

then this is already secured by the Governor having the power to refer back any particular measure which has been passed by the Legislature for reconsideration. If the Legislature does not reconsider, but passes it in original form, the Governor can still stop it by vetoing it. And if the Legislature does not abide by the decision of the Governor, it may compel him to submit the matter in dispute to the electorate by compelling the dissolution of the House. It is therefore obvious that what the second chamber can do or is expected to do, can be done by the Governor with his powers to veto, to refer back and to dissolve. If this is admitted, then a second chamber becomes a useless appendage to a popular chamber.

97. I am sure my colleagues would not have been led away by what exists in some other countries without applying the utilitarian standard if they had made sure that their assumption that a single chamber is likely to pass hasty and ill-conceived laws was based on sure foundations. It seems to me that the assumption is quite unfounded and displays a total ignorance of the working of modern politics. No piece of legislation in modern times is flung upon the Legislature as a surprise. On the other hand every legislative proposal before it is enacted into law goes through a long process of discussion and dissection at the hands of the public extending over a long period of years. Indeed, if the antecedent history of every measure which has found its place in the Statute Book were investigated it would demonstrate that the period that has intervened between the conception of the idea and its enactment into a law has varied more often on the side of length than on the side of brevity. Such being the case the assumption that a popular chamber acts hastily and therefore needs a brake upon its wheels is to prescribe for a disease which does not exist.

98. What however my colleagues are after is not a revising chamber but a governing caste. This is clear from the purpose assigned to it, from the franchise on which it is sought to be built and the powers which are proposed to be given to it I confess I am somewhat surprised that they should have thought that a devolution of powers on the Legislature must be circumscribed by the institution of a second chamber as an insurance against such powers being used to the detriment of a particular community, or a particular interest. For the desire really felt, as I understand it, is not that we should have a reform in which the centre or the balance of political power shall remain unchanged but that within certain limits it shall be surreptitiously shifted in the direction of the mass of the people. To attempt to circumscribe this devolution of power seems to suggest that my colleagues think that the most desirable kind of political reform is one which does not alter the balance of power amongst the different communities concerned. Persons who hold such a view in my opinion either do not know what political reform means or, knowing what it means, do not desire a reform which will disturb the *status quo*. As for myself, I make no mistake about the fact that the essence of all reforms is to change the balance of power among the different classes. If the lower classes gain, some

other class must lose. If each class remains with no more political power than before then there will have been no real reform. It is idle to suppose that either the lower classes or for the matter of that any class interested in reform will be satisfied with a measure, either because it is called political reform or because while proposing to change everything it contrives to keep things where they are. It would be much better to say in plain terms that the scheme of devolution of political power should be so conditioned that the flow of power shall stop with the classes and shall not reach the masses. I must however make it plain that I cannot be a party to any such scheme of reforms.

99. Granting that a second chamber is a necessity there is one supreme difficulty in the way of its formation. The authors of the Montagu-Chelmsford Report had in 1917 carefully considered the question of establishing second chambers in the Provinces. But taking all things into consideration they decided against the proposal. They said, "We see very serious practical objections to the idea. In many provinces it would be impossible to secure a sufficient number of suitable members for two Houses. We apprehend also that a second chamber representing mainly landed and monied interests might prove too effective a barrier against legislation, which affected such interests. Again, the presence of large landed proprietors in the second chamber might have the unfortunate result of discouraging other members of the same class from seeking the votes of the electorates. We think that the delay involved in passing legislation through two Houses would make the system far too cumbrous to contemplate for the business of Provincial Legislature. We have decided for the present therefore against bicameral institution for the Provinces." The objections raised to second chambers in 1917 hold good even today. I am quite certain that this Presidency has not at its command a sufficient number of eminent men to run both the Houses. A second chamber will sap the life of the first or the first will sap the life of the second. There is not enough material to build both. Under such circumstances it is better to have a single efficient chamber than to have two effective ones. For these reasons I oppose the institution of a second chamber in the Presidency.

CHAPTER 6

POWERS OF THE LEGISLATURE

100. *Power of appointing and removing the President.* — Prior to the reforms of 1919 the Governor who was the chief of the executive of the Province was the President of the Provincial Legislature. By the changes introduced in 1919 the Provincial Legislature obtained the right of electing one of its members as its President and to remove him from office. This was a valuable privilege. The exercise of this privilege was, however, made subject to certain restrictions inasmuch as the appointment of the President was made subject to the approval and his removal subject to the concurrence

of the Governor. These limitations are the remnants of the time when the Executive was supreme over the Legislature. They are not to be found in the constitution of the dominions. They are incompatible with the independence of the Legislature and must be removed. Granting that the President must be made independent of the executive, question is, must he also be made independent of the judiciary? Section 110 of the Government of India Act defines the officers and the matters in respect of which they are exempt from the jurisdiction of the High Courts. The President of the Legislative Council is not included among the officers who enjoy this immunity. That being the case, the President of the Legislature is subject to the jurisdiction in respect of what he does as a President. That means that his conduct as a President is liable to be questioned in a Court of Law. It is feared that this opens a vast field to vexatious litigation involving great delay in the conduct of the business of the Legislature. This is sought to be remedied by granting exemption to the President from the jurisdiction of the Courts. I am opposed to this change and prefer to leave things as they are.

101. *Power of defining Privileges.*—No one will question the expediency of allowing a Legislature every power reasonably necessary to the existence of such a body, and the proper exercise of the functions which it is intended to execute. The position of the Provincial Legislatures under the existing law is very unsatisfactory. Beyond giving certain immunities to the members of the Legislature and barring the meagre powers given to the President by rule 17 of the Legislative Council Rules for expelling a disorderly member, the law gives no authority to the Legislature to vindicate itself against a wrong calculated to obstruct its work or lower its dignity. Such authority can no longer be withheld from the Legislature. I therefore recommend that the Provincial Legislatures like the Dominion Legislatures should be given the power within prescribed limits to define by law the powers and privileges which it thinks are necessary in its own interest.

102. *Power of regulating Procedure.*—The conduct of business in the Bombay Legislative Council is governed by Rules framed under Section 72D (6) of the Government of India Act supplemented by Standing Orders framed under Section 72D (7) of the same. In the framing of this code of procedure the Provincial Legislature has had no hand. The standing orders were made by the Governor-General in Council, though the Legislature had had the liberty to suggest amendments to them. But the Rules are framed under the provisions of Section 129A by the Governor-General in Council which expressly prohibits the Provincial Legislature from altering or repealing them. I am of opinion that the Provincial Legislature should have the power of regulating its own procedure. The difficulty in giving such freedom to the Provincial Legislatures seems to arise from the fact that some of the Rules embody provisions which in other countries form parts of their constitutional law; so that the power to amend rules virtually become power to alter the constitution. But this difficulty can be easily avoided if an attempt was made to enact such rules as section of the Government of

India Act. If this is done, the recommendation I have made can be easily given effect to and the Provincial Legislatures brought on a par with the Dominion Legislatures of Australia, South Africa and Canada.

103. *Power of Legislation.*—Section 80C of the Government of India Act provides that it shall not be lawful for any member of any local Legislature to introduce, without the previous sanction of the Governor, Lieutenant Governor or Chief Commissioner, any measure affecting the public revenue of a province, or imposing any charge on those revenues. This section is a serious limitation upon the powers of the Legislature. It is a relic of the days when the people had no voice in the administration of the affairs of the country. The retention of these powers will ill-accord with a Legislature supreme over the executive. This section must therefore be deleted. The Governor will still have the power of vetoing any legislation that will be passed by the Council. That power must suffice. More than that will not be consistent with the position he will have to occupy under a system of complete ministerial responsibility.

104. *Power of Appropriation.*—The Legislative Council under Section 72D may assent or refuse its assent to a demand or reduce the amount referred to therein either by a reduction of the whole grant or by the omission or reduction of any of the items of expenditure of which the grant is composed. This power is subject to certain important provisions. In the case of a demand relating to a reserved subject, the Governor has the power of over-ruling the decision of the Legislature if he certifies that the expenditure provided for in the demand is essential to the discharge of his responsibility for the subject. Another proviso limiting the powers of appropriation of the Legislature is contained in Section 72D, Clause (2)(b), by virtue of which the Governor has the “power in cases of emergency to authorise such expenditure as may be in his opinion necessary for the safety or tranquillity of the Province, or for the carrying on of any department.” These are also very serious limitations on the powers of the Legislative Council, and I suggest that they should be removed from the Act. The powers given to the Governor under the first proviso are out of place in a Government which is fully responsible and in which the Governor is not charged with the direction of affairs. The safety and tranquillity of the Province will not be a special concern of the Governor any more than that of the responsible Executive. Consequently the power given by the second proviso to the Governor is unnecessary and should be taken away.

105. Another restraint on the financial powers of the Legislature is embodied in Section 72D(3). By virtue of this, the executive is not required to submit to the Legislature for its vote expenditure on certain specified heads mentioned therein. The result is that the Budget of the Province contains permanent appropriations to a large extent which the Legislative Council cannot touch. Theoretically speaking, every item of expenditure should be sanctioned each year by the Legislature. But the Budget, in almost every country, contains permanent appropriations which do not

require to be voted annually by the Legislature. Even in England there has grown up quite a list of permanent appropriations covering before the War in the aggregate about one-third of the total annual expenditure. Whether the Executive can or cannot be trusted to fix the amount and determine the character of public expenditure depends upon the stage of development at which people have arrived in their realisation of constitutional government. If the stage be such that there exists an uncertainty concerning the political rights of the Government and the people, it would not be safe to permit such permanent appropriations of public moneys without Legislative sanction as are contemplated by Section 72D(3). It is true that the foundation of responsible government in the Provinces is just being laid and the Provincial Legislatures have jealously to guard against the encroachments of the Executive. All the same, it must, I think, be recognised that the right of popular control over public affairs is recognised and will be under the new constitution fully conceded, so that under the various checks upon the arbitrary use of public authority the submission for annual sanction of every item of public expenditure need not be insisted upon. I do not therefore object to this scheme of permanent appropriations. But I object to their being made so by law, thereby curtailing the powers of the Legislature. Their being made a matter of law has had the effect of debarring the Legislature from even discussing the policy underlying the administration of non-votable items. The creation of non-votable items must be a matter of convenience. There ought to be no restraint about them on the Legislature by law.

106. *Power of controlling the Executive.*—Originally Provincial Legislatures under the reformed constitution of 1919 could control the Minister in three ways : (1) by legislation, (2) by refusing supplies, and (3) by refusing or reducing their salaries. The second and the third were the only two ways whereby the Legislature could control the administration by the Ministers. This control could normally be exercised only once a year, and was therefore insufficient. Consequently provision was made in 1926 for a motion regarding want of confidence in a Minister. These powers are sufficient for the Legislature to control the actions of a Minister and were in keeping with the idea that the Ministers were to be individually liable for their actions. The future Ministry will be based upon the principle of joint responsibility under which Ministers will stand together or fall together. There is nothing in the existing powers of the Legislature to indicate that it desires to dismiss the Ministry as a whole. I think provisions to this effect should be made by adding a new class of motion to be called “a motion of no confidence” as distinguished from the existing motion, which should be renamed as “motion questioning a Minister’s policy in a particular matter”. This was suggested by the Muddiman Committee but was not carried out.

107. *Power of altering the Constitution.*—The Provincial Legislatures are bound by the terms of the instrument which has created them. By virtue of that instrument they are made bodies with “plenary powers” possessing

a specific and defined power of government in their territory over all persons. The plenary powers of government do not per se carry a power to alter the constitution itself. There is a desire that the Provincial Legislatures should have the powers of a constituent Assembly to alter the constitution of the Province. There is much that can be said in favour of such a proposal. Parliament having consented to grant self-government to the people of the Province, it is as well that the people of the Province had the right to decide the form of government under which they liked to live. But it must be recognised that there are minorities who will not like their constitutional rights to be determined by the majority, as would be the case if the Provincial Legislatures were allowed the right to alter the constitution. This is the principal reason why the constitution of Canada gives no power to the Canadian Parliament to alter the constitution of Canada. There is, however, the example of South Africa, which shows that the powers of altering the constitution can be conferred on a Legislature without detriment to the position of the minorities. There is therefore no reason why the example of South Africa should not be followed. I recommend that the power of altering the constitution of the Province should be granted to the Provincial Legislature; provided that it shall have no power to alter the provisions regarding the representation of minorities in the Legislature.

108. What special procedure should be prescribed for passing such legislation is a matter which it is very difficult to decide. But it might, however, be stated that the mode of amending the constitution should be such as to make it sufficiently rigid to protect the fundamental rights of the citizens but which should at the same time leave it flexible enough to recognise that development is as much a law of life as existence and to secure deliberation before action and final decision in harmony with the principle of rule by majority. The safest course, it seems to me, would be to prescribe different procedure for different kinds of amendments to the constitution. For the more fundamental amendments the procedure should be more exacting than for amendments to less fundamental parts of the constitution.