

ANNEXURE II.

Memorandum for the Subjects Committee.

This memorandum is an attempt to state the views of the Government of India upon the general principles involved in the questions which the Subjects Committee will have to consider. On the basis of these views the Government of India are now dealing separately with cases of the different departments, supplementary memoranda upon which will be transmitted to the Committee. The Government of India hope to discuss further with the Committee the views now put forward after the opinions of the provinces have been received. In this connection the Government of India would find it of great assistance to them if they could receive from the Committee statements showing the substance of the material on which the Committee propose to base their own conclusions.

2. The first basic fact with which the Government of India start is that both the Government of India and the provincial Governments in India are subordinate governments, and the Indian and provincial legislatures are subordinate legislatures. The Imperial* Government and Parliament are alone supreme. A practice of non-intervention may gradually grow up, as it did in the case of the Dominions ; but this is not the position at present : and the governments and legislatures in India do not possess uncontrolled power in any respect whatsoever.

3. The second basic fact is that legislative and executive authority must go hand in hand. If a Government, central or provincial, has power to legislate on any matter, it must have a corresponding power to carry out its laws. Wherever there is an overriding power of legislation, there must be a corresponding overriding executive power, with unquestioned capacity to make the overriding legislation effective.

4. The third basic fact is that the Government of India are responsible to the Imperial Government and Parliament for the administration of India. They cannot be divested of that responsibility except by the consent of the Imperial Government and Parliament ; and so long as that responsibility attaches to them, they must have the power to enforce it ; and such power must be both legislative and executive.

5. Assuming these axioms, the problem before us is to divide the whole field of Indian administration into two classes, central and provincial, in such a way that the Government of India will be directly responsible for the administration of the first, while in regard to the second they will retain only a general responsibility to be exercised under conditions to be discussed later on.

* NOTE.—The Government of India suggest that the term Imperial should be served in this discussion for His Majesty's Government and Parliament.

6. The Government of India cannot at present deal with the further question whether any provincial subject is to be administered by the Governor in Council or by Ministers. That is a matter to be considered in the provinces first and by the Government of India only when they have received the views of the provinces. Conditions will vary between provinces, and for this reason alone apart from other considerations it is not practical for the Government of India at this stage to deal with the division of provincial subjects into the categories of reserved and transferred. Their immediate object is merely to arrive at the principles which should regulate the classification of functions into central and provincial.

7. There are certain subjects which are at present under the direct administration of the Government of India. The Government of India maintain separate staffs for their administration, and the provincial Governments have no share in it. The category is easily recognisable, and for the most part there will not be much room for doubt as to the subjects to be included in it. At the other end of the line are matters of predominantly local interest which, however much conditions may vary between provinces, will generally speaking be recognised as proper subjects for provincialization.

8. Between these extreme categories, however, lies a large indeterminate field which requires further examination before the principles determining its classification can be settled. It comprises all the matters in which the Government of India at present retain ultimate control, legislative and administrative, but in practice share the actual administration in varying degrees with the provincial Governments. In many cases the extent of delegation practised is already very wide. The criterion which the Government of India apply to these is whether in any given case the provincial Governments are to be strictly the agents of the Government of India, or are to have (subject to what is said below as to the reservation of powers of intervention) acknowledged authority of their own. In applying this criterion the main determining factor will be not the degree of delegation already practised, which may depend on mere convenience, but the consideration whether the interests of India as a whole (or at all events interests larger than those of one province) or on the other hand the interests of the province essentially preponderate. The point is that delegation to an agent may be already extensive, but that circumstance should not obscure the fact of agency or lead to the agent being regarded as having inherent powers of his own.

9. Applying this principle, the Government of India hold that, where extra-provincial interests predominate the subject should be treated as central. This category as already noted also includes matters which the central Government administer directly by means of their own staff. But confining themselves in this paragraph to cases in which central subjects are partly administered by provincial Governments acting as agents for the central Government, the Government of India wish to emphasize two points. They propose to examine existing conditions with a view to relaxing as far as possible the central control over the

agency and to getting rid of any unnecessary limitations on the agent's discretion. They distinguish this process as one of decentralization, not to be confused with the larger purpose of devolution. At the same time the Government of India think it should be recognized that it is within the principal's power to restrict the agency or even to withdraw it altogether, substituting for it direct administration by the central Government; and that if and when it is proposed to transfer the functions of the provincial agency to the hands of Ministers this particular question will need careful reconsideration.

10. On the other hand, all subjects in which the interests of the provinces essentially predominate should be provincial; and in respect of these the provincial Governments will have acknowledged authority of their own. At the same time, as is recognised in the Report, the Government of India's responsibilities to Parliament necessitate the retention of some powers of intervention in provincial subjects. The Government of India propose to state their views upon the question of the grounds on which and methods by which such powers should be secured and exercised, in the hope that they may be of assistance to the Committee.

11. Among provincial subjects some will be transferred. Taking the case of these first the Government of India think that the exercise of the central Government's power to intervene in provincial subjects should be specifically restricted to the following purposes:—

- (i) to safeguard the administration of Government of India subjects;
- (ii) to secure uniformity of legislation where such legislation is considered desirable in the interests of India or of more than one province;
- (iii) to safeguard the public services to an extent which will be further determined subsequently;
- (iv) to decide questions which affect more than one province.

So far as legislation is concerned the Government of India think that the exercise of the legislative powers of the central Government should be by convention restricted in the manner proposed in paragraph 212, to the abovenamed grounds.

So far as administration is concerned, section 45 should be so amended as to empower the Secretary of State to make rules restricting the exercise of the central Government's powers of administrative control over provincial Governments in transferred subjects to the same specified grounds. This proposal is subject to the following qualification. In the past a very important element in the administrative control exercised by the central Government has been the element of financial control. The Government of India have not yet concluded their examination of the character and extent of the control to which public expenditure in the provinces should under the new arrangements be subjected, and with this aspect of the question they will deal separately. Their proposals in this paragraph should be regarded as relating to control which is not based on financial considerations.

12. A word may be added as to the methods by which the central Government should intervene when necessary in the case of transferred

subjects. A suggestion which seems well worth consideration has been made that in such cases control by the central Government may be better exercised by the Governor acting under the central Government's orders, and enforced in the last resort by resumption of the transferred subject, than by the direct interference of the central Government in the form of orders addressed to the provincial Government, as would be the appropriate course in the case of reserved subjects.

13. Coming now to the more difficult question of the grounds justifying intervention in the case of reserved subjects, which is referred to in paragraphs 213 and 292 of the Report, the Government of India accept the proposition that the justification for relaxing control which exists in respect of transferred subjects is in the case of reserved subjects lacking. They take note also of the possibility that public opinion may be critical of any general relaxation of their authority over official subordinates. At the same time they consider that the new situation requires greater relaxation of control than is suggested by the expression "getting rid of interference in minor matters which might very well be left to the decision of the authority which is most closely acquainted with the facts" (paragraph 213).

In coming to this conclusion they take into account first the changed character of the provincial Governments and the more representative character of provincial Councils. They also note that, so far as financial considerations have entered into the control practised in the past, when the provinces have separate revenues the main motive for interference will disappear, and in so far as the expenditure codes are curtailed or abolished (upon which question as already indicated they have not yet been in a position to formulate their proposals) the ordinary everyday means of exercising control will also vanish. Above all they take account of the new situation in respect of legislation. They accept the proposal made in paragraph 212 of the Report that in all provincial subjects the Government of India will by convention not legislate except on specified grounds which may be taken as those already set out in paragraph 11 above. They also take it that on all subjects, whether provincial or not, provincial legislatures will retain their existing power of legislation subject only to such statutory restraints as it may be decided to retain or to impose. This will involve an amendment of section 79 of the Government of India Act, 1915, which will in future require the previous sanction of the Governor General to legislation by a provincial Council which is not purely on a provincial subject. There will henceforth be no control over provincial legislation exercised by the Government of India in the form of purely executive orders.

For all these reasons the Government of India look forward in future to very different relations between the central and provincial Governments, even in reserved subjects, from those which have obtained in the past.

14. Nevertheless, as they have already said, the Government of India accept the principle laid down in paragraph 213 that an official Government which is not subject to popular control cannot properly be legally exempted from superior official control. Bearing in mind the further

fundamental principle that saving its responsibility to Parliament the central Government must retain indisputable authority, in essential matters, and also the practical danger that the specification of certain grounds for the exercise of powers of control may be taken to imply the exclusion of others, they hold that it would be unwise to lay down any specific limitations upon their legal powers of interference with provincial Governments in reserved subjects. In respect of these therefore they propose no amendment of section 45 of the Government of India Act.

At the same time the Committee may find it useful to have some indication of the extent to which the Government of India consider that such control will generally be exercised in future ; and for this purpose the Government of India take first the four grounds already mentioned in paragraph 11 in the case of transferred subjects. In addition they think that intervention would be required in cases where it was necessary to enforce any standing or special orders of His Majesty's Government conveyed by the Secretary of State, or in exceptional cases, where the Government of India considered that the interests of good government were seriously endangered. But in suggesting these grounds by way of explanation the Government of India wish to make it clear that they do not intend that their specification of certain matters should be made the basis of any formal limitation of their legal powers.

15. In cases where the Governor in Council exercises his powers of intervention in relation to transferred subjects under section 240 of the Report the Government of India think that the central Government should have the same powers of control as if the Governor in Council's decision had been taken in a reserved subject.

16. A minor point worth mention is that the Government of India contemplate that the central Government should have an unquestioned power, to call for any information, statistical or otherwise, and in any form they desire, from provincial Governments, whether such information relates to a transferred or to a reserved subject, and that section 45 of the Act should, if necessary, be amended so as to place their powers in this respect beyond question. It may be covered by their proposals in paragraph 11 (i) above read with paragraph 291 of the Report.