

beyond its power within the resources assigned to it to balance its expenditure and revenue. The subvention to the North-West Frontier Province has already been granted, and the claim of Assam to an increase in its revenues has, for some time, been recognised as one which the Central Government must meet in some form." (Paras. 259, 268 to 270.)

318. The Secretary of State stated before the Joint Select Committee that for the purpose of deciding the question of allocation of revenue and expenditure as between the Centre and the Provinces, a committee is to be appointed. It is to be a small but impartial body.

**A Committee for the allocation of revenues.**

## CHAPTER XXXVIII.

### Borrowing Powers, Audit and Accounts

319. (1) The Federal Government will have powers to borrow for the purposes of the Federation upon the security of the Federal Revenues, within such limits as may from time to time be fixed by Federal laws.

**Powers of the Federal Government.**

(2) After the inauguration of the Federation, the power of the Secretary of State in Council to raise sterling loans will cease.

(3) The trustee status of existing India sterling loans will be maintained (*Vide* page 103, *supra*) and will be extended to future sterling Federal loans.

(4) The Federal Government will be empowered to grant loans to, or guarantee a loan by, any Governor's Province or State member of the Federation on such terms and under such conditions as it may prescribe.

(5) The Government of a Governor's Province will have power to borrow for any provincial purpose, on the security of provincial revenues, within such limits as may from time to time be fixed by provincial law. But the consent of the Federal Government will be required if either

**Powers of the Provincial Governments.**

(a) there is still outstanding any part of a loan made or guaranteed by the Federal Government or by the Governor-General in Council before the commencement of the Government of India Act, 1935, or

(b) the loan is to be raised outside India,

On this question of the consent of the Federal Government, the Joint Select Committee observed as follows :—“ We think that this is right ; but it puts great power in the hands of the Federal Ministry, who might, by refusing the application of a Province or by insisting upon unreasonable conditions, assume the right of controlling the general policy of a Province in a manner which we do not think was contemplated. In these circumstances, it seems to us that the ultimate decision whether consent has been unreasonably withheld in any instance should rest with the Governor-General in his discretion.”

The Act gives effect to this recommendation.

320. *Audit and Accounts* :—(1) There will be an Auditor-General in India appointed by His Majesty, with security of tenure similar to that of Federal Judges.

(2) There may be a Provincial Auditor-General appointed by His Majesty if the Provincial Legislature votes for his salary by passing an Act charging it on the revenues of the Province. At least 2 years from the inauguration of Provincial autonomy must elapse before such an Act is passed, and three years thereafter the Provincial Auditor-General may be appointed.

The idea underlying this proposal is thus explained by the Joint Select Committee :—

“ It is desirable, both on grounds of economy and for other reasons, that the present centralised system of Audit and Accounts should be maintained, and it is to be hoped that the Provinces will realise the advantages of such a course. Nevertheless it would be difficult to withhold from an autonomous Province the power of taking over its own Audit and Accounts if it desires to do so, and we think that the Constitution must allow a Province to take this step, subject to the following conditions. Long notice should be given of the change . . .” (Para 397.)

(3) The Powers of the Provincial Auditor-General and his tenure of office will be similar to those of the Auditor-General in India.

(4) The Auditor-General will, under the future constitution, report to the Governments and Legislatures in India, instead of to the Secretary of State in Council. As observed by the Select Committee, “ When under the future Constitution the revenues of India are vested in the Federal and Provincial Governments, and no longer in the Secretary of State in Council as at present, it will clearly be necessary to provide that the Auditor-General in India shall report to those Governments and to the Legislatures in India, instead of to the Secretary of State in Council.” (Para 397.)

(5) In future, the Auditor of Home Accounts would also be the agent of the Auditor-General in India, and report to the Indian Legislature through the latter. The Joint Select Committee observe as follows :—

“ As regards payments made by the Secretary of State in this country out of Indian revenues, these will in future be mainly on behalf of the Central Government, especially in relation to Defence. Constitutionally, they will not in general differ from those made by the High Commissioner, except that they will more often relate to Reserved Departments than will be the case with expenditure by the High Commissioner. It appears desirable that the Audit of these payments should be made by a Home Auditor on behalf of the Auditor-General in India and that the report should go through the latter to the Indian Legislature.” (Para.398).

He would be appointed by the Governor-General in his discretion, and will have security of tenure similar to that of the Federal Judges.

(6) The Auditor-General in India has got the right to give directions with regard to the methods or principles in accordance with which Provincial accounts ought to be kept. The reason for this power is thus explained by the Joint Select Committee; “a general form of accounts framed on the common basis for all the Provinces should continue to be available for such purposes as the consideration by the Federal Government of applications for loans from Provincial Governments, or proposals for the assignment of revenues to Units, of the kind mentioned in our earlier section on Federal Finance.” (Para. 397.)

(7) As the Indian Governments have nothing to do with the discharge of the functions of the Crown in its relations with the Indian States, the reports of the Auditor-General on those accounts shall be made to the Secretary of State, on behalf of the Crown.

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## CHAPTER XXXIX.

### The Secretary of State for India.

321. (a) The Secretary of State's Council will, on the inauguration of Provincial autonomy, be dissolved, and cease to exist. He may appoint not less than 3 and not more than 6 advisers whose pay is placed on British estimates. Out of these at least one-half must have the service qualification, having served not less than 10 years under the Crown in India, and their services should not have terminated more than two years before

**Secretary of State's advisers.**

their appointment. They will hold office for 5 years and will not be eligible for re-appointment.

(b) The Secretary of State must determine on what matters he will consult his advisers and he may consult them individually or collectively.

(c) But so long as the Secretary of State continues to be in control of any of the members of the public services in India, he must obtain the concurrence of the majority of his advisers for any draft of rules to be made under the Act for regulating conditions of service, and for any order which he proposes to make on an appeal from any such member. In case of equality of votes, he will have a second or casting vote.

(d) On the new Constitution coming into effect, existing accounts of the Secretary of State in Council with the Bank of England will be transferred to the Secretary of State. His salary, the expenses of his department and the remuneration of his staff are placed on British estimates, except in respect of so much of the expenses of that department as is attributable to the performance of agency functions on behalf of the Federation.

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## CHAPTER XL.

### Property, Contracts and Rights.

322. "With the institution of Provincial autonomy, and the legal delimitation of the power and authority of the Provincial Governments of the future and of the Federal Government, accompanied by the disappearance of the Secretary of State in Council as a corporation with sole final authority over all Indian expenditure, it becomes necessary that the rights and obligations of the Government in India should be apportioned between the Federal and Provincial Governments respectively, which will, consequently, have to be created juridic persons for the purpose of suing and being sued." (Evidence of Sir Samuel Hoare). The changes under the new Constitution are as follow:—

(1) All legal proceedings are in future to be taken against the Federation of India or the Provincial Governments.

(2) In pending suits, the Secretary of State is to be substituted for the "Secretary of State in Council."