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# The Future Constitution of India

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BEING THE

RAO BAHADUR BAPU RAO DADA LECTURES

DELIVERED AT

THE NAGPUR UNIVERSITY

ON THE

16TH, 17TH & 18TH SEPTEMBER, 1930

BY

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NAGPUR:  
UNIVERSITY OFFICE.



1930.



## PREFACE

This little book contains the substance of three lectures delivered under the auspices of the late Rao Bahadur Bapu Rao Dada foundation to the Nagpur University in September 1930. They review the Indian Constitution from the commencement of British connection with India and examine the Statutory Commissioners' Report upon its future constitution, and suggest a scheme for the future constitution of India. That scheme generally follows the line of my own memorandum appended to the Report of the Indian Central Committee.

I have merely indicated here my own views on the future constitution of India. At the time my lectures were delivered the Government of India's despatch on the Indian Reforms had not been published; and of course nothing was known about the trend of discussions at the Round Table Conference. But whatever may be its outcome the lectures may still possess some value in focussing attention on the reality of the Indian situation and the necessity for an early solution as conducive to the peace of India. But apart from this the lectures are intended to be a study in the constitutional history of India and were delivered to an academic body which prizes knowledge for its own sake.

As the subject is fraught with acute controversy arousing human passions an attempt has been made to eschew bald statements of facts unsupported by authorities to which references have been added in the footnotes.

It is hoped that these may assist the reader to pursue a further enquiry into a subject of which owing to the exigency of time the treatment was necessary limited.

H. S. GOUR.

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# I.

## THE FIRST STAGE.

### India Under the East India Company.

The constitutional history of India divides itself into three parts:—

1. That under the East India Company commencing from 1600 to 1858.

2. That under the Government of the Crown with little or no participation of the people from 1858 to 1917.

3. The present status of India both in relation to external and internal affairs, and the effect of the Government of India Act 1919 upon its present and future constitution, together with the schemes published for the better government of India in future.

### Historical Retrospect.

In order to understand the economic invasion of India by the West heralded by the Portuguese, the French and the Dutch commercial companies it is necessary to hark back to the history of India before its contact with Europe. Looking to the history of India in the thirteenth and the fourteenth centuries we find that India was one of the foremost commercial countries of the East. It produced silk, textiles and woollen goods which were imported in large quantities to Persia, Arabia, Turkistan, Italy, and as far as England. These goods were highly prized in Europe, they adorned the fair ladies of Venice and Rome, where her muslins, fine as woven wind and lighter than gossamer, were known as *Ventus textils* or *Nebula*. The name of Dacca Muslin and Kashmere Shawls are still remembered amongst her chief exports and commemorated in the commercial term "Kashmere" now imported in large quantities into this country. In hard metals such as Iron and Steel, Copper and Bronze, India held her own so long as the industries of the world had not passed out of the stage of handicrafts dependent upon manual labour. India has always been famous, indeed, she is still famous, for the

industry, skill and thrift of her artisans and craftsmen and so long as she had to compete on even terms she easily held her own; but in the fifteenth century handicrafts and textile industries were undergoing an economic revolution brought about by the discovery of steam as a motive power and the invention of the spinning jenny.

The discovery of steam as a motive power paved the way for the establishment of factories and the mass production of goods. The exports from India dwindled, as the newly established factories and their mechanisation set a new pace to the production of goods and their imports into the country at prices with which the manual labourers were unable to compete.

### **Climate and Character.**

Living in a land self sufficient and possessed of a climate which called for no great exertion and brought up in a religion which placed things spiritual above those mundane, the Indian developed a marked aversion to physical exertion and the pursuit of wealth. To him the ideal life to live was that of an ascetic, and the virtue to practice was that of renunciation. His life was a life of peace. To him there was nothing to spur his easy going habits into a life of conflict or competition. That mentality abhorred all change, repelled all inventions and scorned at the growing competition of the West and treated with apathy its peaceful penetration. He lacked the power of adaptability to his changing environments, and the far-seeing vision of what those changes meant. That mentality is perhaps not yet wholly gone, though it is disappearing by slow degrees. The political and economic history of India has therefore been influenced by two main factors—the morbid mentality of the people and their want of adaptability and lack of organisation. It is the secret of the exploitation of their country by other races living in a soil less favoured than their own.

### **Economic Invasion of India.**

Political adventurers from the naked hills of Central Asia have poured into her fertile plains and placed the indigenous races

under their yoke of which the Dravidians, the Bhils, the Gonds and the Santals still remain. These invaders are the modern high caste Hindus. They in their turn fell out of their vigour to be crushed and conquered by a more virile race pouring down from the mountain passes of the Hindukush.

Meanwhile, adventurers from another quarter made their way with their wares to be bartered for her wheat, rice and sugar, pinda-does, musk, amber, spikenard and saffron and its numerous other raw products. The Portuguese who were the Pioneer Navigators of the fifteenth century, were the first to appear upon the scene. They founded a settlement in Hugli in 1587 and were soon followed by the French and the Dutch, who began to ply a roaring trade, which aroused the jealousy of the English traders, who had in the meantime taken to sea-faring life.

### **East India Company**

Before the grant of the Charter by Queen Elizabeth for the incorporation of the East India Company, the Dutch merchants had already organized a similar company, who had established valuable and lucrative connections with the East, which aroused the cupidity of the English merchants who held a meeting under the presidency of the Lord Mayor of London at the Founder's Hall on the 24th September 1599, for the purpose of forming an association to establish direct trade with India. A petition to this effect was submitted to Queen Elizabeth for a Charter which was granted after 15 months' delay on the 31st December 1600, incorporating George, Earl of Cumberland and 215 Knights, Earls and Burgesses by the name of the Governor and Company of Merchants of London trading with the East Indies.

The Company were to elect annually one Governor and twenty-four members of the Managing Committee, who were to have control of the Company's voyages and the management of its affairs. The Charter was limited to fifteen years and it was given authority to make reasonable Laws and Ordinances for the good government of the

said Company and its officers. It was also given power to inflict fine or imprisonment for their enforcement, but their laws and punishments were, as already stated, to be reasonable and not contrary or repugnant to the Laws, Statutes or customs of the English realm. The Charter could be revoked after two years' notice if the trade did not appear to be profitable for the realm. If otherwise, it might be renewed for a further term of fifteen years. The Company's right of trading during the term and within the limits of that Charter was to be exclusive, and the Crown undertook to oust all interlopers and authorized the Company to do the same and to forfeit their goods, ships and tackle, and to punish them as the Company might deem fit. It will thus be seen that the Company was incorporated for the sole purpose of making money out of India and *quasi*-sovereign powers were given to it to insure its monopoly of trade with the East. When the Company was incorporated it had no subscribed capital, but during the first twelve years of its existence all the subscribers contributed individually for each voyage, the profits of which were divided amongst the subscribers. These profits were enormous as will be clear that from one voyage to the Clove Islands in 1606 the profits of which amounted to 234% on the original sum subscribed. In 1612 the subscribers threw their contributions into a Joint Stock and thus converted themselves from a regulated company into a Joint Stock Company.

In 1609 James II renewed the Company's Charter removing the limitation of fifteen years and making the powers of the Company perpetual subject to determination after three years' notice on proof of injury to the nation.

While the English Company was trading with the East, the Dutch East India Company was equally active, and the two came to a conflict in 1623 when the Dutch massacred the English at Ambyona in the Moluccas; but for which the Company was made to pay compensation to the extent of £85,000/- and the East India Company in return pledged not to trade with the Spice Islands. This exclusion of the Company from trading with the Spice Islands divert-

ed its trade more towards India. Out of the sum of £85,000/- paid to the East India Company as compensation, Cromwell took £50,000/- as loan and thus set an example to his successors to demand large sums from the Company periodically by way of tribute or loan, as a price for its privileges. It is unnecessary to go into the history of the various Charters granted from time to time modifying and enlarging the powers of the Company as occasion arose. During the period of 1660 to 1765 the Company was a purely trading concern. It did not aspire to territorial sovereignty. It is true that it had in the meantime acquired by purchase or cession small pieces of land upon which it was entitled to erect and did erect fortifications, and warehouses, and administered justice to the factors and servants residing within its jurisdiction.

The Company imported the produce of the West and exported that of the East. It was not a company which had the primary purpose of developing or kept in view the development of the trade of England with the East with the result that a large quantity of finished goods from India found their way into England which competed seriously with the Home products, with the result that in 1700 an Act was passed that, "from and after the 29th day of September 1701, all wrought silk, Bengals and stuffs mixed with silk or herbs of the manufacture of China, Persia or the East Indies, and all calicoes, painted, dyed, printed or stained there, which are or shall be imported after that day shall be warehoused or exported again."

But this Act remained a dead letter, as the English ladies continued to use the Indian manufacture in spite of the Act, with the result that severer measures were adopted to protect the Home Industries from the growing competition of India.<sup>(1)</sup>

### **French Rivalry.**

About 1765 the French came upon the scene and threatened to oust the English from their monopoly. Robert Clive was fired with territorial ambition and in his letter to William Pitt dated the

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(<sup>1</sup>)Birdwood's Industrial Acts of India, p. 271; 3 Bruce's Annals of the Hon. G. I. Co., 294, 295, James, Indian Industries, pp. 73-90.

7th January 1759 he unfolded his scheme for territorial aggrandizement. In that letter he refers to the tottering condition of the Moghul Empire and the possibility of a decisive victory with the help of only a couple of thousand Europeans. Clive wrote this letter from Bengal: the seat of the Moghul authority was at Delhi, but the Moghul satrap of Bengal had already become *quasi*-independent of the Delhi authorities. He was known as the Subah and Clive was anxious to secure the Subahship for the Company. He persuaded Pitt to support his adventure adding:—

“But so large a sovereignty may possibly be an object too extensive for a mercantile Company; and it is to be feared they are not of themselves able, without the nation’s assistance, to maintain so wide a dominion. I have therefore presumed, Sir, to represent this matter to you, and submit it to your consideration, whether the execution of a design, that may hereafter be still carried to greater lengths, be worthy of the Government’s taking it into hand. I flatter myself I have made it pretty clear to you, that there will be little or no difficulty in obtaining the absolute possession of these rich kingdoms; and that with the Moghul’s own consent, on condition of paying him less than a fifth of the revenues thereof. Now I leave you to judge, whether an income yearly of upwards of two millions sterling, with the possession of three provinces abounding in the most valuable productions of nature and of art, be an object deserving the public attention; and whether it be worth the nation’s while to take the proper measures to secure such an acquisition,—an acquisition which, under the management of so able and disinterested a minister, would prove a source of immense wealth to the kingdom, and might in time be appropriated in part as a fund towards diminishing the heavy load of debt under which we at present labour. Add to these advantages the influence we shall thereby acquire over the several European nations engaged in the commerce here,

which these could no longer carry on but through our indulgence, and under such limitations as we should think fit to prescribe.”<sup>(1)</sup>

### Dual Government.

It is a matter of Indian History that Clive and Lawrence extinguished the French influence in South India, and the victories of Plassey on the 23rd June 1757 and Buxar on 23rd October 1764 made the Company masters of the North-eastern provinces of the Peninsula. The English traders finding themselves without restraint or responsibility, and uncontrolled by public opinion or legal disabilities behaved as in such circumstances and with such temptations men would behave in any age or country. Some of them lost all sense of honour, justice and integrity, they plundered, though in a more systematic and business-like fashion; the eager pursuit of wealth and its easy acquisition had blinded their conscience and produced wholesale insubordination and chaos. Clive had been to England in 1760 and returned in 1765 to find himself confronted with these most glaring abuses which he tried to suppress. Meanwhile, Bengal was under the Dual Government. The shady influence of the Moghul Emperor Shah Alam II was reduced to a myth, while the Nawab who governed Bengal in his name was powerless, being distracted between fear of assassination by his own officers and fear of dethronement by the East India Company who secured a Firman from the Emperor of Delhi granting them the Dewani or Fiscal Administration of Bengal, Berar and Orissa with control over Civil Justice in return for Rs. 20,00,000/- payable to the Court at Delhi. This *coup* added to the power of the purse to that of the same, and made them masters of the three provinces. But for the reasons of policy the Company used the Puppet Nawab for the collection of Revenue, subject to European superintendence and this system of Dual Government continued from 1765 to 1772.

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<sup>(1)</sup>Vol. I. Speeches and Documents on Indian Policy, pp. 16, 17.

The grant of Diwani to the East India Company marks the commencement of its territorial sovereignty and the beginning of British Rule in India.

### **The Regulating Act, 1773.**

The period between 1765 and 1773 is the period of the Company's growing bankruptcy and the opulence of all its European servants, which attracted the notice of Parliament which ordered an enquiry in 1772, which led to the passing of the first Act known as the Regulating Act of 1773. This Act established the Government of the Presidency of Fort William in Bengal which was to be carried on by the Governor-General and four councillors named in the Act. They were to hold office for five years and were not to be removed in the meantime, except by the King on the representation of the Court of Directors. A casual vacancy in the office of the Governor-General during these five years was to be filled by the Senior Member of the Council, and a similar vacancy occurring in the office of the Member of Council was to be filled by the Court of Directors with the consent of the Crown. At the end of five years a patronage was to be vested in the Company. The Governor General in Council were to be bound by the votes of a majority of those present at their meetings, and in the case of an equal division the Governor General was to have a casting vote. This Act declared the supremacy of the Bengal Presidency over the other two Presidencies of Madras and Bombay, in that it gave the Governor General in Council of Bengal the power of superintending and controlling the government and management of the other two Presidencies in matters as regards questions of peace or war. The minor Presidencies could not commence hostilities or make or declare war against any Indian Prince or conclude a treaty without the previous consent of the Governor-General in Council except in case of imminent necessity or when special orders were received from the Company. The relations of the Governor-General and his Council to the Court of Directors and of the Directors to the Crown were regulated. The Governor General in Council was to obey the orders of the Court

of Directors and keep them constantly informed of all matters relating to the interests of the Company. The Directors were within fourteen days of the receipt thereof to transmit to the Treasury copies of all parts relating to the Company's Revenues and to the Secretary of State copies of all parts relating to the Civil or Military affairs and government of the Company.

### **The Supreme Court.**

The Crown was empowered to establish by Royal Charter a Supreme Court of Judicature at Fort William, consisting of a Chief Justice and three other Judges who were to be Barristers of five years' standing to be appointed by the Crown. It was thus to be a King's Court and not the Company's Court. It was empowered to exercise Civil, Criminal Admiralty, and Ecclesiastical jurisdiction, and was also declared at all times to be a Court of Record and a Court of Oyer and Terminer, and Jail Delivery in and for the town of Calcutta and factory of Fort William and the Factories subordinate thereto. An appeal in the Supreme Court was to liable to the King in Council subject to the conditions to be fixed by the Charter. All offences to which the Supreme Court had cognizance were to be tried by a jury of British subjects resident in Calcutta. With the establishment of a Supreme Court in Calcutta the Mayor's Court in Fort William was abolished.

The Act laid down penalties for taking bribes or receiving presents from Indian Princes or any of the natives of India. Any offender against this provision was to forfeit double the amount received and might be removed to England. The only persons excepted were Councillors at Law, Physicians and Surgeons and Chaplains. No collector or any other of His Majesty's subjects employed in the collection of the Revenues or administration of justice in Bengal, Bihar and Orrissa was to engage in private trade, nor any subject of His Majesty to lend on interest at a higher rate than 12%.

The Regulating Act closely followed the scheme for the Government of India recommended by Warren Hastings who was

appointed its first Governor-General. He was however, seldom in agreement with three of his colleagues who generally opposed him. Being thus in a minority his policy was constantly thwarted and his decisions over-ruled. In 1776 he was reduced to such depression that he gave the agents in England a conditional authority to tender his resignation and in his letter to Lawrence Sullivan dated the 21st March of that year he bitterly complained of the state of anarchy brought about in the affairs of Bengal.

### **Supremacy of The Executive.**

In 1781 some of the glaring defects of the Act of 1773 were removed, it being provided that the Governor-General in Council of Bengal shall not be subject jointly or severally to the jurisdiction of the Supreme Court for anything counselled, ordered or done by them in their public capacity. The Supreme Court shall not have any jurisdiction in any matter concerning the Revenue or concerning any acts done in the collection thereof, according to the usage and the practice of the country or the regulations of the Governor-General in Council.

### **Company's Mis-rule.**

The Governor-General in Council were empowered from time to time to frame regulations for the Provincial Courts and Councils. They were no longer subject to the approval of the Supreme Court or the registration therein. The net result of this and other provisions of the Act of 1781 were to disarm the Supreme Court and strengthen the Executive. It led to gravest abuses in the administration of the country, which attracted the notice of Parliament who appointed a Committee, whose report was summarised by Mr. Edmund Burke in his resolution of 1784 in the following terms :

“The result of the Parliamentary inquiries has been that the East India Company was found totally corrupted and totally perverted from the purposes of its institution, whether political or commercial; that the powers of war and peace given by the Charter had been abused by kindling hostilities in

every quarter for the purposes of rapine; that almost all the treaties of peace they have made have only given cause to so many breaches of public faith; that countries once the most flourishing are reduced to a state of indigence, decay, and depopulation, to the diminution of our strength, and to the infinite dishonour of our national character; that the laws of this kingdom are notoriously and almost in every instance despised; that the servants of the Company by the purchase of qualifications to vote in the general Court, and, at length, by getting the Company itself deeply in their debt, have obtained the entire and absolute mastery in the body by which they ought to have been ruled and coerced. Thus their malversations in office are supported instead of being checked by the Company. The whole of the affairs of that body are reduced to a most perilous situation; and many millions of innocent and deserving men who are under the protection of this nation, and who ought to be protected by it, are oppressed by a most despotic and rapacious tyranny. The Company and their servants have strengthened themselves by this confederacy, they have set at defiance the authority and admonitions of this House employed to reform them; and when this House had selected certain principal delinquents, whom they declared it the duty of the Company to recall, the Company held out its legal privileges against all reformation, positively refused to recall them, and supported those who had fallen under the just censure of this House with new and stronger marks of approbation.”<sup>(1)</sup>

### **Parliamentary Control.**

Two years previously the Parliament had passed a resolution requiring the Company to recall Hastings and Impey. The Court of Proprietors persisted in keeping them in office in defiance of both the Directors and the House of Commons. Mr. Fox introduced his

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(1)I. Quoted in *Speeches and Documents on Indian Policy*, pp. 345, 346.

famous East India Bill in 1783 altering the constitution of the East India Company and transferring all patronage from the Company to the Ministry. The Bill was opposed by William Pitt and Thurlow but it passed through the House of Commons by triumphant majorities; but the King intervened and brought about its rejection by the House of Lords. Next year, however, Pitt came into power and felt constrained to reintroduce substantially the same measure which he had opposed in the previous year. The principle of both the measures was to place the company in direct and permanent subordination to a body representing the British Government. This Bill became Law. It reduced the members of the Council of the Governor-General to three of whom the Commander-in-chief of the Company's forces was to be one, and to have precedence next to the Governor-General. The Government of each of the two Presidencies of Madras and Bombay was likewise to consist of a Governor and three members of whom the Commander-in-Chief of the Presidency was to be one. The Court of Directors appointed the Governor-General, Governors, Members of Council and Commander-in-Chief and could also remove them or any other servant of the Company. The Crown also enjoyed the power of removal. Only Covenanted servants of the Company were to be qualified to be Members of Council. The patronage of the Company was thus left in its own hands. Pitt's Act established a kind of double government of the East India Company, by the creation of the Board of Control and the Board of Directors. The latter though subordinate to the former enjoyed all the powers of patronage. This Act though modified in details remained substantially in force until 1858 which ushers in the second stage in the evolution of Indian Constitution.

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## II.

**THE SECOND STAGE.****India Under The Crown.**

The primary reasons which led Parliament to revoke the Company's Charter and place the Government of India directly under the Crown were stated by Viscount Palmerston to the House of Commons in a speech delivered on the 12th February 1858. He said, "It is perhaps one of the most extraordinary facts in the history of mankind that these British Islands should have acquired such an extensive dominion in a remote part of the globe as that which we exercise over the continent of India. It is indeed remarkable that those regions in which science and art may be said to have first dawned upon mankind, should now be subject to the rule of a people inhabiting islands which, at a time when these eastern regions enjoyed as high a civilisation and as great prosperity as that age could offer, were in a state of utter barbarism."<sup>(1)</sup>

He then passed in review the history of the Company and pointed out that one of the characteristics of the English nation was that commercial matters attracted more attention and exhibited deeper interest than political affairs, and that as such the commercial privileges of the Company which originally constituted the foundations of its existence were taken away in 1833 and since then the Company had remained but a phantom of its original body. It lost the commercial character for which it was originally founded, and continued to be a merely political instrument by means of which the administration of India was carried on.

**New Policy.**

He went on to add that the arrangement so made was a most inconvenient and cumbersome one. He added, "The principle of our political system is that all administrative functions should be accompanied by Ministerial responsibility—responsibility to Parliament,

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(<sup>1</sup>)I. Speeches and writings on Indian Policy, pp. 319 and 320.

responsibility to public opinion, responsibility to the Crown; but in this case the chief functions in the Government of India are committed to a body not responsible to Parliament, not appointed by the Crown, but elected by persons who have no more connection with India than consists in the simple possession of so much India Stock. I think that that of itself is a most objectionable arrangement." "The functions of Government and the responsibility have been divided between the Directors, the Board of Control, and the Governor-General in India; the Board of Control representing the government of the day, responsible to this House, responsible to public opinion, appointed by the Crown, and exercising functions delegated by it; the Court of Directors, elected by the gentlemen and ladies who happen to be holders of India Stock, many of whom are totally ignorant of everything relating to Indian interests and perhaps knowing nothing about Calcutta, Bombay or Madras, except what they learn from the candidates for the directorship as to the presidency to which the cadetship is to belong which is promised in return for their votes. The directors are undoubtedly, in general, men of great experience and knowledge of India, but they are elected by a body of persons who have no peculiar faculty for choosing persons qualified to govern a great empire in the East. Then comes the Governor-General, invested with great, separate, and independent powers, and among these three authorities it is obvious that dispatch and unity of purpose can hardly by possibility exist."<sup>(1)</sup>

He then explained to the House his scheme for the future government of India. Instead of the Court of Directors and the Court of Proprietors he proposed the substitution of a President assisted by a Council for the affairs in India. The President was to be a member of the Government and as such the organ of the Cabinet with reference to all matters relating to India; he was to be assisted by a Council, who were to carry on the work of the various departments and make reports to the Council itself.

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(<sup>1</sup>)*Ib.*, pp. 322-324.

### **Company's Protest.**

In their petition to Parliament the East India Company opposed the new Bill and explained that the abuses in India had crept up on account of the policy of the British Government in relation to that country. They said, "That your petitioners cannot contemplate without dismay the doctrine now widely promulgated that India should be administered with an especial view to the benefit of the English who reside there; or that in its administration any advantage should be sought for Her Majesty's subjects of European birth, except that which they will necessarily derive from their superiority of intelligence and from the increased prosperity of the people, the improvement of the productive resources of the country, and the extension of commercial intercourse."<sup>(1)</sup>

They criticised the proposal of the government to transfer the government of India to the Secretary of State in Council in these terms.

"That your petitioners find it difficult to conceive that the same independence in judgment and act, which characterizes the Court of Directors, will be found in any Council all of whose Members are nominated by the Crown. Owing their nomination to the same authority, many of them probably to the same individual Minister, whom they are appointed to check, and looking to him alone for their reappointment, their desire of recommending themselves to him and their unwillingness to risk his displeasure by any serious resistance to his wishes, will be motives too strong not to be in danger of exercising a powerful and injurious influence over their conduct."<sup>(2)</sup>

### **Dalhousie's Criticism of The India Council Scheme.**

Lord Dalhousie who was then the Governor-General of India levelled against Lord Palmerston's Bill another attack in the same strain. He said, "You cannot govern India as you have attempted to govern the colonies. The colonies have nearly all of them, an

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<sup>(1)</sup>*Ib.*, p. 306.

<sup>(2)</sup>*Ib.*, p. 311.

English population similar in language, religion, feelings, and institutions to those of the mother country. Yet under the government of a Secretary of State at home, the mightiest of our colonies have been lost, and the rest are only preserved to us by our practically abandoning the right of really governing them in England. How is it possible, then, to expect that a Secretary of State at home can singly govern India, with a population which is five times as great as that of the mother country and all the colonies put together, and which differs from the mother country in every particular in which the colonies resemble it—in language, feeling, religion, and institutions? It cannot be reasonably expected. The class from which such a Secretary of State must be selected is very small. Of the few men who would be politically eligible still fewer could have any intimate acquaintance with the vast Empire of which the Secretary is to have the charge. If the Secretary be of the number of those who have no knowledge of the Indian Empire, it would obviously be unsafe to intrust it to his solitary ignorance. If, on the other hand, the Secretary be one of the very few who are well acquainted with the Indian Empire, it would be still more dangerous to intrust it to his sole authority; because his special knowledge would be likely, at one and the same time, to make him presumptuous and to induce his colleagues to give way on every occasion to his superior knowledge. In either case, India would be given over virtually to a despotism which would be full of danger to the public interests. Therefore, if India is henceforth to be governed by a Secretary of State in the Queen's name, something must be devised to provide that check and guidance for his authority which the Court of Directors has hitherto supplied to the Cabinet of the Queen. Lord Palmerston's Council certainly did not do so, for nine nominees of the Crown, remaining in office for only a few years, then going out, and eligible for reappointment, could not possibly form an *independent* check on a Minister invested with the power of reappointing or excluding them as he pleased. In a few years they would insensibly have become the mere tools of the Ministers. Lord Derby's Council, again, certainly did not form any check. For (passing over all the objections to the close limitation of

qualifications, and the absurdity of many of the modes of election) the Council was endowed by the Bill with no power at all.

### **One Man Rule Condemned.**

“Under either Council, and according to either Bill, an utterly ignorant Secretary or an over-confident, rash, and presumptuous, though highly instructed and experienced, Secretary would be as much the Padshah of India as ever was Akbar or Aurangzebe—with this mighty indifference, that he would rule the Indian Empire, at ten thousand miles away from it. Though I can see plainly enough the objections to the plans that have been preponed, I hardly like to venture to propose one of my own, even to you. But I will make a short flight.”<sup>(1)</sup>

### **Abuses Exposed.**

The abuses connected with the patronage in India had become too patent to be overlooked. Referring to it Lord Palmerston said, “Do not imagine that it is the intention of Providence that England should possess that vast empire, and that we should have in our hand the destinies of that vast multitude of men, simply that we may send out to India the sons of gentlemen or of the middle classes to make a decent fortune to live on. That power has been entrusted to us for other and better purposes; and, without pointing to anything particular, I think it is the duty of this nation to use it in such a manner as to promote, as far as they can, the instruction, the enlightenment, and the civilization of those great populations which are now subject to our rule.”<sup>(2)</sup>

Mr. Robert Bernard Smith criticising the action of the Company in relation to India said, “Our policy had been to make the natives so subservient there that they should form regiments of police to retain the countries which we had annexed; and it had been the ad-

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<sup>(1)</sup>His Scheme was that the Secretary should wield no power apart from his Council—*Ib.*, pp. 419, 420.

<sup>(2)</sup>*I.* Speeches and Documents on Indian Policy, p. 341.

miration of all mankind that the Government of India had been able to do that which all other nations had failed in doing—not only to conquer the nations, but to compel the inhabitants themselves of the conquered countries to maintain our conquests.”<sup>(1)</sup>

### **European Exploitation.**

A perusal of the contemporary records shows that though the immediate cause of the transfer of the administration of India from the Company to the Crown was due to the outbreak of the Mutiny of 1857 which brought to light the glaring defects in the administration of the country, chief of which referred to in Parliament by the Board of Directors in their petition were the exploitation of the country by European Commerce and the European services, and it was hoped that with the transfer of Government to the Crown, these abuses will cease and the country would be governed in the interests of the people. A proclamation to that effect was published by Her Majesty the Late Queen Victoria in which the following passages occur :—

### **Queen's Proclamation.**

“And it is our further will that, so far as may be, our subjects, of whatever race or creed, be freely and impartially admitted to office in our service, the duties of which they may be qualified by their education, ability, and integrity duly to discharge.”<sup>(2)</sup>

“When, by the blessing of Providence, internal tranquillity shall be restored, it is our earnest desire to stimulate the peaceful industry of India, to promote works of public utility and improvement, and to administer the government for the benefit of all our subjects resident therein. In their prosperity will be our strength, in their contentment our security, and in their gratitude our best reward. And may the God of all power grant to us and to those in authority under us, strength to carry out these our wishes for the good of our people.”<sup>(3)</sup>

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<sup>(1)</sup>*Ib.*, p. 360.

<sup>(2)</sup>*Ib.*, p. 384.

<sup>(3)</sup>*Ib.*, p. 386.

We shall now see how far these anticipations and promises were fulfilled by the Government of the country in the name of the Crown.

### **Scheme of The Act of 1858.**

The scheme of the Government of India under the Act of 1858 was to vest all power in the Secretary of State in Council, in whom were vested all the Revenue of India and who was empowered to expand them, as provided in Section 41 which ran as follows :

“The expenditure of the revenues of India, both in India, and elsewhere, shall be subject to the control of the Secretary of State in Council, and no grant or appropriation of any part of such revenues, or of any other property coming into the possession of the Secretary of State in Council by virtue of this Act, shall be made without the concurrence of a majority of votes at a meeting of the Council.”<sup>(1)</sup>

The highest authority in India was the Governor-General in Council who was to be appointed by the Crown, but he was to act under the superintendence, direction and control of the Secretary of State. He was to exercise similar control over the provincial Governors-in-Council, who were all to be also appointed by the Crown. The Central and the Provincial Governments were purely beauracratic, unrelieved by any semblance of popular control, which was introduced for the first time by Sir Charles Wood, the then Secretary of State for India, (Lord Irwin's grandfather) by the Act of 1861. He said,

### **Evils of Foreign Rule.**

“All experience teaches us that, where a dominant race rules another, the mildest form of government is a despotism. It was so in the case of the democratic republics of Greece, and the more aristocratic or autocratic sway of Rome; and it has been so, I believe at all times and among all nations in every part of the world.”<sup>(2)</sup>

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(1)S. 41 Government of India Act. 1858, p. 378.

(2)2 Speeches and Documents on Indian Policy, p. 14.

He then quoted the following pregnant sentences from Mr. Mill's work on *Representative Government* :—

“Now, if there be a fact to which all experience testifies, it is that, when a country holds another in subjection, the individuals of the ruling people who resort to the foreign country to make their fortunes are, of all others, those who most need to be held under powerful restraint. They are always one of the chief difficulties of the Government. Armed with the prestige and filled with the scornful over-bearingness of the conquering nation, they have the feelings inspired by absolute power, without its sense of responsibility.”<sup>(1)</sup>

### **First Legislative Council in 1861.**

He hoped that he was not creating a powerful body of such a character; but the Act which he sponsored did not modify the previous policy of the East India Company or of the Crown, but merely enabled the Governor-General to nominate between 6 and 12 additional members to the Council for the purpose of making Laws. Half of these were to be Non-Officials. Their number was subsequently raised to be between 10 and 16. Local Councils were also constituted for the two Presidencies of Madras and Bombay, consisting of 4 to 8 additional members. Later on Legislative Councils were called into existence for Bengal and the North-western provinces.

### **Demand for Elected India Council.**

This was the first introduction of a popular element in the Legislative Council of India, and it ran its course for a period of 31 years. But when the Council Act was further amended in 1892 it was clearly recognized that the creation of the nominated Councils had not brought India into the arena of Responsible Government. That the authors of the Pre-War Reform could have dreamt of advancing India in the direction of Responsible Government is clear from their utterances and action embodied in the three Councils' Act, the last of which found its way in the Statute Book

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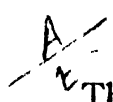
<sup>(1)</sup>*Ib.*, pp. 14, 15.

in 1909. But apart from responsible government the main attack directed against the scheme of the Government of India was, against the irresponsible character of the Secretary of State and of his Council.

Mr. Schwann had moved an amendment in 1892 for introducing the principle of election in the India Council. But, that amendment like all other amendment intended to widen the door of election was rejected by Parliament. Even the Late Mr. Gladstone, the pillar of radicalism opposed the introduction of an elective element, but hoped that the government would carry out the intension of the amendment apart from the decision of the Houses. But that intention of the House was never carried out and the India Council remained a nominated body and it so remains upto date.

As regards the introduction of popular element in the Indian Legislature, the Act of 1892 made some advance but wholly incommensurate with the demands of the people.

### **Morley Minto Reforms.**

 The Indian National Congress started in 1885 had been demanding a larger measure of reforms and the introduction of responsibility in the Government of India. The people of India were deeply disappointed by the response given to their demands, with the result that a strong revolutionary movement started in Bengal, which began openly to preach and practice the doctrine of Fire and Sword.

After long years of discussion and hesitation the Government at last took action and introduced another amending Bill which became Law in 1909. It considerably raised the number of the additional members of the Viceroy's Council from 16 to 60 and correspondingly raised the number of members of the local councils, with this difference that while the official majority in the Viceroy's Council was to be retained, that majority in the local council was abolished. A portion of the members of each Council was to be elected, but as before, the Budget was only open to discussion but

the Council was not empowered to vote thereon. The right of putting supplementary question was for the first time granted, but it was provided that the President may disallow such questions, and the member to whom it was addressed may decline to answer it.

John Morley, (then Viscount Morley) justified this measure in his speech delivered in the House of Lords on 23rd February 1909; in the course of which he said: "There are, I take it, three classes of people that we have to consider in dealing with a scheme of this kind. There are the extremists, who nurse fantastic dreams that some day they will drive us out of India. In this group there are academic extremists and physical force extremists, and I have seen it stated on a certain authority—it cannot be more than guessed—that they do not number, whether academic or physical force extremists, more than one-tenth, I think, or even three per cent., of what are called the educated class in India. The second group nourish no hopes of this sort, but hope for autonomy or self-government of the colonial species and pattern, and then the third section of this classification ask for no more than to be admitted to co-operation in our administration, and to find a free and effective voice in expressing the interests and needs of their people. I believe the effect of the reforms has been, is being, and will be to draw the second class, who hope for colonial autonomy, into the third class, who will be content with being admitted to a fair and full co-operation."<sup>(1)</sup>

In his *Recollections*, Lord Morley takes the public into the secret working of his mind from which we find that the Congress and the popular movement behind it had left the Secretary of State with no alternative but to introduce the small reforms which he did.

### **Morley on Awakened India.**

In one of his letters to the Viceroy he said, "Everybody warns us that a new spirit is growing and spreading over India; Lawrence, Chirol, Sidney Low, all sing the same song; 'You cannot go on governing in the same spirit; you have got to deal with the Congress

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(1)2 Speeches and Documents on Indian Policy, pp. 82, 83.

party and Congress principles, whatever you may think of them: be sure that before long the Mahomedans will throw in their lot with Congressmen against you,'” but he went on to add, “I don't know how true this may or may not be. I have no sort of ambition for us to take a part in any grand revolution during my time of responsibility, whether it be long or short.” That he was careful not to take any part in the revolution is clear from the halting terms of the Reforms of 1909 which he had engineered in consultation with Lord Minto, the then Viceroy of India.

In his private letter to the Viceroy, he said, that the time for the Reforms was overdue and that either one of the two should start by writing a dispatch which should not be “a long or high flown affair.”

He had in his mind the question of appointing an Indian to the Viceroy's Executive Council. Referring to it, he said:—

“I suppose the notion of a Native in your Executive Council would not do at all. Is that certain? I dare say it is—and it would frighten that nervous personage (naturally nervous,) the Anglo-Indian.”<sup>(1)</sup> But it frightened not only the Anglo-Indians but many Englishmen at Home. Lord Morley has pointed out that one of the peculiar features of English politics is that whatever may be the views of leading politicians upon other questions they appear to be adamant against any advance in India. As Lord Morley wrote in another connection, “Mr. Gladstone and Chamberlain were very unlike in many ways, but they both of them often astounded me by the tenacity with which they held to dubiously supported opinions.”<sup>(2)</sup>

### **Morley's Modest Bill.**

Lord Morley had great difficulty in piloting his modest measure through the House of Lords. It appears that he was prepared to pilot a measure of bolder advance, but he feared its fate in the House of Lords. As he wrote in one of his letters to the Viceroy: “If we

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<sup>(1)</sup>2 Recollections, p. 174.

<sup>(2)</sup>*Ib.*, p. 190.

had satisfied the Lords at every turn, we should certainly have been laying up trouble for ourselves in the Commons. You will laugh at me as a horrible double-faced Janus, for having in one House to show how moderate we are, how in the other to pose as the most ultra-reformers that ever were. Such are what we call tactical exigencies!"

As already stated, Lord Morley was anxious to appoint at least one Indian member to the Viceroy's Executive Council. He wrote that if he were to make this a part of the Statute, it would be thrown out by the consensus of opinions of both the Houses. So, he left it for executive action. Even here he encountered unexpected difficulties from English quarters. The liberal Cabinet unanimously agreed to his proposal to appoint one Indian member to the Council but His Majesty the King protested against the whole proceeding, though he admitted that there was no alternative against the unanimous Cabinet. Lord Roberts however lost no time in publicly protesting against Mr. Sinha's appointment in the House of Lords, but as Lord Morley adds, "Nobody paid attention, for that is one glorious virtue in our political ways, that when a thing is done it is treated as done, and people listen no more."<sup>(1)</sup> Lord Morley also appointed two Indian Members to his own Council.

But neither this measure nor the liberal policy underlying it sufficed to placate the country in which lawlessness and unrest had almost suspended the ordinary machinery of Government which was driven to resort to wholesale deportations and arrests which the Secretary of State had most reluctantly to sanction.

In one of his letters he said, "A pretty heavy gale is blowing up in the House of Commons about deportations, and shows every sign of blowing harder as time goes, for new currents are showing."<sup>(2)</sup>

It is common knowledge that the general unrest in the country had received a special stimulus in Bengal which had been

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<sup>(1)</sup>2 Recollections, p. 308.

<sup>(2)</sup>*Ib.*, p. 309.

partitioned into two provinces by Lord Curzon in 1905 which aroused the deepest hostility of the people of Bengal against what they considered to be a dismemberment of their province.

Six years later, the King visited India and held a Darbar in Delhi, where he cancelled the partition of Bengal and at the same time constituted two new provinces of Bihar and Orissa and Assam and transferred the seat of Imperial Government from Calcutta to Delhi. Bengal was thenceforth to be in charge of a Governor instead of a Lieutenant-Governor. A provision of the establishment of Local Councils in the provinces under the Chief Commissioners was also made. These provisions were embodied in the Amendment Act of 1912. Three years later, all the previous Acts were consolidated into an Act of 1915 and in the next year some minor amendments were made to which no reference is here necessary. This closes the second stage in the evolution of the Constitution of India.

### **Approach to Responsible Government.**

Before passing on to the third, we may summarize its result.

Ever since the commencement of British connection in India, the policy of the Company and of the Crown was never in the direction of educating the people or of equipping them with the means of assuming the responsibility of Self Government. The East India Company was started as a purely commercial venture. It had no territorial ambition. When owing to the weakness of the Native Government and the dissensions amongst the people, it found to its advantage to make territorial acquisition, it did so merely as a profitable investment. The merchants and the European services made no secret of treating India as a Milch-cow.

### **Warren Hastings' Defence.**

When Warren Hastings was impeached before the House of Commons, he defended himself by stating that actions in Asia did not bear the same moral qualities as the same actions would bear in Europe. He said, "I had an arbitrary power to exercise; I exercised

it. Slaves I found the people; slaves they are. They are so by their constitution; and if they are, I did not make it for them. I was unfortunately bound to exercise this arbitrary power, and accordingly I did exercise it. It was disagreeable to me, but I did exercise it, and no other power can be exercised in that country." The abuses and accusations of the East India Company and their servants became so intolerable that the whole country created a Mutiny, which aroused the attention of Parliament, who hastily cancelled the Charter of the Company and substituted therefor direct Parliamentary control. That control was exercised through the medium of the Secretary of State and his Council. But as it was pointed out at the time, the substitution of this machinery for the one already scrapped would not be conducive to the advancement of India or adapted to the redress of the grievances from which she suffered. It is true that the Government had seriously in their minds the question of improving the condition of the people of India and controlling in some degree the exploitation of the country by the European traders and the services.



## THE THIRD STAGE.

### **Company and Crown Follow the Same Policy.**

It must be confessed that in both these respects the intentions of the framers of the Reformed Constitution wholly failed; but that Constitution would have continued down to date had it not been for the intervention of the Great War, which brought into sight new problems and forced the Government to prescribe new remedies which could no longer be postponed. It must be remembered that on the eve of the War India had been in a state of serious unrest which was growing by leaps and bounds and extending from the towns to the countryside.

As Lord Morley put it:—"It was among the students in parts of India that unrest especially prevailed. That class was rapidly being drawn into something like a spirit of revolt against the British Government, and the movement was unmistakably coming to a head, notably in Upper India. A feeling gained ground that the last twenty years had been a period of reaction, and in combative response the idea of complete independence of England began to appeal to youthful imagination. This marked the line of cleavage between moderate and extremist in the native party of reform. It was no question of the terrible military mutiny of half a century ago repeating itself. The danger arose from a mutiny, not of sepoys about greased cartridges, but of educated men armed with modern ideas supplied from the noblest arsenals and proudest trophies of English literature and English oratory. Official persons of high station and responsibility assured the new Viceroy that the political change within the last dozen years was enormous, and though the mass of the people remained ignorant and unmoved, it would be a fatal mistake to suppose that the change was confined to the preachings of political agitators. The fairly educated Indians were thoroughly dissatisfied with the old order of things. The victories of Japan, the revolutionary movements

in Turkey, China, Persia, did not pass unobserved. A new and ominous suspicion that England had come to a stop in her liberating mission made way. Though modern notions did not descend from an educated handful to the humble myriads, yet they easily yoked themselves to deep invisible roots of alien race, creeds, inviolable caste.”<sup>(1)</sup>

### **Indian Unrest Growing.**

The danger of this growing unrest accompanied by the holocaust of Sabotage, Bombs and Bullets, threats of non-payment of taxes, had shaken the very foundations of orderly government.

The Morley-Minto Reforms were not only belated, but as Morley has himself put it, they were laughed out of Court as the production of a mouse from the labouring mountain. The world opinion was being harnessed against the British Government in India, which the British Cabinet wished to allay by issuing a Manifesto on the occasion of the King’s Jubilee, but as Morley pointed out, “it was a manifesto not only to India, but to the world, for the world had been very ignorant, and not at all charitable in criticisms of our rule.”<sup>(2)</sup>

Small and inconsiderable as the reforms were, they were stoutly opposed by the services and the European commercial interests both in England and in India.

As Lord Morley wrote, “The influence on conservative opinion at home of the retired Anglo-Indian, accustomed to wield authority and with a practiced pen, whose ideas crystallised in the local atmosphere that had surrounded him in distant days. These ideas had fallen out of date, yet they still survived and found a ready and important public among our leading men. If it had only been possible to jog along on old lines, they would have kept their value. That was not possible. The dual system of Indian government set up by the organic statute of 1858 was evidently now to be exposed to a new and perhaps formidable strain. The ingenious saying, that

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<sup>(1)</sup>2 Recollections, pp. 154, 155.

<sup>(2)</sup>*Ib.*, p. 276.

British rulers of India with a supreme Parliament at home are like men bound to make their watches keep time in two longitudes at once, was now to be sharply tested.”<sup>(1)</sup>

### **War and the Unrest.**

The Indian situation on the eve of the War was therefore far from satisfactory, but no sooner the War was declared, the Indians of all shades of opinion, immediately suspended their hostility towards the Government and marshalled all their resources to assist England in her trial.

“Since the outbreak of War,” said Lord Hardinge, “all political controversies concerning India have been suspended by the educated and political classes with the object of not increasing the difficulties of the Government’s task. In certain cases where drastic legislation was necessary, the Indian Government was able to pass it without the slightest opposition in the Imperial Legislative Council, which consists of 68 members, with an Indian representation of about 30, and a Government majority of only four. Speeches made by Indian members of the Council are striking testimony to their sense of increased responsibility. There is no doubt of the very considerable political progress of India. Even during the five and a half years of my stay there I noticed a vast political development. It is unquestionable that this improvement is an outcome of the reformation of the Councils undertaken by Lord Morley and Lord Minto.”<sup>(2)</sup>

### **Colonies Demanded Equality.**

Such then was the situation in India in 1914. The position of the colonies was equally one of growing discontent. They were anxious to secure a position of equal status in the British Commonwealth and had been clamouring for it for many years.

The situation had to be cleared up and the colonial ambitions satisfied, and a conference known as the Imperial War Conference

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<sup>(1)</sup>*Ib.*, p. 156.

<sup>(2)</sup>*Ib.*, p. 340.

was convened in 1917 the objective of which was explained by the Prime Minister in his statement dated December 19, 1916, in the following terms:—

“Government felt that the time had come when the Dominions ought to be more formally consulted as to the progress and the course of the War and as to the steps that ought to be taken to secure victory and the best methods of garnering in those fruits.”

“ We propose, therefore, at an early date to summon an Imperial Conference to place the whole position before the Dominions and to take counsel with them as to what further action they and we should take together in order to achieve an early and complete triumph over the ideals they and we have superbly fought for.”

The omission of any reference to India in this announcement at once attracted its notice, and both the British and the Indian press started an agitation for the inclusion of India in the Conference. As the War was then still going on, the Government thought it discreet, and after prolonged consultation agreed to admit India to the Conference, and three delegates were appointed to assist the Secretary of State. This was in striking contrast to the position of the Dominions who were represented by their Prime Ministers who could bind their Governments by the decisions they had taken. Meanwhile, the Government policy towards India was fixed and the announcement of August 20, 1917. Later on when the Conference met, the representatives of India were treated on the same footing as those of the Dominions and the following resolution was unanimously passed:—

### **Declaration of a New Policy.**

“That any readjustment of Constitutional relations while thoroughly perserving all existing powers of Self Government and its complete control of domestic affairs should be based upon a full recognition of the Dominions as autonomous nations of an Imperial Commonwealth, and of India as an important portion of the same; should recognize the right of the Dominions and India to an adequate voice in foreign policy and in foreign relations; and should provide

effective arrangements for continuous consultation in all important matters of common Imperial concern, and for such necessary concerted action, founded on consultation as several Governments may determine.”

This resolution placed the Dominions and India in the same position and conferred upon them International status, in consequence of which they were invited and became signatories to the treaty of Versailles on June 28, 1919—the first occasion on which the Dominions and India openly appeared in their new status to sign an International treaty.

President Wilson had pledged the support of America in the War on the acceptance by the Allies of his fourteen points, one of which was Self Determination for all Nations, big or small, and the second was the Constitution of an International League of Nations to insure the peace of the world. All these fourteen points were accepted by England as well as by the Allies, and consequently in 1920 the League of Nations was inaugurated and its covenant settled which only admitted States and Dominions possessing Self Government to its membership. India was invited to become and became one of its founder members and has continued to remain so up to date. India has since been invited to all the Imperial Conferences including the one now about to take place in London,<sup>(1)</sup> and she has taken her due place along with the other Self-Governing Dominions in all Inter-Imperial and International Conferences. All these facts are sufficiently known to the public and it will be just as well if I categorised here some of the attributes of India's external and internal Sovereignty which constitutionally places her in the same position as the other Self-Governing Dominions of the British Commonwealth.

### **India's External Sovereignty.**

*As regards her external sovereignty—*

1. India was invited to the War Conference and her future status defined therein.

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<sup>(1)</sup>It took place in October, 1930.

2. As such, she was invited to be a signatory to the Peace treaty of Versailles on June 28, 1919.

3. On the establishment of the League of Nations in 1920 she became a founder member thereof. Membership of the League was only open to the countries possessing self governing status, and no others.

4. Following her International status, she became a party to the Kellogg Pact made for the limitation of armaments.

5. India was invited to the Naval Conference and has signed a Treaty embodying its decisions.

6. India is a member of the International Labour Conference.

7. India is entitled to make Treaties with the other dominions and to appoint her own agents and Trade Commissioners accredited to foreign countries. She has just concluded one such treaty with Turkey.

In this connection it should be remembered that in all treaties made by England, the Dominions and India are expressly declared, as not bound, unless they ratify them. In other words, England has no right to make a treaty on behalf of India any more than she has on behalf of the other self governing dominions.

It must, however, be added that the proviso in the treaty excludes not only the Dominions and India but also other possessions of the British Commonwealth. As such, it must not be regarded as a crucial index of her sovereignty.

8. India has been given the right to correspond directly with the other Dominions, e.g., South Africa, though it is true that in this respect her right is limited and exercised subject to the general control of the Secretary of State.

9. At the Imperial Conference of 1922, India along with the other dominions was expressly given the right to control the com-

position of her own population and she has exercised this right by enacting a measure known as the Immigration into India Act 1924.<sup>(1)</sup> This important resolution of the Conference settled the question that citizenship of the British Commonwealth did not necessarily carry with it the right of free ingress and settlement in all parts of the Empire and that all Self Governing Dominions and India had the same right to control the composition of their own population.

### **India's Internal Sovereignty.**

*Turning next to her rights of internal sovereignty—*

#### **Fiscal Autonomy.**

10. India has been expressly given the right of fiscal autonomy. The Joint Parliamentary Committee in their report on the Government of India Act pointed out that nothing was more likely to endanger the good relations between India and Great Britain, than a belief that India's fiscal policy was dictated from Whitehall in the interests of the trade of Great Britain. They therefore recommend that India should be given complete fiscal autonomy, and that in this respect she should have the same liberty to consider her interests as Great Britain, Australia, New Zealand, Canada and South Africa. All the Secretaries of State including the British Cabinets of the two parties have recognized her technical fiscal independence, though during the debate on the Cotton Protection Tariff Bill, in March last, it became clear that unless the Central Government were made responsible to the Legislature, India would lack the machinery necessary to give effect to her fiscal autonomy.

#### **Purchase of Stores.**

11. India has been given the right to control the right of purchases of her own stores: as such, the Indian High Commissioner is appointed by India and is under the control of the Legislat-

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<sup>(1)</sup>Act III of 1924.

ive Assembly, who have decided that all purchases through him shall be made in the cheapest market. Here again, the weakness of India lies in the fact that it is left to the good will of the departments concerned, to employ his agency and that the Legislative Assembly cannot compel them to do so. So far the Military have steered clear of his agency in making their purchases, and other departments have not employed him to the extent the Assembly would like them to. But still the fact remains that the power is there though under the present Constitution it remains almost illusory.

### **Assembly's Vote of Supplies.**

12. The Indian Legislative Assembly is statutorily empowered to vote supplies upon all heads except only those excluded by section 67 (a) of the Government of India Act. The provision for supplies implies the power of control over the expenditure of the departments concerned, which the Assembly cannot exercise, without assuming responsibility in respect of them. This was no doubt withheld from it in the Act, but the Joint Committee had recommended the enlargement of its powers by having recourse to a convention to be established, "that only in exceptional circumstances should the Secretary of State be called upon to intervene in matters of purely Indian interests, where the Government and the Legislature of India are in agreement." If this convention had been given effect to the position of the Indian Legislative Assembly would have approximated more nearly to that of the Parliament of a Self Governing Dominion.

### **Secretary's Relaxation of Control.**

13. Apart from such conventions, the Secretary of State has been given power under Section 19 (a) of the Act of 1919 to relax his control in order to give effect to the purpose of the Government of India Act 1919. These purposes were stated in the preamble as "the increasing association of Indian's in every branch of Indian Administration and for the gradual development of self governing

institutions with a view to the progressive realization of responsible government in British India.”

It will thus be seen that the Reforms Act was to be implemented by the establishment of widening conventions. As every student of Constitutional Law knows, Conventions have always been a dominant factor in the constitutional system of the British Commonwealth, which prefers the elasticity and flexibility of such system to the rigid and immobile framework of a written constitution. It prefers the conventions to the Statute, because they are dynamic and not static, because they are easily formed and conducive to a healthier growth and development of a constitution. The peculiar genius of the British Constitutional system has always been the adjustments of relations by conventions, understandings and usages. Such then, is the position of India both in the domestic and in the international field.

### **Dominion Status in Theory, but not in Action.**

In a considered speech, the Secretary of State described India as enjoying Dominion Status in action, but with due respect this is just what it has not, since India's status as a Dominion is certainly *de jure* but not *defacto*. It is so in Law but not in action, which is the only thing now required to make her status function and which it would as soon as the Government provided it with an adequate machinery suitable for the enjoyment of her new status. The question often raised and frequently discussed is, therefore, not whether India should be given Dominion Status with or without transitory safeguards, but rather that India having already been exalted to that status by the accumulated growth of conventions, can she be now denied the machinery necessary to implement her status? It is illogical that India should command an International status, enter into international pacts and obligations and yet be helpless to observe them because her whole Government is bureaucratic and dependent upon the supreme authority of the Secretary of State. This is an anomaly and a unique anomaly in the British constitution to which several writers on the constitutional theory have adverted.

### **India's Anomalous Position.**

Professor Zimmern criticises India's position in the British Commonwealth as hardly amenable to political logic. While Professor Keith points out how this anomaly has been the parent of many others causing confusion in the constitutional structure of the British Commonwealth, e.g., in the Locarno Pact of 1925 under which the United Kingdom guaranteed France, Belgium and Germany their frontiers, a provision was inserted that it was subject to the approval of the Governments of the Dominions and India. This was a novelty, since in all other treaties, the reference is to the Dominion Parliaments and not the Governments, but this express departure was made to meet the case of India; and it was pointed out that even if the assent of the Indian Legislature were required it was not likely that it would undertake the obligations voluntarily, while its certification would have been out of the question. The Indian Legislature were thus excluded from the necessity of having to record a direct vote on the question, though it was of course clear that the other Dominions would not dream to undertake an obligation without the consent of their parliaments.<sup>(1)</sup>

The fact is that not only in respect of the Locarno Pact but in respect of all other obligations India has really no individuality. She is a dummy partner of England and merely duplicates her vote. Unfriendly critics on British Rule regard this an act of insincerity on the part of England in securing a political independence to India in all international bodies when really her vote was at the disposal of the Secretary of State and the representatives of the British Government. So long as India remains in the bond of absolutism, it is idle to think of her Dominion Status in action. But the fact remains that she has been allotted a sovereign status along with the other self governing dominions in the comity of Nations, though she lacks the means of exercising her right like the other members of the Empire.

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(<sup>1</sup>)Keith, *Sovereignty of the British Dominions*, pp. 399, 400.

### **Reform Act 1919 Elastic.**

The Reforms Act of 1919 was expressly thrown into an elastic form so as to admit of the expanding rights of India during the transitory period, which was to have expired this year. During this period it was intended that all its provisions would be exploited and India given a more assured place amongst the free nations of the Empire; but the bureaucratic character of the Central Government and its hostility to any advance has prevented her from developing her stature, while the change of governments in England have involved a corresponding change in the Secretariat mentality towards India. All these facts could not have been ignored by the Indian Statutory Commission. They were not ignored by the Indian Central Committee appointed to co-operate with that Commission. It will be seen that the section 84 (a) of the Government of India Act enabled the Statutory Commission to report as to whether and to what extent it is desirable to establish the principle of responsible government or to extend, modify or restrict the degree of responsible government then existing in India.

### **Assembly and the Growing Unrest.**

This enquiry was not necessarily limited in its extent by the preamble to the Government of India Act. Indeed if the preamble were intended to be the basis of enquiry a reference to it would have been made in the section under reference. In any case, it is well known that when the Act of 1919 was enacted the people of India were sharply divided into two opposing camps. The Congress and the very large body of the intelligentsia who went with it regarded the Reforms as wholly inadequate and the preamble as derogatory to India. They therefore boycotted the Reforms and the Reformed Councils. A small body of moderate politicians while agreeing with the majority that the Reforms were inadequate and illusory, still wanted to give them a trial for what they were worth and offered themselves for election to the Reformed Councils, but they lost no

opportunity in pressing upon the Government their own view-points and demanding an early revision of the Constitution so as to introduce some degree of reality into the Constitutional structure of India. One such resolution was passed by the Legislative Assembly with the concurrence of the Government of India; but it appears to have been shelved in England, where with the change of Government, the question of revision before the Statutory period was considered as both inexpedient and inopportune. But when I drew the attention of the Government in a resolution accepted by the House, that apart from the Statutory revision of the Act the constitutional development of India was possible even within its structure, a point to which Lord Peel when Secretary of State for India had referred in his dispatch in reply to the resolution of the Legislative Assembly. My resolution was forwarded to the India Office, but was definitely pigeon-holed there and in spite of the pressure exercised by the Assembly from time to time, the points therein raised were definitely evaded. Meanwhile, the situation in the country was growing from bad to worse. After the first triennium the Congress decided to capture the Councils which they did in the general elections of 1923. They then pressed upon the Government the desirability of taking immediate action in improving the political condition of the country, but the Government adopted the Fabian policy and appointed a departmental committee which drew up an inconsequential report upon which no action was taken. The fact was that the Government had been all along playing for time. Meanwhile, the country was getting thoroughly impatient of the predicament in which it found itself.

### **Obstruction by the Congress.**

The Congress Committee in the Councils began to block all legislation and began to thwart administrative action. Wherever possible the Ministers were withdrawn or discredited by votes of no confidence, and by 1927 it was perfectly clear that the country had definitely repudiated the Montagu Reforms,

### **The Statutory Commission.**

The Government at last felt that it could no longer stave off the growing discontent, and after prolonged correspondence with Whitehall they decided to take action by the appointment of a Statutory Commission as provided in the Act. But India had no confidence in Lord Birkenhead who was then the Secretary of State for India, because he had already given out in 1918 that he and his party thought that India had profited too much from the War and that Montagu had given her a Constitution far beyond her deserts. His policy was a policy of clear reaction and when he appointed a purely British Commission, India revolted and started its boycott, in which all parties including the moderates joined. The Legislative Assembly threw out the Government motion for co-operation with the Commission and similar motions in the Local Councils met the same fate. In spite of the pronounced hostility of the country to the British Commission, the result of which was said to be a foregone conclusion, there were a few credulous beings like myself, who thought that in spite of the valid objection of the Indian nation the Commission might still be open to persuasion and reason, and that in any case it was bound to decide in accordance with the tenor of the evidences given before it.

### **The Central Committee.**

In this view I joined the Central Committee co-operating with the Commission, took part in the investigation which lasted for nearly 13 months. At the close of this inquiry the Commission and the Committee parted company. There was no mutual consultation or discussion contrary to the promise made by the Chairman of the Commission that at the close of the evidence the two wings would meet for joint consultation. The members of the Central Committee drew up their report in which they have followed the evidence and given their reasons for recommending the transfer of all subjects in the Central Government reserving only for a stated time the full control of the defence, foreign and political relations. The princi-

pal recommendations of the Central Committee is that the revenues of India should be vested in the Government of India which should be responsible to the Legislative Assembly. This is the main recommendation and it is amply supported by the evidence of responsible bodies and persons given before us. Even the India Office Memorandum reactionary though it is, concedes that the Government of India must either go forward or backwards and that it cannot stand still. That the Simon Commission have come to a diametrically opposite conclusion is clear from their report.

### **Restricted Data.**

In the first place they placed before themselves the bald statement contained in the preamble to the Government of India Act, as a sole basis for their inquiry, overlooking the constitutional expansion of the country which had since taken place and which had become an integral part of the British Constitutional policy. Though one complete volume is devoted to what is called the historical survey of the country, there is not even a passing reference to the constitutional development of the country since the War; and there is of course, as already stated, a clear reversion to the letter of the Law as contained in the Act of 1919. Even so, it was open to the Commission to recommend the rescission of the Reforms of 1919 by giving reasons therefor. They have not done so. They profess to recommend an advance both in the Central as well as in the Provincial Governments; but at the same time they have serious misgivings, whether the advance they have recommended is likely to be accepted by the people of India and they therefore provide for an alternative Government in the case of the break-down of the Constitution. This alternative government is an undiluted absolutism, since all the powers of the Government is centred in the Governor subject only to the control of the Governor General, who in his turn is subject to the ultimate and supreme control of the Secretary of State. The Government of India is thus to vest in this triumvirate. It is no doubt the alternative government, but the Commissioners

could not have been aware of the fact that the country which had rejected the Montagu Reforms is not likely to hug to its bosom, the Simon dispensation which took away all essential popular control therefrom. In order to fully appreciate the effect of the Simon Report let us consider its proposals under the three heads:—

*Firstly*, the Provincial Governments, *Secondly*, the Central Government and *Thirdly*, the Secretary of State for India in Council.

### **The Simon Scheme of Provincial Government.**

Taking first the Provincial Governments and the existing constitution as the basis, let us see what we have gained and what we have lost. The gains there are, of course, *nil*. It is only the losses that we are to reckon with. I will categorize them as follows:—

1. Under the present Constitution the ministerial responsibility though limited to only certain departments is real. Under the Simon scheme this responsibility is precarious and depends upon the goodwill of the Governor, since he is empowered to place any or all subjects in charge of an official or officials.

2. Under the present scheme all ministers are responsible to the Councils. If they forfeit their confidence, they go. But under the Simon scheme the Governor is empowered to appoint officials as ministers, and these officials are of course wholly irresponsible to the Legislature. The appointments of officials as ministers is a mere euphemism since there can be no minister without ministerial responsibility. An official who is responsible to the Governor and to him alone is undistinguishable from an Executive Councillor and since the Governor can appoint any official in charge of any department it follows that henceforth the sharp distinction between the transferred and the reserved halves of the Government depends upon the goodwill of the Governor.

### **Ministers, Present and Future.**

3. At present the responsibility of the Ministers is joint and they can be removed by a vote of no confidence. Under the Simon

scheme, Official Ministers and Non-Official Ministers will conjointly constitute the Ministry and it is a part of the scheme that the vote of censure must be moved against the ministry as a whole with the result that such vote would entail dismissal of the ministers, but the official minister remains, though the censure may have been directed solely against him. There are countries in which vicarious punishment is permissible, but there is no country that I am aware of in which the innocent is punished for the guilty who escapes all punishment.

### **The Services.**

4. The Lee Commission had decided that all services operating in the transferred field shall be provincialized. That this is an obvious truism admits of no doubt. As the Madras Government pointed out—the throwing of responsibility upon the ministers carries with it their right to appoint their own agents for carrying out their policy. Under the present constitution some of the members of the all India services are in charge of transferred departments, but they are appointed and maintained in their places by the Local Council subject to the approval of the Ministers. The Statutory Commissioner have however, recommended that not only the All India services must continue, but that even the postings of the members thereof to certain appointments shall entirely be in the hands of the Secretary of State; e.g. Education is a transferred subject now, and the Director of Education is a member of the Indian Educational Service, which has been abolished in consequence of the Reforms. But under the Simon scheme the Director of Education may be appointed by the Secretary of State and he will be removable only by the Secretary of State, who may appoint all the other departmental heads at his discretion, the result being that whatever may be the difference of opinion between these Heads of Departments and the Ministers who will be punished for not carrying out the policy of the councils, and not the departmental heads who are irremovable even by the Local Government or by the Government of India. Here,

again the Ministers may be penalized for the misdeeds of their officers—another case of vicarious punishment for which there is no precedent in the Constitutional history of the world.

5. At present the resumption of transferred subjects has to follow a cumbrous procedure but under the Commissioners' scheme it depends entirely upon the will of the Governor.

### **Council Control Removed.**

6. All the Provincial Governments are at present under the superintendence, direction and control of the Governor-General in Council and not the Governor-General alone. This has been the practice ever since the constitution of the Governor-Generalship of India, its objects being that no single individual should be entrusted with the right of taking important decisions upon matters of high policy without collective consultation with the members of his Council, and this procedure has been in existence ever since the establishment of British Rule in India.

The withdrawal of the Provinces from the control of the Governor-General in Council, removes, as will be presently seen from the cognizance of the Legislative Assembly all provincial questions since no matter which is not the primary concern of the Governor-General in Council can be a subject of discussion or debate in the Legislative Assembly.

7. The Statutory scheme will in no way be conducive to the economic government of the provinces. The one complaint the Congress, the Councils and the Assembly have been making is against the costliness of the All India services. The retention of these services would make the reformed provincial councils powerless to effect economy, burdened as they would be with the cost of the All India services which they may not require but which they will have nevertheless to pay for.

8. The Statutory Commissioners in more than one place have stated that they wished to establish a true Provincial

Autonomy, but how is this consistent with the recommendation for retaining the present distinction between the votable and the non-votable parts of the Budget?

### **Alternative Absolutism.**

9. The Statutory Commissioners have presented India with two alternatives, either their own scheme of Provincial Autonomy or failing which the Governor's Rule without the Council and without the controlling authority of the Central Government.

The first alternative is so reactionary and is so anomalous that the Commissioners themselves recognize the difficulty of working it. They say, "We fully appreciate that the Governor's position will become embarrassing if, in the exercise of his special powers, he is opposed by an united Ministry supported by a substantial majority of the Legislature. But it is exceedingly unlikely that measures taken by the Governor for the preservation of peace or the protection of minorities will be such as not to receive the tacit if not always openly expressed approval of a substantial section of the public, and we should hope that opinion will, in the end, generally rally to his support,"<sup>(1)</sup> with the utmost deference this view can only be expressed by people wholly ignorant of the mentality of the Indian people. They seem to think that the Governor's action if not supported by the Council, is likely to be supported by the public. The fact is, that the Council and the public both will not touch the Simon scheme with a pair of tongs. It is useless to waste time upon a scheme which is so reactionary as to stagger humanity.

### **The Simon Scheme of Central Government.**

Turning next to the Central Government the proposals regarding it are even more reactionary. The present constitution of that Government is as follows:—

(1) The Viceroy as such has no existence in the Indian constitution. The Simon Commission want to give the Viceroy a Statu-

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(1)2 Repp. p. 56.

tory status and place him in charge of the Army, the Indian States and as Governor-General, he and he alone without his Council will control the provinces through the provincial governors, subject in turn to the superintendence, direction and control of the Secretary of State. Under the present constitution not only the provinces but the Indian States, the Army and all departments of the Government of India are in charge of the Governor-General in Council and not of the Governor-General alone. The position, therefore, is that in the Central Government the Simon Commission have created a bureaucratic diarchy, removing from the Viceroy's Council three most important subjects, internal administration, defence and foreign relations which have been placed under the Viceroy's control, subject only to the shadowy control of the Secretary of State for India. It is acknowledged on all hands that diarchy has failed in India because all the departments of government cannot be ruled in water-tight compartments, and yet the Simon Commission wish to introduce that very system in the administration of the Central Government, freeing even from the Council control, much less the popular control, subjects which cannot be isolated from the general administration of the country.

(2) Under the convention in force since 1921, three out of six members of the Viceroy's Council are to be Indians. It is well known that the Indian members have not seen eye to eye with their British colleagues which has thrown a heavy responsibility upon the Viceroy who has to decide between the official and the non-official equipoise.

### **Majority of Europeans in Council.**

The Simon Commission propose to add one more European member to the Executive Council, who is to be in charge of the Army, and curiously he is to be the leader of the Federal Assembly. Apart from the martial leadership of a popular chamber this is a device to ensure a certain and uniform preponderance of service views in the Viceroy's Council.

On the inauguration of the Montagu Reforms the King had sent a message to the Legislative Assembly to the effect that autocracy in India was dead. Who can now deny, that it will now flourish evergreen under the Simon Scheme of Reforms?

### **Limitations on the Council.**

(3) The Legislative Assembly as now constituted is able to exert its influence through the Governor-General in Council all over India. The Simon Commission recommend the abolition of the Legislative Assembly and its replacement by a Federal Assembly constituted by indirect elections from the Provincial Councils. This Assembly is intended to be the mouth-piece of the provinces. And yet it will not be able to prevent abuses therein, because all the provinces are under the scheme to be removed from the control of the Governor-General in Council to that of the Governor-General. It is a curious paradox that the provincial representatives in the Central Government, who are to finance the provincial administration by taxation at the centre, are yet to have no voice in redressing wrongs of the provinces, or, indeed, to have any say in provincial questions.

(4) The Military expenditure of India has been the one festering sore of Indian administration. For a generation past, and more so since the Reforms, the Congress and all political organizations in the country and the Legislative Assembly have been raising an outcry against its appalling growth, out of all proportion to the requirements of the country or its financial ability to bear it.

In the International Financial Conference held at Brussels, at which India was represented, it was unanimously decided that no country should spend more than 20% of its revenue upon its defence. India's Military expenditure is nearly half of the Central Revenues and about 45% on the entire Revenue of the Central and Provincial Governments. The Central Committee have gone into this question and pointed out that the bulk of the British troops which cost six times as much as the Indian troops are kept in this country for Imperial purposes, and that their cost must be borne by the Imperial Exchequer and not by the Revenues of India.

### **India to Leave Her Defence to England.**

This view is feebly voiced by the Simon Commission, who however, recommend the astounding solution that India should pay an annual subsidy to England and England should undertake the defence of India. It is for this reason that the Army is proposed to be placed entirely under the Viceroy and freed from the control of this Council. If this proposal is accepted, India must always remain dependent upon England for her defence, and if in the next War or for any other reason England is not able to defend India, what is to become of her? Apart from this, it is a humiliation to which India will never submit. Indians have always insisted that India must be defended by her own sons, controlled by her own Ministers. This sentiment underlies the demand for the Indianisation of the Army. We are told that India can never aspire to Home Rule so long as she is not able to defend herself, and yet under the Simon Scheme, India will never be able to defend herself, from which it follows that India must remain doomed to perpetual dependency upon England, who must rule India, so long as the Sun and Moon last; and this is the Simon's measure of advance for India.

(5) The Simon Commissioners adumbrate the eventual federation of British India with the Indian States. They, however, do not foresee such a possibility in the near future. On the other hand, as they themselves point out, that possibility is distinctly remote, in view of the fact that the Federation though aimed at by the Canadian Constitution of 1867, has not yet been achieved in that country. Nevertheless, they have recommended the constitution of the Federal Assembly as the advance guard of such future, remote and contingent federation.

### **Creation of a New European Political Service.**

And at the same time they accept the totally reactionary report of the Indian States Committee which provides that the Political Departments of the Government of India dealing with

the States should be recruited by a distinct service drawn from the British Universities. In other words, they have earmarked all these appointments for Europeans. The services being separated the Indian States are left free to make a move in the direction of federation, if they so desire. Meanwhile, they will be in charge of the Viceroy defended by an Army which will be in the Viceroy's charge and supervised by Political Officers, who will have nothing to do with the British Indian Services. This is the very antithesis of federation or a preparation for it.

(6) The Simon Commissioners have recommended that one or more members of the Viceroy's Executive Council should be taken from the elected members of the Legislature, but what good will it do to the people is not clear, so long as these members have to follow the policy of the Viceroy and are irresponsible to the Legislature.

Indeed, the present Government of India Act provides for the appointment of Council Secretaries from the Legislature; but so far as the Legislative Assembly is concerned, it refused to lend its members to all those offices only to carry out the policy of the Bureaucracy over the heads of their own quondam colleagues.

### **Authority of Whitehall Left Intact.**

(7) Turning next to the seat of ultimate control in Whitehall, the Simon Commission maintain the *status quo*. The demand of India has been incessant that the Secretary of State should relax his control over the Government of India and that his position should approximate to that of the Colonial Secretaries of State, and that his council should be abolished. This question came to a head when the Montagu Reforms were under discussion and a strong Committee was appointed under the presidency of Marquess Crewe, himself an experienced Secretary of State to go into the whole question. That Committee found that the India Council had failed to serve the interests of India. They wrote "The Council are by law in a position to obstruct his (i.e., the Secretary of State's) policy, or indeed the

policy of His Majesty's Government, by interposing their financial veto if Indian revenues are affected; but in practice they have acknowledged the supremacy of the Imperial Executive by accepting proposals communicated to them as decisions of the Ministry, in so far as those proposals raise issues on which they are legally competent to decide. We mention this demarcation of functions, to which we shall revert to illustrate the way in which the hard outlines of legal definitions have been rounded off by constitutional usage."

Though they finally recommended the abolition of the Indian Council and its replacement by a partially elected Advisory Council, no action was taken upon their recommendations.

### **Opposition to India Council.**

Meanwhile, the opposition to the India Council has been growing in this country in consequence of their hostility to Indian advance and their inability to protect the Revenues of India. This has been the considered opinion of the Indian members of that Council and we were told in confidence by several European Members that the opinion of their Indian Colleagues was not wholly unjustifiable.

As it is, the India Council is only in charge of the Revenues of India. In all fields administrative, political and legal, the Secretary of State is all in all. As is well known the Secretary of State is not a permanent official but a Minister of the Crown and follows the fortunes of his party. By the time he gets to know the ropes, he is as often as not, out of power. The permanent officials are in effect, the masters of his policy. As Sir William Molesworth put it, "the frequent changes of the political head of the Colonial office, led in practice to government by the permanent officials, and in the famous picture drawn by Charles Buller 'The Mother Country' resolved finally after investigation into an obscure clerk in the back room of the office."

That this is the position of the India Office will be admitted by those who have any knowledge of the arcana of its working.

### Summary of Objections.

Let me categorise some of these objections :—

(1) The Secretary of State is charged with the duty of ruling over one fifth of the human race, whom he has never seen and whom he cannot even imagine.

(2) He cannot formulate a policy of his own, and being a member of the Cabinet, he has to fall in with the views of his party.

(3) Though the India Council is nominally charged with the duty of protecting the Revenues of India, those revenues have never been protected as is clear from the Report of Lord Crewe's Committee.

(4) Both the Secretary of State and his Council living as they do 6,000 miles away can never be influenced by the Indian opinion or be conversant with the shifting scenes of Indian condition.

(5) Lord Crewe's Committee wanted to introduce a popular element into India Office, but the recommendations of that Committee were never given effect to.

(6) The Central Committee have given weighty reasons for the abolition of the India Council and for shifting the centre of gravity from Whitehall to India. Those reasons remain irrefutable and have not been touched upon much less refuted by the Simon Commission.

(7) The India Office being influenced by English opinion, which is notoriously anti-Indian and controlled by the permanent staff in which there is not a single Indian, it is not a matter of surprise that the Indian public opinion over half a century has been insisting upon its reform.

It will thus be seen that India badly needs the scrapping of her old political machinery which is not only out of date but has proved injurious to her interest. The question is, why India should not be brought into line with the other self governing dominions? The protagonists of Reform have no difficulty in establishing a clear case, and indeed an unanswerable case for bringing into line India's

internal machinery with her political status. But while it is admitted that this is theoretically her immediate goal, there are practical difficulties in the way of its immediate attainment.

### **Objections to Dominion Status.**

Briefly stated, they are said to be, (1) Her inability to defend herself, (2) her communal problems and (3) her illiteracy. Let us examine them. It seems to have been taken for granted by many political writers, otherwise friendly to India's aspirations—that her inability to defend herself is a obstacle to her securing internal autonomy. But the fact is that no colony of Great Britain, which is now a Dominion, and a sovereign state was prepared in this respect when she was given responsible government. As a matter of fact the history of all the Colonies, such as Canada, Australia and South Africa shows that the Imperial garrison remained stationed therein, long after they had attained to the possession of responsible government, and it was maintained at the expense not of the Colonies but of the Imperial Government.

### **Objections to Advance Considered.**

Even to-day no Dominion is able to defend itself as its army is wholly inadequate for that purpose. The Indian Army could be easily strengthened to defend her frontiers without the help of white troops. As a matter of fact, it was proved in the Great War that India could defend herself without the aid of the white troops, which had been mobilised and employed elsewhere, for a period of nearly four years. The fact is that the British troops in India are primarily stationed here because India is a strategic base in the chain of Imperial defence; and really speaking England should pay for the privilege she enjoys in stationing a portion of her army here. That the Indian Army performs a dual service is recognised by the Statutory Commissioners though their solution of the problem is of course a different matter.

It has been sometimes pleaded that while India pays for the Imperial garrison, she does not pay for the protection she enjoys from the British Navy, but it is forgotten that in this respect India is no more an offender than the other possessions of His Majesty. The object of the British Navy is to protect the British shore and the British trade, for which it was created.

### **India a Polyglot Country.**

The second question raised is one of the minorities. It is said that India is not an homogenous nation, and that the various races peopling it, do not belong to the same ethnological group, and have, therefore, no real affinities or sympathies.

On the other hand, the communal feuds between Hindus and Mahomedans have been for generations notorious and are an inseparable obstacle to the grant of a rule in which one community would dominate the other. Reference is made to the abject condition of the depressed classes and to the prevalence of caste, which is the antithesis of human equality, the bed-rock of all democratic institutions. India is not alone in having to face communal problems, and the antagonism of the two great communities in India is not greater than was the antagonism between the French and the British in Canada and the Dutch and the British in the South Africa, before the grant of autonomy. The Christian and Moslem problems are still agitating most parts of Eastern Europe, while the Moslems and the Jews are still fighting for supremacy in Palestine and elsewhere. The fundamental principle in all countries possessing a minority population is that the majority rule, which provides sufficient safeguards for the protection of their minorities so as to enable them to preserve their religion, language and culture, but not so as to impair the national solidarity.

### **Protection of Minorities.**

The question has engaged the attention of the League of Nations, whose decision on the subject has been thus summarised by

Noel Buxton. He says, "There can be no better solution of the minorities problem; Democratic self government is only possible if the various races co-operate in the task of government; and roughly aspirations descriptive of each group can be fulfilled if they are limited in expression to culture; i.e., language, education and religion."(1)

As M. De Mello Franco stated in the League of Nations, that "The introduction into the laws of all countries of provisions protecting minorities would be enough to cause them to spring up where they were least expected, to provoke unrest among them, to cause them to pose as having been sacrificed, and generally to create an artificial agitation of which no one up to that moment dreamed. It would be rather like the imaginary illnesses from which so many people think themselves suffering the moment they read a book on popular medicine."(2)

I have in my memorandum appended to the Indian Central Committee's Report dealt with this question in some detail.(3)

Both England and India are members of the League of Nations who have considered and settled the question of minorities. As Mr. A. Chamberlain said before that body, "It was certainly not the intention of those who had devised this system to establish in the minds of nations a community which would remain permanently estranged from the national life."(4)

A communal complexity is therefore not an inseparable obstacle to the political growth of India. If the two parties concerned are not able to find a solution it is the duty of the British Government as a neutral body to decide for them. This is all the more necessary in view of the fact that India's position in the British Commonwealth has been secured through the good office of that government, and it is up to it to make her status a reality.

(1) Depressed People and the League of Nations, pp. 86, 87.

(2) Cited in the Central Committee's Report, p. 264.

(3) Central Committee's Report, pp. 262 and 271.

(4) *Ib.*, p. 265.

### **Central Committee's Resolution.**

The Central Committee have devised a scheme for the solution of communal questions which ought to satisfy all reasonable apprehensions on the subject. The Committee have already pointed out how separate electorates have estranged the two communities, embittered their relationship and that a solution must be found in a scheme which combines joint electorates with adequate protection to the minorities. Such a scheme has been found. For example, it is very easy to have joint electorates and insure true representation of the Moslems, if a provision is made that a certain percentage of voters of each community must vote for a candidate in such election. It will keep out the fire-brands from both sides, and at the same time make them feel inter-dependent for their suffrages and support. As regards the minorities a reservation of seats for them has been suggested and appears at the present moment the only solution. The depression of the so-called depressed classes, is an age-long grievance brought about by their religious and social disabilities accentuated by their educational and economic backwardness. It is a problem like the problem of many backward communities in South Africa and Australia. Even in India there are aborigines who are not depressed but are still so backward as not to be able to take advantage of the Reforms, but this cannot be treated as drawbacks to the advance of India.

### **European Commerce and the Services.**

Apart from the minority question, two other questions have an important bearing upon the evolution of a future constitution for India. As has been pointed out before, the European commercial interest and the services look askance at any political progress which would seriously impair their privileged position in the country. That it is so, would be clear from a plain statement issued to the Press over the signatures of Lord Sumner, Lord Sydenham of Combe, Sir Reginald Craddock, Sir M. M. O'Dwyer, Field Marshal Sir Claud W. Jacob, and others. They say, "A peaceful and prosperous

India is vitally essential to this country and to India itself. India is our best customer in the world. No commercial nation like Great Britain can lose such a customer without paying a terrible price for it; and the price would have to be paid by the banks, the shipping companies, our industries as a whole, our salaried officials and our wage-earning classes. It is not too much to say that no one would escape. The working classes of India would suffer even more."

"The prevention of these disasters is, therefore, everyone's concern. The Indian Empire Society has been established to inform and focus public opinion in this country on the realities of the situation in India and the danger of concession to violence, and, at the same time, to take resolute action in every quarter possible to safeguard British and Indian interests."<sup>(1)</sup>

As to this it is sufficient to say that India's progress cannot be held in abeyance, because of its prejudicial effects upon the European interests in India.

It seems to me that these two classes have exaggerated their fears since a peaceful and progressive India would be more in the interests of English commerce than a discontented and belligerent nation striking out for its own freedom. The recent occurrences have clearly shown that the European Commerce cannot retain its supremacy by force, and the same might be said of the services.

### **Wider Reason for Advance.**

A peaceful solution of the Indian problem is more important than the paramountcy of the Europeans in India. They are only a handful when compared to the people, and Great Britain does not gain anything by continuing the tension which has been increasing in this country for many years. That thoughtful Englishmen take this view is clear from a Manifesto recently issued over the signature of Lord Aberdeen and many leaders of public thought in England. They have pointed out, that the Indian question is a

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(<sup>1</sup>) *Spectator*, July 26, 1930, p. 128.

menace and that they “look with profound dismay to the possibility that, should the Conference fail to propound a Constitution which will command the support of the best elements of Indian Nationalism, we may be involved in measures which will mean the cessation of peaceful government. Neither Britain nor India has anything to gain from the use of force, and no effort should be spared to secure a basis of agreement along peaceful lines.”<sup>(1)</sup>

### **People’s Illiteracy.**

There remains the question of the illiteracy of the people.

If we turn to the English history we will find that responsible government in England itself did not await the removal of mass illiteracy.

The Hartog Committee of Educational experts appointed by the Commission clear up the matter in the following words:—

“There are large numbers of persons in the country who, though not classified in the census as literate, not only manage their own affairs and those of their families competently but are fully capable of taking an intelligent part in public life. Inherited traditions, natural shrewdness and ability and practical experience assist many illiterate men to act as intelligent citizens and many illiterate women to be good wives and mothers, ruling their households with wisdom and success.”<sup>(2)</sup>

### **Literacy and Politics.**

Lord Bryce in his work on *Modern Democracies* says, “The difficulties of education among backward races such as the Phillipinos or the African Bantu tribes, or even among the ignorant sections of civilised peoples, such as the Russian peasantry, or the Chinese or the Indian ryots, will not, desirable as it is, necessarily qualify them to work a democratic government, and may even make it more difficult to work in its earlier stages. Attainment in learning and science

<sup>(1)</sup>*Spectator*, August 2, 1930. p. 163.

<sup>(2)</sup>Quoted in the Central Committee’s Report, § 145, p. 277.

do little to make men wise in politics. Some eminent scientific men have been in this respect no wiser than their undergraduate pupils. There have been countries in which the chiefs of public services and the professors in Universities were prominent in the advocacy of politics which proved disastrous. Knowledge is one only among the things which go to the making of a good citizen. Public spirit and honesty are even more needful.”<sup>(1)</sup>

That literacy has considerably increased under the reforms is clear from the statistics furnished to us. As the Hartog Committee’s report puts it, “It will be seen that the expenditure has increased by six crores since 1892, and that two thirds of that increase has been made during the last ten years. The fact that large additional sums have been demanded by ministers and that they have been voted gladly by the new Legislative Councils is in itself encouraging. These figures suggest that there is a considerable and growing demand, that real effort has been made to meet the demand by the improvement of existing schools and by the provisions of the new schools. The Legislative Councils have shown clearly and effectively that they are in full sympathy with the movement.”<sup>(2)</sup>

### **Literacy and New Reforms.**

Illiteracy is therefore a vanishing factor in Indian progress and it has been the primary concern of the Ministers in all provinces under the present reforms.

It is not suggested how the continuance of the present form of Government would cope with this difficulty. The British connection in India has been for over three and a half centuries. It is only under the Reforms and under the Ministers that the problem of illiteracy was seriously tackled. Illiteracy has been a blot on the Indian administration both under the East India Company and the Crown Government of India. It cannot be used as an argument to stave off the march of progress.

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<sup>(1)</sup>Quoted in the Central Committee’s Report, pp. 277, 278.

<sup>(2)</sup>*Ib.*, p. 277.

All the governments who have reported on the subject have commented on the growth of a new spirit in the country inaugurated by the Montagu Reforms, and with the further emancipation of the people all the clouds that seem to hover over the future of India will be dispelled. A century of English education has produced in the country a mentality which Lord Macaulay foresaw and the result of which he prophesied in the House of Commons as far back as 1833.

He said, "To have found a great people sunk in the lowest depths of slavery and superstition, to have so ruled them as to have made them desirous and capable of all the privileges of citizens would indeed be a title to glory all our own. The sceptre may pass away from us. Unforeseen accidents may derange our most profound schemes of policy. Victory may be inconstant to our arms. But there are triumphs which are followed by no reverses. There is an empire exempt from all natural causes of decay. Those triumphs are the pacific triumphs of reason over barbarism; that empire is the imperishable empire of our arts and our morals, our literature and our laws."<sup>(1)</sup>

### **British Commonwealth and India.**

We have seen the spectacle of the British Empire forming and consolidating. We have seen the spectacle of its members welded into a Commonwealth in which all important members have attained to their full height of manhood, and independence. We have seen the Colonies becoming self governing dominions and now exalted to the position of Dominion Status, the attributes of which were clearly defined by the Imperial Conference of 1926 and the details of which have just been settled by the Constitutional Committee then appointed.

These dominions even when combined form but an insignificant part of the British Commonwealth without India, which as Sir John

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(<sup>1</sup>)1. Speeches and Documents on Indian Policy, p. 265.

Simon himself pointed out the other day is in point of population thirteen times as much as all of them put together. It must be remembered that all the Colonies of England which have hitherto acquired the status of sovereignty are peopled by the men of British extraction. As Professor Zimmern observes: "The population of the Empire is about 440 million, of whom some 380 millions are non-white. If they were actively hostile, how could our force control them? Our sea-power is no doubt formidable; but navies cannot govern; nor can they help the land Power to govern in face of active or even passive resistance. Force is in fact of little use in governing an empire. It must be available in the last resort, in an empire as in a municipality, but by itself it is almost powerless. You can do almost anything with bayonets except sit on them."

### **India's Place in the Commonwealth.**

The name British Commonwealth has, therefore, really no meaning unless India finds a place therein. The people of England naturally treat India as a foreign country, peopled by an alien race, but they must not forget that aliens though we are to them, we have an older civilization and culture and the spiritual light we have imparted illumines the major portion of the world.

England will become greater and mightier if she gives to India the supreme prize of freedom which she has granted to her colonies. India has entered upon the grim struggle for freedom, and though her course may be retarded it cannot be blocked by the resistance of any classes and interests inimical to her progress.

### **India's Right to Self Determination.**

The one lesson that the Great War has taught is that all nations great and small must be free. Look at the map of the world, before the War and after; and it is the best justification for granting India what she rightly deserves. The conquest of India was a great thing to England, but it will be a greater thing to grant her freedom.

A suspicion has been aroused in the minds of the lovers of Freedom in India that the Indian question cannot be solved by the mere grant of dominion status to her, since the Congress which is the principal political body in the country stands committed to her independence.

### **Dominion Status will Satisfy the Bulk of Indians.**

I venture to prophesy that barring a few extremists, the bulk of the Congress would immediately veer round to the support of a Constitution if it is sufficiently liberal and grants to the people of the country a substantial measure of autonomy. It would not be satisfied with half hearted measures, nor is this the time for such measures. There is after all very little difference between dominion status and independence. The Dominions are as good as independent since they are now a free association of nations possessing the right of secession from the Commonwealth at any time they choose.

This is all that the intelligentsia of India demand, and they ask that with the history of their country before them, while the dominions have insured their position why should not India do the same?

### **Future Constitution.**

I have left myself very little time to discuss the future constitution of India. But from what I have said already it will be clear that the future of India must be a departure from its past, since the policy which has made its political history must now be radically altered. It has been said that the British history of India before the Montagu Reforms has been one of conquest and consolidation. Whatever it may have been we must strike out a new line of advance. That line must follow the course so clearly marked by the reforms of 1919. A casual glance at the Act of that year will show that what the Parliament had then contemplated was that India should obtain some statutory rights which should be imple-

mented by conventions. In this respect the intention of Parliament has not been fulfilled. On the other hand, yielding to the pressure of the services Parliament had to pass an Act in 1925 placing the salaries and emoluments of civil servants outside the vote of the Assembly thereby placing them above its criticism.

### **Her Present Status.**

The future of India cannot be treated as if its past were a clean slate, since in spite of the unwillingness of the Government of India to work her expanding constitution she has speedily marched onward towards her appointed destiny. Theoretically and in law her status is that of a Dominion but alongside of it her internal status as a dependency is a political paradox which has puzzled every writer on her constitution. The only logical, and indeed inevitable, course now to take is to vest her with the true symbol of autonomy. It has already been seen that there is no insuperable impediment to the adoption of such a course.

### **Limits of the Statutory Commission.**

The statutory inquiry was limited to an inquiry regarding the future of British India overlooking the Indian States. I felt that such an inquiry would be otiose, and I therefore penned an independent note in which I delineated a scheme for the future Government of all India. Some weeks after the publication of this note the Prime Minister authorised the Statutory Commission not to overlook the States but the Commissioners had failed to take evidence of their spokesmen and so both their report and ours remains a partial document based only upon a partial inquiry. In my note, however, I have given in detail the course of future constitution affecting them, and judging from the reports received I am happy to find that that scheme is gaining ground. Let me then briefly refer to it. So far as the Provinces are concerned there can be no question but that they should now receive complete local autonomy. All subjects should be transferred to the ministers and all services

provincialized. This is the unanimous recommendation of the Madras Government, but apart from it, it is a reform long overdue and must now be accomplished.

### **The Central Government.**

As regards the Central Government we agree with the Statutory Commissioners that the strength of the Assembly should be doubled from 143 to 300, and we equally agree that the official block should be removed. But here the Commissioners and our Committee part company, for while we are for the transfer of all subjects, save Defence, foreign and political relations now comprised in the Governor-General's own portfolio, the other view is that in proportion to the liberation of the Provinces the centre should be freed from popular control. This is what some call a strong Central Government; but it would be in reality a pitifully weak Government. Our proposal is that all residuary powers should as now vest in the Central Government which should be strengthened by strengthening the popular control. At the same time we have to take in the States. In order to serve this double purpose we propose the establishment of a Privy Council and a Supreme Court and upon these two grand pillars should rest the grand arch of the future constitution of India. The Privy Council will advise the Viceroy upon subjects included in his own portfolio while the Supreme Court will interpret and uphold the new constitution and serve as an arbiter in all justiciable matters between the two Indias on the one hand, and the centre and the Provinces on the other. To this extent the India constitution would loosely follow the Canadian model.

### **Abolition of the India Council.**

The centre of power having shifted from England to India there is no need for the retention of the India Council while the power of superintendence, direction and control of the Secretary of State would be necessarily limited to the three subjects for the time being left in the Viceroy's portfolio. But they cannot remain there

for all time and a period of ten or fifteen years should be statutorily fixed as the extreme limit for his reservation. This then in a nutshell is my scheme for the future constitution of India. I have devoted 150 closely printed pages to elaborate this scheme in the report of the Central Committee and I must treat this reference to it as a mere excursus which leaves out many material details which I cannot repeat without repeating all I have so recently written on the subject. What India now wants is what the Dominions had received in the last century. The Dominions have since improved their constitutional position, but India is modest enough to ask that though by her dimensions and population she is infinitely the largest member of the British Commonwealth she must obtain even the cardinal incidents of a free Nation without which all talk of such commonwealth is but a tinkling cymbal.



**POONA :**

PRINTED AT THE SCOTTISH MISSION PRESS

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1931













