

(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

83. The following table shows the distribution of the seats in the different Provinces among members of the various communities :—

	Executive councillors and nominated members other than those nominated to represent specific classes or interests.	Members nominated to represent classes or interests specified.					Members returned by specific constituencies.			Members returned by general constituencies.								
		Depressed Classes.	Anglo-Indians.	Indian Christians	Labour.	Others.	Land-holders,	University	Commerce, Industry etc.	Non Muham- madan		Muhammadan.		Sikhs.	Anglo-Indians.	Ind. Christians.	Europeans.	Total.
										Urban.	Rural.	Urban.	Rural.					
Madras ...	23	10	...	...	...	1	6	1	6	9	56	2	11	...	1	5	1	132
Bombay ...	20	2	1	1	3	1	3	1	7	11	35	5	22	...	...	...	2	114
Bengal ...	22	1	...	1	2	...	5	2	15	11	35	6	33	...	2	...	5	140
U. P. ...	20	1	1	1	...	...	6	1	3	8	52	4	25	...	...	...	1	123
Punjab ...	18	...	1	1	1	2	4	1	2	7	13	5	27	12	...	...	...	94
Bihar & Orissa ...	18	2	1	1	1	4	5	1	3	5	42	3	15	...	...	...	1	103
C. P. & Berar ...	11	4	1	...	1	1	3	1	3	9	32	1	6	...	...	...	...	73
Assam ...	12	...	...	...	1	1	...	...	6	1	20	...	12	...	...	...	...	53
Burma ...	22	...	...	...	1	...	...	1	6	14	8	44	5	...	1	...	1	103
										General Urban	Indian urban	General rural	Karen rural					

N.B.—There are general constituencies and special constituencies. In some Provinces seats are reserved in general constituencies for the members of a particular community, for example, for the Non-Brahmins in the Madras Presidency.

84. *The franchise for the Provincial legislatures:—*(a) **Franchise.** The normal qualification for the vote is residence within the constituency coupled with the payment of a small amount in land revenue, rent or local rates in rural areas, and municipal rates in urban areas.

(b) All payers of income-tax, and all retired, pensioned or discharged officers, or men of the regular forces, are also enfranchised.

(The qualifications for the present Provincial legislatures are summarised in Appendix B).

85. The Act made no mention about female suffrage but the electoral rules made under the Act enabled the legislatures to remove the sex disqualification. Madras led the way in April 1921 and all bodies except the Council of State have passed the necessary qualification. Therefore a woman may vote for all legislatures, except the Council of State.

As regards the right of a woman to sit in the Provincial legislatures, all provinces except Bengal and Assam have passed the necessary resolution and therefore women may be elected or nominated councillors in all legislatures except the Council of State and the Provincial legislatures of Bengal and Assam.

85. The rules as to the summoning of local legislatures, their duration, and the provisions relating to the election of President and Deputy President of the Legislative Councils, are the same as those relating to the Legislative Assembly.

Two months' absence from India or inability to attend to the duties of his office on the part of a member of the Legislative Council entails the loss of that member's seat in the Council.

87. The provisions with respect to business and procedure in Governor's Legislative Councils are similar to those relating to the Legislative Assembly, with the following modifications:—

Procedure in Legislative Councils. (1) The Legislative Assembly, if it refuses its assent to any demand, must reduce the whole grant; whereas the Legislative Council may reduce the whole grant or any of the items of expenditure of which the grant is composed.

(2) Certain heads which are not submitted to the vote of the Legislative Assembly are not open to discussion by the Legislative Assembly unless the Governor-General otherwise directs. But in the case of the Legislative Council, though certain heads are not submitted to the vote of the legislature, there is no prohibition in the Act as to their being discussed in the legislature.

88. The Governor of a Governor's Province has the power just like the Governor-General,

The Powers of the Governor.

(a) to restore any demand refused by the legislature,

(b) to authorise expenditure in case of emergency without reference to the legislature or any other body,

(c) to arrest the course of discussion in the legislature with reference to a bill or any portion thereof or any amendment introduced,

(d) and to pass a bill relating to a reserved subject into Law by certifying that the passage of the bill is "essential for the discharge of his responsibility for the reserved subject."

89. If the legislature refuses to pass a bill relating to a transferred subject the usual consequences of rejection follows and the Governor cannot pass it into law by certificate.

90. With regard to a bill on a reserved subject passed by the power of the Governor's certificate, the Governor cannot, unless he considers that a state of emergency exists, turn the bill which he has certified, into an Act by himself assenting to it. It must be sent to the Governor-General who is bound to reserve it for the signification of His Majesty's pleasure to be expressed by the King-in-Council, and it must have been laid before both Houses of Parliament for 8 days of their session, before being presented for His Majesty's assent.

Legislation by certificate.

Where the Governor-General certifies that a state of emergency exists, he may direct that the certified bill shall become an Act immediately.

91. *Provinces other than Governor's Provinces* :—The legislatures of these Provinces are to consist of members, nominated or elected in accordance with rules. The maximum for the Legislative Council of a Lieutenant-Governor is fixed at 100. No maximum is fixed in respect of Chief Commissioner's legislatures. The members of the Executive Council of the Lieutenant-Governor are also members of the legislature.

In these legislatures, at least $\frac{1}{3}$ of the members elected or nominated, should be non-officials. The Lieutenant-Governor or the Chief Commissioner presides over these Councils.

Where there is no Executive Council, the Lieutenant-Governor or the Chief Commissioner should appoint a member of the Legislative Council to be its Vice-President.

92. The powers of these legislatures are restricted. No business can be transacted in these legislatures other than motions for leave to introduce a measure, or motions in connection with a measure introduced,

or proposed to be introduced, or having reference to the rules for the conduct of business in the Council.

The Local Government, may, however, make rules with the sanction of the Governor-General in Council, authorising the discussion of the budget and the asking of questions, under such conditions and restrictions as may be prescribed in the rules.

All questions at a meeting of these legislatures are to be determined by a majority of votes.

No power is reserved in the Act to the Lieutenant-Governor or Chief Commissioner to pass a bill by certifying.

93. The provisions relating to the legislatures in Provinces other than Governor's Provinces are now only of historical interest because there are no Lieutenant-Governors and among Chief Commissioner's Provinces, only Coorg has a Legislative Council. We have already seen that the Coorg Legislative Council has legislative, deliberative and interrogatory powers.

94. *Powers of local legislatures in Governor's Provinces:—*

Powers of local legislatures.

(a) The local legislature has power to make laws for the peace and good Government of the territories for the time being constituting that Province.

(b) It can alter and repeal laws made by any authority in British India subject to certain restrictions specified below in clause (c).

(c) On a specified list of matters it cannot legislate even for its own territorial area without the previous sanction of the Governor-General (S. 80-A).

Previous sanction of the Governor-General.

(A) Previous sanction of the Governor-General is necessary for making or taking into consideration any law,

(1) imposing or authorising the imposition of any new tax other than the following taxes:—

(a) A tax on land put to uses other than agricultural.

(b) A tax on succession or on acquisition by survivorship in a joint family.

(c) A tax on any form of betting or gambling permitted by law.

(d) A tax on advertisements.

(e) A tax on amusements.

(f) A tax on any specified luxury.

(g) A registration fee

(h) A stamp duty other than duties of which the amount is fixed by Indian legislature.

(j) The following taxes levied for the purpose of any local authority :—

1. A toll.
2. A tax on land or land values.
3. A tax on buildings.
4. A tax on vehicles or boats.
5. A tax on animals.
6. A tax on menials and domestic servants.
7. An octroi.
8. A terminal tax on goods imported into or exported from a local area save where such tax is first imposed in a local area in which an octroi was not levied on or before 6—7—1917.
9. A tax on trades, professions and callings.
10. A tax on private markets.
11. A tax imposed in return for services rendered such as
 - (a) a water rate,
 - (b) a lighting rate,
 - (c) a scavenging, sanitary or sewage rate,
 - (d) a drainage tax,
 - (e) fees for the use of markets and other public conveniences.

(2) 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, provided that the imposition or alteration of a tax referred to in sub-clause (1) above shall not be deemed to affect any such tax or duty,

(3) affecting the discipline or maintenance of any part of His Majesty's naval, military or air forces,

(4) affecting the relations of the Government with foreign Princes or States,

(5) regulating any central subject,

(6) regulating any provincial subject which has been declared by rules under the Government of India Act, either in whole or in part, subject to legislation by the Indian legislature in respect of any matter to which such declaration applies,

Concurrent legislative powers.

The Provincial subjects thus subject to Indian legislation are the following :—

- (a) Powers of Local Authorities to borrow otherwise than from a Provincial Government,
- (b) levying, by such Authorities, of taxation not included in sub-clause 1 (j) above,
- (c) infectious and contagious diseases,
- (d) the definition of the jurisdiction of any University outside the Province in which it is situated,
- (e) light and feeder Railways and extra-Municipal tramways which are in physical connection with a main line or are built on the same gauge as an adjacent main line,
- (f) water supplies, irrigation and canals, drainage and embankments, water-storage and water power, when these relate to matters of inter-provincial concern, or affect the relations of a Province with any other territory,
- (g) destructive insects and pests, and plants' diseases and animal diseases,
- (h) disforestation of reserved forests,
- (i) land acquisition,
- (j) administration of justice as regards High Courts, Chief Courts and Courts of Judicial Commissioners and any Courts of criminal jurisdiction,
- (k) Administrator-General and Official Trustees,
- (l) non-judicial stamps, and judicial stamps in relation to High Courts in their Original jurisdiction,
- (m) registration of deeds and documents,
- (n) registration of births, marriages and deaths,
- (o) industrial matters under the head of factories, settlement of labour disputes, electricity, boilers, labour welfare, industrial insurance and housing,
- (p) adulteration of foodstuffs and other articles as regards import and export trade,
- (q) standards of weights and measures,
- (r) inland steam vessels,
- (s) control of poisons, control of motor vehicles as regards licenses valid throughout British India, and control of cinematographic films for exhibition,

- (t) control of newspapers, books and printing presses,
- (u) criminal tribes,
- (v) European vagrancy,
- (w) prisons, prisoners and reformatories,
- (x) regulation of medical and other professional qualifications and standards,
- (y) control of public services within the Province other than All-India Services.

(7) affecting any power expressly reserved to the Governor-General in Council, by any law for the time being in force,

(8) altering or repealing the provisions of any law which, having been made before the commencement of the Government of India Act, 1919 by any authority in British India other than that local legislature, is declared by rules to be a law which cannot be repealed or altered by the local legislature without previous sanction,

Under the rules styled "local legislatures (previous sanction) rules" most of the important Acts are included in this category,

(9) altering or repealing any provision of an Act of the Indian legislature made after the commencement of the Government of India Act, which, by the provisions of the first-mentioned Act, may not be repealed or altered by the local legislature without previous sanction.

(B) The local legislature has no power to make any law affecting any Act of Parliament.

(d) The assent of the Governor, Lieutenant-Governor or Chief Commissioner as the case may be, and the assent of the Governor-General, is necessary before a Bill becomes Law.

(e) The Governor or Lieutenant-Governor or Chief Commissioner may return the bill to the Council for reconsideration, or reserve it for the consideration of the Governor-General, as laid down in the rules made under the Act.

Under the "Reservation of Bills Rules" framed, the bill *shall* be reserved for the consideration of the Governor-General if it appears to contain provisions, in respect of which the bill has not been previously sanctioned by the Governor-General under S. 80 (A) (3) of the Act,

- (a) affecting the religion or religious rites of any class of British subjects in British India, or,
- (b) regulating the constitution or function of any University, or