

there is a higher authority equally competent, to pass the business on to it would at best help to transfer power to the hands of the lower ranks of the official hierarchy, by causing congestion of business in the Central Department. Thus centralization, unless greatly circumscribed, must lead to inefficiency. This was sure to occur even in homogeneous states, and above all in a country like India where there are to be found more diversities of race, language, religion, customs and economic conditions than in the whole continent of Europe. In such circumstances there must come a point at which the higher authority must be less competent than the lower, because it cannot by any possibility possess the requisite knowledge of all local conditions. It was therefore obvious that a Central Government for the whole of India could not be said to possess knowledge and experience of all various conditions prevailing in the different Provinces under it. It, therefore, necessarily became an authority less competent¹ to deal with matters of provincial administration than the Provincial Governments, the members of which could not be said to be markedly inferior, and must generally be equal in ability to those of the Central Government, while necessarily superior as a body in point of knowledge.

To these arguments the only reply the Government of India could make was that it concentrated all power in its hands, not from principle but from necessity. That necessarily arose out of its constitutional obligations. The law had invested it with the superintendence, direction, and control of the civil and military government and the ordering and management of the revenues of the country. It could not therefore relax its control over the powers it had delegated to the Provincial Governments. It was, of course, impossible to deny the force of this argument. So long as the Government of India remained the authority solely responsible to Parliament it was reasonable to hold that it should be the controlling authority in all matters pertaining to the administration of the country. But it was equally reasonable to ask whether it would not have been possible in the interests of cordiality

¹ In this connection it may be of interest to draw attention to the semi-serious suggestion made by Mr. A. C. Logan, in which he argued that if decentralization "cannot be effected then there is an alternative method of so remodelling the constitution of the Government of India as to replace the present departments by departments of various local areas each with its own Secretary and Member; thus there should be a department of Bombay with Secretary and Member appointed from that Province dealing with all Bombay questions and the like for other (six) provinces. Thus each Province could govern itself from Calcutta under the supervision of the Governor General,"—*Vide R.C.D., Mit of Evid., Vol. VIII, Q. 35531.*

between the Central and Provincial Governments to have relaxed such of the restrictions on the financial powers of the Provinces as would not have been incompatible with the due discharge by the former of its own responsibilities. That it was possible so to enlarge the scope of Provincial Finance by a relaxation of the limitations without injury to the position of the Government of India must be said to be evident from the following analysis of the suggestions made by the Provincial Governments. These suggestions were

- (i) Power of taxation and borrowing on the security of Provincial Revenues.
- (ii) Power of sanctioning expenditure on Staff and Establishments up to a limit higher than that allowed by the Government of India.
- (iii) Separation of Provincial Estimates from the Imperial Budget and Accounts.
- (iv) Abolition of the system of divided heads of revenue and expenditure and the replacement of it by a system of separation of sources and contributions from the yield.
- (v) Power to spend part of their balances up to a defined amount, without the previous sanction of the Government of India in meeting an excess of expenditure over Budget Estimates.

What objections were there, from the standpoint of the constitutional responsibilities of the Government of India, to the grant of these demands? Clearly it was possible for the Government of India to have marked off certain sources of taxation best suited for provincial levy and unconnected with the imperial imposts. Similarly it was possible to have permitted the Provincial Governments to borrow to a limited extent on the security of the revenues assigned to them. To suggest as did the Government of India, that the Provincial Governments would abuse these powers to the extent of causing discontent or jeopardizing the stability of their financial system, was to believe that such legally recognized polities as the Provincial Governments were run by incompetent administrators unmindful of their obligations. The second demand could have been granted with greater ease. It is to be noted that the Civil Service of the country which deals with revenue and general administration has been divided into

- (i) The "Indian Civil service" recruited in England by

- competitive examination, at which natives of India, like other subjects of His Majesty, can compete; and
- (ii) The "Provincial" and "Subordinate" Civil Services, recruited in India, and, as a rule, only open to persons who are natives of the country or domiciled therein.

Each Province has had its own separate "Provincial" and "Subordinate" Services, but while it has a free hand in recruiting for the latter, appointments to the former have been regulated by rules laid down by the Government of India. That being the case it would have been only logical that the Government which had the power of recruiting for an appointment should also have the power of regulating the salary. There can be no reason why the salaries of posts of similar grades should be equal in all Provinces; nor can they be equal having regard to the differences in the economic conditions of the Provinces. A Local Government knows better the economic value of a local man, and should therefore have been trusted with powers up to a limit covered by the Provincial and Subordinate Services. The suggestion of the Government of India that the grant of such powers would have resulted in heavy additions to the recurring expenditure of a Province must be said to be too ungracious to be taken seriously.

The acceptance of the third recommendation could not have in any conceivable way affected the responsibility of the Government of India. The only objection which the Government of India urged was that such a separation would have been unwise. To have published accounts or estimates of the Imperial Government which excluded the accounts of the Provincial Governments, when the items excluded covered such a large magnitude, would have misled the public and rendered a wholly incomplete idea of the financial position of the Government of India.¹ Now it must be granted that if such a separation of accounts could have avoided the scrutiny and the consequent restraint on budget-making by the Provinces, not to have done so was to have put the supposed convenience of the student of Accounts above the administrative convenience of the Provincial Governments. Besides, it is to be pointed out that the suggestion was not a novel one. It was only a revival of the old practice which obtained between 1871 and 1877. During that period of financial decentralization Provincial figures did not appear in the Imperial

¹ *R.C.D.*, Mit. of Evid., Vol. X, Q. 44866, 45179-180.

Budget. The Provincial Budget as framed by the Accountant General was passed by the Provincial Government and no more reference was required to the Government of India except to inform it that the estimate was a probable one and that it was within the limits of the revenues assigned to the Province. It is therefore obvious that there could not have been any constitutional objection to the granting of the demand for a separation of accounts.

The fourth recommendation was of the same class as the third, in that it too could not be said to have involved any infringement of the constitutional responsibilities of the Government of India. The abolition of the divided heads of revenue would have clearly eliminated the interference of the Government of India in the preparation of the Budget Estimates by the Provinces. Similarly the abolition of the divided heads of expenditure would have given the Provinces greater¹ freedom in the matter of spending the revenues assigned to them. Under that system a Provincial Government could not spend more on a particular service if it was a divided head unless the Government of India consented to increase its figure for expenditure under that service. If the Government of India reduced its figure the Provincial Government was perforce obliged to reduce its own. The substitution of a system of separation of sources and contributions from the yield for the system of divided heads would have clearly resulted in a greater freedom to the Provincial Governments, without any evil consequence to the Government of India. The objections which the Government of India was able to oppose to this demand was far from convincing. It was urged² that the Provincial Governments under complete separation may cease to take such interest as it took in respect of revenues which were divided. But it is evidently a mistaken view that a Provincial Government could not have been trusted to administer a tax efficiently unless it had a financial interest in the result. This view supposed that the people engaged in the collection of revenue really knew whether it went to the Imperial or the Provincial credit. As a matter of fact the ultimate credit could in no way have affected the collection of the revenue. And even if that view were true the

¹ *R.C.D.*, Mit of Evid., Vol. VIII, Q. 35225-28.

² *Ibid.*, Vol. IV. Q. 15100, 16791.

difficulty could easily have been met by each government having its own staff to collect its own revenues. The employing by one Government to execute its functions the agencies of another, as has been the case in India, is obviously a complicated and awkward system. If separation of agencies had resulted from the separation of sources it would have been a reform all to the good. Besides it was overlooked that the fact that the divided heads gave a personal interest to the Provincial Governments was indeed a point against the system rather than in favour of it. A system which created a vested interest in a revenue apart from the interest of the public was a bad system, for such an interest was sure to lead to harshness and rigidity in collection.¹ As an instance of this may be cited the notorious unwillingness of Provincial Governments in the matters of remitting taxation.² If humanizing the Provincial Governments was a desirable end, then the abolition of divided heads was a good means. The other objection which the Government of India was able to oppose was that such a change would have given the share of the Government of India from the revenues raised in the provinces the character of a tribute, and the Government of India would have appeared to be the pensioner of the Provincial Governments, depending upon them rather than controlling them. This objection must be ruled out as being sentimental.

The fifth and the last suggestion for the enlargement of the scope of Provincial Finance was least obnoxious to the responsibility of the Government of India. There is no reason why there should have been a single-treasury system for both the Governments, Provincial and Central. It is true that a common treasury permits a high state of economy in the cash balances of the country, which it is the duty of every Government to effect, just as any business firm looks upon it as its duty to economize its till money or floating cash. But if a common treasury hindered the use of the balances the gain in freedom would have more than compensated the loss involved by the increase in the cash balances that would have followed the institution of separate treasuries and separate ways and means. But the demand of the Provincial Governments did not ask for a complete separation of Provincial balances from the balances of the Central Govern-

¹ Cf. in this connection *The Fee System*, by Prof. Urdhal.

² *R.C.D.*, Mit of Evid., Vol. X, Q. 44866.

ment involving separate treasury system and separate ways and means, probably because they anticipated that as such a proposal meant separate possession of provincial revenues the Government of India would raise a constitutional objection to such a demand. All they asked for was a power to spend part of their balances up to a defined amount without reference to the Government of India. The suggestion was accepted¹ as “reasonable,” for its consequences, provided it was not a big amount, would have been not a deprivation of the Government of India’s power of control over nor a disturbance in the ways and means, but only a slight increase in the cash balances of the country.

Thus it is clear that the scope of Provincial Finance was unduly restricted by a too narrow and too legalistic an interpretation of the constitutional obligations of the Government of India. From the above analysis of the suggestions made by the Provincial Governments it is clear that without making any breach in the constitutional position of the Government of India it would have been possible, with a more charitable view of their sense of responsibility, to effect the changes they desired. Such concessions would have made Provincial Finance as self-sufficient and as autonomous as it was capable of being made. The system would no doubt have rested on pure convention: none the less its benefits would have been as real as though it was based on law.

But the time had arrived when the financial arrangements could no longer be looked upon as a matter which concerned the Central and Provincial Governments. There arose a third party whose counsels were rejected in 1870 but which now insisted on having a voice in the disposition of the financial resources of the country. It was the Indian taxpayer, and his clamour had grown so strong that it compelled the powers that be to alter the system so as to permit him to take the part he claimed to play.

The changes that followed upon this event will form the subject-matter of Part IV.

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¹ *R.C.D.*, Mit of Evid., Vol. X, Q. 44900.

PART IV
PROVINCIAL FINANCE UNDER
THE GOVERNMENT OF INDIA ACT OF 1919
CHAPTER X
THE NECESSITY FOR A CHANGE

As two types of governmental systems, the Presidential and Parliamentary are often contrasted¹ to the advantage of the latter. For the Parliamentary type of government it has been claimed² that no other arrangement seems able quite so effectively to place the centre of authority under the control of those who are supposed to represent the popular will : that it means government by consent: that it ensures the exercise of the functions of government by a body of persons who are amenable to and whose views are in accord with those of the majority of the Legislature : that it is the only form of government which provides for a powerful Executive so very necessary for a stable government without rendering it so irresponsible as to endanger the essentials of a good government: that it throws upon the holders of high office the onus of vindicating their acts or, failing, suffer dismissal: it renders the Legislature supreme both in legislation and administration so that it forms a government not only to make life possible but also to make life good. No other form of government, it is urged, can so effectively prevent order degenerating into tyranny or progress blocked in the name of peace. So eminently has Parliamentary Government demonstrated its supreme virtue in securing orderly progress that, though originally developed as an accident in the evolution of the British Constitution, it has been most eagerly adopted as the most fundamental institution by many countries whose political convulsions have required them to prepare anew or alter the existing framework of their governmental systems.

If the fact of the Executive being a part of the Legislature be a sufficient indication of the Parliamentary type of government, then the system of government in India since 1853 may be said to be analogous to the Parliamentary system. Indeed it would

¹ Cf. James Bryce, *The American Commonwealth*, 1910, Vol. I, Chap. XX.

² Cf. Sir Sidney Low, *The Governance of England*, 1914, Ch. III, *passim*.

hardly be possible to deny this characteristic to the Indian constitution, for the provision of the constitutional law has since then been that the additional (i.e. the Legislative) members *and* the ordinary (i.e. the Executive) members shall *together* form the Legislature for the making of the laws and regulation for the peace, order and good government of British India.¹ But judged in the light of its *de facto* consequences the Indian system falls lamentably below the *de jure* connotation of the class of governmental systems to which it belonged. If in other countries the record of Parliamentary government is one of submission of the Executive to the Legislature, in India it had been one of the Executive thwarting, often of flouting, the legislature. In vain may one search the proceedings of the Legislature to find the Executive ever paying deference to the wishes of the people.² Reforms have been incessantly, asked for by the legislature only to be denied with equal tenacity by the Executive.

The reason why the Indian parliamentary system was but an empty form is to be found in the fact that it was a Parliamentary system without a Parliamentary Executive. In other words, the Executive under the system was not responsible to the legislature and was not removable by it. The Indian Legislature could neither make nor unmake the Indian Executive. The Indian Executive made peace or war as it liked without being afraid of dismissal by the Legislature. It taxed as it pleased and spent as it liked, without the slightest compunction as to the wishes of the Legislature, it undertook acts or refused to undertake them according to its own sweet will, but had no fear of a vote of censure from the legislature. The nearest approach to the Indian

¹ Cf. the important note by that eminent lawyer Sir Bhashyam Iyengar on the Reform proposals of Lord Minto in 1908.

²The following table from N. C. Kelkar's *The Case for Indian Home Rule*, p. 81, is illustrative of the fact:—

Legislative Council	No. of Resolutions moved	No. of Resolutions withdrawn	No. of Resolutions rejected	No. of Resolutions accepted
Supreme ...	3	2	1	0
Madras ...	32	26	6	0
Bengal ...	38	26	12	0
U. P. ...	22	10	12	0
Bihar and Orissa ...	5	5	0	0
C.P. ...	4	2	2	0

system of parliamentary Government is to be found in the position of the Irish Parliament which existed from 1782 to 1800. The peculiarity of the case lay mainly in the fact that while this Irish Parliament, commonly known as Grattan's Parliament, was during the period it lasted admittedly a sovereign Legislature, the Irish Executive of the time was as regards the Irish Parliament in no sense a Parliamentary Executive. The Irish Executive, instead of being appointed and dismissed by the Irish Legislature, was in reality appointed and dismissed by the Crown on the advice of the English Ministry. In the same manner the Indian Executive was appointed and dismissed by the Crown on the advice of the Secretary of State for India who is a member of the English Ministry and was in no way responsible to the Indian Legislature.

It is true that the Executive in India was ultimately responsible to the Secretary of State for India and through him to the British Parliament. But it must not be forgotten, said Mr. Fisher,¹ that

“the affairs of India are in the hands of the Government of India.... Proposals may come from the Indian Government to London and be vetoed by the Imperial Government. The large lines of Indian policy may be shaped by a Secretary of State in the India Office, and a powerful Secretary of State may make his influence felt strongly on the direction of Indian affairs if he encounters no serious opposition from the Government of India. But in reality the last word lies with the Indian official opinion (i.e. the Executive in India), that a measure would not be forced upon India against the united opposition of the Indian bureaucracy.”

As a matter of fact neither was the Secretary, though all-powerful in Indian affairs, inclined to restrain the Executive in India from doing what the people regarded as evil nor to constrain it to do what he thought to be for the good of the people.² Hardly can it be said that the British Parliament, wherein every member

¹ Fisher, H. A. L., on Imperial Administration in his *The Empire and the Future*, 1916, p. 58.

² The only two cases in which the Secretary of State is known to have run counter to the wishes of the Executive in India were those concerning the Punjab Drainage and Canal Act and the Indian Tariff Act of 1875. The latter was obviously detrimental to the interests of India.

has been supposed to be a member for India, has made the acts of the Indian Executive a matter of anxious scrutiny.¹ On the other hand, its interference in Indian affairs has on some occasion been positively harmful to the interests of the Indian people.² Indeed, there can be no doubt that the interest of Parliament in Indian affairs since the assumption of the Government of the country by the Crown instead of increasing has considerably diminished as compared with the interest it took when the affairs of the country were in charge of the Company.³ Nay, the influence of the British Parliament over Indian affairs, it may be said, has undergone a decided change for the worse,⁴ inasmuch as all its influence is exerted to strengthen the Executive in India against popular clamour rather than restraining it from flying in the face of public opinion.

It is therefore evident that the control of the Secretary of State and of Parliament over the Executive in India was only a nominal control, and the Indian Executive was in reality an uncontrolled body of bureaucrats in the exclusive charge of Indian affairs. How was this trust discharged by this irresponsible Executive ?

The answer to this question may be summed up in the statement that the Indian Executive has sacrificed progress to order. Whether we examine its actions in the field of legislation or finance, the truth of this statement becomes painfully evident.

¹ The salary of the Secretary of State for India being paid out of the revenues of India, Parliament, had no occasion, as it had in the case of the Colonial Secretary, to annually review his actions in the full activity of the parliamentary Session. At the end, generally after the Appropriation Bill had been read a second time, the Indian Budget used to be submitted to Parliament which, after a somewhat desultory discussion, used to pass a Resolution proclaiming in solemn terms that the Indian Accounts show certain totals of income and expenditure ! Many attempts were made to improve the control of Parliament on Indian affairs. But Parliament never cared to increase its control. In 1873 Mr. R. N. Fowler moved "that in the opinion of this House it is desirable that the Statement of the financial affairs of India should be made at a period of the Sessions when it can be fully discussed." Again in 1883 the same motion was brought forward by Mr. Fowler. Both of these attempts to furnish the House with a better opportunity to review Indian affairs fell to the ground. In 1899 the same Resolution was moved by Mr. Cladwell, M.P., with the addition that the Salary of the Secretary of State for India be placed on the British Estimates. It was opposed by Mr. Fowler, who was then the Secretary of State for India, and was in consequence lost. By the provision of the Government of India Act of 1919 the House has a better opportunity to criticize Indian affairs owing to the salary of the Secretary of State having been placed on the British Estimates.

² Cf. the Resolutions of the House of Commons in 1877 and 1879 condemning the Indian Tariff policy in the interest of Lancashire.

³ In support of this may be cited the fact that Parliament never granted a lease of power without making harassing inquiries into the affairs of the East India Company.

⁴ Compare the Parliament which subjected the Indian Executive to the Judicature with the Parliament that has freed that Executive from Judicial and Legislative control. Compare the Parliament which laid stringent regulations on the Europeans in India with the Parliament which not only allowed them free ingress but kept them above the control of the Magistracy. Compare the Parliament which impeached Hastings with the Parliament which supported General Dyer.

There are very few countries in the world where there may be said to prevail so many social evils as has been the case in India. Law is a means by which society from time to time repairs its ills in order to effect its conservation. But with very few exceptions¹ the rule of *personal* law of a most pernicious character has been allowed to govern the social relations of the citizens, notwithstanding the fact that enlightened public opinion has long since raised its voice of protest against its perpetuation.² So religious has been the regard of the Executive for the preservation of the personal law, notwithstanding the fact that it has disabled millions of its subjects from enjoying the most elementary rights of citizenship, that it has been careful not to allow in cases of conflict the rational provisions of the civil law to override or chasten the irrational rulings of that archaic code.³ Judged by the modern standard of legislation the Executive must be pronounced to be extremely conservative. In the matter of securing economic rights its response was of a very halting character, and the legislation it has been persuaded to undertake for giving security or fixity of tenure to the agricultural⁴ or ease and comfort to the industrial⁵ population sank in comparison to what it refused to undertake for liberating the rest from a species of industrial slavery notwithstanding incessant demands for its abolition.⁶

Its financial system was similarly characterized by the desire to preserve peace and order by taxing the masses and exempting the classes. It has been urged that the revenue system be so altered as to give relief to the poorer classes. Indirect taxes are justified as a method of making the poorer classes pay their

¹ Bengal Regulation of 1829 prohibiting *Sati*; Act V of 1843 (prohibiting slavery); XXI of 1850 (re enacting Sec. of Reg. VII of 1832) prohibiting forfeiture of rights or property as a result of loss of caste or religion; XV of 1856 authorizing the remarriage of Hindu widows; XXI of 1866 enabling native Converts to Christianity to obtain divorce; XXVII of 1871 restricting unnatural practices; III of 1872 providing a form of marriage for all persons who are neither Christians, Jews, Hindus, Mahomedans, Jains, nor Sikhs.

² It was first accepted by Warren Hastings in 1772 and was embodied in the East India Company's Act of 1780 (21 Geo. III, c. 70, ss. 17 and 18); the provisions have been incorporated in later Statutes.

³ Cf. the provisions in favour of the personal law in the Indian Succession Act X of 1865; the Transfer of Property Act IV of 1882, and the Indian Trust Act II of 1882.

⁴ Cf. The Tenancy Acts of 1859, 1868, 1881 and 1885 in Bengal; Oudh Rent Act of 1868 in U.P.; the Deccan Agriculturists Relief Act of 1879 in Bombay, and the Central Provinces Tenancy Act of 1883.

⁵ The Factory Acts did not begin in India till 1881. The Act of 1881 was amended in 1891 and replaced by another in 1911 which lays down the conditions governing factory labour in India.

⁶ Students of Indian economic problems will perceive that the reference is to the scandalous system of indentured labour.

share of the burden of the State without their being sensible of the fact. But there is a limiting principle which forbids the imposition of certain kinds of indirect taxes. It may be said to be agreed by students of public finance that indirect taxes be such that the poor on whom they impinge rather heavily relatively speaking, must be able to adjust the burden of such taxes to their means. When such indirect taxes fall on luxuries it is possible for them to apportion for themselves the burden they need must bear by regulating their purchases. But in those cases where they fall on necessities of life this elasticity is not possible. The pernicious character of the salt tax in India was urged as a sufficient ground for its elimination from the revenue system of India. But not only did the Executive refuse to accept the demand, it actually increased the salt tax whenever a deficit has occurred instead of tapping some other source of revenue, which it could have done with equal ease and greater justice. In 1886, to cite one example, it was admitted¹ that

“ There can, after all is said and done, be no manner of doubt, but that one great fact remains established, one great blot not only unremoved but aggravated by the course of events in recent years It is that the classes in (India) which derive the greatest security and benefit from the British Government are those who contribute the least towards it.”

But in the Budget of 1887-8 the Executive eschewed its own conviction and increased the salt duty to make up for the deficit caused not by any extraordinary measure of internal improvement but by an enormous act of external aggression, namely the conquest of Burma, as though the income tax of 1886 which left untouched the incomes of the Bengal zamindars, the Assam Tea planters and the Talukdars of Oudh, in making the richer classes pay, made them pay, at the very moderate rates it levied, all they could be made to pay.

But the salt tax is not the only instance of inequity under which the masses paid for the classes. The land revenue as it has been levied in India may be cited as another example of inequity in the Indian Tax System. The sources of inequity are various. There is first of all the glaring fact that in some cases the amount of the tax

¹ Cf. the speech by Sir A. Colvin on the License Tax Amendment Bill in the Supreme Legislative Council on January 4, 1886.

is permanently fixed, while in other cases the amount of the tax payable in respect of land revenue is periodically revised. Now there is no justifying circumstance why some citizens should be exempted from contributing their quota to the growing needs of the State when the same is rigorously exacted from their fellows. This is, however, only one point of injustice to those whose taxable capacity in respect of land revenue is subject to periodical revisions. There is another which consists in the adoption of a wrong measure of capacity to pay. The cardinal feature of this revisable part of the land tax in India is to be found in the basis of the tax which, as is well known to every student of Indian Finance, is a certain unit of land. Now nobody has ever suspected the pernicious effect of the system which bases the tax on a unit of land held ; but surely there can hardly be a system more mistaken in thought or more mischievous in practice. It ignores the commonplace of economists which asserts that taxes are paid not by things but by persons,¹ and if it is persons who ultimately pay the taxes then it is manifest that they must be required to contribute not according to the land they hold but in proportion to the total income derived. On the contrary the system, in undertaking to tax per unit of land, taxes the poor peasant with only one acre to cultivate and the landlord owing hundreds of acres at a *uniform* rate without realizing that as the total incomes of the two must be vastly different this uniformity of taxation must produce a glaring inequity of treatment as between the rich and the poor.

If the revenue thus raised by sacrificing equity to the dictates of order had been spent on services promoting progress there would have been some compensation. But such was not the case.

All the revenue that was collected was spent on Services such as Police, Military and Administration which are calculated to maintain order. Such services as Education, State aid to industries, hardly found any place in the scheme of public expenditure as managed by this irresponsible Executive. But it may be asked as to why the Executive, sovereign as it was, should have stood for order and against progress ? The answer

¹ Cf. the criticism by Prof. Cannan on the Terms of Reference to the Royal Commission on Local Taxation in the Memoranda chiefly relating to the classification and incidence of Imperial and Local Taxation, C. 9528 of 1899, p. 160.

PERCENTAGE OF EXPENDITURE

(Excluding expenditure on commercial services, i.e., Post Office and Telegraph Dept., Railways and Irrigation).
In thousands of rupees.

Periods	District Adminis- tration	Forest	Other Heads, including Opium	Debt Sources	Civil Depts.	Civil Changes	Civil Works	Army (Including Military Works and Special Defence Works)	Famine Relief and Insurance	Total
1877-78 to 1881-82	5.2	.8	5.6	8.9	18.7	6.8	5.8	39.2	2.6	93.6
1882-83 to 1886-87	6.0	1.2	6.6	8.2	21.4	7.5	7.6	35.6	2.3	96.4
1887-88 to 1891-92	6.0	1.3	5.4	7.6	22.1	7.5	7.3	37.7	2.8	95.7
1892-93 to 1896-97	6.1	1.3	4.9	6.4	22.5	8.4	6.9	38.5	1.6	96.6
1897-98 to 1901-02	5.8	1.4	5.5	4.3	22.6	7.8	6.8	35.2	4.8	94.2
1902-03 to 1906-07	5.9	1.6	8.2	3.1	23.2	7.3	9	37.1	1.8	97.2
1907-08 to 1911-12	6.3	1.8	7.1	3.5	25.7	7.7	8.5	35.6	2.1	98.3
1912-13 to 1916-17	6.0	1.9	6.2	2.1	28.2	7.3	9.3	35.1	1.5	97.6

From the statistics of British India, Vol. II, Financial Statistics, 1920, p. 7.

is that an irresponsible government, however sovereign, is incapable of progress, for in the exercise of its sovereign powers it is hampered by two very serious limitations.¹ There is first of all the internal limitation which arises from the character, motives and interests of those who are in power. If the Sultan does not abolish Mahomedanism, Pope ban Catholicism, the Brahmin condemn caste, or the British Parliament declare the preservation of blue-eyed babies illegal, it is not because they *cannot* do things, but it is because they *will* not do these things. In the same way if the Executive in India did not do certain things most conducive to progress it was because by reason of its being impersonal² and also by reason of its character, motives and interests it could not sympathize with the living forces operating in the Indian Society, was not charged with its wants, its pains, its cravings and its desires, was inimical to its aspirations, did not advance Education, disfavoured Swadeshi or snapped at anything that smacked of nationalism, it was because all these things went against its grain. But an irresponsible government is powerless to do even such things as it may like to do. For its authority is limited by the possibility of external resistance. There are things which it would do but dare not do for the fear of provoking thereby resistance to its authority. Caesar dare not subvert the worship of the Roman people, a modern parliament dare not tax the Colonies, however much they would. For the same reason the Government of India dared not abolish the caste system, prescribe monogamy, alter the laws of succession, legalize intermarriage or venture to tax the tea planters. Progress involves interference with the existing code of social life and interference is likely to cause resistance. None the less

¹ For an illuminating discussion of this, cf. A. V. Dicey, *Law of the Constitution*, 1915, pp. 74-82.

² Impersonal because the higher and controlling grades of public services are devoid of Indian element. Although the eligibility of the natives of India for employment in public services was proclaimed as far back as 1833, the regulations made by the Secretary of State for admission to the Public Services in India has had the tendency to exclude them from the employment of the right granted to them by statute. Under the regulations made by the Secretary of State for War, candidates for Commission in the Army were to be of pure European descent and a similar regulation was adopted by the Admiralty for cadetship in the Navy, thereby excluding Indians. As to the Civil Service the Statute (Government of India Act, 1858, s. 32) laid down that all "natural-born subjects" of the Crown be admitted for examination, thereby including the natives of India. But the ruling of the Secretary of State that that examination should be held only in London had indirectly debarred many natives of the country from benefiting themselves under the statute. Regulations for admission to other public services varied. For the Indian Medical Service, candidates were to be natural-born subjects of European or East Indian descent; for the Indian Police Service they were to be British subjects of European descent; for the Forest Service they were to be natural-born British subjects; for Public Works Department one-tenth might be natives of India who are British subjects.—Cf. in this connection Halsbury, *Laws of England*, Vol. X, pp. 588-9.

a government which is of the people and is not detached from them can venture on the path of progress, because it is in a position to know where obedience will end and resistance will begin. But the Indian Executive not being of the people could not feel the pulse of the people. The gist of the matter is that the irresponsible Executive which had been in power in India was paralysed between these two limitations on its authority and much of what went to make life good was held up. Part of the programme it would not undertake and the other part it could not undertake. As a result of this, so far as the moral and social life of the people was concerned, the change of government by the Moghuls to a government by the British was only a change of rulers rather than a change of system. Owing to the adoption of the principle of non-interference partly by preference and partly by necessity by the British

“the natives of India found themselves under a government distinguished in no vital respect from those under which they had toiled and worshipped, lived and died through all their weary and forgotten history. From a political standpoint, the change was but the replacement of one despotism by another. It accepted the arrangements as it found them¹ and preserved them faithfully in the manner of the Chinese tailor who, when given an old coat as a pattern, produced with pride an exact replica, rents, patches and all.”²

That there was some advancement in material progress is not to be denied. But no people in the world can long remain contented with the benefits of peace and order, for they are not dumb brutes. It is foolish to suppose that a people will indefinitely favour a bureaucracy because it has improved their roads, constructed canals on more scientific principles, effected their transportation by rail, carried their letters by penny post, flashed their messages by lightning, improved their currency, regulated their weights and measures, corrected their notions of geography, astronomy and medicine and stopped their internal quarrels. Any people, however patient, will sooner or later demand a government that will be more than a mere engine of efficiency. Under the influence of Western ideas of representative govern-

¹ The poll tax has been continued in Burma simply because it was found to exist there on the day of conquest.

² Benard Houghton, *Bureaucratic Government*.

ment the Indian people had for some time been demanding a change in the form of the government. A Parliamentary form of government with a Parliamentary Executive was the goal they had laid before themselves.

The popular agitation for achieving this end assumed such proportions that, in the course of time, there was presented a serious issue for the consideration of the Executive in India. How was the government of the country to be carried on ? By force or by consent, Power seldom commits suicide of its own accord. Rather, when it fails to secure the willing compliance of the people, it resorts to force. That was the resource adopted by the Executive in India. Not satisfied with the aid of the power with which the Executive was endowed by the provisions of the Criminal and Penal Codes to anticipate offences by preventive acts, it besmeared the Indian Statute Book with a set of repressive laws hardly paralleled in any other part of the world. The Criminal Law Amendment Act XIV of 1908 empowered a magistrate with special sanction of the Government to hold an *ex-parte* inquiry without the presence of the accused or of his legal representative and commit him for trial to be conducted without a jury. Under another provision of the same Act the Executive could declare unlawful any association which in its view interfered with the maintenance of law and order. The State Prisoners Regulations¹ and Acts² authorizing the Executive to place under restraint any person whom it suspected but against whom it had no proof, constituted by themselves a perpetual suspension of the Habeas Corpus Act :³ while under another Act⁴ the Executive was empowered to proclaim "a State of Siege" or martial law in any area and suspend therein the jurisdiction of the civil courts in favour of the military courts. The Indian Press Act of 1910 put a complete muzzle on the Press. So wide were its provisions that in the opinion of a learned judge⁵ of one of the Indian High Courts it was "difficult to see to what length its operation might not be plausibly extended by an ingenious mind"

¹ Bengal Regulation III of 1818 ; Bombay Regulation XXV of 1827 ; Madras Regulation II of 1819.

² Act XXIV of 1850 and Act III of 1858.

³ N. Ghose, *Comparative Administrative Law*, 1918, p. 480.

⁴ Act IX of 1857.

⁵ Sir Lawrence Jenkins, C. J., *in re Mahomedali*, I.L.R. 40, Cal. 466 (1913), quoted by N. Ghose, *op. cit.*, p. 567.

and “that they would certainly apply to writings that might even command approval” and “much that is regarded as standard literature might undoubtedly be caught.” The right of public meeting was suppressed in the same manner and with the same sternness as was the right to personal freedom and the right to freedom of discussion ; for, over and above the restrictive provisions contained in the ordinary law of the land,¹ the executive armed itself with discretionary powers under a special enactment to prohibit any public meeting on the excuse of what it regarded as the interest of the public.

The rigour of this regime of *lettre de cachet* and the *Bastille* was quite untempered by any fear of responsibility on the part of the Executive for any excesses committed in putting these repressive laws into operation. For it is to be noted that the Executive had, coupled with the large grants of these discretionary powers to suppress the liberties of the people in order to preserve law and order, the gift of an equally generous measure of immunity to its agents in carrying out those powers.² The Police Acts and the Press Act *all* contained provisions which barred all action in a civil court against these agents for damages to be done in pursuance of these Acts. Officers, and soldiers taking part in the suppression of riots were not criminally responsible for acts done in good faith and were not to be prosecuted for other acts without the sanction of the government.³ In like manner superior Executive officers could not be prosecuted for crimes committed in discharge of public functions except with the permission of the government and then only in the manner prescribed by government.⁴ There is no wonder then if such discretionary powers, exercised extra-judicially, substituted a reign of terror in place of a regime of peace.

But it was soon found out that force was not a sure means of carrying on the government of a country. The verdict of history was well summed up by Burke⁵ when he said :

“The use of force alone is but temporary. It may subdue for a moment, but it does not remove the necessity of subduing again : a nation is not governed which is perpetually to be conquered. (The) next objection to force is its uncertainty. Terror is not always the effect of force, and an armament is not

¹ Sections 108 and 144 of the Criminal Procedure Code and Sections 120A and B, 124A and 153A of the Indian Penal Code.

² N. Ghose, *op. cit.*, p. 601.

³ Code of Criminal Procedure Act V of 1898, Ch. IX, Sections 128, 130 and 132.

⁴ *Ibid.*, sect. 197.

⁵ Speech on conciliation with America.

a victory. If you do not succeed, you are without resource ; for conciliation failing, force remains, but force failing, no further hope of reconciliation is left. Power and authority are sometimes bought by kindness, but they can never be begged as alms by an impoverished and defeated violence. A further objection to force is, that you impair the object by your very endeavours to preserve it. The thing you fought for (to wit the loyalty of the people) is not the thing which you recover, but depreciated, sunk, wasted and consumed in the contest

Government by consent was indeed long ago accepted by the Indian Executive as a principle of political wisdom, and the changes introduced from time to time in the constitution of the Indian Legislature were avowedly for the purpose of making it reflect the popular will. The result for a time was an astonishing degree of accord between the Indian Executive and the Indian Legislature ; so much so that the regime of *lettre de cachet* and the *Bastille* had the sanction of the majority of the *Indian legislature*. But all this government by consent or conciliation was a camouflage. On the other hand, an analysis of the changes introduced from time to time into the constitution of the Indian Legislature clearly shows that the motive behind these changes was to make it an impotent body or a willing tool in the hands of the Executive. A Legislature as distinct from the Executive was first inaugurated in 1853.² But in 1861³ the constitution of the Legislature then established was altered. The ground urged was that that Legislature was not a body representative of the Indian people.⁴ Its members were drawn from the official class representing the several Provincial Governments. In order to make the Legislature representative of the people, the Act of 1861 directed that it should be composed of *nominated* members chosen by the Governor-General from among the public, of course on the advice of the Executive. Again, by the Act of 1892 the Governor-General was directed to nominate such persons to the Legislature as were selected by public bodies in the country.

¹ Up to 1833 the Executive was also the Legislature. In 1833 a law member was added to the Executive Council, whose duties were confined to merely giving assistance to the Executive Council in the matter of making laws. By the Act of 1853 he was merged into the Executive Council.

² 16 and 17 Victoria, c. 95.

³ 24 and 25 Victoria, c. 67.

⁴ By the Act of 1853 the Supreme Legislature was composed of nominated members comprising two Judges of the High Court of Bengal and four nominated officials representative of the Bengal, Madras, Bombay and N.W.P. governments in addition to the members of the Executive Council of the Government of India.

These changes in the constitution of the Legislature appear to be aimed at liberalizing it. But was this tendency towards making the Legislature representative accompanied with a tendency to make it more powerful as regards the Executive? Quite the reverse. As the legislature gained in its representative character it lost in its controlling power. The powers exercised by the Legislature under the Act of 1853 were far vaster than anything possessed by the Legislature under the Act of 1861. Under the former the Indian Legislature modelled itself on the procedure of the House of Commons in England, and not only dealt with matters of legislation, pure and simple, but also with matters of administration. In the words of Sir C. Ilbert, it showed an inconvenient degree of independence by asking questions as to and discussing the propriety of the measures of the Executive Government—deeming itself competent to inquire into abuses and grievances, calling for reports and returns from local administrations, debating long on questions of public interest and introducing motions and resolutions independent of the Executive Government. In a despatch of Lord Canning at the time, he pointed out that the Legislature had become invested with forms and modes of procedure closely imitating those of the House of Commons, that there were 136 standing orders to regulate the procedure of a dozen gentlemen assembled in council, that in short, in the words of Sir Lawrence Peel, they had assumed jurisdiction in the nature of that of a grand inquest of the nation. This was deemed to be a very grave defect (!) in the Legislature as constituted by the Act of 1853. Its reform was therefore looked upon as very necessary for maintaining the supremacy of the Executive, and its non-popular character was made the ostensible excuse for its reconstruction. Under the pseudo-representative system introduced in 1861 the Legislature was a meek body entirely in the hands of the Executive. Being composed of *nominated* members, division in the Legislature was directly influenced by that fact. In every legislative body a man must sit, unless he has a hereditary right, by what in modern parlance is called a mandate. That mandate usually proceeds from the authority to whom he owes his seat. The nominated

members, official as well as non-official, owed their elevation to the legislature to the pleasure of the Executive, and as such were bound to support the Executive on any measure on which a division was taken. The Executive had always at its command the official block of nominated members, who gave implicit obedience to its mandates either because of its convictions or by reason of its being a part of the same. The nominated non-officials, who may be said to be opposed by conviction to the Executive, were not men of independent character and were largely concerned to make themselves agreeable to the Executive rather than make themselves reckoned with. But had they been men of independent character they could not have made themselves masters of the Executive, for by the provisions of the Constitutional law and the rules of procedure made under it, the Legislature was rendered entirely powerless to compel the Executive to do anything against its wishes. From 1853 to 1861 the Legislature dealt with both legislative and administrative questions. From 1861 the legislature met only for legislative purposes. As a consequence of this limitation the Legislature was debarred from asking a question, moving a resolution or dividing on the Budget. During the first thirty years of its existence the legislature did not even discuss the annual budget on more than sixteen occasions, and that too because some new tax legislation had been called for, and which the Executive could always carry through with the help of the nominated official block as it did every other kind of legislation it deemed necessary. The right of discussing the annual financial statement and the right of asking questions in regard to matters were first conceded to the legislature by the Rules of Procedure framed under the Indian Councils Act of 1892. But it may be doubted whether these concessions of powers to the Legislature amount to a restoration of the position which it occupied and dominance it exercised under the Act of 1853.

Even the reforms of Lord Morley fell short in the matter of according a real measure of independence and power to the Legislature over the Executive. In the reforms which he introduced in 1909 nomination, directly or after selection, was in principle replaced by election as a basis for the constitution of the legislature. At the same time the procedure of the legislature was liberalized so as to give power to the members to put

supplementary questions along with interpellations, to move resolutions on the Financial Statement and on matters of general public interest. But a little analysis is enough to show that even this attempt was of a piece with the old endeavour of liberalizing the Legislature without impairing the supremacy of the Executive.¹ This supremacy of the Executive was maintained (1) by means of a permanent majority of officials of the government nominated to the legislature, and (2) by controlling the rules of procedure. Although election² was admitted by the Act of 1892 as a basis of the composition of the Legislature, the elected members were in a minority, so that they could not give effect to the wishes of the people whom they represented. They were entitled to move resolutions if permitted by the Executive³ but the Executive was not bound to carry them out. They served only as recommendations, and were not binding upon the Executive. This direct thwarting produced irritation between the Executive and the elected members of the Legislature. In a certain sense the reforms of 1909 were a bad piece of engineering. Before 1909 whatever conflict there was was manifested outside the Legislature. For by the rules of election and procedure the Legislature was entirely muzzled: it could do no mischief. By the reforms of 1909, however, an attempt was made to make the Legislature independent and at the same time to muzzle it. This attempt, ingenious as it was, only served to bring to the surface the deep-seated conflict between the Executive and the forces agitating the minds of the people. Election procedure or business procedure governing a legislature is, in the words of Prof. Redlich, as it were a political pressure gauge, indicating the tension in the parliamentary machine and thence in the whole organism of the State.⁴ It is possible that this pressure gauge in the first instance may either be badly constructed or may become

¹ It was Lord Morley, of world-wide fame as a champion of Liberalism by supporting the cause of Irish Home Rule, who said in introducing the political reforms in India: "If I knew that my days, either official or corporeal, were twenty times longer than they are likely to be, I should be sorry to set out for the goal of a Parliamentary system in India. The Parliamentary system in India is not the goal to which I for one moment aspire."

² It was, however, a system of selection. The only difference between the Act of 1861 and the Act of 1892 was that under the former Act the Executive Government was to nominate anyone it liked to the Legislature. Under the latter the Executive Government was to nominate "upon the advice of such sections of the community as are likely to be capable of assisting in that matter." But as the Government was not bound to appoint the person selected, the second, howsoever concealed, must really be regarded a case of nomination by the Executive as much as the first.

³ Legally the President of the Council, i.e. the Viceroy; but he is supposed to be invariably acting on the advice of the executive Council.

⁴ Cf. J. Redlich, *Parliamentary Procedure*, Vol. III, p. 198.

worn out so as to give a false reading of the actual tension. But there can be no doubt that in the case of India the Executive, in the alterations which it introduced from time to time and particularly in 1909 in the election and business procedure of the legislature, had all along constructed it badly of purpose and had attempted to conceal thereby dangerous pressure of the steam in the political machine, so as to cause it to give a false reading of the situation. So long as the members of the legislature derived their mandates from the Executive, owing to the fact that all of them were nominated members, such an artifice worked well, with the entry of the elected members holding their mandates from the people, the weakness of the artifice became evident. The mortification of the elected members led them to obstruct and challenge the great fundamental principles recognized as the theoretical basis of procedure. Now if a party complained of inequality among members, of the rules of conducting proceedings, of freedom of speech or of the majority principle, it is a danger signal indicative of the existence of some serious defects in the life of the State. When such a conflict arises it is for a political statesman to judge whether he has to face a reform of the procedure of the representative assembly or a reform in the constitution of the State.

While inside the Legislative Assembly there were signs of hardening opposition and weariness which comes from sterile efforts, outside the Legislature the tide of feeling was rising more quickly, for, all the time the sense of national consciousness and the desire for political power were growing rapidly in the minds of educated Indians, no doubt, because the Legislature with its limited powers was found to be an insufficient safety valve. As a result of the realization of this fact those who had given their thoughts to the political reconstruction of the country agreed that a mere reform of the procedure will not do. Only a reform of the constitution will save the state from anarchy.

There was, however, a considerable diversity in the reforms suggested for effecting an alteration in the constitution of India. One scheme may here be noted in passing and that was the scheme propounded by the Indian National Congress and the Moslem League, shortly known as the Congress-League-Scheme.¹ The scheme demanded a four-fifths majority of elected

¹ This will be found in *East India Constitutional Reforms*, pp. Cd. 9178 of 1918, p. 98.

members in the Central Legislature. As to the Executive, it demanded that one-half of the total number of the Executive members should be Indians and that they should be elected by the elected members of the Legislature. The Legislature was to have complete financial and legislative powers. Nay, its recommendations, passed in the form of resolutions, were to be binding on the Executive. Such "was the latest, most complete and most authoritative presentation of the claims of the leading Indian political organizations" on behalf of the Indian people. But when we come to analyse the scheme it speaks poorly of the political genius of the Indian politicians. The scheme was formulated as a fulfilment of *responsible* government in British India. But in practice it was not only not a measure of responsible government, but it was deficient even to subserve the ends of good government. The scheme did not ask that the legislature should have the power to make or unmake an Executive as it pleased. If it had asked that, then the scheme would have been a scheme for responsible government. But what it asked for was to compel an Executive, which was irremovable, to conduct the administration of the country according to the orders of the Legislature. The Scheme was of a piece with that of Lord Morley in an enlarged form. He had introduced an Indian element into the Government so that Indian opinion and Indian advice might have some weight with the Executive in addition to what it exercised through the legislative organ of the Government. Those who framed the Congress-League-Scheme merely increased the Indian element in the Executive and the Legislature, and added provisions aimed at converting advice into control without realizing what was to happen if the Executive refused to be bound by the wishes of the Legislature. The essence of the project was an Executive with a divided mandate legally responsible to Parliament, and practically to an elected Legislature. Such a separation of mandates, it was obvious, would have enabled the Legislature to paralyse the Executive without having power to remove it. Being without any constitutional means to change the Legislature in cases of conflict by an appeal to the Electorate it would have been obliged to carry on