

different, and must be decided according to circumstance. Absolute rigidity is impracticable where constitutional usage is far from settled on normal lines. What is clear is that it is always advantageous to grant a dissolution where that will clear up issues." (Keith : Constitutional Law of the British Dominions.)

222. A suggestion was made before the Select Committee that power to appoint a non-elected Minister may be given to those Provinces in which there is only one Chamber. (In the case of bicameral legislatures, a person may be nominated to the Upper Chamber and he may be appointed Minister.) Such a provision exists in England and the Dominions and the Secretary of State promised to think over that suggestion. But the Joint Select Committee turned down this proposal. (Para. 88 of the report.)

As to whether there should be Under-Secretaries and Secretaries to Ministers, Sir Samuel Hoare stated that the matter is to be left for decision by the legislature concerned.

CHAPTER XXX.

The legislatures in Governors' Provinces.

The Provincial Legislature.

223. In each of the Governors' Provinces there will be a legislature consisting of the King represented by the Governor and

- (a) two Chambers in Madras, Bombay, Bengal, United Provinces and Bihar,
- (b) and one Chamber in all other Provinces.

The Upper Chamber in the five Provinces aforesaid will be styled the Legislative Council, and the Lower Chamber in all Provinces will be styled 'Legislative Assembly.'

The Joint Select Committee recommended the establishment of Upper Chambers for Bombay and Madras also, on the ground that the conditions there, are substantially the same as in Bengal and the United Provinces. The conditions are not referred to, nor does the White Paper specify the special conditions in these Provinces. It has, however, been suggested that the existence of large zemindary interests necessitated this safeguard.

224. The question as to whether a Second Chamber is a necessary piece in the mechanism of representative Government is one of controversy. The theory of checks and balances had an irresistible appeal to the statesmen of the eighteenth century, and a bicameral legislature was then deemed a necessary provision in the constitution of every democratic country. The main idea underlying a Second Chamber is, as we have seen, that it impedes the passing of ill-considered and hasty measures, and the introduction of radical changes with the sanction of chance majorities.

Principles underlying the setting up of Second Chambers.

During the first decade of the twentieth century people began to lose their faith in the utility of a Second Chamber. Experience showed that a Second Chamber was more a hindrance than a help to the cause of progressive and efficient legislation. The House of Lords which was a survival of mediæval institutions was reduced to practical impotency by the Parliament Act of 1911. In many States in post-war Europe, public opinion is veering round to the view that a Second Chamber is a clumsy and complicated addition to the structure of Government, a fifth wheel in the administrative coach. Germany has abolished her Second Chamber, and the Irish Free State has followed suit.

At the Second Round Table Conference Gandhiji as the sole representative of the Indian National Congress opposed the proposal for a Second Chamber even in the Federal Legislature. It is not, however, to be supposed that the British Government would agree to a unicameral Central Legislature elected on a democratic principle. A bicameral Central Legislature is now a *fait accompli*. But whatever justification there may be in setting up a bicameral legislature in the centre, there is no principle in making an invidious distinction against five out of eleven Provinces, and setting up bicameral legislatures in those Provinces. The Montagu-Chelmsford Report definitely decided against the introduction of Second Chambers in Provinces. The authors of the report were convinced that proper materials were not available for the composition of a Second Chamber, that only the landed and monied interests could be represented in that body, and that such a House would form too effective a barrier against all liberal legislation. No doubt they reserved the question of the desirability of setting up Second Chambers in the Provinces for being considered in the future, and this was one of the questions specifically referred to the Simon Commission. The Simon Commissioners were divided in opinion on this point. That shows that there is no overwhelming reason why a Second Chamber should be set up in the Provinces. It would, therefore, appear that His Majesty's Government went out of their way in proposing to set up a bicameral legislature in five Provinces.

When questioned in the Joint Select Committee as to the reason underlying this proposal—the question was put as to Bengal, and we may take it that the reason applies to United Provinces as well as Bihar, for which three Provinces alone the White Paper proposed Second Chambers—the answer was that the proposal was made in view of ‘special conditions’ of the Province, and in order to allay public anxiety.

Arguments for and against Second Chambers 225. The Lothian Committee summarised the arguments for and against Second Chambers as follows. (Paras. 383 and 384 of their report.)

The advocates of the Second Chamber base their case on four main grounds :

It is important at a time when the suffrage is being very largely extended in a country where the vast majority of the electors will be illiterate, to create a body which will be representative of experience and expert knowledge to act as a stabilising factor by being empowered, not to compete for power with the Lower House, but to revise or delay legislation for a short period.

The great majorities of the democracies of the world, even those which have come recently into being, have been established on a bicameral basis. Experience in the Australian and American Federations seems to show that their existence has been a security against abuse of power and impetuosity on the part of the popular Chamber.

A Second Chamber makes it possible for people of political and administrative experience and ability who, for reasons of age or finance, or health, are unable to enter the Lower House through the arduous process of popular electioneering, to be brought into public life, and made available for public office.

It is better that the responsibility for acting as a brake on the Lower House should, normally, be exercised by a Second Chamber, than by the Governor which is the alternative.

The contentions of the opponents of the Second Chamber, on the other hand, are as follows :—

Analogies drawn from sovereign nations to make out a case for Second Chambers of Provincial Legislatures in India are superficial, fallacious and misleading. The history of the subject in India tells more heavily against the proposal than in favour of it.

While Provincial Governments and Committees are, by a majority, in favour of the proposal, the weight of public opinion is against the Second Chamber, and such opinion as there is, is mostly of those who are concerned more for the special position of the privileged classes than for the advancement of the people at large. Far, therefore, from

conducting to stability, Second Chambers in the Provinces will, by impeding measures designed to benefit the mass of the people who have been the most neglected, and whose welfare must be the primary concern of the future legislatures, tend to aggravate discontent and hasten the very mischief which all desire to see avoided.

The establishment of Second Chambers in the Provincial Legislatures would be expensive. It will be difficult in many Provinces to man those Chambers; and all interests will be sufficiently represented in the Lower House.

The hopes of the people that the coming constitutional reform will be a measure of political appeasement and will facilitate progress will be destroyed, if the partial concessions made with the right hand are in effect to be taken away with the left, by the establishment of institutions for the benefit of the favoured few, and the whittling down of powers ostensibly given to popular legislatures.

226. The Provincial Constitution Sub-Committee of the Round Table Conference, by a majority, stated that "the decision to incorporate a Second Chamber in the new Constitution of any Province other than Bengal, the United Provinces and Bihar and Orissa, where opinion in favour of a Second Chamber has already been expressed, should not be taken until opinion in the Province definitely favours this course." Yet the Select Committee recommended Second Chambers in Bombay and Madras also. The opinion expressed by the Provincial Governments and the Provincial Committees associated with the Lothian Committee of Bombay and Madras, in favour of Second Chambers can certainly not be "opinion in the Province definitely favouring the course." The Provincial Committees were nominated by the Provincial Governments and certainly cannot claim to represent popular opinion.

The Lothian Committee refrained from expressing any opinion on the question of Second Chambers in the Provinces. But certain members thereof, in expressing their unqualified opposition to Second Chambers in Provinces, observed as follows :—

"A recent writer thus sums up the results of the bicameral system in the American States.

"It increases the cost and complexity of the law-making machinery. It facilitates, even actively encourages, the making of laws by a process of compromise, bargaining and log-rolling. It compels all legislative proposals to follow a circuitous route on their way to final enactment. It provides countless opportunities for obstruction and delay, and it makes easy the shifting of responsibility for unpopular legislation. Finally it has proved a barrier to the planning of the law." These are

weighty reasons against the constitution of Second Chambers in the Provinces. The nature of the subjects which it will be competent for Provincial Legislatures to consider, the peculiar constitution of the Councils actual and proposed, which does away with the risk of hasty legislation, the needless cost which one more House of the legislature will impose upon tax-payers already impoverished and overburdened—these are among the arguments against bicameral Provincial Legislatures besides what have been stated in the report ”.*

227. The Provincial Legislatures will be summoned to meet for the first time on a date not less than six months after the Proclamation inaugurating the autonomous Provinces.

228. The power to summon and appoint places for meeting of the Chamber or Chambers, to prorogue it, or them, to dissolve the Legislative Assembly, and to summon the legislature for addressing it or them vests in the Governor, at his discretion.

229. The Lower Chamber will continue for 5 years unless dissolved sooner, and the Upper Chamber will be a permanent body subject to no dissolution, the members being elected for 9 years, one-third retiring and being replaced every three years.

230. In the case of a Province having two Chambers, a Minister will have the right to speak but not to vote in the other Chamber of which he is not a member.

231. *Composition of the Legislative Assemblies* :—(a) The total number of seats depends on the population of the Province, and its importance. The following are the total number of seats for the various Provinces :—

The Legislative Assembly.

Madras	...	215	Central Provinces with Berar	...	112
Bengal	...	250	Assam	...	108
U. P.	...	228	N. W. F. Province	...	50
Bombay	...	175	Sind	...	60
Punjab	...	175	Orissa	...	60
Bihar	...	152			

(b) The allocation of seats to the various communities is specified in Schedule 5 to the Act. The principle followed is as follows :—

Distribution of seats.

(i) There will be general electorates, separate communal electorates, and special electorates.

* Minute of dissent appended to the Lothian Report.

- (ii) In the general electorates, seats are reserved, for the Depressed Classes and in Bombay for the Mahrattas also. Elections to these will therefore be by joint electorates in plural number constituencies.
- (iii) In the case of the Europeans, the Sikhs, the Mahomedans and the Anglo-Indians, there will be separate communal electorates covering between them the whole of a Province.
- (iv) In the case of Indian Christians there will be separate communal electorates in selected areas.
- (v) The precise electoral machinery to be employed in the constituencies for the special women's seats is still under consideration.
- (vi) The method of filling seats assigned for representatives from backward areas is still under consideration.
- (vii) The seats allotted to labour will be filled from non-communal constituencies—partly trade unions and partly special constituencies. Electoral arrangements are under consideration.
- (viii) The special seats allotted to commerce and industry, mining and planting, will be filled by election through Chambers of Commerce and various associations. Details of electoral arrangement are under consideration.
- (ix) Landholders' seats will be filled by election by special landholders' constituencies.
- (x) Method of election for the University seat is still under consideration.

232. With regard to the distribution of seats among the various communities we may make a few observations. In allocating seats for minority communities, it may not be sufficient to give them just the number of seats proportional to their population. In order that they may have appreciable voice in the legislatures, it may be necessary to give them weightage. But the weightage should not be out of all proportion to the population, and such a principle is out of place in allocating seats for a majority community. An analysis of the figures would show that the Muslims and the Europeans have been given special favoured treatment. Taking Bengal where the Muslims are in a majority, out of a total of 250 seats, Europeans are allotted 25 seats (11 from the European constituencies, and 14 from the commerce, industry etc., constituencies, *Vide* footnote to the table in Appendix V to the White Paper). The total population of Bengal is 50 millions, and the Europeans in Bengal are

only 23,000 ; that is barely .05%. But they get 10% of the seats. The Muslims are 54·9% of the population. Out of the 250 seats for Bengal, deducting 51 seats allotted for special constituencies, Europeans, Anglo-Indians and Indian Christians, 199 seats are available for distribution between the Muslims and the Non-Muslims (including women). 54·9% of 199 gives us only 109. But the Muslims have been allotted 119 seats (117 men and 2 women).

233. *The composition of the Legislative Council in five Provinces* :—The total number of seats is as follows :—

	Madras	Bombay	Bengal	Bihar	U. P.
not less than	54	29	63	29	58
not more than	56	30	65	30	60

The details of distribution among the communities, and the mode of election are given in Schedule 5 to the Act. The general principle observed is as follows :—

In all these Provinces a certain number of seats is filled up by nomination by the Governor in his discretion. Out of the remaining seats in Bengal and Bihar a certain percentage is filled up by election by members of the Lower House by the method of the single transferable vote, and the rest of the seats in these two Provinces, and the entire non-nominated seats in Madras, Bombay and the U. P. are filled up by direct election by communal constituencies, *i.e.*, General, Mahomedan, European and Indian Christian.

234. *General qualifications for membership* :—(a) A candidate must be a British subject or the Ruler or subject of a Federated State.

(b) He must be not less than 25 years of age in the case of a seat in the Legislative Assembly, and not less than 30 years of age in the case of a seat in the Legislative Council.

(c) He must possess such other qualifications specified in the fifth schedule to the Act as may be appropriate in his case, *i.e.*, communal qualification in the case of communal constituencies, and so on.

235. *The Franchise for election to the Provincial Legislatures* :—
 This is not specified in the Act but will be prescribed by Rules. The details are specified in Appendix V to the White Paper, and the Joint Select Committee have suggested certain modifications. The details of franchise as specified in the White Paper are as follows :—

(a) The Provincial Upper House :—

(1) With regard to indirect election to certain seats in Bengal and Bihar no question of franchise arises.

(2) With regard to direct election in these Provinces, for the rest of the seats, and for all the elected seats in the other three Provinces, the intention is to base the franchise on

- (i) high property qualifications somewhat lower than those existing for the present Council of State,
- (ii) qualification based on service in certain distinguished public offices such as High Court Judge, Minister, Member of an Executive Council, or Vice-Chancellor of a University, etc.

(b) The Provincial Lower House :—

(i) Every voter apart from the qualification of race, community or religion,

- (1) except in the case of certain special constituencies, must reside in the constituency in which he claims to vote,
- (2) must be a British subject,
- (3) must have attained the age of 21 years, and
- (4) must have one or other of the qualifications prescribed in Appendix V to the White Paper.

The qualifications specified in the said appendix are not uniform for all Provinces. They come under certain heads :

(a) Certain specified property qualification, either as owner of property or occupier of property, or payment of certain taxes (corresponding to the qualification now necessary for election to the present Municipal bodies).

(b) Being the wife of a person having property qualification entitled to vote for a Provincial Legislative Council under the existing Constitution.

(c) Prescribed educational qualification.

(d) Service in the Army.

The registration of claimants on the grounds of educational qualification and being the wife of a person having property qualification, is to be for the first two elections on application by the potential voter.

(ii) The educational qualification prescribed is not uniform for all Provinces. It is stated that owing to the marked differences in the educational system in different Provinces, and the absence of records which could be used to support a claim to an educational qualification in certain cases, it has proved impossible to lay down any common educational standard which would apply to the whole of India, and in certain

Provinces it has been found necessary to fix a standard identical with that laid down for the Federal Assembly, *i.e.*, the Matriculation or S. S. L. C. (in Bombay, Bengal, Bihar, Orissa and Central Provinces). It shall be open to the Local Governments concerned to lower the qualification once the administrative difficulties involved are overcome.

The franchise for Sind, Orissa and Coorg is yet to be determined.

With regard to the Depressed Classes or scheduled castes there would be a lower qualification so as to secure an electorate of 10% of the population of the scheduled castes.

236. The effect of the franchise proposals abovementioned would be to enfranchise 14% of the population or 27% of the adult population taking all Provinces together. Taking Madras alone the percentage of the total population is about 15%, *i.e.*, 7½ million votes. In Bengal and United Provinces the proportion would be about the same. In Bombay, somewhat higher, and in the other Provinces, substantially lower, the lowest being 9% in Bihar and Orissa.

237. Under the communal award, after 10 years, the communal seats may be altered with the consent of the community concerned.

238. The Joint Select Committee made certain recommendations in modification of the proposals contained in Appendix V to the White Paper. These are contained in paragraphs 131, 135, 136 and 137 of their report. As these recommendations will, without doubt, be incorporated in the Rules to be framed, we may summarise these modifications :—

R e c o m m e n d a t i o n s of the Select Committee regarding franchise.

(a) Slight changes in the case of the general franchise in Bihar and Orissa with regard to property qualification in rural areas.

(b) Special provisions for Berar recognising the sovereignty of His Exalted Highness the Nizam over it, as follows :—

(i) Educational qualification should include the passing of a corresponding examination in Hyderabad.

(ii) The military qualification should be extended to the regular Forces of His Exalted Highness.

(c) The educational qualification may be lowered by a Provincial Government substituting a middle school certificate in the place of the Matriculation certificate.

(d) With regard to women the recommendations made are as follows:—

- (i) In the case of women qualified in respect of a husband's property, the requirement as to application is to be dispensed with in some Provinces, even from the start, and in respect of the other Provinces should be removed as early as possible.
- (ii) As long as the application requirement is retained, facilities should be given for mitigating the deterrent effect of this requirement, by permitting application by letter, or by the husband on behalf of the wife.
- (iii) In certain Provinces, in the place of the same educational qualification as for men, literacy qualification is to be substituted even from the start, and in other Provinces, it should be effected as early as possible.
- (iv) Wives of men with the military service qualification entitled to vote, should be enfranchised, registration in their case being on application only.

239. With regard to various matters connected with elections and electoral procedure provision would be made by Order in Council with regard to certain matters, by the Act of the Provincial Legislature in certain cases, and in others by Rules framed by the Governor in the exercise of his individual judgment.

240. There shall be a Speaker and Deputy Speaker for the Lower House and a President and Deputy President for the Upper House. The provisions relating to their period of office, their salary, and their resignation or removal are similar to those of the Federal Legislature.

The provisions relating to oath or affirmation of members, vacation of their seats, disqualifications for membership, penalty for sitting or voting when not qualified or disqualified, privileges etc. of members, and their salary and allowances are similar to those of the Federal Legislature.

The quorum for a meeting of the Legislative Assembly shall be one-sixth of the members on its roll, and that for the Legislative Council shall be not less than twelve.
