

these areas need not be submitted to the vote of the Assembly or the Provincial legislature, and no questions may be asked about the tracts, and no subject relating to it may be discussed in the Legislative Assembly, or except with the Governor's assent, in the Provincial legislature.

66. Certain tracts were classified as partially excluded areas. In respect of these, the reserved half of the Provincial Government is given full discretion in applying or refusing to apply new Provincial enactments, with or without exceptions and modifications.

The different tracts falling within the category of modified exclusion are not, however, all treated in quite the same way. In some areas the legislatures of the Province have no powers at all. In some others, the legislature votes the necessary expenditure for them, questions may be asked about them and subjects relating to them may be discussed. In some areas Ministers exercise authority over the transferred subjects. In others, all provincial subjects are reserved subjects.

All backward tracts which are not wholly excluded (with 2 exceptions) are represented in the legislatures of their Provinces.

---

## CHAPTER XII.

### The Central Legislature.

67. The Central legislature consists of the Governor-General and two Chambers, *viz.*, the Council of State and the Legislative Assembly. A Bill to become law must have been passed by both these Chambers.

The Council of State is to consist of *not more than* 60 persons nominated or elected according to rules. The rules provide that 33 are to be elected and 27 nominated, including not more than 20 officials. The Governor-General shall appoint a President. The term of office for a member of the Council of State is 5 years.

The Legislative Assembly is to consist, under the Act, of *not less than* 140 persons, of whom 100 should be elected and 26 shall be official members. The number may be increased by rules made under the Act but at least  $\frac{5}{7}$  of the members shall be elected, and at least  $\frac{1}{3}$  of the rest should be non-officials. The term of office for a member of the Legislative Assembly is 3 years.

The Legislative Assembly as constituted under the rules, comprises 145 members, of whom 104 are elected, and 41 nominated, including 26 officials.

The first President of the Assembly was to be appointed by the Governor-General for a period of 4 years and thereafter the President was to be elected by the Assembly.

A Deputy President was also to be elected by the Assembly.

The elected President and Deputy President cease to hold office, if they cease to be members of the Assembly. Both appointed Presidents and elected Presidents may resign their office by writing under their hands, addressed to the Governor-General. Appointed Presidents may be removed by the Governor-General. Elected Presidents and Deputy Presidents may be removed by a vote of the legislature with the concurrence of the Governor-General. The Act in conferring power on the Governor-General, and as this rule applies *mutatis mutandis* to legislatures in Governor's Provinces, the Governors, to keep in office a President although a vote of no confidence has been passed by the legislature concerned, makes a departure from precedent in England and other countries. In England the Speaker holds office during the Session of Parliament, and enjoys a security of tenure as unshakable as that of His Majesty's Judges. He is elected by the Commons and the election has to be approved by the Crown. In the Dominions where the office is elective, the Speaker can be removed by a vote of the House. In other countries the President's tenure is subject to the condition that he enjoys the confidence of the House.

68. *The qualifications of the electors for the Council of State:—*

**The franchise.**

The franchise is extremely restricted. A voter must possess one or other of the following qualifications:—

- (a) Specified property qualification which has been pitched so high as to secure the representation of only wealthy
  - landowners and merchants.
- (b) Previous experience in a Central or Provincial legislature.
- (c) Service as Chairman of a Municipal Council.
- (d) Membership of a University seat, and similar tests of personal standing and experience.

*Distribution of seats:—*Electorates are, for the most part, grouped in communal constituencies. Thus, for Madras one member is elected by the Muhammadans, and 4 members by the Non-Muhammadans, by the single transferable vote. Bombay, Bengal and United Provinces elect 3 Non-Muhammadans and 2 Muhammadans. The appended list shows the composition of the Council of State.

**Distribution of seats.**

## COMPOSITION OF THE COUNCIL OF STATE.

Province.	Nominated.		Elected.					Total.
	Officials.	Non-Officials.	Non-Muham- madan	Muham- madan	Sikhs.	European commerce.	Non- Communal.	
Govt. of India ...	11 includ- ing Presi- dent.							11
Madras ...	1	1	4	1	...	...	...	7
Bombay ...	1	1	3	2	...	1	...	8
Bengal ...	1	1	3	2	...	1	...	8
U. P. ...	1	1	3	2	...	...	...	7
Punjab ...	1	3	1	2	1	...	...	8
Bihar & Orissa ...	1	...	2	1	...	...	...	4
C. P. & Berar ...	...	2	...	...	...	...	1	3
Assam ...	...	...	...	1	...	...	...	1
N. W. F. P. ...	...	1	...	...	...	...	...	1
Burma ...	...	...	...	...	...	1	1	2
<b>Total</b> ...	<b>17</b>	<b>10</b>	<b>16</b>	<b>11</b>	<b>1</b>	<b>3</b>	<b>2</b>	<b>60</b>

69. *The Franchise for the Legislative Assembly, and distribution among Provinces* :—The distribution of elected seats among the Provinces is not based on the proportion of the population but on considerations of importance of each Province. The franchise has been arranged on the same lines as the Provincial Councils, but with somewhat higher electoral qualifications.

There are general constituencies divided into Non-Muhammadan and Muhammadan, European Constituencies and Special Constituencies for Landowners and Indian Commerce.

**Distribution of seats.** The following table shows the distribution of seats among the various Provinces and communities and classes :—

## LEGISLATIVE ASSEMBLY.

Province.	Nominated		Elected.						Total.
	Officials.	Non-Officials.	Non-Muham- madan.	Muham- madan.	Sikhs.	Euro- peans.	Land- holders.	Indian commerce.	
Govt. of India ...	14	5	...	...	...	...	...	...	19
Madras ...	2	...	10	3	...	1	1	1	18
Bombay ...	2	1	7	4	...	2	1	2	19
Bengal ...	2	2	6	6	...	3	1	1	21
U. P. ...	1	2	8	6	...	1	1	...	19
Punjab ...	1	2	3	6	2	...	1	...	15
Baluchistan ...	1	1	8	3	...	...	1	...	14
C. P. & Berar ...	1	1	3	1	...	...	1	...	7
Assam ...	1	...	2	1	...	1	...	...	5
Burma ...	1	...	3	...	...	1	...	...	5
Delhi ...	...	...	1	...	...	...	...	...	1
Ajmere-Merwara ...	...	...	1	...	...	...	...	...	1
North West Frontier Province .	...	1	...	...	...	...	...	...	1
<b>Total</b> ...	26	15	52	30	2	9	7	4	145

No woman is entitled to sit in the Council of State or to vote for election to it. It is open to the Council of State to remove either or both of these barriers, but it has shown no inclination to do so.

Women are eligible to stand as candidates for Assembly constituencies in any Province where they might be elected to the Provincial Legislature, *i.e.*, in 7 Provinces only out of nine (Bengal and Assam are the exceptions).

*Qualifications of voters for the Legislative Assembly:*—The normal qualification for the vote is residence within the constituency, coupled with the payment of a prescribed amount in land revenue, rent, or local rates in rural areas, and municipal rates in urban areas, or payment of income-tax.

**Franchise.**

70. (a) The Governor-General has to fix the time and place for holding the sessions of the Chambers. He may dissolve either Chamber, sooner than the prescribed period, or in special circumstances, extend

their term. All members are bound to take oath or affirm allegiance to the Crown.

(b) The Governor-General has got the right to address the Central legislature.

All questions should be determined by a majority of the votes of the members present. The presiding member has no vote except a casting vote, in case of an equality of votes.

Every member of the Governor-General's Executive Council shall be nominated as a member of one Chamber, and shall have the right of attending in and addressing the other Chamber, but shall not be a member of both Chambers.

71. *The powers of the Indian legislature*:—The Indian legislature has powers which can be classified under

- |   |                       |
|---|-----------------------|
| Powers of the<br>Indian Legisla-<br>ture. | (a) Deliberative,     |
|   | (b) Interrogatory and |
|   | (c) Legislative.      |

The rules framed under the Act lay down certain restrictions. With regard to the deliberative and interrogatory powers, the following are the most important restrictions :—

No resolution shall be moved in the Indian legislature, nor questions be asked, in regard to any of the following subjects :—

(i) Any matter affecting the relations of His Majesty's Government, or of the Governor-General in Council with any Foreign State.

(ii) Any matter affecting the relations of any of the foregoing authorities with any Prince or Chief under the Suzerainty of His Majesty, or relating to the affairs of any such Prince or Chief, or to the administration of the territory of any such Prince or Chief.

(iii) Any matter which is under adjudication by a Court of Law having jurisdiction in any part of His Majesty's dominions.

(a) If any doubt arises whether any question is or is not within the restrictions imposed above, the Governor-General shall decide the point, and his decision is final.

(b) The President may disallow a question or part of a question on the ground that it relates to a matter which is not primarily the concern of the Governor-General in Council.

(c) The Governor-General may disallow any resolution or part of a resolution on the ground that it cannot be moved without detriment to the public interest, or on the ground that it relates to matter which is not primarily the concern of the Governor-General in Council.

**Legislative Powers.** *Legislative Powers*:—The Indian legislature has power to make laws for all persons, for all Courts, and for all places and things within British India, for all subjects of His Majesty and servants of the Crown within other parts of India, and for all native Indian subjects, without, beyond, as well as within British India, for the Government officers, soldiers, airmen, and followers in His Majesty's Indian Forces, wherever they are serving, in so far as they are not subject to the Army Act or the Air Force Act, and for all persons employed, or serving in, or belonging to the Royal Indian Marine Service.

It can repeal and alter laws subject to certain exceptions (*Vide S. 65*).

In respect of certain pieces of legislation the previous sanction of the Governor-General is necessary (*Vide S. 67*).

72. The Governor-General's assent, after a bill has been passed by both the Chambers, is necessary before the bill becomes Law. The Governor-General may assent, or withhold assent or reserve the bill for the signification of His Majesty's pleasure thereon, or return the bill for re-consideration by either Chamber. Power is reserved to the Crown to disallow Acts assented to by the Governor-General.

73. If a bill which has been passed by one Chamber is not, within 6 months after the passage of the bill in that Chamber, passed by the other Chamber, the Governor-General has the power to refer the bill for a joint sitting of both the Chambers.

**Methods of settling differences between the Chambers.**

Two other methods devised by statutory rules under the Act for avoiding or composing differences between the 2 Chambers, are by joint committee and joint conferences. The first method is used before any difference of opinion has arisen, in order to forestall differences, and to expedite the passage of a bill. Each Chamber passes a resolution for a joint committee and each nominates an equal number of members. The second method is resorted to when a difference of opinion has arisen. At a joint conference, each Chamber is represented by an equal number of members, but no decision is taken. The results of a conference are to be looked for in the subsequent proceedings of either or both Chambers.

74. The Governor-General has got the power to stop the passage of a bill, or any part of it, by certifying that such action is necessary in the interests of the safety and tranquility of British India or of any part thereof.

75. *Financial powers* :—(a) The Indian budget, *viz.*, the annual statement of the estimated revenue and expenditure, is presented simultaneously in both Chambers, in each year.

**The Indian budget.**

(b) No proposal for the appropriation of any revenues, or moneys for any purpose shall be made except on the recommendation of the Governor-General.

(c) The discussion of the main principles is permitted in both Chambers.

(d) When the budget is introduced the Finance Member makes his budget speech. This is followed by a general discussion covering the whole field of administration.

(e) Certain heads of expenditure are not votable by the legislature. Their expenditure is authorised by the Governor-General in Council. These heads are,

(1) Interest and sinking fund charges on loans.

(2) Expenditure of which the amount is prescribed by any law.

**Non-votable heads.** (3) Salaries and pensions payable to or to the dependants of ;

(i) Persons appointed by or with the approval of His Majesty or by the Secretary of State in Council,

(ii) Chief Commissioners and Judicial Commissioners,

(iii) Persons appointed before the 1st day of April, 1924 by the Governor-General in Council or by a Local Government to services or posts, classified by rules under the Act as superior services or posts.

(4) Sums payable to any person who is or has been in the Civil Service of the Crown in India under any order of the Secretary of State in Council, of the Governor-General, or of a Governor, made upon an appeal preferred to him in pursuance of rules made under the Act,

(5) Expenditure classified by order of the Governor-General in Council as,

(i) Ecclesiastical,

(ii) Political,

(iii) Defence.

(f) These non-votable heads are not open to discussion in the Assembly unless the Governor-General permits such a discussion. In practice the Governor-General has allowed the Assembly to discuss these non-votable items also.

(g) At the next stage the demands of the Government for supply are presented to the Assembly in the form of a series of motions.

(h) If the Assembly declines to vote a demand put before it, the Governor-General is empowered to declare that he is satisfied that the demand which has been refused is essential to the discharge of his responsibilities. The exercise of this power is usually referred to as the

restoration of a rejected demand. Thereupon the Government of India acts as though the demand had received the assent of the Legislative Assembly.

(i) A practice has grown up by which it is possible to attack non-votable expenditure by moving a cut in the voted expenditure auxiliary to it.

For instance, expenditure on defence is classified as non-votable, but in practice, army policy and army expenditure may be criticised by moving a reduction in the expenditure for the Civil Secretariat establishment of the army department which is a votable item.

(j) Only the Legislative Assembly can grant or withhold supply. Therefore demands for grants are not submitted to the Council of State.

(k) The annual finance bill which is the annual statutory authority for most of the central taxation comes before both these Chambers, and both Chambers have equal powers of dealing with it.

The annual finance bill is formally introduced at the time of the Finance Member's budget speech, though it is not discussed or voted upon until after the estimates have been passed or certified. All the central taxes of India, including postal rates, except the tariff, are voted.

This practice owes its origin to an amendment to the taxation bill of 1921 which sought to limit the operation of the bill to one year. The non-official member, who moved this amendment, explained that his object was to establish a convention similar to that in force in the House of Commons. The Government accepted the amendment except in respect of the customs tariff.

The reason for the English practice was that there was no statutory obligation on the part of Parliament to meet at least once in every year. Therefore under the financial system in England some of the most important taxes are never voted for more than one year in order to oblige the Government to come annually before Parliament for a vote of those taxes, although they are unaltered in amount. But in India there is a statutory obligation that the legislature should meet at least once every year, and therefore the reason underlying the practice in the House of Commons does not apply to India.

Anyway the Government has agreed to follow the practice of the House of Commons.

76. In cases of emergency the Governor-General has power to authorise such expenditure as may, in his opinion, be necessary for the safety or tranquility of British India, without reference either to the Central legislature or any other body.



77. When either Chamber refuses leave to introduce a bill, or fails to pass a bill in a form recommended by the Governor-General, the Governor-General may certify that the passage of the bill is essential for the safety, tranquility or interests of British India, and on such certificate of the Governor-General, if the bill is passed by one Chamber, it becomes an Act of the Indian legislature.

78. If a bill has been rejected by both Chambers of the legislature, the Governor-General may secure its enactment by certifying that the bill is essential for the safety, tranquility or interests of British India or part thereof. In such a case the Act has to be laid before both Houses of Parliament, and has no effect until assented to by His Majesty. If, however, in the opinion of the Governor-General a state of emergency exists, the Governor-General may direct that the Act shall come into operation forthwith. It thereupon does so, subject to disallowance by His Majesty in Council.

79. The Governor-General in his Executive Council has power to make regulations for the peace and good Government of certain parts of India which are considered to be backward, and for which no Legislative Council has been constituted. This matter has already been dealt with (*Vide* para. 64).

80. *The relations between the Secretary of State and his Council on the one hand and the Government of India on the other in regard to legislation:—*(1) Prior to 1921, no bill other than a purely formal one could be introduced into any Indian legislature until the Secretary of State in Council had seen and approved its actual terms, or at least a full statement of its scope and purpose. But under the rules framed in 1921, bills to be introduced in the Central legislature need not be referred to the Secretary of State in Council, unless they relate to subjects such as,

- (a) Imperial or Military affairs.
- (b) Foreign relations.
- (c) Rights of European British subjects.
- (d) The law of Naturalisation.
- (e) The Public debt.
- (f) Customs.
- (g) Currency and Exchange.
- (h) Shipping.

(2) With regard to Provincial Bills, it is left to the Governor-General in Council to refer for the previous approval of the Secretary of State in Council, such Provincial bills as he thinks fit.

## CHAPTER XIII.

### Provincial Legislatures.

81. In each of the 9 Governor's Provinces there is a unicameral triennial legislature consisting of the members of the Executive Council of the Governors, and of members nominated and elected.

**The Provincial legislatures.**

Under the Act, not more than 20% shall be officials, and at least 70% shall be elected members in the case of all except Burma, and at least 60% in the case of Burma.

The rules framed under the Act may increase the number of the members of the Council, subject to the maintenance of the above proportion.

82. The following table shows the statutory minimum fixed by the Act, the actual number of members elected under the rules, and the proportion of the elected, nominated and official element:—

	Statutory Minimum.	Elected Members.	Nominated Officials & Executive Councillors.	Nominated Non-Officials.	Actual Total.
Madras ...	118	98	7 plus 4	23	132
Bombay ...	111	86	15 plus 4	9	114
Bengal ...	125	114	12 plus 4	10	140
U. P. ...	118	100	15 plus 2	6	123
Punjab ...	83	71	13 plus 2	8	94
Baluchistan ...	98	76	13 plus 2	12	103
C. P. & Berar ...	70	55	8 plus 2	8	73
Assam ...	53	39	5 plus 2	7	53
Burma ...	92	80	14 plus 2	7	103