

CHAPTER IV.

The Minto-Morley Reforms.

20. The Indian Councils Act, 1909 further enlarged the Legislative Councils, and introduced, for the first time, the elective principle. Before considering the provisions of this Act—the reforms introduced thereby are commonly referred to as the Minto-Morley reforms—it would be useful to summarise the constitutional position as existing till then.

The constitutional position at the time of the passing of the Indian Councils Act, 1909.

The Supreme authority over the affairs of India was the Crown, *i.e.*, the King in Parliament, represented by the Secretary of State. He exercised all the powers which formerly the Board of Control and the Court of Directors exercised, *i.e.*, to superintend direct and control all the acts, operations and concerns relating to the Civil or Military Government or the Revenues of the Indian Possession. He was assisted by a Council of not less than 10 and not more than 14 members, but the body was merely advisory, and the Secretary of State could override his Council except in certain cases. Subject to this control of the Secretary of State in Council, the Supreme authority in India was the Governor-General in Council. The ordinary members of the Executive Council were 6. The Governor-General had authority to overrule the opinion of the majority of his Council, in special cases. The Legislative Council of the Governor-General consisted of the ordinary members of his Executive Council, the Commander-in-Chief and certain additional members, not less than 10 and not more than 16, and similarly the Legislative Councils of the Presidencies also consisted of the ordinary members of the Executive Council and certain additional members. The powers of these Legislative Councils were very much limited. In addition to their 'assistance' in making laws and regulations, they had only the power of discussing the budget and to interpellate.

It will be seen from the above discussion that the Supreme authority over the affairs of India was the Secretary of State. According to usage the Secretary of State is the person responsible to Parliament for the administration of India. But the Secretary of State is a member of the cabinet, and where there is a conflict between Imperial interests and the interests of India, the Secretary of State as a member of the cabinet must bow to the wishes of the cabinet. The position of the government in India in relation to the Home Government, *i.e.*, the British Cabinet, is well put by the Duke of Argyle, the Secretary of State for India in 1870: "The Government of India were merely the executive officers of the Home Government who hold the ultimate power of requiring the Governor-General to introduce (any bill) and of requiring also all the official members of the Council to vote for it."

Or, to use the words of the *Imperial Gazetteer*, "The Secretary of State has the power of giving orders to every officer in India including the Governor-General."

"The Governor-General and his Council are appointed from Home. The utmost effect of the subordination of the Governor-General to the Secretary of State could only be that, if he felt disposed to differ from the Policy of the Secretary of State, he must yield up his private opinion or resign. If he yields, he becomes in effect a mere creature of the 'Home' Government. If he resigns, there is no constitutional means, in India, by which he can vindicate his position or have carried out the Policy which he deems necessary for the welfare of India. The Governor-General may resign but the Government of India consisting of his Councillors and successors are bound to carry out the order of the Home Government. The legal and political responsibility of the Government of India is only towards the Home Government, and there is no constitutional arrangement by which they could be made responsible to the people of India."—(A. Rangaswamy Iyengar in his "Indian Constitution.")

Of course, it is not to be expected that where no Imperial interests are concerned the Secretary of State would interfere with the Policy of the Governor-General in Council. In the ordinary course of business, when the Secretary of State is not disposed to interfere, the powers of the Governor-General in Council are practically unlimited. But the crucial test comes in when Imperial interests are involved, and instances have not been wanting when even powerful Governors-General had to yield to the Secretary of State's view and sometimes even resign.

Let us see in the succeeding chapters if these powers of the Secretary of State have been curtailed by subsequent legislation.

21. Before proceeding to discuss the circumstances under which the Minto-Morley reforms were inaugurated, it may be useful to pause for a moment to review the then political situation. We have already seen that till 1892, Indians, then styled 'Natives', had no active part either in the province of administration or in the province of legislation. Under the Act of 1793, the principal civil offices in India, under the rank of Member of Council, were reserved for the members of the Covenanted Civil Service (so-called because of the covenants into which they entered, at the time of appointment, undertaking not to engage in trade nor to receive presents), and appointment to this service was made by the Court of Directors.

The Act of 1793 was not applied to the non-regulation provinces, i.e., provinces other than Madras, Bombay, Bengal and the North Western

The political situation at the time of the passing of the Indian Councils Act, 1909.

Province (present U. P.) ; and even in the regulation provinces (*i. e.*, the 4 provinces abovementioned), public exigencies occasionally required outside appointments to be made. The Indian Civil Service Act of 1861 repeated the provisions contained in the Act of 1793, legalised these irregular appointments, and scheduled the posts which were, in the future, to be reserved to covenanted Civilians.

In spite of the provision in the Charter Act of 1833 that "no natives of the territories, nor any natural-born subject of His Majesty resident therein shall, by reason only of his religion, place of birth, descent, or colour or any of them, be disabled from holding any place, office or employment under the Company," the important posts continued to be the preserves of the European members of the Civil Service who were recruited in England.

The Covenanted Civil Service.

Those nominated to be Indian Civil Servants were trained in a special school at Haileybury, which was established in 1813. Patronage played a large part in appointments and entry to the school. The Act of 1833 prescribed that, in future, four candidates were to be nominated for each vacancy, and the nominees were then to compete in "an examination in such branches of knowledge and by such examiners as the Board (of control) of the Company shall direct." In July 1854 a committee under the chairmanship of Lord Macaulay was appointed to report upon the recruitment of the Indian Civil Service, and as a result of the report of this committee, the scheme of open competition was put into practice for the selection of the Indian Civil Servants. The competition was open to all the natural-born subjects of His Majesty. The system was continued after the transfer of India to the Crown by the Act of 1858. Regulations for the purpose were made by the Secretary of State in Council with the advice of the Civil Service Commission which was established in England by Order in Council of 21st May, 1855. At the same time the Act reserved power for making appointment of outsiders, under exceptional circumstances. The appointment was only provisional, and had to be approved by the Secretary of State with the concurrence of a majority of his council, within 12 months. Otherwise it became void.

In 1870, Power was conferred for the employment of "natives of India, of proved merit and ability" in the Civil Service, otherwise than by direct recruitment from England. Little was done under this provision till 1880 when rules or regulations were framed.

These rules or regulations established what was called the 'Statutory Civil Service.' The principal features of the scheme were, nomination by the Local Governments, subject to the approval of the Government of India and the Secretary of State, employment of the selected officer

within his own province, and the ultimate transfer of 1/6 of the total number of Indian Civil Service appointments to the Statutory Civilians.

The rules did not work satisfactorily, and a Commission was appointed in 1886 under the presidency of Sir Charles Aitchison to devise a scheme for the employment of Indians in the Public Services.

In pursuance of the recommendations made by that Commission a Provincial Civil Service was formed, and the higher appointments in what was till then called the Uncovenanted Civil Service, together with a certain number of appointments till then held by the Covenanted Civil Service, were amalgamated and put under the cadre of the Provincial Civil Service. The result is that, in many departments, the All-India Service and the Provincial Service dovetail into each other. In Bombay and Madras, for example, the charges of a Sub-Division of a district are interchanged between 'Deputy Collectors' of the Provincial Service and 'Assistant Collectors' of the 'I. C. S.' The lower appointments in the Uncovenanted Civil Service were classed as appointments in the 'Subordinate Service.'

22. But these arrangements did not satisfy the people of India. They were agitating for increased representation, and for a larger part in shaping the policy of the Government. In October 1905 the Province of Bengal had been divided. Eastern Bengal and Assam were constituted into a province. The people of Bengal felt very sorely aggrieved by this partition, and they were raising a hue and cry over it. About this time a wave of Swadeshism spread throughout the country and there was discontent and dissatisfaction everywhere.

23. Lord Minto in a minute in August 1906 reviewing the political situation in India stated, "We the Government of India, could not shut our eyes to present conditions. The political atmosphere is full of change, questions are before us which we cannot afford to ignore, and which we must attempt to answer, and, to me, it would appear all important that the initiative should emanate from us, that the Government of India should not be put in the position of appearing to have its hands forced by agitation in this country, or pressure from Home." He made similar remarks in a speech in the Imperial Legislative Council on 27th March, 1907. On 24th August, 1907, with the approval of the Secretary of State, the Government of India issued a circular to all Local Governments and administrations, inviting opinion on certain proposals put forward.

In the words of the circular, "Nor does the scheme now put forward contemplate any surrender or weakening of paramount British Power in India upon which depend the safety and welfare of the vast

populations there, committed to it." The object of the proposals is mentioned in the circular as follows :—" Subject to this essential condition that the executive authority of the Government is maintained in undiminished strength, the Government of India believe that the proposals outlined below, represent a considerable advance in the direction of bringing all classes of the people into closer relations with the Government and its officers, and of increasing their opportunities or making known their feelings and wishes, in respect of administrative and legislative questions. The classes which will be enabled, under the present scheme, to take a more effective part in shaping the action of Government may reasonably look forward, as the necessary outcome of the measures now in contemplation, to a large share in the actual work of administration, and more extensive employment in the higher offices of the State." It will thus be seen that the object of the Minto-Morley reforms was not the inauguration of any representative system of Government, but only an experiment to find out "to what extent the people of India as a whole are, as yet, capable of serving in all branches of administration." Lord Morley was quite frank on this question. In his speech in the House of Lords he said, "If I were attempting to set up a Parliamentary system in India, or if it could be said that this chapter of reforms led directly or necessarily up to the establishment of a Parliamentary system in India, I, for one, would have nothing at all to do with it."

In 1907, Lord Morley appointed two Indians as Members of the Council of India, and after the passing of the Indian Councils Act, 1909, an Indian was appointed to the Governor-General's Executive Council, and one Indian to each of the Councils of the other provinces.

We shall now proceed to discuss the actual changes effected by the Minto-Morley reforms.

The Minto-Morley Reforms.

The Minto-Morley Reforms summarised.

24. The changes effected by the Indian Councils Act of 1909 are as follows :—

Executive administration :—(a) Power was given to raise the number of members of the Executive Councils for Madras and Bombay to a maximum of 4, of whom two at least must have been in the service of the Crown in India for at least 12 years.

(b) Power was conferred to constitute Executive Councils in the provinces under the control of a Lieutenant-Governor.

Legislatures :—(1) Numbers : The constitution of the Council was changed in respect of numbers. The number of members in the Governor-

General's Council was raised to a maximum of 60 members, in the major provinces to 50, and in the minor provinces to 30.

(2) *Proportion as to official and non-official element* :—Under the law prior to 1909, at least one-half of the additional members of the Legislative Councils of the Governor-General and of the Governors of Madras and Bombay, and at least $\frac{1}{3}$ of the members in respect of other provinces, must be non-official. Under the Act of 1909 there must be an official majority in the Governor-General's Legislative Council, and a non-official majority in all other Legislative Councils. The exact proportion was fixed by regulations. In the Governor-General's Council the proportion of nominated to elected members was 33 : 27. In Madras and Bombay 23 : 27. In Bengal 22 : 28. In other provinces the proportion varied.

(3) *Method of appointment* :—The members consisted of not only nominated members, but also members elected in accordance with the regulations made under the Act.

“The elaborate rules scheduled to the regulations show the number and diversity of the electorates, and the variety of methods adopted for constituting the electorates, and for regulating the procedure in elections. The object arrived at was, to obtain, as far as possible, a fair representation of the different classes and interests in the country.” The rules framed were so varied that it is not possible to generalise their provisions. But one thing may be said. Except in respect of certain seats, the election was indirect, *i.e.*, representation was by classes and interests, or election by elected delegates.

Let us now proceed to see what changes were effected in the functions of the Legislative Councils. Under the law existing till 1909 the Legislative Council had the power of discussing the budget and to interpellate, subject to the conditions and restrictions that may be prescribed in the Rules framed under the Act of 1892. But no member was allowed to propose a resolution or divide the Council. Under the Act of 1909 two important changes were introduced :—

(1) The restriction on the right to propose resolutions or to divide the Council on the budget was removed.

(2) Members were given the right to discuss on matters of general public importance, and to propose resolutions and divide the Council on them also. Under the rules framed, the right of discussion on the budget was enlarged. Originally only one or two days annually were allotted in every Council to the discussion of a budget already settled by the executive Government. But under the rules made under the Act of 1909, the discussion of the budget was to extend over several days, it was

to take place before the Budget is finally settled, and members have the right to propose resolutions and to divide the Council upon them. Certain heads of revenue and expenditure were, under the rules, expressly stated to be not open to discussion.

The resolutions are to take the form of recommendations to the Government, and the Government is not bound to act upon them.

With regard to the right to interpellate, the Act did not make any change but, under the rules framed thereunder, a member was allowed to put a supplementary question "for the purpose of further elucidating any matter of fact regarding which a request for information has been made in his original question."

The changes effected by the reforms of 1909 may be summarised thus, in the words of the resolution on reforms, of the then Governor-General in Council :--

"The constitutional changes that have been effected are of no small magnitude. The Councils have been greatly enlarged. The maximum strength of all Councils (Central and Provincial) was 126. It is now 370. All classes and interests of major importance will, in future, have their own representatives. In the place of 39 elected members there will now be 135, and while the electorates of the old Councils had only the right to recommend the candidate of their choice for appointment by the Head of the Government, an elected member of the new Councils will sit as of right and will need no official confirmation. Under the regulations of 1892, officials were everywhere in a majority. The regulations just issued establish a non-official majority in every Provincial Council. Nor has the reform been confined to the constitution of the Councils; their functions also have been greatly enlarged. A member can now demand that the formal answer to a question shall be supplemented by further information. Discussion will no longer be confined to legislative business and a discursive and ineffectual debate on the budget, but will be allowed in respect of all matters of general public interest. Members will, in future, take a real and active part in shaping the financial proposals for the year, and as regards not only financial matters but all questions of administration, they will have liberal opportunities of criticism and discussion, and of initiating advice and suggestions in the form of definite resolutions."
