

faithful and bear true allegiance to the King Emperor, his heirs and successors. Would a republican government, lawfully established in Britain, make the President of that country a successor of the King-Emperor? The forms of oath provided in the Schedule permit rulers or subjects of Indian States to make a reservation in respect of their own States. But no such saving is permitted in the case of British subjects in respect of a prior allegiance to their own country. It is also interesting to note that no oath is taken by any body to respect the Constitution. It is doubtful if even the oath taken by the King-Emperor, at the time of the Coronation, will include any reference to the new Constitution of India, and pledge the British sovereign to the maintenance of the Indian people's liberties, such as they are under the new Constitution.

#### Disqualifications

Of the disqualifications upon membership in a Chamber of the Legislature, the more considerable are mentioned in Section 69, which precludes a person from being chosen or from being a candidate who:—

(a) holds an office of profit under the Crown in India, except that a Ministership under the Federation or in a Province is not to be held as disqualification; nor such other office as the Provincial Legislature declares by Act not to be a disqualification.

This seems to open the door to possible political corruption; but in view of the guaranteed rights of the Civil Services, it is unlikely that any considerable patronage would be open to the Ministers for being used as an engine of corruption. Holding valuable contracts under the Government does not constitute a disqualification; though that may be much more likely to engen-

der corruption than an office declared by Act of the Legislature to be a disqualification.

The right of the Indian Ministers to advise in the distribution of Honours and Titles does not seem to be clearly established, if it is ever permitted to them. Hence that further source of Parliamentary corruption is also not likely to play considerable part in the political fortunes, at least of Parties with whose programme the Governor is not in sympathy. Inasmuch as the bestowals of Honours and Titles is a matter of Royal Prerogative, it is doubtful if an Indian Legislature would be allowed to legislate barring the conferment of such distinctions, and thereby removing a source of influence to the Government, which plays such an important part in the public life of Britain.\*

(b) is declared by a competent court to be of unsound mind, or

(c) is an undischarged insolvent.

These two need no comment.

(d) has been found guilty of corrupt practices at elections, or of any offence relating to elections, which has been declared by Order in Council, or by Provincial legislation, to be involving disqualification.

This, however, may be cured by efflux of time, as provided for in the Order or Act, as the case may be. This is salutary to ensure purity of elections, though its deterrent value is not beyond question.

(e) Conviction of offence by a competent court, and being sentenced to transportation or imprisonment for not less than two years, unless 5 years, or any other period fixed by the Governor in his discretion, have elapsed since then. As no mention is made of the kind

\*Cp. Section 101.

of offence constituting a disqualification under this subsection, it is open to hold that political offences will continue to be disqualifications, irrespective of any violence or moral turpitude. This is one of those unfortunate legacies of the prevailing system of Government, in which Indian Politicians are inevitably regarded as "agitators", and the spirit of which there is every reason to fear will be continued under the new regime, when political intolerance becomes more rabid amongst the Indian Parties themselves. Even as regards the so-called offences involving moral turpitude, there are many offences, in the commercial society of today, which may not be offences if we have a different social outlook. Those, moreover, who have suffered the pains and penalties imposed by the law, may well claim to have expiated their crime; and so must not be further punished by the continued maintenance of this additional penalty of a loss of civic rights involved in this disqualification.

(f) fails to make a due and proper return of election expenses within the prescribed time, after having acted as a candidate or an election agent.

Here also efflux of time is allowed to wipe out the disqualification. It may be added that this is necessary so long, not only as elections continue to be so expensive as they are today, but so long as the expense of the elections is borne wholly by candidates, or their Parties. It is one of the greatest handicaps of a Political Party like the Indian National Congress, that majority of their candidates are such as cannot bear the heavy cost of elections in India. Despite the immense popularity of the Congress with the masses, they have often to prefer persons, in their choice of nominees for elections, who could bear their own burden of election expenses, or contribute to the Party chest for this purpose. The Congress has, therefore, often, to accept

candidates,—or refrain from contesting seats against particular individuals,—who have been financially helpful, even though their intellectual capacity, political sagacity, or general worth may be excelled by many others in the Congress ranks. If the Congress, or any Political Party in India, desires to escape this incubus of riches, the Legislature must set about amending this section, so as to prevent elections becoming such burdens; make most of the services needed in electioneering,—e.g. conveyances, or a prescribed amount of printing and distribution of literature,—a public charge, in regard to the candidates of at least recognised Parties commanding a prescribed minimum of votes in the Province.

A specific subsection of this section also makes it illegal to elect to the Provincial Legislature any one who has been, at the time of the election, serving a sentence of transportation or imprisonment for a criminal offence. Will this cover political prisoners, even those who have been duly tried and sentenced, as also Detenues? Perhaps a disqualification like this may prevent *ab initio* the election of a person such as Mr. Sarat Chandra Bose, who was elected at the last general elections to the Indian Legislative Assembly.

Another subsection also provides for the case of a person, already a member of a Chamber of the Legislature, who has since been convicted and sentenced so as to be disqualified. In such a case, the disqualification would not operate immediately, but only 3 months after the date of the sentence, so as to allow time for appeal. During the period allowed for such appeal, the member is not disqualified, but is debarred from sitting or voting.

If a person, not qualified, or actually disqualified, or prevented from sitting and voting under the provision just mentioned, sits and votes in a Chamber of the Legislature, "he shall be liable in respect of each day on which he so sits or votes to a penalty of five hundred rupees." (70)

Under Section 68\* no one can be a member of both Chambers of a Provincial Legislature, where that body is Bicameral. The Governor, *exercising his individual judgment*, is empowered to make rules to provide for the vacation of one of the seats, in one of the Chambers. There is, apparently, no objection to one and the same person being elected to more than one seat in the same Chamber, but rules made by the Governor in his individual judgment may provide for vacating of all other seats except one to be held by one and the same person.

Similarly, no person shall be a member both of the Federal Legislature and of a Provincial Legislature. If a person is chosen member both of the

\*68. (1) No person shall be a member of both Chambers of a Provincial Legislature, and rules made by the Governor exercising his individual judgment shall provide for the vacation by a person who is chosen a member of both Chambers of his seat in one Chamber or the other.

(2) No person shall be a member both of the Federal Legislature and of a Provincial Legislature, and if a person is chosen a member both of the Federal Legislature and of a Provincial Legislature, then, at the expiration of such period as may be specified in rules made by the Governor of the Province exercising his individual judgment, that person's seat in the Provincial Legislature shall become vacant, unless he has previously resigned his seat in the Provincial Legislature.

(3) If a member of a Chamber (a) becomes subject to any of the disqualifications mentioned in subsection (1) of the next succeeding section; or (b) by writing under his hand addressed to the Governor resigns his seat, his seat shall thereupon become vacant.

(4) If for sixty days a member of a Chamber is without permission of the Chamber absent from all meetings thereof, the Chamber may declare his seat vacant: Provided that in computing the said period of sixty days no account shall be taken of any period during which the Chamber is prorogued, or is adjourned for more than four consecutive days.

Federal and of a Provincial Legislature, then, at the expiration of such period as may be specified in rules made by the Governor of the Province exercising his individual judgment, that person's seat in the Provincial Legislature shall become vacant, unless he has previously resigned his seat in the Federal Legislature.

This does not preclude members of a Provincial Legislature, while they are such members, from standing as candidates to seats in the Federal Legislature, and *vice versa*. It only requires them to vacate one of the two seats, in the Federal and in the local Legislature,—and that, too, after a certain time allowed to such persons to make up their minds has passed. It is possible that this facility may, in the hands of astute Party managers, be abused; but the danger is remote.

#### Withdrawal from Membership

Resignation of a seat by a Member is allowed at any time. Non-attendance, without permission of the Chamber, for a period of sixty days during which the Chamber has sat,—not counting the period of prorogation, if any, nor for any continuous adjournment for more than 4 days at a time,—would also compel such an absentee member to vacate his seat. [68, (3) and (4)].

A critical study of the qualifications and disqualifications imposed upon candidates and members of the Indian Legislatures, as also of the Franchise to Indian citizens to vote for such representatives of theirs, reveals certain basic considerations that all advocates of a working democracy must seriously ponder over. The life of the Assembly being 5 years, the chance to express public opinion will only occur once in 5 years,—apart from by-elections, or earlier dissolution



of the Assembly. At the time of a General Election, issues are almost invariably so mixed, that it is impossible honestly to say what really was the verdict of the people, on each particular issue. The utmost that can be said, if any definitely organised party has been given a clear majority at the polls, is that the programme of that Party is, in general, endorsed by the people. That may not necessarily mean popular endorsement of every detail of that programme, in so far as it is embodied eventually in legislative measures; and much less, of the actual administrative action taken thereunder.

The enfranchisement of the Indian citizen still applies to about 25%\* of the adult mass in British India; while in the Federated States, if any, there is still hardly a trace of popular representation in the Councils of those States. But even if we overlook  $\frac{2}{3}$  of the people who have no vote; even if we disregard more than 90% of the adult women who are not yet enfranchised, the chance of expressing one's view on a mixed lot of political questions, once every five years or so, does not constitute anything like a working democracy.

It may be urged that Parliamentary Democracy, in every country in which it is tried, functions in the same manner; and that true self-government is possible

\*According to the Census of 1931, there are in British India, 139,698,972 males; and 131,376,733 females of all ages. Of these, 67,727,022 men were 20 or less years of age; while 64,970,704 women were similarly 20 or less, and so disqualified from voting, even if they were otherwise qualified. Of roughly 72 million males, about 30 millions are entitled to vote under one or the other qualification in all provinces,—yielding an average of about 42 p.c. voters of the adult male population. Of 66.40 million adult women, about 6 million have been similarly enfranchised, or one in every 11,—90 p.c. of the adult women being voteless. Of the combined population, 271 million in British India, only about 36 millions, or about 13 p.c., are enfranchised; and of the total adult population of 138.88 million, only 36 million, or a little more than 25 p.c. are entitled to a vote.

only on the Municipal, or District Local Board scale. We shall have something to say on the extent of real self-government possible in the Indian towns and villages,—of which there are 500,000 in British India alone. Here let it be added that the scope for a working democracy, on a scale like that of an average Indian Province,—let alone the entire India,—is all but a contradiction in terms. It is a physical impossibility.\*

Recognising this impracticability of a working democracy, however, does not involve a categorical denial of the principle or the practical desirability of self-government. If we cannot have it on the provincial scale; if territorial and communal and class electorates render this ideal unattainable, could we not recast (A) our basic notions of political franchise; and, at the same time, (B) reconstitute our administrative units, so as to permit of a closer interest being taken, and more real popular verdict being possible, more substantial popular control of their own governmental machine feasible?

(A) There are two devices which may well be considered in this connection. On the one hand, instead of making constituencies on a territorial basis,—apart from special class constituencies, or small minority communities' seats,—could we not make our constituencies on a functional rather than a geographical basis? Workers would then have a much more direct interest, and more intimate knowledge or understanding of the problems of government, on which the

\*When Mahatma Gandhi inclined towards "indirect" elections, for the National Legislature at least, he was thinking rather of the difficulties of managing such huge constituencies as Indian territorial constituencies are bound to be. But the difficulty of adequately interesting such an electorate in the issues at a general election seem not to have been emphasised at all.

fate of Legislatures should be decided, and support to Political Parties assured. Functional voting may not, it is possible, embrace all the population,—especially in a land where economic parasitism is an ancient canker gnawing at the vitals of the body politic. Besides, functional constituencies cannot be devised on an All-India scale, or even on an entire provincial scale,—though in the latter case the danger is much less than in the former. But some kind of a Federal hierarchy in each functional group could be devised to meet this difficulty. Besides, Agriculture is a nationwide industry; and so also is transport. Banking and other similar trades could be also organised on a functional basis. Industry is less widely spread; and particular industries may tend to be exclusively localised. But that need not preclude the possibility of organising and grouping all industrial and agricultural workers,—which would account for more than 90% of the population,—into units, each to return a number of candidates, so as to allow of Minorities even in such units to have their say. Perhaps some device of proportional voting would serve the turn.

Functional grouping would also include professional workers, and cottage workers,—artisans carrying their own burden of finding the necessary capital as well as the necessary market,—who are not paid wage-earners, but each a small producer in his own way. It may also include traders, shopkeepers, merchants, middlemen under merchants, or industrialists, and other such capitalist producers, provided they are actively engaged in some work of a productive character. The analogy of the Hammond Committee's recommendation regarding the voting rights in a com-

mercial constituency under the new Constitution,—i.e., those only being qualified to vote who are actively engaged in trade or industry, transport or banking and insurance, and who have an annual income of not less than Rs. 10,000 from such sources,—may well be pressed for a similar recouping of all constituencies in the country, though of course, that particular limitation of franchise is not commendable.

(B) If to this we add the further improvement of breaking up our present day Provinces, and making them much smaller units,—say of the size of a present district, with about 4,000 sq. miles of area, and about a million population,—we should get all the interest and understanding of the problems of government in the electorate, as also convenience in handling such constituencies.

We have already offered some observations about the utterly *ad hoc* nature of the present British Indian Provinces,—almost all exclusively the creations of historical accident and administrative convenience. More than one important Province has had its boundaries illogically shuffled in the past. Even today there are Provinces, whose component units would be much more satisfied, whose aspirations more easily fulfilled, by being set up into separate units themselves. Considerations of modern economic organisation,—permitting only a certain extent in area and population,—with a reasonable degree of homogeneity in conditions and resources,—to be exploited with the utmost advantage, point also in the same direction. While a unit with a smaller area or population would be too small to be properly worked, units

too large in area or in population, or too heterogeneous in resources and conditions, would prove too unwieldy to be operated economically,—with definite material advantage to their people.

In the concluding Chapter of these Monographs, an attempt is made to suggest a redistribution of the Provinces, which would seek to combine ethnic homogeneity with economic unity, to permit of the most advantageous administration, without, at the same time, affecting the intrinsic national solidarity of the country as a whole. For real self-government a much smaller size than that of a modern Indian Province is indispensable, as also for proper economic working.

On the other hand, the national integrity is equally indispensable, if India is to make any contribution of her own to the cause of human advancement. Perhaps, it would be as well if the Provinces and States, as we know them today, were abolished, and replaced by more compact, homogeneous, and intrinsically more economic units, which may be autonomous for all their local purposes, and yet welded together in an indissoluble mass of the Indian Nation.

There are considerations, however, of certain homogenous units, already existing as such, and conscious of their local integrity, which would not submit to a morcellement for administrative purposes in this manner. But those who aim at a political or economic and administrative reconstruction of India will have to bear in mind the double,—and not always reconcilable—requirement, of the national solidarity and paramountcy over all local considerations, and local

autonomy for all purpose of local administration. Without affecting the local sentiment of strong nationalities within the country, as for instance that of Bengal, we may yet suggest a redistribution of the component autonomous units, in a real Federation of India, which none but a champion of maintaining in tact vested interests, however cumbersome they might be, could object to.

### Internal Powers of the Indian Legislatures

Even in maintaining its own procedure, or appointing its own officers, the Provincial Legislatures are under the control of the Governor,—often acting in his discretion.

Apart from the Governor, who is entitled to address them, to send them messages, to recommend legislative measures, and even to issue an authenticated schedule of authorised expenditure voted by the Legislative Assembly,—(and in several cases, even if not voted),—some privileged people are entitled to enter the Chamber and speak in it, even if they are not members of that Chamber. Under Section 64:—

“Every minister and the Advocate General shall have the right to speak in, and otherwise take part in the proceedings of, the Legislative Assembly of the Province or in the case of a Province having a Legislative Council, both Chambers and any joint sitting of the Chambers, and to speak in and otherwise take part in the proceedings of, any committee of the Legislature of which he may be named a member, but shall not, by virtue of this section, be entitled to vote.”

Over such outsiders, empowered to address the Chamber and take part in its proceedings, the disciplinary powers of the Chamber must needs be very



lax,—if any; though we may safely presume that such non-members will not be guilty of indecorous conduct while appearing before a Chamber of which they are not full members. The Ministers cannot vote, except, of course, in the Chamber of which they are members in their own right.

Under Section 65, every Provincial Legislative Assembly is required to choose, as soon after its election as possible, two of its members to serve as Speakers and Deputy Speaker respectively. The Speakership has become an elective office ever since 1921; and so there is nothing progressive in this provision. The same rule applies to the President of the Upper Chamber. These are presiding officers, who have certain disciplinary powers as regards the control of the proceedings of the Chamber in which they preside, or at a joint sessions of the two Chambers. They have no ordinary vote; but, in the event of a tie, they have a casting vote, which may determine the issue. The award of the casting vote is, however, conditioned by so many well established conventions, that it is impossible to depend upon the Chair in a Legislative Chamber to help materially in the progress of legislation, or determination of policy.

A Speaker or his Deputy must vacate office [65 (2)], if he ceases to be a Member; or if he resigns his office in writing addressed to the Governor; or loses his seat at an election. When, however, an Assembly is dissolved,\* the Speaker does not automatically lose his office, but continues in it until immediately before the first meeting of the Assembly after dissolution.

\*As the Upper Chamber is never dissolved, this rule does not apply to the President and Deputy President of that body. All other Provisions are common to the presiding officers of the two Chambers.

Dissolution also acts as vacating office by these officers, but there is no bar to their re-election; and the convention seems to be fairly established that a Speaker or Deputy Speaker, if re-elected by his constituents at a General Election, will be continued in office by a re-election in the Chamber, too.\*

The Speaker being considered to be above Parties, his conduct in the Chair must be impartial, and in accordance with the law, rules, customs or usages in that behalf established. Notwithstanding this judicial detachment, the traditions of Speakers in the Indian and Provincial Assemblies have not made that office entirely without any significance in the Constitution of the country. The right of the Speaker to decide points of order, and often the question regarding the admissibility or otherwise of particular Questions, Motions, Bills, invests that dignitary with an importance, which the letter of the law applying to this office does not in any way indicate.

The salary of the Speaker, or the President of the Legislative Council, and of the Deputy Speaker (or Deputy President) is to be fixed by Act of the Legislature; and, until such salary is so fixed it is to be regulated by the Governor. The Chairmen of both Chambers being paid officers of the Chambers, they are but properly made removable from office by a simple resolution passed by a majority of the members present at a meeting at which such motion is to be carried, provided that at least fourteen days' notice has been given to move such a resolution.

\*There is, however, no force in the convention, sought to be established by certain interested parties, that a member who has been elected once as a Speaker shall not even be opposed at a General Election, since this seat must be considered beyond Party divisions.

All questions in the Chambers are determined by majority of the votes of the members present, the presiding officer not voting, in the first instance.

A quorum of one-sixth is required by law for valid proceedings in the Lower Chamber, and of ten members present in the Upper Chamber; and if there are less present at any time, the presiding officer may adjourn, or suspend, the sitting. [66, (3)].

The Chambers are entitled to make their own rules of Procedure [84 (1)]. But the Governor is entitled, *in his discretion*, and after consulting the Speaker or the President, to make rules:—

- (a) for regulating the procedure of, and the conduct of business in the Chamber in relation to any matter which affects the discharge of his functions in so far as he is by or under this Act required to act in his discretion, or to exercise his individual judgment;
- (b) for securing the timely completion of the financial business;
- (c) for prohibiting the discussion of, or the asking of questions on any matter connected with any Indian State, unless the Governor in his discretion is satisfied that the matter affects the interests of the Provincial Government, or of a British subject ordinarily resident in the Province, and has given his consent to the matter being discussed, or to the question being asked;
- (d) for prohibiting, save with the consent of the Governor in his discretion;
  - (i) discussion of or the asking of questions on any matter connected with relations between His

Majesty or the Governor-General and any foreign State or Prince; or

- (ii) the discussion, except in relation to estimates, of expenditure of, or the asking of questions on, any matter connected with the tribal areas, or arising out of or affecting the administration of an excluded area; or
- (iii) the discussion of, or asking of questions on, the personal conduct of the Ruler of any Indian State or a member of the ruling family thereof;

and, if and in so far as any rule so made by the Governor is inconsistent with any rule made by a Chamber, the rule made by the Governor shall prevail.

#### Questions, Resolutions, Etc.

Questions and Resolutions are two of the main directions in which the Legislature, in a Parliamentary Democracy, can influence the policy of the Executive, and keep under its control the day-to-day administration of a unit. In this section, severe restrictions are laid upon asking for particular kinds of information, or moving particular resolutions, or initiating discussions on certain subjects. The Governor making these rules acts *in his discretion*, that is to say, he need not even seek the advice of his ministers,—though he is enjoined to consult the Speaker or the President of each House in making rules for the same in these respects. The rights of the Houses to regulate each its own procedure is thus substantially curtailed; and the power of the Governor is exalted in proportion.

#### Joint Sessions

At joint sittings of the two Chambers, in any Province which has Bicameral Legislature, the Rules of



porcedure are made by the Governor, after consultation with the Speaker and the President. These rules relate to the procedure with respect to joint sittings, as also communications between the two Chambers. At a joint sessions of the two Chambers, the President of the Legislative Council is, by law, [84, (4)] entitled to preside. The Governor in his discretion is entitled to make rules regarding Questions, or discussion on matters relating to external affairs, Indian States, or excluded areas, just as he is entitled to make similar rules in regard to such matters in the individual Chambers.

The Legislature is debarred, by Section 86 (1), from discussing the conduct of any Judge of a Federal Court or of a High Court,—the term High Court including any Court in a Federated State which is given the status of a High Court.

By subsection (2) of Section 86:—

*"If the Governor in his discretion certifies that the discussion of a Bill introduced or proposed to be introduced in the Provincial Legislature, or of any specified clause of a Bill, or of any amendment moved or proposed to be moved to a Bill, would affect the discharge of his special responsibility for the prevention of any grave menace to the peace or tranquility of the Province or any part thereof, he may in his discretion direct that no proceedings, or no further proceedings, shall be taken in relation to the Bill, clause or amendment, and effect shall be given to the direction."* (Italics ours).

The Governor, then, is all powerful, even in regulating the daily procedure and the conduct of business in a Chamber of the Provincial Legislature; and the

province of the latter, or the scope for its effective influence, is proportionately restricted.

### Language

Proceedings in a Legislature have to be in English; but rules of procedure may permit in any Chamber, or in a joint sitting any member not familiar with the English language to use another language (85). This is a facility not open to those, who, knowing English, would, as a matter of national self-respect, insist upon using the vernacular language.

### Privileges of Members

The constitutional struggle that has been waged in Britain round the question of the Privileges of the Members of the Legislature, individually and collectively, has practically been unknown in India. Such privileges as are accorded to the Legislature collectively, or to the individual members severally, are defined by Section 71, subsection (1) of which guarantees freedom of speech to the members free from any liability in law for any thing said, or any vote given in the Legislature; and also for printing and publishing, under the authority of any Chamber, anything said or done in that body.

The freedom so guaranteed is, of course, subject to the Act and the rules or standing orders made thereunder. So far as freedom from liability in connection with anything printed and published by any person goes, it must be publication under the authority of the Chamber, and so will not protect, against the consequences of any litigation under the ordinary law of the land, anyone who publishes anything without such