the Government even where it did not respect the wishes of the Legislature. The scheme was unsound, like all previous attempts at the reform of the Indian Constitution, because in it the Executive and the legislature derived their mandates from and were responsible to different powers. It was unsound because it overlooked the possibility that two mandates may not agree, in which case there would be a conflict. That conflict is inherent in a non-parliamentary executive. Some form of a Parliamentary government with a Parliamentary executive was the only way of avoiding it.

It is from this standpoint that the announcement of August 20, 1917, forms a landmark in the annals of the development of the Indian Constitution. On that date the Secretary of State for India announced in the House of Commons that—

> "The policy of His Majesty's Government, with which the Government of India are in complete accord, is that of the increasing association of Indians in every branch of the administration and the gradual development of self-governing institutions, with a view to the progressive realization of responsible government in India as an integral part of the British Empire. They have decided that substantial steps in this direction should be taken as soon as possible ....."
>
> " I would add that progress in this policy can only be achieved by successive stages. The British Government and the Government of India, on whom the responsibility lies for the welfare and advancement of the Indian peoples, must be judges of the time and measure of each advance, and they must be guided by the co-operation received from those upon whom new opportunities of service will thus be conferred and by the extent to which it is found that confidence can be reposed in their sense of responsibility."

This momentous announcement marks the end of one epoch and the beginning of a new one. It definitely abandoned the old conception under which the Executive might, as it saw fit, consult the wishes of the legislature, which were only given an increasing share in the administration of the country and increasing opportunities for influencing and criticizing, but never for

controlling, the Government. Under the new conception the aim was to endow the Legislature with the power to make or unmake the government, so that it would be not only a government of the people and for the people, but by the people. The adoption of such a change of policy in the basis of the political institutions of the country involved far-reaching changes in their relations with one another, administrative, legisltive and financial. The changes in the system of Provincial Finance introduced in consequence of the Reforms Act of 1919 were not caused by any inherent defects in the system as it stood at that date. On the other hand, the system was eminently workable. They were effected because the system as a whole was inconsistent with the great revolution which that Act had sought to effect in the governmental system of that country.

The nature of the changes, their extent and their adequacy will form the subject-matter of the two following chapters.

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CHAPTER XI

THE NATURE OF A CHANGE

The announcement of August 20, 1917, spoke of progressive realization of responsible government as the goal of the future British policy in India, and the Montague-Chelmsford Report on Constitutional Reforms surveyed the ways of giving effect to that announcement. One of the merits of that Report consisted in showing that the Congress-League-Scheme of political reforms did not embody the principle for the recognition of which they were agitating so long. Instead of inaugurating a responsible government in India, the scheme would have saddled the country with a non-parliamentary executive under a parliamentary system of government. Being convinced of their error the Congress-League politicians, be it said to their credit, abandoned their scheme in favour of the proposals contained in the Joint Report. But in their turn they demanded the introduction of a more or less complete responsible government in most of the political institutions at one stroke. But the framers of the new constitution pointed out that the emphasis on the word progressive in the announcement was as great if not greater than the emphasis laid on the word responsible.[1]

In consonance with this view it was decided to introduce, as a substantial step in the progress towards the realization of the goal laid down in the announcement, a responsible government of a limited character in the Provincial Governments. The Provincial Governments in India, like the Central Government, were irresponsible governments. The changes made in the constitution of Provincial Legislatures were of the same nature as the changes in the Central Legislature, in that both were calculated to enable the Executive to consult the Legislature without being amenable to its control. Only on one occasion were the frame-works of the two machines of governments, the

[1] Report of the Joint Select Committee on the Government of India Bill, p. 203 of 1919, p.s. para. 7.

Provincial and the Central, constructed on a slightly different basis, and that was in the Morley-Minto Reforms of 1909. Under those reforms the Central Legislature was dominated by *official* members who with the members of the Executive formed a standing majority in the chamber. In the Provincial Legislatures this principle of a standing majority of official members was dispensed with. The second point of departure in the constitution of the Provincial Legislatures as compared with that of the Central Legislature consisted in the Budget procedures in the two governments. In the Central legislature the Finance Member early in each calendar year presented to the Legislature his preliminary estimates accompanied by an explanatory memorandum. On a subsequent day he made such further explanations as he thought necessary. Members of the Legislature could thereupon move resolutions regarding (*a*) any proposed alteration in taxation, (*b*) *any* proposed loan, or (*c*) *any* additional grant to a Local Government. The first stage in the discussion of the Budget of the Government of India was over when once these resolutions were voted upon. The second stage commenced when the estimates were taken into consideration by groups. At this stage also it was open for members to move resolutions on any heads of revenue and expenditure, except those that were declared by rules of procedure to be not open for discussion to the legislature. After the resolutions had been moved and voted upon the Finance Member took the whole discussion into consideration and made such changes as were agreeable to him and then presented his final Budget. At this, the third stage, the Finance Member explained his reasons for the acceptance of some and the non-acceptance of other suggestions made during the course of the Budget debate. A general discussion of the Budget then followed, but no resolution was allowed to be moved upon the final Budget or a vote taken. The Budget procedure in the Provincial Legislatures was a little different. There the first stage commenced with the preparation of a rough draft of the provincial estimates, accompanied by a schedule including in it all projects involving an expenditure of over 5,000 rupees, divided into two parts, the first containing all allotted, i.e. obligatory, items of expenditure and the second containing unallotted, i.e. non-obligatory, items of expenditure. The Government of India to whom this draft Budget was submitted corrected

the estimate of the revenue and determined in consultation with the Provincial government the aggregate expenditure for which the latter should provide, and if need be, altered or added to the items in the first part of the schedule. When the figures of the altered revenue and the aggregate expenditure as fixed by the Government of India were communicated to the Provincial Government it marked the close of the first stage of a Provincial Budget. The second stage commenced when this draft Budget was submitted by the Provincial Government to a committee of the Provincial Legislature. The Committee was composed of officials and non-officials in equal number, the former nominated by Government and the latter elected by their fellows. It was presided over by the member of the Executive in charge of Provincial Finance ; the proceedings of the committee were informal and private and decisions were by majority votes. The Committee concerned itself only with the second part of the Schedule containing non-obligatory items of expenditure and, provided it did not exceed the aggregate expenditure fixed by the Government of India, it was free to make variations and even to insert new items occasionally. On the conclusion of its labours the Committee reported the changes it made to its Government. With this ended the second stage in the Provincial Budget. The third stage began when the Provincial Estimates as a whole were presented to the Provincial Legislature by the member in charge of finance. The Budget was then considered in a committee of the whole House and resolutions moved on each group of estimates discussed. When all resolutions were debated and voted upon the result of the discussions was communicated to the Provincial Government. But the resolutions were not binding. The fourth stage commenced when the Provincial government introduced the final budget and explained its reasons for the acceptance of some and the non-acceptance of the rest of the suggestions made by the Legislature. A debate followed, but no resolutions were in order at this stage ; nor did the Legislature divide upon the Budget. It was adopted as passed by the Executive.

From these differences in the constitution and procedure of the Central and Provincial Governments, it must not be supposed that the provincial Governments were less irresponsible with regard to their Legislatures than the Central Government was

with regard to its own Legislature. The fact that since 1909 there was no majority of official members in the Provincial Legislature as there was in the Central Legislature was a matter of no moment so far as its practical consequences to the Executive were concerned ; for it is to be remembered that in practice the difference between nominated members from among the non-officials and the official members was only superficial. Both had their mandate from the government who gave them their seats in the Legislature, and as nominees of the Government they voted for the Government, so that, though not in theory, in practice the Provincial Government had as much a standing majority in Legislatures as the Central Government had in theory as well as in practice. Nor did the budget procedure of the Provincial Government mark any decided improvement over that adopted in the Central Government in the matter of giving greater control to the Legislature over the Executive. In both cases the aim was to give the members of the Legislature the privilege of discussing *beforehand* the question of such alteration with reference to the necessities of the Budget, only in the case of the Provincial Budget this privilege was allowed to be exercised at an earlier stage than in the case of the Imperial Budget. But in view of the fact that the Resolutions of the Legislature on the Provincial Budget, as those of the Central Ledgislature on the Imperial, were only recommendations to their respective Executives, this difference between the Budget procedure of the two Governments did not impose any greater control over the one Executive than it did on the other. Again, the provision that a committee of the Provincial Legislature had been allowed the privilege of framing the non-obligatory portion of the Provincial Budget did not give the Legislature any appreciable control *over* the Executive. First of all, the Provincial Government could always restrict the scope of this Budget Committee by transferring any head from the class of non-obligatory expenditure to the class of obligatory expenditure. Besides this, the operation of certain other rules of Budget procedure based upon general principles of public finance tended directly to restrict the powers of the committee to put forth schemes of alternative or additional expenditure. It was rightly provided that schemes involving recurring expenditure could only be proposed with due regard to the rate of growth of recurring revenues and recurring

expenditure. Owing to this rule, the committee had to drop proposals which involved recurring expenditure, but which were desirable from its standpoint. On the other hand, similar proposals made by the Executive could be easily carried through by the device freely adopted of obtaining previous sanction of the Government of India. The consequence was that in all the Provincial Budgets presented under the new rules the amount of this "unallotted" fund left to the discretion of the committee bore too insignificant a proportion to the total expenditure in the budget to make the Provincial Executive in any real degree amenable to the Provincial legislature.

No really responsible government could, however, be introduced in the provinces without first of all making a complete change in the mutual relations between the Central Government and the different Provincial Governments in India. The relation between the two which existed before the passing of the Act of 1919 was one of complete subordination of provincial Governments to the Central Government.[1] In this bond of subordination we can discern three strands—legislative, financial, and administrative. Of these three we have seen how tight was the financial strand. The Government of India's control over revenues and expenditure was derived from Parliamentary Statutes which treated the revenues of India as one and applied them to the purposes of the Government of India as a whole. It is true that this provision was not so strictly construed as absolutely to prevent the appropriation of particular sources of income to specific purposes all-India or provincial. Or else the development of the provincial system of finance would have been impossible. But it certainly had the effect of denying to Provincial Governments any inherent legal right to the revenues which they raised. The Government of India completely controlled taxation imposed in British India, apart from the local taxes which were raised by local bodies. Taxation could only be levied by law,[2] but the law had forbidden a Provincial Legislature, without the previous sanction of the Government of India, to consider

> "any law affecting the public debt of India or the customs duties or any other tax or duty for the time being in force and imposed by the authority of the Governor-General in Council for the general purposes of the Government of India."

[1] Report on Indian Constitutional Reforms, Cd. 9109 of 1918, Ch. V.

[2] There is, however, a glaring exception. The land revenue in India has been raised without any legislative sanction. The exclusion of land revenue from the province of the legislature practically removed between 40 and 50 per cent. of the net public revenue from any sort of control.

This is the natural corollary of the statutory hypothecation of all-India revenues to all-India needs. The law would not inhibit a provincial legislature from exploiting for provincial purposes any new source of taxation which it had the ingenuity to discover. But even in that case the project would, before being translated into action, have to secure the assent of the Finance Department of the Government of India, which would not give its sanction without considering closely if it trespassed on the Central Government's sources of taxation. Again, the provision of the law which required that

> " no governor or governor in council (of a province) shall have the power of creating any new office or granting any salary, gratuity or allowance without the previous sanction of the Governor General of India in Council"

had given the Government of India a right of control over expenditure in the Provinces which was exercised through the instrumentality of a series of codes of instructions, such as the Civil Service Regulations, the Civil Account Code, the Public Works Code and the like. These codes partly dealt with the mechanism of finance such as the maintenance of a uniform system of audit and accounts, the custody of public money, remittances, economy, and such matters ; but they also imposed definite restraints upon the powers of Provincial Governments, to create new appointments or raise emoluments and other matter such as recruitment, promotions, leave, foreign service and pensions upon which the codes really constitute a digest of the case-law laid down from time to time by the Government of India which the Provincial Governments must strictly obey. If their powers of taxation and expenditure were strictly controlled the power of borrowing was never conceded to the provinces. It will be recalled that Port Trusts and Municipalities might raise loans within defined limits, but because the revenues of India were legally one and indivisible and were liable for all debts incurred for the purposes of the Government of India, Provincial Governments possessed no separate resources *on* the security of which they could borrow.

Even within the prescribed limits of Provincial Finance the Provincial Governments were not free from the control of the Central Government. Because the provincial settlements were based not on provincial revenues but on provincial needs,

a central control was inevitable. The Government of India could not allow a Province to go bankrupt. But if the Government of India were responsible for provincial solvency they must be in a position to control provincial expenditure. Again, as regards revenues, so long as the Government of India took a share in the proceeds they had a strong motive not only in interfering in the Budget estimates of the provinces, but also in interfering in details of administration. Their interest in land revenue, for example, inevitably led them to close supervision over revenue settlements, and the control tended to become tighter in cases where expansion and development of a source of revenue, such as irrigation, depended on capital outlay.

The legislative powers of the Provincial Governments had in the same manner been made subject to statutory restrictions. There was no doubt an extensive field in which, so far as the substantive provisions of the Statute were concerned, the legislative competence of the provincial Legislatures was legally unfettered. Actually, however, the power of the local legislatures was curtailed in two ways. In the first place, owing to the fact that in their existence all the Provincial Legislatures were younger, and most of them much younger, institutions than the Central Legislature of the Governor-General, a great part of the field that would have otherwise been open to them was covered by acts of that body, which had always retained a concurrent power of legislation for the country at large. But the field yet remaining open for Provincial Governments in the matter of legislation was further restricted by the fact that the power of the Secretary of State and Parliament to control all-Indian legislation was made operative by means of executive directions, which had made it incumbent on Provincial Governments to submit for the previous sanction of the Government of India and the Secretary of State all their projects for legislation before introduction. It is true that these directions did not apply to private members' Bills ; but inasmuch as a Bill could only be introduced with the leave of the Legislature, and the Provincial Government was in most cases in a position if it chose to do so to oppose such a motion successfully, the Government of India by directions to the Provincial Governments were in a position to control all private provincial legislation almost as effectively as the Provincial Government's Bills.

In carrying on the actual work of administration every Provincial Government was by law required to obey the orders of the Government of India and keep that Government constantly and diligently informed of its proceedings and of all matters which ought, in its opinion, to be reported to that Government, or as to which that Government required information. That was because in law every Provincial Government was placed under the superintendence, direction and control in all matters relating to the Government of its Province. This administrative control of the Government of India was exercised by that Government in the interest of uniformity. It is obvious that in many respects India is one single and undivided country, in which much work had to be carried on on uniform lines. The Civil servants who executed the orders of Provincial governments having been recruited from England on terms guaranteed by the Secretary of State, many questions affecting them could not be determined by any Provincial Government. Again, the development of trade, industry and science throughout India similarly favoured the formulation and pursuit of uniform policies by the Government of India. Even with one law for the whole of India business and industry might have been left to their discretion to administer such matters as statistics, patents, copyright, insurance, income tax, explosives and mining, etc. Not only were the provincial Governments subordinated to the Central Government to follow established lines in the matters of administration, but they were not free to initiate any new policy. It was the Government of india which regarded itself as distinctly charged with the duty of framing policy and inspiring reforms for the whole of India by issuing new orders. To make them effective these orders were often accompanied by handsome grants to Provincial Governments strictly earmarked for the purpose of pushing on some particular feature of the new policy. Not seldom did the Government of India appoint new advising or inspecting officers whose task it was to see that the new energy suddently infused into the system was well maintained and well directed to the chosen ends.

So long as the provincial Governments continued to be bound by such strands to the Government of India there could be no responsible government in the Provinces. No government can be made to serve two masters at one and the same time. To

keep the Provincial Governments subordinate to[1] the Government of India and also to make them responsible to popular Legislature would have been inconsistent in theory and vicious in practice. It is quite conceivable that under such a double government the wishes of the Provincial Legislature on certain matters may not coincide with those of the Government of India. On such occasions a Provincial Government may not know whom to obey. If it deferred to the wishes of the Legislature it would be failing in its duty towards the Government of India. Indeed there is on record a case of such a conflict.[2] There was an occasion during the currency of the Morley-Minto Reforms when the Government of Bombay were unsuccessful in their endeavours to persuade the Government of India to sanction certain charges affecting the educational staff. The proposals were locally popular and were again put forward for adoption in a resolution moved in the Bombay Legislature by an elected member. The Bombay Government thereupon accepted the resolution which was carried unanimously, and once more put forward their proposals to the Government of India on the ground that they had the Legislature's entire support. But the Government of India and the Secretary of State held that these tactics were out of order and that it was

> "the duty of the Local Government in dealing with the resolutions to uphold with all their authority the decision of the Government of India,"

i.e. to have opposed the resolution even if it agreed with the Legislature in the principle thereof.

The strong ties of subordination which bound the Provinces to the Central Government were therefore the chief obstacles in the path of Provincial autonomy. In order that the Provincial Government be made subject to Provincial Legislatures, the first thing to do was to curtail the powers which the Government of India possessed of interference in provincial finance, provincial legislation, and provincial administration. As was well observed by the authors of the Report[3] on Constitutional Reforms :

> "We have to demolish the existing structure, at least in part, before we can build the new. Our business is one of devolution, of drawing lines of demarcation, of

[1] The degree of subordination it should be noted varied with the status of the Provinces, for which see Joint Report, pp. 37-45.

[2] Joint Report, pp. 75-6.

[3] Joint Report, p. 101.

cutting long-standing ties. The Government of India must give and the Provinces must receive ; for only so can the growing organism of self-government in the Provinces draw air into its lungs and live."

The path to provincial independence therefore lay through a satisfactory division of functions and finances between the Provincial and Central Governments. Of the two, the task of dividing the functions was comparatively an easier one. For facilitating the necessary division of functions the following principles were laid down by the Government of India.[1]

"7. There are certain subjects which are at present under the direct administration of the Government of India. The Government of India maintain separate staffs for their administration and the Provincial Governments have no share in it. The category is easily recognizable, and for the most part there will not be much room for doubt as to the subjects to be included in it. At the other end of the line are matters of predominantly local interest which, however much conditions must vary between Provinces, will, generally speaking be recognized as proper subjects for provincialization.

"8. Between these extreme categories, however, lies a large indeterminable field which requires further examination before the principles determining its classification can be settled. It comprises all the matters in which the Government of India at present retain ultimate control, legislative and administrative, but in practice share the actual administration in varying degrees with the Provincial Governments. In many cases the extent of delegation practised is already very wide. The criterion which the Government of India apply to these is whether in any given case the Provincial Governments are to be strictly the agents of the Government of India, or are to have (subject to what is said below as to the reservation of powers of intervention) acknowledged authority of their own. In applying this criterion the main determining factor will be not the degree of delegation already practised, which may depend on mere convenience, but the consideration whether the interests of India as a whole (or at all events interests larger than those of one Province), or on the other hand the interests of the Province essentially preponderate.

[1] Memorandum for the Functions Committee by the Government of India, Annexture II to the Report of the Committee Cmd. 103 of 1919.

> "The point is that delegation to an agent may be already extensive, but that circumstance should not obscure the fact of agency or lead to the agent being regarded as having inherent powers of his own."

These principles, in which it was stated that "where extra-provincial interests predominate the subject should be treated as central," while

> "all subjects in which the interests of the provinces essentially predominate should be provincial, and in respect of (which) the Provincial governments (to) have acknowledged authority of their own,"

were accepted by the Functions Committee appointed to make a division between all-India and Provincial subjects. The recommendations made by the Committee were with minor amendments embodied in what are called Devolution Rules under section 45A of the Government of India Act of 1919, which gave effect to the policy of responsible government and are made a part of the constitutional law of the land, so that the subjects thereby devolving upon the Provinces became the services over which the Provinces gained an *acknowledged authority of their own* such as they never had before 1833. According to these Devolution Rules the following were declared to be

PROVINCIAL SUBJECTS

1. Local Self-government, that is to say, matters relating to the constitution and powers of municipal corporations, improvement trusts, district boards, mining boards of health and other local authorities established in a Province for the purpose of local self-government, exclusive of matters arising under the Cantonments Act, 1910 ; subject to legislation by the Indian Legislature as regards—

(*a*) The powers of such authorities to borrow otherwise than from a Provincial Government, and

(*b*) the levying by such authorities of taxation not included in schedule II to the scheduled Taxes Rules.

2. **Medical administration,** including hospitals, dispensaries and asylums, and provision for medical education.

3. **Public Health and Sanitation and Vital Statistics** ; subject to legislation by the Indian Legislature in respect of infectious and contagious diseases to such extent as may be declared by any Act of the Indian Legislature.

4. **Pilgrims within British India.**

5. **Education,** provided that—

(a) The following subjects shall be excluded, viz.:

(i) The Benares Hindu University, and Aligarh Muslim University, and such other universities constituted after the commencement of these rules, as may be declared by the Governor-General in Council to be Central subjects, and

(ii) Chiefs' Colleges and any institution maintained by the Governor-General in Council for the benefit of members of His Majesty's Forces or of other public servants or of the children of such members of servants; and

(b) the following subjects shall be subject to legislation by the Indian Legislature, namely:

(i) The control of the establishment, and the regulation of the constitutions and functions, of universities constituted after the commencement of these rules ; and

(ii) The definition of the jurisdiction of any university outside the Province in which it is situated, and

(iii) For a period of five years from the date of the commencement of these rules, the Calcutta University, and the control and organization of secondary education in the presidency of Bengal.

6. **Public Works** included under the following heads, namely :

(*a*) Construction and maintenance of provincial buildings used or intended for any purpose in connection with the administration of the Province ; and care of historical monuments, with the exception of ancient monuments as defined in Section 2(i) of the Ancient Monuments Preservation Act, 1904, which are for the time being declared to be protected monuments under Section 3(i) of that Act; provided that the Governor-General in Council may by notification in the *Gazette of India,* remove any such monuments from the operation of this exception ;

(*b*) roads, bridges, ferries, tunnels, ropeways, and causeways, and other means of communication, subject to such conditions as regards control over construction and maintenance of means of communication declared by the Governor-General in Council to be of military importance, and as regards incidence of special expenditure connected therewith, as the Governor-General in Council may prescribe ;

(*c*) tramways within municipal areas ; and

(*d*) light and feeder railways and extra-municipal tramways in so far as provision for their construction and management is made by provincial legislation ; subject to legislation by the Indian Legislature in the case of any such railway or tramway which is in physical connection with a main line or is built on the same gauge as an adjacent main line.

7. **Water Supplies,** irrigation and canals, drainage and embankments, water storage and water power; subject to legislation by. the Indian Legislature with regard to matters of inter-provincial concern or affecting the relations of a Province with any other territory.

8. **Land Revenue administration,** as described under the following heads, namely:

(*a*) Assessment and collection of land revenue ;

(*b*) Maintenance of land records, survey for revenue purposes, records of right;

(*c*) Laws regarding land tenures, relations of landlords and tenants, collection of rents ;

(*d*) Courts of wards, incumbered and attached estates ;

(*e*) Land improvement and agricultural loans ;

(*f*) Colonization and disposal of Crown lands and alienation of land revenue ; and

(*g*) Management of Government estates.

9. **Famine relief**

10. **Agriculture,** including research institutes, experimental and demonstration farms, introduction of improved methods, provision for agricultural education, protection against destructive insects and pests and prevention of plant diseases ; subject to legislation by the Indian Legislature in respect of destructive insects and pests and plant diseases, to such extent as may be declared by any Act of the Indian Legislature.

11. **Civil Veterinary Department,** including provision for veterinary training, improvement of stock, and prevention of animal diseases ; subject to legislation by the Indian Legislature in respect to animal diseases to such extent as may be declared by any Act of the Indian Legislature.

12. **Fisheries.**

13. **Co-operative Societies.**

14. **Forests,** including preservation of game therein ; subject to legislation by the Indian Legislature as regards disforestation of reserved forests.

15. **Land acquisition** ; subject to legislation by the Indian Legislature.

16. **Excise,** that is to say, the control of production, manufacture, possession, transport, purchase and sale of alcoholic liquor and intoxicating drugs, and the levying of Excise duties and licence fees on or in relation to such articles, but excluding in the case of opium, control of cultivation, manufacture and sale for export.

17. **Administration of Justice,** including constitution, powers, maintenance and organization of courts of civil and criminal jurisdiction within the Province ; subject to legislation by the Indian Legislature as regards High Courts, Chief Courts, and Courts of Judicial Commissioners, and any courts of criminal jurisdiction.

18. **Provincial Law Reports.**

19. **Administrators-General and Official Trustees** ; subject to legislation by the Indian Legislature.

20. **Non-Judicial Stamps,** subject to legislation by the Indian Legislature, and **Judicial Stamps,** subject to legislation by the Indian Legislature as regards amount of court fees levied in relation to suits and proceedings in the High Courts under their original jurisdiction.

21. **Registration of deeds and documents;** subject to legislation by the Indian Legislature.

22. **Registration of births, deaths, and marriages** ; subject to legislation by the Indian Legislature for such classes as the Indian Legislature may determine.

23. **Religious and Charitable endowments.**

24. **Development of Mineral resources which are Government property** ; subject to rules made or sanctioned by the Secretary of State, but not including the regulation of mines.

25. **Development of industries,** including industrial research and technical education.

26. **Industrial matters** included under the following heads, namely:—

(*a*) Factories;

(*b*) Settlement of labour disputes ;

(*c*) Electricity;

(*d*) Boilers;

(*e*) Gas;

(*f*) Smoke nuisance ; and

(*g*) Welfare of labour, including provident funds, industrial insurance (general health and accident) and housing :

subject as to heads (a), (b), (c), (d), and (g) to legislation by the Indian Legislature.

27. **Stores and Stationery** ; subject in the case of imported stores and stationery to such rules as may be prescribed by the Secretary of State in Council.

28. **Adulteration of food-stuffs and other articles** ; subject to legislation by the Indian Legislature as regards import and export trade.

29. **Weights and Measures** ; subject to legislation by the Indian Legislature as regards standard.

30. **Ports,** except such ports as may be declared by rule made by the Governor-General in Council or by or under Indian legislation to be major ports.

31. **Inland Waterways;** including shipping and navigation thereon so far as not declared by the Governor-General in Council to be Central subjects, but subject as regards inland steam-vessels to legislation by the Indian Legislature.

32. **Police**; including railway police ; subject in the case of railway police to such conditions as regards limits of jurisdiction and railway contributions to cost of maintenance as the Governor-General in Council may determine :

(*a*) Regulation of betting and gambling ;

(*b*) prevention of cruelty to animals ;

(*c*) protection of wild birds and animals ;

(*d*) control of poisons, subject to legislation by the Indian Legislature ;

(*e*) control of motor vehicles, subject to legislation by the Indian Legislature as regards licences valid throughout British India; and

(f) control of dramatic performances and cinematographs, subject to legislation by the Indian Legislature in regard to sanction of films for exhibition.

34. **Control of Newspapers, Books, and Printing Presses** ; subject to legislation by the Indian Legislature.

35. **Coroners.**

36. **Excluded Areas.**

37. **Criminal tribes** ; subject to legislation by the Indian Legislature.

38. **European vagrancy** ; subject to legislation by the Indian Legislature.

39. **Prisons** ; prisoners (except State prisoners) and reformatories ; subject to legislation by the Indian Legislature.

40. **Pounds** and prevention of cattle trespass.

41. **Treasure Trove.**

42. Libraries (except the Imperial Library) and **Museums** (except the Indian Museum, the Imperial War Museum and the Victoria Memorial, Calcutta) and **Zoological Gardens.**

43. **Provincial Government Presses.**

44. **Elections** for Indian and provincial legislature, subject to rules framed under section 64 (i) and 72A (4) of the Act.

45. **Regulations of medical and other professional qualifications and standards**; subject to legislation by the Indian Legislature.

46. **Local Fund audit,** that is to say, the audit by Government agency of income and expenditure controlled by local bodies.

47. **Control** as defined by rule 10, **of members of all-India and Provincial Services** serving within the Province, and control, subject to legislation by the Indian Legislature, of public services within the province, other than all-India services.

48. **Sources of Provincial revenue,** not included under previous heads, whether—

(*a*) Taxes included in the schedules to the scheduled taxes Rules, or

(*b*) Taxes, not included in those schedules, which are imposed by or under provincial legislation which has received the previous sanction of the Governor-General.

49. **Borrowing of money** on the sole credit of the Province, subject to the provisions of the Local Government (Borrowing) Rules.

50. **Imposition** by legislation of punishment by **fine, penalty, or imprisonment,** for enforcing any law of the Province relating to any provincial subject; subject to legislation by the Indian Legislature in the case of any subject in respect of which such a limitation is imposed under these rules.

51. **Any matter** which, though falling within a Central subject, is **declared by the Governor-General in Council to be of a merely local or private nature within the province.**

52. **Matters pertaining to a Central subject in respect of which powers have been conferred by or under any law upon a Local Government.**

The second task that of allocating the revenue resources between the Central and provincial Governments was a comparatively difficult one. As the problem was conceived in the main as one of making the Provinces independent of the Government of India in matters in which it was proposed that they should acquire an authority of their own acknowledged by law it was natural for the authors of the Report on constitutional Reforms to hold that

> "Our first aim.....has been to find some means of entirely separating the resources of the Central Government from those of the Provinces."

The first step in that direction was therefore to abolish the system of "divided heads" or budget by shared revenues, for there was a concensus of opinion that this coparcenary system, in so far as it gave a handle to the Central Government to interfere in the domestic affairs of the Provinces, was a source of friction and was incompatible with provincial independence. But such a system of complete separation was fraught with two main difficulties. The first difficulty was in connection with the disposal

of dividend heads. To whom should they be handed over ? At the time the scheme of complete separation was contemplated the heads of revenue which were divided in all or some of the Provinces were land revenue, stamps, excise, income tax and irrigation. The authors of the Report on Constitutional Reforms proposed[1]

> "……that the revenue from stamp duty should be discriminated under the already well-marked sub-heads *General* and *Judicial*; and that the former should be made an Indian and the latter a provincial receipt. This arrangement will preserve uniformity in the case of commercial stamps where it is obviously desirable to avoid discrepancies of rates ; and it will also give the provinces a free hand in dealing with court-fee stamps and thus provide them with an additional means of augmenting their resources. Excise is at present entirely a provincial head in Bombay, Bengal, and Assam, and we see no valid reason why it should not now be made provincial throughout India…… Land revenue, which is far the biggest head of all, is at present equally shared between the Indian and all the provincial Governments, except that Burma gets rather more than one-half and the United Provinces get rather less…… Now land revenue assessment and collection is so intimately concerned with the whole administration in rural areas that the advantages of making it a provincial receipt are obvious…… Moreover, famine expenditure and expenditure on major irrigation works are for obvious reasons closely connected with land revenue, and if the receipts from that head are made provincial it logically follows that the Provinces should take over the very heavy liability for famine relief and protective works……We were told that in the days of dawning popular government in the Provinces it would be well that the provincial government should be able to fall back on the support of the Government of India (as, if the head were still divided, it would be able to do) when its land revenue policy was atttacked.[2] But it is just because divided heads are not

[1] Report, pp. 165-7.

[2] The land revenue policy of the Government has always been looked upon by the popular leaders, rightly or wrongly, with a certain degree of suspicion, and is always in danger of being attacked. For fear that the policy may be subverted under a popular Provincial Legislature to whose control land revenue as a provincial subject was subjected it provided by the Reservation of Bills Rules under Section 12 (1) of the Government of India Act, 1919, that—The Governor of any Governor's province *shall* reserve for the consideration of the Governor-General any Bill, not having been previously sanctioned by the Governor-General, which has been passed by the legislative Council of the Province and

regarded as merely a financial expedient but are, and so long as they survive will be, viewed as a means of going behind the provincial government to the Government of India, that we feel sure that they should be abolished. We propose therefore to make land revenue together with irrigation wholly provincial receipts. It follows that the Provinces will become entirely liable for expenditure on famine relief and protective irrigation works.....The one remaining head is income tax. We see two very strong reasons for making this an Indian receipt. First, there is the necessity of maintaining a uniform rate throughout the country. The inconveniences, particularly to the commercial world, of having different rates in different Provinces are manifest. Secondly, in the case of ramifying enterprises with their business centre in some big city, the Province in which the tax is paid is not necessarily the Province in which income is earned. We have indeed been told that income tax is merely the industrial or professional complement of the land revenue ; and that to provincialize the latter, while Indianizing the former, means giving those provinces whose wealth is more prominently agricultural, such as the United Provinces and Madras, an initial advantage over a Province like Bombay, which has very large commercial and industrial interests. Another very practical argument is that the tax is collected by provincial agency and that if Provincial Governments are given no inducement, such as a share of the receipts or a commission on the collections which is only such a share in disguise, there will be a tendency to slackness in collection and a consequent falling off in receipts. We admit that these arguments have force; but we are not prepared to let them stand in the way of a complete separation of revenues. Equality of treatment as between one Province and another must be reached so far as it is possible in the settlements as a whole, and it is

is presented to the Governor for his assent, if the Bill appears to the Governor to contain provisions—

(*e*) affecting the land revenue of a Province either so as to

(i) prescribe a period or periods within which any temporary settled estate or estates may not be re-assessed to land revenue, or

(ii) limit the extent to which the assessment to land revenue of such an estate or estates may be made or enhanced, or

(iii) modify materialy the general principles upon which land revenue has hitherto been assessed, if such prescription, limitation or modification appears to the Governor to be likely seriously to affect the public revenues of the province.

not possible to extend the principle of equality to individual heads of revenue. If it should be found that receipts 'fall off, it may be necessary to create an all-India agency for the collection of the tax, but this we should clearly prefer to retaining it as a divided head. To sum up : we propose to retain the Indian and Provincial heads as at present, but to add to the former income tax and general stamps, and to the latter land revenue, irrigation, excise and judicial stamps. No head will then remain divided."

However, when all the existing sources of revenue were completely distributed between the Central and Provincial Governments as proposed, it was inevitable that there should be a deficit in the Budget of the Government of India. How to make up this deficit was therefore the second difficulty that was involved in replacing the system of divided heads by a system of separate heads of revenue. The authors of the Report on Constitutional Reforms were presented with many a plan for the solution of this knotty problem, lathe course of their survey they observed :[1]

"One way of meeting it would be to maintain the basis of the present settlements, but to allot to the Government of India a certain proportion of growing revenue instead of its share of the divided heads. But this device would stereotype all the existing inequalities between the Provinces which by reason of the permanent settlement in some of them are considerable ; while it would also introduce an element of great uncertainty into the Indian Government's finance. A second was that we should take an all-round contribution on a *per capita* basis. But this expedient also would not obviate very undesirable variations between Provinces in the rate of levy owing to the inequality of provincial resources and of provincial needs. A third plan was to take an all-round percentage contribution based on gross provincial revenue. This is open, *inter alia,* to the objection that it would leave several of the Provinces with large deficits. Fourthly, we considered but rejected the proposal that Provinces which had a surplus should temporarily help others as being cumbrous and impracticable."

[1] Report, p. 168.

The plan recommended by the authors of the Report was[1]

> "to assess the contribution from each Province to the Government of India as a percentage of the difference between the gross provincial revenue and the gross provincial expenditure";

in other words, a levy on the surplus of the estimated gross revenue of the Province when all divided heads are separately allotted over its estimated normal expenditure, including expenditure on famine relief and protective irrigation. On the basis of the Budget figures for 1917-18 it was found that it would require a levy of 87 per cent.[2] on the provincial surpluses to make up the deficit of Rs. 1363 lakhs in the Budget of the Government of India found likely to be caused by the abolition of the system of divided heads.[3]

[1] Report, p. 169.

[2] The suggested imposition of an equal rate of levy is somewhat strange, for the authors of the Report had in para. 206 protested that "equality of contribution was impracticable," etc. Para. 206 of the Joint Report makes a confusion. It protests against equality of contributions, which is what it adopts in the plan it recommends.

[3] The way in which the proposed plan would have worked out in practice can be gathered from the following figures given in the Report, Cal. Ed. (p. 134), and based on the Budget figures for 1917-18:—

(In Lakhs of Rupees)

Province	Gross Prov. Revenue	Gross Prov. Expenditure	Gross Prov. Surplus	Contribution (87 per cent. of Col. 4)	Net Prov. Surplus
1	2	3	4	5	6
Madras ...	13,31	8,40	4,91	4,28	63
Bombay ...	10,01	9,00	1,01	88	13
Bengal ...	7,54	6,75	79	69	10
United Provinces ...	11,22	7,47	3,75	3,27	48
Punjab ...	8,64	6,14	2,50	2,18	32
Burma ...	7,69	6,08	1,61	1,40	21
Bihar and Orissa ...	4,04	3,59	45	39	6
Central Provinces ...	4,12	3,71	41	36	5
Assam ...	1,71	1,50	21	18	3
Total ...	68,28	52,64	15,64	13,63	2,01

N.B.—The Punjab figures in column 5 should be reduced and those in column 6 raised by $3^1/_2$, lakhs in each case to allow for the continued compensation which the province is entitled to receive for the cession of a crore of its balances to the Government of India in 1914.

In making these recommendations the authors of the Report were careful to observe :[1]

> "One caveat we are bound to make. Emergencies may arise which cannot be provided for by immediate raising Government of India taxation ; and in that case it must be open to the Central Government to make a special supplementary levy upon the provisions. We must add that inasmuch as our proposals are based on war figures they should be open to revision hereafter, but not subject to change for a period of say six years, and to avoid intermediate discussion the scheme should in the meantime be regarded as part of the constitutional agreement with the Provinces. It should also be one of the duties of the periodic commission which we propose should be appointed to examine the development of constitutional changes after ten years' experience of their working or of some similar body at that time, to re-investigate the question of the provincial contributions to the Government of India."

These proposals were put before the Provincial Governments, for their opinion. The objections to a plan which appeared to make some Provinces bear a greater burden of the cost of the Central Government than others readily suggested themselves. Madras and the United Provinces seemed to pay 47.4 per cent. and 41.1 per cent, of their surpluses to the Government of India, while Bombay and Bengal appeared to escape with a sacrifice of no more than 9.6 per cent, and 10.1 per cent, of their respective surpluses. The inequity of this treatment seemed to be so very apparent that the Provinces against which a greater burden was set down raised loud protests. So impressed was the Government of India with the justice of this clamour that in its letter[2] to the Secretary of State it observed :

> "We recommended that the initial contributions should be recognized as temporary and provisional, and that steps should be taken as soon as possible to fix a standard and equitable scale of contributions……The whole question…… requires skilled investigation ; (the difficulty of the position was

1 Report, p. 170.

[2] Dated March 5, 1919 (para. 61), on the questions raised in the Report on Indian Constitutional Reforms, pp. Cmd. 123 of 1919.