

A Bill, however, which is passed by the Lower House, and sent to the Legislative Council, and is not ready for the presentation to the Governor for his Assent for a period of 12 months after its passage by the Assembly, may lead the Governor to summon the two Chambers to a joint sitting to consider the Bill and vote upon it [74 (2)]. If the Bill in question affects any of the Governor's Special Responsibilities, or relates to Finance, the Governor may summon a joint sitting of the Chambers without waiting for the period of 12 months to elapse before the Second Chamber might be required, as it were, to finish consideration of the measure submitted to it. If the Governor chooses to dispense with this period of grace allowed to the Second Chamber in given cases, he need not at all consult his Constitutional advisers, *i.e.*, he is entitled to act in his discretion.

The meaning of these provisions is, that the Second Chamber is constituted, or at least conceived, to be a sort of revising body, a curb on the enthusiasm of the Lower Chamber. The Assembly may pass certain

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if any, as are agreed to in joint sitting, is passed by a majority of the total number of members of both Chambers present and voting, it shall be deemed for the purposes of this Act to have been passed by both Chambers:

Provided that at a joint sitting—

- (a) unless the Bill has been passed by the Legislative Council with amendments and returned to the Legislative Assembly, no amendment shall be proposed to the Bill other than such amendments, if any, as are made necessary by the delay in the passage of the Bill:
- (b) if the Bill has been so passed and returned by the Legislative Council, only such amendments as aforesaid shall be proposed to the Bill and such other amendments as are relevant to the matters with respect to which the Chambers have not agreed:

and the decision of the person presiding as to the amendments which are admissible under this sub-section shall be final.

measures; but the Legislative Council is given a whole twelvemonth before the Governor can be made by the Ministers to summon a joint session of the Provincial Parliament. The Legislative Council has, indeed, no right to shelve a Legislative measure passed by the Assembly permanently. It has every right to suggest any amendments in the Bill as sent up by the lower House for its consideration and adoption. And all these amendments must either be agreed to by the Assembly before the Bill can be taken up to the Governor for his Assent,—without which it cannot become law,—or a period of twelve months must elapse, in this process of amendments and counter amendments, negotiations and counter negotiations, before the Governor can be made to intervene.

### Position of the Governor

The Governor may intervene *suo motu*, if the Bill in question affects the discharge of any of his Special Responsibilities, or relates to Finance. When the Governor intervenes to call a joint sitting of two Chambers *suo motu*, he need not wait for the period of grace allowed to the Upper House to see the reasonableness of the Lower House in having passed the measure in question. The Upper House may delay the measure, by such tactics, only upto a point. But if, within that period, the Lower House is dissolved, or ceases to be in office,—*i.e.*, its term of 5 years expires,—there may be a sporting chance that the new Assembly might not take the same view as its predecessor and might even drop the measure, or agree to the amendments suggested by the Upper House. But unless the Governor really takes a keen interest, and has true sympathy

with the line of policy adopted by the Lower House, under the advice of the Ministers, it is wholly unlikely that a situation contemplated in this section could arise, or its solution as suggested therein could be effective.

Similarly, in regard to the legislative proposals of the Lower House, affecting any of the Governor's Special Responsibilities, or relating to Finance, the Governor can, and probably will, intervene off his own bat, without waiting for the period of grace to expire. But cases are difficult to conceive, in which a Lower House would have passed a measure affecting one or more of the Governor's Special Responsibilities, or relating to the provincial finance, and the Upper House seeks to defeat such a measure by dilatory tactics, which force the Governor to summon a joint sitting of the Chambers, in his discretion. There is not much hope of a Provincial Upper Chamber in India acting, like the Senate in France, as the guardian of popular liberties and a curb on the Executive. In all probability, the Upper House would be more likely to take the line of policy in favour with the Governor than the Lower House; and so the contingency is, normally speaking, not at all likely to arise.

The only assumption, on which such a contingency may seem likely is, that, in a particular Province, at a particular time, the Upper House is more progressive, more radical, than the Lower; and, as such, while the Lower takes a line of policy and adopts a measure which the Governor approves, the Upper House opposes it, and seeks, by the constitutional power given to it of co-equal rights in concurring to a piece of legis-

lation, to postpone decision on the subject,—a wholly improbable, unlikely, almost inconceivable assumption.

### Procedure in Joint Sessions

In a joint sessions, the Lower House must be confident of a majority of 30—50 in most cases, if it desires to get a measure passed by this device. For the Provinces which have a Second Chamber have also a much larger number in the Assembly, as the following comparative Table shows:—

Province	Number of Members in	
	Assembly	Legislative Council
Madras	215	56 (maximum)
Bombay	175	30 „
Bengal	250	65 „
United Provinces	228	60 „
Bihar	152	30 „
Assam	108	22 „

The excess of the Lower House over the Upper is, in all these cases, so considerable, that unless the division in the Lower House is very close, and there is practically no sympathy for the measure in the Upper House, no purpose would be served, so far as the prestige of the Upper House is concerned, in insisting upon or necessitating a Joint Sessions of the two Chambers. In Bengal, for instance, which has the largest Legislature of 315, unless the number supporting a measure in the Lower House falls below 160, and there is no sympathy for that measure whatsoever in

the Upper House, the Joint Sessions even in Bengal cannot defeat the intentions of the Lower House.

The majority needed at a Joint Sitting for the proper passage of the Bill is a simple majority of the two Chambers combined. But, unless the Legislative Council has passed the Bill and returned it to the Lower House with certain amendments, no amendments would be permitted at a joint sessions which are not necessitated by the mere efflux of time. The amendments made by the Legislative Council to the Bill as passed by the Assembly in the course of the Council's first consideration of the Bill, will, of course, be duly considered at the joint sittings. The only other amendments that would be allowed at the joint sessions must be such as are relevant to the matters with respect to which the Chambers are not agreed in the first instance [sub-section (3) provisos (a) and (b), of Section 74]. As to whether or not particular amendments are admissible for discussion at the Joint Sessions must be decided by the person presiding at such joint sittings,—his decision on the subject being final.

#### Initiative in the Legislature—Finance

The procedure outlined above is slightly different in regard to that in connection with Financial Bills in the Provincial Legislatures. In the first place, whereas in all other matters competent to the Provincial Legislature to legislate upon, the initiative may come from any Member of the Legislature, and in any Chamber, in matters of finance, including the Provincial Budget, the initiative is almost entirely with the

Governor, or his Ministers, acting under recommendation from the Governor. Under Section 78,

- (1) The Governor shall in respect of every financial year cause to be laid before the Chamber or Chambers of the Legislature a statement of the estimated receipts and expenditure of the Province for that year, in this part of this Act referred to as the "annual financial statement."
- (2) The estimates of expenditure embodied in the annual financial statement shall show separately (a) the sums required to meet expenditure described by this Acts as *expenditure charged upon* the revenues of the Province; and (b) the sum required to meet other expenditure proposed to be made from the revenues of the Province, and shall distinguish between expenditure on revenue account from other expenditure, and *indicate the sums, if any which are included solely because the Governor has directed their inclusion as being necessary for the due discharge of any of his special responsibilities*, (Italics ours).
- (3) *The following expenditure shall be expenditure charged on the revenues of each province:—*
  - (a) The salary and allowances of the Governor and other expenditure relating to his office for which provision is required to be made by Order in Council;
  - (b) Debt charges for which the Province is liable including interest, sinking fund charges and redemption charges, and other expenditure relating to the raising of loans and the service and redemption of debt;
  - (c) the salaries and allowances of Ministers and of the Advocate General;



- (d) expenditure in respect of the salaries and allowances of judges of any High Court;
- (e) expenditure connected with the administration of any areas which are for the time being excluded areas;
- (f) any sum required to satisfy any judgment decree or award of any court or arbitral tribunal;
- (g) any other expenditure declared by this Act or any Act of the Provincial Legislature to be so charged.
- (h) Any question whether any proposed expenditure falls within a class of expenditure charged on the revenues of the Province shall be decided by the Governor in his discretion."

All these items, and their list is capable of infinite expansion, especially if the Provincial Legislatures would follow the advice of the Parliamentary Select Committee which considered the present Constitution in its Bill form, and add the salaries and allowances of the Provincial services also to the list of items "charged upon the revenues of the Province" and make them non-votable,—make an aggregate of the Provincial expenditure which may well absorb more than  $\frac{3}{4}$  of the Provincial income in the leading Provinces,—those, at least, whose local debt is not condoned to them under the Niemeyer Award, and who have a considerable bill to foot every year in respect of that debt.\*

\*C. P. Report, J. S. P. Committee, Para 294:—

"There is, however, one existing right of Officers appointed by the Secretary of State, the application of which, as it stands, to civil servants in general would be impossible, namely, the right to non-votability of salaries and pensions. There is, indeed, again nothing derogatory to the rights and powers of the Legislature in the adoption of a special procedure, similar to the Consolidated Fund Charges procedure of the British Parliament, under which certain salaries are authorised by permanent statute in stead of being voted annually on supply, and this is in fact generally recognised to be desirable procedure in certain circumstances. But, as we point out below in a slightly different connection (vide Para 316), this procedure could not in practice be applied to the salaries of all public servants. We think, however, that it might well be applied without prejudice to the proposals in the White Paper, which provide that certain heads of expenditure shall not be submitted to the vote of the Provincial Legislature at all."

The limits of the effective authority of the Provincial Government,—narrow as they are under other provisions of the Constitution Act,—are restricted to vanishing point by this suggestion. Hence Indian politicians would be more than justified, if, on the strength of this provision alone, they condemn the Constitution of 1935, as offering them a stone when they had asked for bread.

### Non-Votable Items

Section 79 makes explicit the non-votability by the Provincial Legislature of the seven categories of expenditure relating to a Province, *and any others* that may be added by the Provincial Legislature itself, or may follow under the provisions of the Constitution Act itself. These items are simply not submitted to the vote of the Legislature at all. The Legislature is, indeed, given the empty right of merely discussing, without the power to vote upon, all other items mentioned above, except the salary and allowances of the Governor, and other expenditure in connection with his office (e.g., his Private Secretary and the staff attached to that office) ordained by an Order in Council.\* But such a barren privilege of merely discussing what the Legislature is incapable by its vote to affect can only lead to needless heart-burning,

\*79. (1) So much of the estimate of expenditure as relates to expenditure charged upon the revenues of a Province shall not be submitted to the vote of the Legislative Assembly, but nothing in this subsection shall be construed as preventing the discussion in the legislature of those estimates, other than estimates relating to expenditure referred to in paragraph (a) of subsection (3) of the last preceding section.

(2) So much of the said estimates as relates to other expenditure shall be submitted, in the form of demands for grants, to the Legislative Assembly, and the Legislative Assembly shall have power to assent, or to refuse to assent, to any demand, or to assent to a demand subject to a reduction of the amount specified therein.

(3) No demand for a grant shall be made except on the recommendation of the Governor.

disappointment, and conflict between the Legislature and the Executive. In every instance in which the authors of the Constitution Act of 1935 could manifest their distrust of the Indian Legislature, and could devise any means to guard against such distrust of theirs being justified by events, they have taken the utmost possible precautions to provide against. The working of this Constitution, therefore, in any hope of making it yield constructive results for the benefit of the people, is bound to be sadly disappointing.

The power given to the Lower House, under Section 79 (2), to vote grants for the provincial expenditure, which is within its competence to vote upon, marks that Chamber off from the Upper House, which is not entitled to assent to any grants for expenditure. But the Lower Chamber can itself function, in this regard, only on a recommendation of the Governor. It is, indeed, not stated how the Governor is to recommend a grant,—i.e., whether he would, in making such a recommendation, *act in his discretion*, or *exercise his individual judgment*, or *simply let his Ministers act* in his name. But we may reasonably assume, that, in this matter, the Governor stands for his constitutional advisers, i.e., the Ministers.

The Governor's Instrument of Instructions contains clear provisions in this behalf, which would assign certain powers to the Provincial Finance Minister;\* but, so far as the Legislature is concerned, all this would be a matter of the Ministers' collective responsibility. The Governor's initiative remains unaffected. The precedent of the British constitution, that no grants for expenditure can be voted except on a motion by a

\*Cp. Instrument of Instructions, Article XIII ante p. 115.

Minister of the Crown, is inapplicable, strictly speaking, in a Constitution wherein a considerable proportion of the public income is pledged before it is received, and is placed by the explicit injunction of the Constitution outside the control of the Legislature.

The Governor is further made an effective, co-ordinate, and even overriding authority in matters of finance by the following provisions of the Act:—

Section 80:

"(1) The Governor shall authenticate by his signature a schedule specifying (a) the grants made by the Assembly under the last preceding section; (b) the several sums required to meet the expenditure charged on the revenues of the Province but not exceeding, in the case of any sum, the sum shown in the statement previously laid before the Chamber or Chambers:

Provided that, if the Assembly have refused to assent to any demand for a grant, or have assented to such a demand subject to a reduction of the amount specified therein, the Governor may, if in his opinion the refusal or reduction would affect the due discharge of any of his special responsibilities, include in the schedule such additional amount, if any, not exceeding the amount of the rejected demand or the reduction, as the case may be, as appears to him necessary in order to enable him to *discharge that responsibility*. (Italics ours).

(2) The schedule so authenticated shall be laid before the Assembly, *but shall not be open to discussion or vote* in the Legislature. (Italics ours).

(3) Subject to the provisions of the next succeeding section, no expenditure from the revenues of the Province shall be deemed to be duly authorised unless it is specified in the schedule so authenticated."

This means that:

(1) In the cases specified in section 78, the expenditure is *not to be voted* by the Provincial Legislature at all, even though it absorbs more than half, or three-fourths, of the revenues of particular Provinces; and even though, further, such expenditure may involve grave questions of fundamental policy. The right merely to discuss some of these items is a barren privilege, since the discussion revealing acute difference of viewpoint between the settled policy of the executive government, and the desires of the people as voiced in the Assembly discussions, can only intensify tension, or widen the gulf between the Executive and the Legislature.

(2) Even as regards the items of expenditure which are subject to the vote of the Provincial Assembly, in any case in which the Governor considers any of his Special Responsibilities involved, that officer is *entitled to restore a grant* refused by the Assembly, and even to *restore the reduction of any grant*, which in the opinion of the Assembly need not be as considerable as the Governor has indicated in his authenticated schedule of expenditure.

### Finance and Special Responsibilities

(3) The doctrine of the Governor's Special Responsibilities is not applied, it is true, in so many words, to the maintenance of the provincial credit. Hence that summary, overriding power over the Budget, which is given under Section 12 (1) (b) to the Governor-General in respect of the Federal Budget,

may be said to have been denied to the Governor.\* But, reading Sections 78 and 80 together; and bearing in mind the real scope and intention of Section 52 detailing the Governor's Special Responsibilities, it is not at all open to doubt that an overriding power is vested in the Governor as regards all concerns of the Provincial Finance.

(4) If in any year the authorised expenditure is exceeded, the Governor is entitled, by Section 81,† to present a *supplementary Financial Statement* for that year to the Assembly; and the latter has the same power,—or the lack of it,—to deal with that additional expenditure. If, then, in any Province, the Government specialise in the practice of underestimating the expenditure on objects or departments not likely to find favour with the Assembly, at the proper Budget

\*Says the Report of the Joint Select Committee of Parliament, Para 84. "We think it desirable to make some reference to the suggestion that, among the special responsibilities of the Governor should be included the safeguarding of the financial stability and credit of the Province, following the analogy of the special responsibility of this kind, which, as we shall explain later, we recommend should be imposed on the Governor-General in relation to the Federation. A similar proposal was examined and rejected by the Statutory Commission on the ground that a power of intervention over so wide a field would hinder the growth of responsibility. We agree with this view . . . . But the addition of a special financial responsibility would increase unduly the range of his special powers. There is no real parallel with the situation at the centre, where there is a paramount necessity to avoid action which might prejudice the credit of India as a whole in the money-markets of the world, and where so considerable a proportion of its revenues is needed for the expenditure of the reserved departments."

The Committee, however, fail to see that in the Provinces, too, for all practical purposes, almost an equal proportion of the revenues is pledged to objects over which the Provincial Legislature would have no control; and so the non-addition of a special responsibility upon the Governor in matters of finance does not really add at all to the powers or influence of the Provincial Ministers.

†81. If in respect of any financial year further expenditure from the revenues of the Province becomes necessary over and above the expenditure theretofore authorised for that year, the Governor shall cause to be laid before the Chamber or Chambers a supplementary statement showing the estimated amount of that expenditure, and the provisions of the preceding sections shall have effect in relation to that statement and that expenditure as they have effect in relation to the annual financial statement and the expenditure mentioned therein.



time, they can always overreach the Assembly by this device of Supplementary Estimates, and a supplementary schedule of authenticated expenditure.\*

### Radical Innovations in Financial Provisions

(5) The basic theory of the liabilities placed on the Indian revenues has been radically recast by the Act of 1935, and the reflection of that change is traceable in the principles of provincial expenditure. Says Section 150:

(1) *No burden shall be imposed on the revenues of the Federation or of the Provinces except for the purposes of India or some part of India.*

(2) Subject as aforesaid, the Federation or a Province may make grants for any purpose, notwithstanding that the purpose is not one with respect to which the Federation or the Provincial Legislature, as the case may be, may make laws." (Italics ours).

\*It is interesting to note the observations of the Parliamentary Select Committee who considered this constitution in its Bill form. They say (para 317 of the Report) speaking of the regular payment of the salaries etc. of Public Servants:—

"In so far as the apprehension may be that a temporary deficiency might occur in the cash required to meet such current obligations as the issue of monthly pay, not through any failure in the annual revenues, but through excessive commitments in other directions, the good sense of the Government, and the advice of a strong Finance Department, must, in our opinion, be relied on as the real safeguard. Nor must it be forgotten that, although a Governor will not have a special responsibility for safeguarding the financial stability and credit of the province, it will most certainly be his duty to see that he has information furnished to him which would enable him to secure such financial provision as may be required for the discharge of his other special responsibilities, including of course his special responsibility for safeguarding the legitimate interests of the Services. If need arose for the Governor to take special steps for the purpose, in virtue of his special responsibilities, it would, of course, be open to him to adopt whatever means were most appropriate in the circumstances, and, if necessary, to meet the situation by borrowing. The powers, available to him personally in this respect would be identical with those available to the provincial Government. If he should seek assistance from the Federal Government in the form of a loan, his application would be governed by the provision relating to provincial borrowing which we have already advocated. The Governor-General will, of course, be responsible for securing the interests of officers serving at the Centre."

Under this provision any monies received as income or revenue,—and the definition of "revenue" is very considerably enlarged by Section 136, including not only the yield of taxation and other normal recurrent income, but also the borrowed monies,—are open to be spent on any purpose, which might be regarded as among the "purposes of India or any part thereof."

Contrast with this the language of the Act of 1919, Section 20, and 22 of which are as follows:—

"20 (1) The revenues of India shall be received for and in the name of His Majesty, and shall, subject to the provisions of this Act, be applied for the purpose of the Government of India alone.

(2) . . . (3) . . . (4) . . .

22 Except for preventing or repealing actual invasion of His Majesty's Indian possessions, or under other sudden and urgent necessity, the revenues of India shall not, without the consent of both Houses of Parliament, be applied to defraying the expenses of any military operations carried on beyond the external frontiers of those possessions by His Majesty's forces charged upon those revenues."

Whether or not a purpose for which a grant is demanded is one on which a Provincial (as well as the Federal) Legislature is entitled to make laws, the grant can be validly made. The definition of what is called "purposes of India" is provided in the gloss of the Select Committee which scrutinised this Constitution in its Bill form. Speaking of the question of lending Indian troops to fight outside the frontiers of India in the Imperialist wars of Britain,—which was absolutely forbidden under all the previous Government of India

Acts, except with the consent of both Houses of the British Parliament,—the Committee observe.\*

"There have been many occasions on which the Government of India have found themselves able to spare contingents for operations overseas, in which considerations of India's defence have not been involved; and we may presume that such occasions will recur. There appears to be some misconception in India on this point, which it would be desirable to remove. It is not the case that, because a Government can in particular circumstances afford a temporary reduction of this kind in its standing forces, the size of those forces is thereby proved to be excessive; or, conversely, that if it is not excessive, troops cannot be spared for service elsewhere. These standing forces are in the nature of an insurance against perils which may not always be insistent, but which nevertheless must be provided for. There is thus no ground for assuming a *prima facie* objection to the loan of contingents on particular occasions. If on such occasions, the Governor-General is asked whether he can lend a contingent, he must decide, first, whether the occasion involves *the defence of India in the widest sense*; (Italics ours) and, secondly, whether he can spare the troops having regard to all the circumstances at the time. *Both these decisions would fall within the exclusive sphere of his responsibility.* If he decided that troops could be spared, the only remaining constitutional issue would be narrowed down to one of broad principle, namely, that Indian leaders as represented in the Federal Ministry should be consulted before their fellow countrymen were exposed to the risk of operations in a cause that was not their own. In view, however, of the complexities that may arise, we do not feel able to recommend that the ultimate authority of the Governor-

\*Para 178 of the Report.

General should be limited in this matter. Our proposal is that when the question arises of lending Indian personnel of the Defence Forces for service outside India on occasions which in the Governor-General's decision do not involve the defence of India in the broadest sense, he should not agree to lend such personnel without consultation with the Federal Ministry. We have little doubt that in practice he would give the greatest weight to the advice of the Federal Ministry before reaching his final decision. The financial aspect has also to be considered. Although in the circumstances we are discussing, the defence of India would not be involved, it might on occasions be in India's general interests to make a contribution towards the cost of external operations. . . . . If, therefore, the question should arise of offering a contribution from India's revenues in the circumstances we are discussing, (and the interests in question did not fall under the other reserved department of external affairs), we are of opinion that it would need to be ratified by the Federal Legislature."

This is a long extract, but it serves to indicate, perhaps more accurately than any other, the new outlook of those responsible for the latest Constitutional camouflage for India. Having permitted the employment of Indian revenues *for any purpose* regarding India,—and the term purpose is sufficiently vague,—they exclude certain departments of Government completely from the purview of the responsible Indian Ministries. Questions relating to Defence may arise, not only in the Federation, but also in the Provinces, in regard to military lands or buildings, drilling of troops, &c. The Provincial Legislature may not be competent to make laws for a given subject; but the Provincial purse would, for that reason, not be immune from having to make contribution to purposes which



might be regarded as "defence in the widest sense." This may not be defence of India's frontiers at all; but may, quite frankly, be an Imperialist British War. The Governor-General has sole discretion and responsibility in any thing that concerns India's defence, even in this "widest sense". Even if it is not concerned with India's defence in that sense, but is a matter in which India's "general interests" may be affected,—and that without trenching upon another reserved Department, that of External Affairs,—and if a financial liability is involved in the use of troops loaned, in an Imperialist British War, the powers and authority of the Governor-General are not restricted. He *may* consult his Federal Ministers; but he would not be bound by their advice. Further, the financial contribution in an exclusively British Imperialist quarrel, merely on the ground that the "general interests" of India may be affected, would have to be ratified by the Legislature. But, very likely, if the Governor-General can urge that one of his 'special responsibilities' (e.g., the credit or the financial stability of India)—would be affected, he can include in the authenticated schedule of authorised expenditure any amount needed to make good such a contribution; and so frustrate completely the Federal Legislature,—even if it were bold enough to oppose such a contribution from the Indian revenues for a purely British Imperialist affair.\*

#### Financial Legislation

(6) A Bill relating to finance is, no doubt, excluded from the co-equal powers given to the Upper Chamber in all other matters for legislation, in all Provinces.

\*Cp. particularly Sections 8, 11, 12, and 34 of the Government of India Act, 1935.

which have a Bicameral Legislature. But that does not by any means make the Lower Chamber the supreme, or exclusive, custodian of the Provincial Purse. The Governor must, in the first instance, *recommend* a Bill, whether it involves additional taxation, or imposes additional burdens on the public purse of the Province. Says Section 82:—

- "(1) A Bill or an amendment making provision (a) for imposing or increasing any tax; or (b) for regulating the borrowing of money or for the giving of any guarantee by the Province, or for amending the law with respect to any financial obligations undertaken or to be undertaken by the Province; or (c) for declaring any expenditure to be expenditure charged on the revenues of the Province, or for increasing the amount of any such expenditure, shall not be introduced or moved except on the recommendation of the Governor, and a Bill making such provision shall not be introduced in a Legislative Council.
- (2) A Bill or an amendment shall not be deemed to make provision for any of the purposes aforesaid by reason only that it provides for the imposition of fines or other pecuniary penalties, or for the demand and payment of fees for licences or fees for services rendered.
- (3) A Bill which, if enacted and brought into operation, would involve expenditure from the revenues of a Province shall not be passed by a Chamber of the Legislature unless the Governor has recommended to the Chamber the consideration of the Bill."

The Governor not only initiates motions for grants of expenditure,—of course through his responsible Ministers in the Assembly. He can also recommend Bills imposing or increasing taxation, or involving

expenditure from the revenues of the Province. Though the Governor will act, in these matters, on the advice of his constitutional Ministers, in view of the hold he will have upon those Ministers, the powers of *initiative, recommendation, authentication of a schedule* of authorised expenditure, read in conjunction with the doctrine of Special Responsibilities and Discretionary Powers of the Governor, the scope for the influence of the popular Ministers becomes exceedingly restricted, if it exists at all. The key position in the new Constitution rests entirely with the Governor.

The real powers of the Provincial Legislatures,—and their chiefs, the Ministers,—are thus extremely narrowed down. They are powerless, under the Constitution, to do any real good to the peoples who elect them. And there are infinite ways in which their action may be turned into considerable damage to themselves, e.g., the provision in Section 82, whereby the Legislature is authorised to declare, by its own act, particular expenditure to be expenditure *charged upon the revenues* of the Province, and as such not votable by the Legislature. This act of self-denial would be certain to be interpreted as an act of abdication; and the Governor will not permit, on a later occasion, any Legislature, which has been foolish and short-sighted enough to denude itself of such powers, to resume those powers.

#### Membership in the Provincial Legislature

Not only is the composition of the Legislature, in 6 Provinces at least, such as to add unnecessary checks in the form of a Second Chamber,—a costly and needless impediment; the personnel of the Legislature as a

whole, and particularly of the more important Assembly, is so carefully designed by the architects of this structure as to make it all but unlikely that the real domination of the nominees of the British Imperial Government could be effectively challenged.

It is unnecessary to go at length into the details of the composition of the several Provincial Legislatures. Elsewhere has been given, in a tabular statement, the composition of these bodies, which would reveal the following salient features worth a general notice:

- (1) The Legislatures are composed, in every instance so that, in the aggregate, the several Communities should be balanced; or at least that sufficient representation should be assured by law to the different communities in a Province to permit of a semblance of excuse to the Governor for intervention, under some one of the innumerable discretionary powers he enjoys, or the special responsibilities that he is charged with. The various communities required to be represented, by separate Communal Electorates, returning only members of those Communities to represent them in the Legislatures, are not all of a size at all comparable to the general mass of the population, or even the wealth and other status of that population. Anglo-Indians, Indian Christians, Europeans are, in almost every Province, in a microscopic minority, in comparison to the bulk of the population in the Province. Nevertheless, these are required to be represented by their own separately chosen co-religionists or compatriots,—who have, by the very nature of their being, to be extremists in politics, and particularly in exaggerating the interests of their particular little group of people. Hence the Provincial Legislature will miss,—except in rare instances and on very rare occasions,—that spectacle of general agreement and mutual sym-

pathy among its members which seems indispensable for a progressive government in modern times.

(2) In addition to the separate Communal Representation, there are separate class representatives,—for Landholders; Commerce, Industry, Mining or Planting and Labour. These are running at right angles, as it were, to the Communal Representatives, since the economic divisions implied by these classes cut right across the communal barriers. If representatives of different communities should chance to combine on a matter affecting them as a class, there is an antidote provided in these *class* representatives,—who may not be numerous enough to turn the scale in voting; but who may nevertheless be important enough to necessitate, or excuse, the Governor's intervention, or to hold the balance even, and so obstruct progressive legislation.

(3) In addition to classes and communities, there are representatives,—separate, of course,—of *women*, and of *Universities*. Women are, undoubtedly a most important minority, whose separate interests need to be protected against exclusively man-made legislation. But to guarantee that protection, it is not necessary to foster a spurious antagonism between the sexes. The organised women of India have always demanded equal franchise,—which has not been granted,—and the open door for entry into the legislatures. But they have, in stead, been granted the questionable boon of *reserved* seats to be filled by women only,—though they may be elected, in some provinces at any rate, by mixed electorates of men and women.

The minimum thus reserved for them will inevitably become the maximum ever available to them. The women of India will thus never be able, so long as this system of reserved seats lasts, to obtain their rightful number of representatives,—assuming that it is essential that women should be represented

by women only. And yet they would have the stigma of special, if not separate, representations. Looked at dispassionately, the whole system appears to indicate a consuming desire, in the minds of those who have devised this ingenious instrument of political disunion, to prevent the Indian people from ever combining and presenting a united front against the alien Imperialist exploiter in their midst.

(4) There is not even that justification for a separate representation to the Universities in the several Provinces. But for a slavish imitation of British models, there is no intelligible reason for this addition. It may be assumed, without any violence to the theory of political probabilities, that a good proportion of the men and women elected in any Province to the local Legislature would be University-educated folk. Some among them may even have keen interest in problems of education, and possess personal experience of the same. If there were no separate representative for the University proper, there would be every likelihood of all these educated men and women,—perhaps from all parties and communities in the Legislature,—to co-operate as people of common sense in tackling problems of national education, which are supposed to be peculiarly within the province of the Universities. But given the presence of a special representative, that sense of responsibility among other members will weaken, if not disappear; and the concerns of the University may be left to the varying shades of the political complexion in the Legislature, or, worse still, to the pedantic narrowness of a special representative.

(5) Constructed on such a diverse basis, the Provincial Legislatures cannot develop that two-Parties System which is such a marked feature of political life in countries of Anglo-Saxon tradition. True, at the present moment, there seem to be only two



dominant Parties in the Indian political arena: those who stand for the National Congress and its programme or ideals, and those who support or depend upon British Imperialist forces to uphold their rights. Mr. Jinnah and other Muslim leaders of his way of thinking may question this alignment of the political forces in the country; but even Mr. Jinnah himself and his followers have hitherto worked far more often in collaboration with the Congress members in the Indian Legislature than with their opponents. The Mussulmans of India, *qua* Mussulmans, do not, and cannot form a party by themselves. They must merge into and work with the other Nationalist forces, for the intelligent Mussulman in India desires his country's emancipation as much as the Hindu. The difference, if any, is more of method than of objective; more of tactics than of ideals.

But when the present inevitable clash of interests between the Imperialist and the Nationalist ceases to have any real substance, new lines of division must emerge which will have little relation to the Communal line. At that time, Indian Political Parties will be represented rather by groups than by two definitely opposed camps,—and two only. In a group system of political organisation, as in France, there is always a danger to the stability of governments and continuity in their policy, which the alteration in office of two Parties may obviate to a considerable degree. On the other hand, it must also be recognised that the evolution and working of groups, once it takes place, will bring into existence sufficient number of trained, experienced leaders in each group, who would, after a time, render the danger just noted insignificant.

#### Qualifications of Candidates

With these characteristics, the Constitution further requires that the candidates for the Legislature in every Province should be resident, for varying terms,

in the Province; that they should possess certain (a) property, (b) literacy, or (c) status qualifications. We have given extracts in an Appendix (II) to this Chapter of these qualifications of voters and candidates, as prescribed in Schedule V of the Act; and need not consider them in detail here.

It is noteworthy, however, that though the legal age of majority for all contractual purposes in India, in both the leading communities, is 18, the minimum age for voting is 21 under the law; for standing as a candidate for the Assembly, 25; while for the Legislative Council, the corresponding minimum age is 30. This distrust of youth is meaningless; for the difference in intellectual evolution between 21 and 25, or between 25 and 30, is not so considerable as to justify this distinction. However, the older a prospective member is, the colder, more responsible, and more accessible to appeals of self-interest he may be; and so presumably more amenable to the designs of British Imperialism in India.

It must be added, in fairness, that the average age of candidates elected to either Chamber would be much above the minimum here prescribed. That is, therefore, not a point of very material criticism upon the structure and composition of the Indian Legislature. Under Section 67:

"Every member of a Provincial Legislative Assembly or Legislative Council shall, before taking his seat, make and subscribe before the Governor, or, some person appointed by him, an oath according to that one of the forms set out in the Fourth Schedule to this Act which the member accepts as appropriate in his case."

The forms of oath or affirmation given in Schedule IV require the person swearing (or affirming) to be