

## CHAPTER VII

### PROVINCIAL GOVERNMENTS (*continued*)

#### II—LEGISLATURES

THE India Councils Act of 1861 consolidated and amended the law relating to Councils. The Act of 1833, passed when the idea of a united and centrally controlled India was uppermost in men's minds, not only made Bengal the superior province in India, but withdrew legislative powers from the Councils of Madras and Bombay. These powers were restored by the India Councils Act of 1861, when the vast complexities and range of Indian administration and legislation had again become apparent, and this Act further provided for the creation of Councils wherever a Lieutenant-Governorship was thereafter to be set up. Provincial Legislative Councils were set up in Bengal in 1862, in the United Provinces in 1886, in the Punjab and Burma in 1898. In 1892 they were enlarged, an elective element introduced, and a limited right of questioning and of discussing budgets was given. Finally came the Morley reform of 1909, the rules and regulations for the carrying out of which were revised in 1912, and published in a Blue book.<sup>1</sup> The Bengal Council under these rules consists of 28 elected members and 20 nominated, of whom not more than 16 may be officials and the others are composed as follows: Bihar and Orissa, 21 elected and 19 nominated, of whom not more than 15 may be officials; Assam, 11 elected and 13 nominated, of whom not more than 9 may be officials; Madras, 21 elected and 21 nominated, not more than 16 being officials; the United Provinces, 21

<sup>1</sup> Cd. 6714, 1913.

elected and 26 nominated, of whom not more than 20 may be officials; the Punjab, 8 elected and 16 nominated, of whom not more than 10 may be officials; Bombay, 21 elected and 21 nominated, of whom not more than 14 may be officials; Burma, 1 elected and 14 nominated, of whom not more than 6 may be officials. It must be noted that these are all known as "additional" members. Thus the original idea of adding members to the Executive Council for legislative work still obtains. The legislative members are in theory attached to the Executives, the Executives are not committees of the Legislatures. Indeed, the actual fact is that, though called Legislatures, they are essentially Consultative Committees attached to the Executives.

The volume of rules promulgated for the election of these Councils also contains the regulations for the discussion of the Annual Financial Statements, and of matters of general public interest, and also for the asking of questions of the Executive. No resolution on the Financial Statement may criticise a decision of the Government of India, and any resolution may be disallowed by the President of the Council. Whatever resolutions are carried are only of the nature of recommendations to the Governor or Lieutenant-Governor in Council. No resolutions may be moved on the Budget, and the Budget itself is not submitted to a vote of the Councils. Resolutions on matters of general interest may also be disallowed by the President on one of two grounds: that they are not consistent with the public interest, or that they should be moved on the Legislative Council of another Province or of the Governor-General; and again, all resolutions carried are of the nature of recommendations to the Governor in Council, or the Lieutenant-Governor. Questions must be handed in ten days before they are answered, and supplementaries are allowed, but the President has the right to refuse any question at his discretion.

The position of these Councils raises four important points for settlement.

The first is their constitutional status. The time has now come for giving them a status independent of the Executive Councils, and establishing them as the Legislatures of India. Their relations to the Executive can be determined in one of two ways. The Executive can be made to depend upon them as in Great Britain, or, as a first step, partly depend upon them; or, as in America, the Executive can be an independent body appointed by the Viceroy, who will be expected to use discretion and common sense, and take all the political circumstances into account when making his choice of men. The latter would be most in accordance with Indian traditions, though not most in accordance with the political thought which is stirring in India and creating the demands for responsible and representative government which we have now to meet.

I have therefore in this book assumed that the relations between the Executive and Legislature ought to be determined on the British rather than on the American model. The American model, however, must not be dismissed without being considered, as it may be found to suggest convenient expedients for avoiding obvious difficulties which meet us at this moment. It must be noted, however, that whereas the American Colonies separated their Executive and Legislature in order to weaken the Executive, the separation is advocated for India for the opposite reason.

A study of the working of the American Constitution leads me to the conclusion that the separation has been bad for both, though the political genius of the people is such as to get tolerable results from a bad machine. I do not believe that an independent Executive in India will be any safeguard either for British sovereignty or against Indian folly. Should it acquire the mind of an alien body in authority checking and watching the Legislatures, nothing but trouble is ahead of it; should it set itself up as an authority equivalent to the Legislature, even if it avoids racial distinctions, trouble is ahead of it. I fear it will be impossible for an independent

Executive to avoid being mixed up with the oppositions of the moment which support it and object to it. In India that is the conflict between bureaucracy and self-government. Therefore, the wisest policy seems to be to place the Executive for the time being midway between the British and the American position. Let it be appointed by the Viceroy or the Governors as the case may be, on the understanding that it includes some of the legislative leaders, and then watch the development of events.

But when it is appointed it ought to be a unity. The proposal in the Montagu-Chelmsford Report that it should consist of two sections, one owing allegiance to the Viceroy and the other looking to the Legislatures for authority, is clumsy and in every sense inexpedient.

The second point is how elections are to be conducted, and what is to be represented in the Legislatures. With that I have dealt in a previous chapter, and so pass on to the third and fourth points which should be considered together—the relation of the Provincial Legislatures to the Delhi Legislature, and the powers they are to exercise: in other words, what type of unity should the Indian Government show?

Again one very properly thinks first of all of traditional conditions, and here India presents the curious spectacle of an extreme development of local autonomy in villages and an equally strong central authority for financial purposes in particular. In later days the bureaucracy has developed masterful centralising tendencies which one hears adversely criticised in every Province. This cannot be avoided whilst the strongest members of the Civil Service gravitate to Delhi, and the India Office and Secretary of State invariably support the Viceroy and his Executive—always known and thought of as “the Government of India”—in any disputes with Local Governments as to policy. The Report of the Decentralisation Commission abounds in evidence of this tendency,<sup>1</sup> and so does the history of Indian administra-

<sup>1</sup> See, for instance, the memorandum complaining of Imperial inter-

tion. Able men do not make good constitutional monarchs, and a representative system in India cannot be based on an efficient bureaucracy.

These currents flowing towards Delhi will be checked, however, by representative government, and others will begin to flow. There is, for instance, a very marked Madras, Bombay, Bengal patriotism which, founding itself upon history, shows itself in literature, speech, institutions, and administration. Even the Imperial Civil Service is divided into somewhat secure watertight Provincial compartments, and representative government will undoubtedly demand a firm Provincial foundation. This will be strengthened if more heads of Provinces are sent out from home.<sup>1</sup>

Still, no consideration can obscure the fundamental fact that British administration has made India, and not the Provinces, its centre, that the Indian political mind has grown into the same way of thinking, and that therefore the powers of Provincial Legislatures will have to be delegated from the Imperial authority. That must be the principle. It is indeed the existing Constitution, the position of Provincial Governments being that, with the concurrence of the Imperial Government, they exercise power to do anything not specifically withheld from them.<sup>2</sup> How much and what

ference addressed to the Decentralisation Commission by the Bombay Government (*Report*, vol. viii., Cd. 4367 (1908), Appendix ii., pp. 229, etc.). The Decentralisation Commission has detailed the means by which the Central Government has acquired authority over the Provincial Governments as follows: Financial rules, restrictions and conditions, the growth of powers to check administration either by specifically granted legal powers or by administrative encroachments, the power to sanction Provincial legislation, the passing of resolutions directing Provincial Governments, specific instructions, the right to listen to appeal by persons against the acts of Provincial Governments.

<sup>1</sup> For instance, in 1877 Lord Lytton found great difficulty in persuading the Duke of Buckingham, then Governor of Madras, to adopt a famine policy, as he was unable "to force upon the Madras Government advice which it will neither invite nor accept."

<sup>2</sup> Madras, Bombay, and Bengal, being Presidency Governments, have inherited some authority from the old Company administration, and have slightly more power than the other Provincial Governments.

is to be delegated is a question for consideration, and raises nothing but matters of judgment and expediency, and the same is true of the amount of " concurrence " that should be required. Local Government and municipal affairs, education, a limited amount of financial independence must assuredly be amongst the transferred powers. But the complicated and somewhat pettifogging network of entanglements and checks proposed by the Montagu-Chelmsford Report ought not to be considered. Far better is it that the powers delegated should, to begin with, be strictly limited in extent than that they should be wide and hampered in their exercise, because by the one plan they can be extended as a natural process upon experience ; by the other, the Imperial authorities are being endowed with new powers of control and continued in old ones which, if effective, will be justified and therefore continued, but if not effective will be irksome and lead to trouble and division between the foreign and the Indian administrations.

British policy in India has acquired the reputation of withholding with one hand what it gives with the other. One hears in India a universal complaint that we deny to the heart what we offer to the ear. Our fault has been to give with reserve. It is a bad policy. We must give what we do give without reserve. If we cannot give much, nevertheless let us give it and let further gifts be dependent upon the way in which previous ones are used. This is true particularly as regards finance. The Imperial Legislature must protect itself by securing first claims upon such income as the Land Tax, Customs duties, and so on ; it must also retain powers to co-ordinate Provincial finance in such a way that poor Provinces may not be hampered by their poverty. But, these safeguards laid down, the responsibility of providing a Provincial Budget can be safely left, and ought properly to be left, to the Provincial Legislatures, though I think a very useful end would be served if all the Provincial Budgets were made the subject of discussion at an all-India financial

conference held each year before the Budgets are presented to the Legislatures for consideration. These matters, however, relate to the art of government rather than to the system.

Here the question of checks has to be considered. The Montagu-Chelmsford Report finds these in Viceroys, Governors, and Executives. In no more inappropriate direction can checks be looked for. Of course veto and suspension must be powers held in reserve by Viceroys and Governors, but these cannot be the habitually used parts of the mechanism of government. The check must be within the representative system itself, and in India there should be no difficulty in devising this. The Provincial Legislatures are in direct touch with electing bodies which are to be the best representatives of Indian thought and need that can be devised. But what of the Imperial Legislature? No direct election is possible for it. I believe that the bulk of its members should be elected by the Provincial Legislatures as the American Senate used to be elected, with, at first, a limited number of members nominated to represent interests that are common to India. If the expert bureaucrat can point out the comparative inferiority of such a body, the reply is both easy and conclusive. We are now definitely encouraging the development of self-government and we must make a beginning, and in doing so we recognise quite frankly to ourselves that we cannot make a silk purse out of a sow's ear. This body, in addition to its Imperial work, should have the power of suspending Provincial legislation referred to it by the Governor or Viceroy in Council. Nothing of any grievous importance could get over such a check, provided we can convince these Councils of their responsibility. There might be a special Committee of the Imperial Legislature to consider Provincial Legislature, or other means might be devised to make the responsibility real. But again that belongs to the art of government, and I am most concerned here with its principles.