin,—receives such state recognition and support, while the religions of the children of the soil have no such recognition accorded to it. The concern of the State with any Religion or Religions is open to criticism on general grounds, and for a variety of reasons. For our part, we would not have the State in India to have any concern with any religion. But, if the State must concern



itself with Religion even in the way of financial support, the first claim is obviously that of the religion or religions of the people of the soil, and not of an outside minority of such insignificant proportions as the Anglican civilians and soldiers serving in this country. Appointments in this Department will be made by, and be under the control of, the Secretary of State.

#### (5) High Commissioner for India

In this connection, we might also dispose of the appointment of the Indian High Commissioner in Britain and that of the Agent to the Government of India in the Union of South Africa. The appointment of the High Commissioner will, in the new regime, be made under Section 302, which leaves the appointment, and the salary and conditions of service, to be prescribed by the Governor-General, acting in his Individual Judgment. This means that this appointment is not completely withdrawn from the advice of the Ministers, though the Governor-General is left a margin of authority to override the advice of his Ministers in choosing the individual, or prescribing his remuneration and conditions of service. No mention is made of any Pension attached to this post; and if it is ranked as a political appointment, it is possible distinguished and retired politicians alone would be appointed to the post. The work, however, which the Indian High Commissioner has to do in Britain involves considerable administrative and business experience; and the choice of a retired politician may not always serve the interests at stake most effectively. No mention is made, in this section, of the Staff for the High Commissioner's office, which, it may be presumed, will also be under the control of the Federal Government.

#### Agent to the Federal Government in South Africa

The same authority will appoint Agent to the Government (Federal) of India in the Union of South Africa, and such other Dominions in which it may be deemed advisable to have special Agents. This is not excluded from the scope of Ministerial Responsibility in the Federation. Even if we may not regard this to be the means for improving India's relations with the Dominions, the Federal Government may, it may well be presumed, be more active and determine in retaliation for any unjust treatment to Indians in the British Dominions, thanks to the advice and information of such Agents.\*

#### (6) Auditor of Indian Home Accounts

Sections 170, 251 and 252 deal with the appointment of an Auditor of Indian Home Accounts, and his Staff. The Auditor of Indian Home Accounts,—i.e., of the Secretary of State whose cost will not be charged on the British Budget,—and of the Indian High Commissioner's Office, will be appointed by the Governor-General *in his discretion*. The number of his staff, their salaries and qualifications will require to be approved by the Governor-General, also *in his discretion*. The Staff will, of course, be appointed by the Auditor himself. It may therefore, be taken for granted that very little Indian element will be found in these appointments.

The same applies to the staff of the office of the High Commissioner. As however the latter Officer may be an Indian, and his appointment not free from

\*Provision is made for the Staff of the High Commissioner in Section 251.

political influence and considerations, the exclusion of the Indian element may not be quite so complete as in the case of the Auditor's staff. Those holding the corresponding appointments before the coming into operation of Part III of the Act of 1935 are guaranteed in their office, and conditions of service regarding pay, pension, etc. The expenses of this department of the Auditor of Indian Home Accounts will be **charged on the revenues of the Federation**, and, as such, non-votable by the Federal Legislature; while that in connection with the staff of the High Commissioner's Office will be charged on those revenues to the extent that corresponding expenditure under the existing system was defrayed without being submitted to a vote of the Indian Legislative Assembly.\*

#### (7) Railway Service

By Section 277, Railway Services, Class I and Class II mean the services, which were, immediately before the commencement of Part III of the Act of 1935, so classed in the Classification Rules under Section 96 B of the Government of India Act, 1919. By Section 242, the provisions of the preceding section as regards recruitment and conditions of service would apply, so, however, that, for purposes of initial appointment and prescribing conditions of service, the Railway Authority is substituted for the Governor-General. This is intended to keep the Railway Staff and Superior Services outside political influence and wire-pulling supposed to operate in Government Departments. The

\*cp., Detailed Estimates for 1937-38, pp. 177-8. In the Government of India Budget for 1937-38, this expenditure was divided into: Voted Rs. 993,000; non-voted Rs. 332,000 inclusive of the Education Department under the High Commissioner.

same privileges regarding guaranteed pay, pensions, leave and other allowances, rights of complaint, etc., and compensation, are assured to these Railway Servants as to the other civil servants of the State in India under the terms of Section 241.\*

A special feature of the Railway Service is the disproportionate number of appointments in it going to the Anglo-Indian community. Under the provisions of Section 242 (3) this position is specially safeguarded, so that

"the specific class, character, and numerical percentages of the posts hitherto held by members of that community and the remuneration attaching to such posts"

are guaranteed to them. The Railway Authority is further bound

"to give effect to any instructions which may be issued by the Governor-General for the purpose of securing, so far as practicable to each community in India a fair representation in the Railway services of the Federation".

As the care of the legitimate interests of Minorities is among the Special Responsibilities of the Governor-General, the extremely small Minority community of Anglo-Indians are guaranteed this profitable privilege as long as this Constitution lasts. With this guaranteed charge acting as a first mortgage on the resources of the Indian Railways,—already in a woefully deficit condition,—it is impossible to expect that any real economy could be made for the general benefit of the Federal Finances.

\*cp. Section 186 which makes the Pay and Pensions and Provident Fund Contributions of such servants be charged on the Railway Fund before other demands can be made against that Fund.

**(8) Customs, Posts & Telegraphs, and Court Officials**

The same rules of recruitment and conditions of service will apply to those serving under the Federal Government in the Indian Customs Service, the Posts and Telegraphs Department, and the Officials of the Federal Court. The privileged position of the Anglo-Indian community is noted and guaranteed in these Departments also in identical terms. This means considerable patronage at the disposal of the Governor-General, who may exercise it in consultation with the Federal Public Services Commission, or under rules made or suggested by that body; or on the advice of his Ministers. But in no case is he bound to follow that advice if it clashes in his opinion with any of his Special Responsibilities.

**Audit Service**

Under Section 166, an Auditor-General for India is to be appointed by the King-Emperor, i.e., by the Secretary of State; and that officer is made removable from his post in the same way and on the same grounds as a Judge of the Federal Court. This is but proper, as the duties of the Auditor-General are of a kind that require this office to be made as completely free from political influence or Party manoeuvrings as could possibly be arranged. It follows, therefore, that the conditions of service of this officer must be such as to afford him the required independence and immunity from political influence. The provisions, therefore, of Section 166 (2), (3) and (4) are as correct in principle as they seem irreproachable in form. The only regret of an Indian commentator on such provisions is that Indians, perfectly suitable and qualified for this most important, though perhaps the least advertised, post,

will have practically no chance of securing that appointment, and serving their country through it in every way the Auditor-General can.

The Auditor-General, being debarred, by Sub-section (2) of that section, from any further office under the Crown in India after he has ceased to hold the office of the Auditor-General, will be free from the insidious temptation that seems to beset a number of the higher officers of the Government in India. On their retirement, most of them obtain high paid posts with Indian States, or private corporations, on the tacit understanding that their knowledge and influence of the working of the Indian Government would enable them to obtain all desired, and at times not too legitimate, advantages for their new employers. Such a practice for a person in a post like that of the Auditor-General would be highly reprehensible, even if the understanding referred to above were not even breathed in his case with any prospective employer. The salary, etc., of the Auditor-General is rightly charged on the revenues of the Federation, and as such non-votable; while the salaries, etc., of his office and staff are to be paid out of those revenues, and may be open to Legislative vote.

**Reserve Bank**

The Governor and Deputy Governor of the Reserve Bank of India are appointed by the Governor-General *in his discretion*, and, so are fixed also their salaries, allowances and other terms of office. The same rule applies to the appointment of an officiating Governor or Deputy Governor of the Bank. The Reserve Bank, like the Railways, is supposed to be best managed if its staff, etc., are kept outside political influence and party



manoeuvrings. In practice, however, political influence and party manoeuvring are supposed to be dangerous in these departments, only when they are alleged to be exercised by parties not sympathetic to the British steel frame in India. Otherwise it is difficult to understand or justify the appointment and withdrawal of the present Premier of the Punjab from the Deputy Governorship of the Reserve Bank.

#### (9) Inspecting and Co-ordinating Officers

A considerable amount of the Federal Government's powers of interference in, or supervision over, public administration in the Provinces and the States comprised in the Federation, will be carried out through the Federal Inspecting Officers. The Federal Inspectors will see to it that the rules of administration, or the laws made by the Central Legislature, on subjects within their jurisdiction, are duly carried out. These officers will be among those Civil officers, who may not form part of the regular Civil Service; but who will nevertheless be appointed, paid, promoted, pensioned under rules described in the preceding pages. The standard of efficiency in the public administration generally will depend, in a large measure, upon these Inspecting Officers. Their recruitment, therefore, must be a task of considerable responsibility and consequence in the well-being of the country collectively. The Governor-General will act, in such matters, on the advice of the Federal Ministers, subject to the express provisions of the law in regard to the protection and discipline of these Officers.

#### (10) Judicial Service

We shall describe, in so far as such description remains to be given, the Judicial Service under the

Federation in the Chapter devoted to the Federal Judiciary.

#### Summary

Taken collectively, the powers and functions of the Governor-General, in regard to the protection and safeguard of the Superior Services, mostly manned still by non-Indians, invest him with an effective and practically an absolute command of the administrative machinery. These powers extend, not only to the Federal Services proper, but also, as we have seen in the volume on Provincial Autonomy, to those members of these Services serving in the Provinces. Many of the appointments, their pay and conditions of service, pensions and allowances, are either to be determined by him, or by the Secretary of State above him; or guaranteed by the Constitution itself. With rare exceptions, the Governor-General is empowered in all these matters relating to the superior Services, to act **in his discretion**,—i.e., without reference to the Ministers. The bulk of the salaries, allowances, pensions, etc., are *charged upon the revenues of the Federation*, i.e., utterly outside the vote or discussion of the Indian Legislature. By this arrangement, the Governor-General is not only made the most important single cog in the administrative system of India; his Ministers' power and importance, their authority and influence, are diminished *pro tanto*. The powers of appeal and redress left to the Governor-General, or the Secretary of State; the right to afford compensation on stated contingencies to the individual officers fancying themselves aggrieved; and the fundamental principle running right through the entire legislation that no change or amendment in the system can be made, which

would render the position of any given public servant less advantageous than it was before that proposal was made, make the Services Citadel as impregnable as could possibly be devised. No economy, retrenchment, or reform in the Services is possible, so long as this system is enforced rigorously upon us. Even the Indian members of these Services would be unamenable to suggestions of any relaxation in these their enormous and abnormal privileges, their insupportable salaries and allowances, so long as an outside guaranteeing authority remains in the land backed by all the material force the British Government commands in India,—unless the impulse of patriotism, the perception of the real, long-term interests of the country and its people, and the resolute stand taken by the Provincial and Federal Ministers and Legislatures work a miracle.

## CHAPTER VIII

### THE FEDERAL LEGISLATURE

The institution and functioning of the Federal Legislature is supposed to embody the essence of Responsible Government introduced under the new Constitution in India. This Legislature is different from the hitherto existing Indian Central Legislature, not only because it is a Legislature competent to make laws for the whole of British India and such of the Indian States as have acceded to the Federation; but also because, for the first time in the history of the Indian Constitution, the Legislature is empowered to hold Ministers Responsible to it for the working of the Government. How far this Responsibility is real; and to what extent it can or will serve the interests of political freedom, social reconstruction, and economic well-being in this country will be summed up at the end of this Chapter.

#### Plan of the Chapter

We shall consider in this Chapter:—

- (i) The composition of the Federal Legislature, including therein:—
  - (a) The Bicameral form of the Legislature; relations of the two Houses; respective powers of the two Chambers; object and purpose of a Bicameral legislature, how far achieved in the Federation of India;
  - (b) The process of election of the Members; Franchise of Voters; Qualifications and