

## PART II.

### THE EXISTING CONSTITUTIONAL STRUCTURE.

#### CHAPTER VII.

##### The Home Government.

30. India is governed by and in the name of His Majesty the King-Emperor of India. There are certain powers specifically reserved to the Crown under the various sections of the Government of India Act. They may be summarised as follows:—

**Powers reserved to the Crown.**

- (1) His Majesty may remove from office any member of the Secretary of State's Council on an address of both Houses of Parliament.
- (2) His Majesty appoints,
  - (a) An auditor for auditing the accounts of the Secretary of State in Council.
  - (b) The High Commissioner for India.
  - (c) The Governor-General, the Governors and the Members of their Executive Councils.
  - (d) Permanent Judges of High Courts.
  - (e) Advocates-General.
- (3) His Majesty-in-Council exercises certain powers with regard to the establishment of the Secretary of State in Council, and in regard to the salary and pensions and gratuities of the staff thereof.
- (4) His Majesty must approve of the constitution of a new Province under a Lieutenant-Governor, and of the appointment of a Lieutenant-Governor, or of the creation of a Legislative Council for a Lieutenant-Governor's Province.
- (5) His Majesty must assent to laws passed on the certificate of the Governor-General and the Governors.
- (6) His Majesty may disallow any Act passed by any legislature.
- (7) Additional High Courts can be established only by Letters Patent issued by the Crown, and the Crown may disallow any order of the Governor-General in Council altering the limits of the jurisdiction of High Courts.
- (8) His Majesty has certain powers with regard to the Ecclesiastical establishment.
- (9) His Majesty may annul rules framed under the Act.

The powers vested in the Crown are, in practice, exercised upon the advice of the Constitutional Minister in England, **The Secretary of State.** viz., the Secretary of State. We may, therefore, say that at the head of the administration in England is the Secretary of State for India. He exercises all the powers which, prior to the transfer to the Crown, were exercised by

- (1) The East India Company,
- (2) The Court of Directors,
- (3) The Court of Proprietors, and
- (4) The Board of Control.

Subject to the provisions of the Government of India Act and the rules made thereunder, he may superintend, direct and control all acts, operations and concerns, which relate to the Government or the revenues of India, and all other payments and charges out of or on the revenues of India.

The Secretary of State, as a member of the Cabinet, is the immediate agent of Parliament for the discharge of its responsibilities in Indian affairs.

31. We have seen that some subjects have been transferred to the provincial Ministers. The Central Government in India has no power to interfere with the administration of these transferred subjects, except in certain cases.\* Outside the field of administration so transferred, the responsibility of Parliament for the good Government of India remains unimpaired. The chain of responsibility in the reserved sphere is as follows:—

- (1) Secretary of State with his constitutional responsibility to Parliament.
- (2) Governor-General.
- (3) Governor.

With regard to the transferred subjects, the Secretary of State's power of supervision, direction and control can be exercised in the following cases only:—(Rule made under S. 19-A of the Government of India Act),

- (1) to safeguard the administration of central subjects,
- (2) to decide questions arising between two Provinces, where the Provinces concerned fail to arrive at an agreement,
- (3) to safeguard Imperial interests,
- (4) to determine the position of the Government of India in respect of questions arising between India and the other parts of the Empire,

\* *Vide* Chapter IX, *infra*.

(5) to safeguard the due exercise and performance of powers and duties possessed by or imposed upon the Secretary of State, or the Secretary of State in Council, under or in connection with or for the purpose of Sections 29-A, 30 (1-a) or Part VII-A of the Government of India Act, or rules made by or with the sanction of the Secretary of State in Council.

32. Soon after the introduction of reforms, the question arose whether the administration of transferred subjects could properly be raised in Parliament. The Under-Secretary of State for India explained the position thus:—

“It must be perfectly clear that Government in India under the new system would be absolutely impossible if Parliament, by virtue of its ultimate responsibility for the welfare of India, were to interfere in the Administration of subjects which it has transferred to Local Governments as represented by the Governor and his Ministers, and if it were to seek to make Indian Ministers responsible to itself, in detail, as well as to the Governors and their own Councils.

“The Secretary of State in Council, on the advice of one of Lord Southborough's Committees, and of the Joint Select Committee, limited, by statutory rules, the exercise of his powers of superintendence, direction and control, in relation to transferred subjects, to cases where central subjects or Imperial interests are affected. . . It is in that spirit that we appeal to Parliament to exercise an equal self-restraint in the use of its rights of interrogation and criticism. Parliament has undoubtedly the ultimate responsibility, but it must exercise some self-restraint in the exercise of that responsibility. The thorough investigation of the working of the new Act by periodical Statutory Commission has been provided in the Act itself, but Parliament must be content to limit its legal right of pulling up the young plants to see how they are growing.”

From this statement it is clear that even in the transferred departments, the ultimate responsibility of Parliament, for the welfare of India, is undoubted and constitutionally unrestricted.

33. The Secretary of State is assisted by a Council called the Council of India consisting of not less than 8 and not more than 12 members, at least half of whom must have served or lived in India for at least 10 years. The period of office was fixed at 5 years. But the members may be re-appointed by the Secretary of State. The right of appointment vests in the Secretary of State.

The Council of India came into existence by virtue of the legislation of 1858. The practical *raison d'être* of the Council of India is that its members provide the Secretary of State, who represents the case of

**The Council of India (Secretary of State's Council).**

India in Parliament and who is usually without personal knowledge of India, with experience and advice upon Indian questions.

34. The duty of the Council of India is to conduct, under the direction of the Secretary of State, the business transacted in the United Kingdom in relation to the Government of India and the correspondence with India. The Secretary of State is to be the President of the Council and has power to appoint a Vice-President. Except in the following cases where the Act requires the concurrence of a majority of votes of the Council of India, the Secretary of State has the right to overrule the opinion of his Council. The following are the excepted cases :—

- (1) Grant or appropriation of revenues or property. S. 23.
- (2) Selling, mortgaging or buying property. S. 28.
- (3) Entering into contracts. S. 29.
- (4) Order affecting the salaries of members of the Governor-General's Executive Council. S. 85.
- (5) Framing rules regarding leave of persons in the service of the Crown in India. S. 94.
- (6) Framing rules as to Indian military appointments. S. 95.
- (7) Framing rules as to Civil Service, Public Services Commission and Auditor-General. S. 96 (e).
- (8) Framing rules as to appointment of Indians to reserved posts. S. 99.

35. The Secretary of State may constitute Committees of the Council, for the more convenient transaction of business, and distribute to the Committees particular departments. The acts of such Committees are to be deemed to be acts of the Secretary of State in Council.

36. All revenues of India are received for and in the name of His Majesty and shall be applied for the purposes of the Government of India. All property acquired vests in His Majesty for the purposes of the Government of India.

37. The expenditure of these revenues is subject to the control of the Secretary of State in Council. The concurrence of a majority of the votes of the Council of India is necessary for the grant or appropriation of any such revenues or any property.

This rule which is enunciated in S. 26 of the Government of India Act does not stand in the way of expenditure by the Governments in India for the purpose of day-to-day administration. To a very

great extent, the power to dispense with Council sanction in such matters passed to them long ago, either by specific sanction, or by inevitable usage and sufferance. The rules delegating financial powers have, in consequence, never been lists of matters for which sanction is not required, but they prescribe the exceptional matters in regard to which sanction is necessary.

The Council never had the right of initiating action or expenditure. It could only consider proposals put before it by the Secretary of State.

38. The rules framed under S. 19-A of the Act have introduced certain limitations in the control of the Secretary of State's Council with regard to Indian finance.

**Control of Indian  
finance by the  
Council of India.**

(1) The whole of the expenditure on the transferred side in the Provinces has been withdrawn from the control of the India Council.

(2) With regard to expenditure on reserved subjects in Provinces, and with regard to expenditure by the Central Government,

(a) The control of the Council over non-votable expenditure is unrestricted, constitutionally, though, in practice, the power has been delegated to authorities.

(b) The control over votable expenditure does not authorise expenditure. It means no more than an authority to the Government to seek the approval of its legislature with which, subject to certification, the last word rests.

(3) A fiscal convention has been adopted under which it is now the settled policy that the Secretary of State does not interfere with the enactment of any tariff measure upon which the Government of India and the Indian legislature are agreed. But, as a member of His Majesty's Government, he cannot divest himself of responsibility for ensuring that no such measure cuts across general Empire policy, or is so unfair to any constituent part of the Empire as to bring India into conflict with it. This responsibility, he can, in the last resort, fulfil by exercising the right of advising the Crown to disallow the measure.

**The fiscal con-  
vention.**

(4) An understanding analogous to the fiscal convention has been arrived at in the matter of the purchase of Government stores for India, other than military stores. The Government in India, in agreement with the legislatures, are free to buy stores in India, in England or abroad as seems best to them, and the Secretary of State, though he is responsible to Parliament, has undertaken not to intervene.

**Purchase of  
Government  
Stores.**

39. Without the consent of both Houses of Parliament, the expenses of any military operation carried on beyond the external frontiers of India, except for preventing or repelling actual invasion, or under other sudden and urgent necessity, are not to be charged upon the revenues of India.

40. The revenues of India which are remitted to, and all moneys of India and stock accruing and arising in, the United Kingdom are deposited in the Bank of England to the credit of the Secretary of State for India in Council.

The accounts of the Indian revenues and expenditure in England are laid before Parliament annually, and are audited by an auditor appointed under the Royal Sign Manual, and countersigned by the Chancellor of the Exchequer.

In respect of legal proceedings and contracts, the Secretary of State in Council was constituted into a body corporate.

41. At present the Council of India consists of 10 members.

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## CHAPTER VIII.

### The Central Government in India.

42. Subject to the provisions of the Government of India Act, 1919 and the rules made thereunder, the superintendence, direction and control of the Civil and Military Government of India is vested in the Governor-General in Council who is required to pay due obedience to all such orders as he may receive from the Secretary of State.

43. The Governor-General's Executive Council is to consist of such number of members as His Majesty thinks fit. They are appointed by Warrant under the Royal Sign Manual; and three at least should have been in the service of the Crown in India for 10 years, and one must be a Barrister or Vakil. The Commander-in-Chief is also made a permanent member. The Governor-General may appoint a Vice-President. The quorum for a meeting of the Governor-General's Council is the President and one member other than the Commander-in-Chief. The term of the members of the Executive Council is not fixed by statute. It is, by custom, a period of 5 years. Under ordinary circumstances the Governor-General is bound by the opinion of a majority of his Council, but in special cases, where, in his opinion, the safety, tranquility and interests of British India are affected, he can overrule the opinion of the majority. During his absence from his Executive Council, the