

# CONSTITUTIONAL REFORM IN INDIA

E. W. H. CRUICKSHANK

**I**N 1833 Macaulay spoke as follows in a parliamentary debate on the government of India:

The destinies of our Indian Empire are covered with thick darkness. It is difficult to form any conjecture as to the fate reserved for a State which resembles no other in history, and which forms by itself a separate class of political phenomena. The laws which regulate its growth and its decay are still unknown to us. It may be that the public mind of India may expand under our system till it has outgrown that system, that by good government we may educate our subjects into a capacity for better government, that having become instructed in European knowledge they may in some future age demand European institutions. Whether such a day will come, I know not, but never will I attempt to avert or retard it. Whenever it comes, it will be the proudest day in English history.

It has been said that historic occasions are always difficult to recognize, that usually they are not recognized until they are in the history books. Recent events concerning India would not justify any assumption that England has arrived at her proudest day; they do, however, indicate that she has not wavered from the great task of guiding her Indian Empire toward the goal of Dominion Status.

In the debate in the House of Commons on the Joint Select Committee's Report on the White Paper, which is the final result of seven years of work on the question of Indian Constitutional Reform, the criticism voiced by the Labour Party was that no reference had been made to *Dominion Status* in that Report. Labour opposed the Report because it did not go far enough, and the Die Hards of the Conservative Party condemned it because "Democracy in India is dead against the scheme". This latter argument in effect means that Indian politicians want a great deal more than we are giving them, and that this is a good reason for giving them nothing at all. So, as in everything else, there are two contrary opinions, and a host of others so conflicting that it is not surprising that many people interested in India confess their inability to arrive at any opinion whatsoever.

To understand what is offered to India to-day, it is necessary to know something of the present system of government which

prevails there. It is a dual system of control, called "dyarchy"; the word refers to the dual system of rule by Emperor and Senate in the government of Roman provinces. Dyarchy was instituted in 1921. In 1917 the Secretary of State, Mr. Montagu, and the Viceroy, Lord Chelmsford, suggested that "The first advance towards the progressive realisation of responsible government in India should begin in the domain of provincial government". But they were afraid to give complete responsibility to a provincial legislature elected by a largely illiterate electorate, because complete responsibility meant handing over the control of law, order and finance to Indian Ministers whose experience of government was necessarily small. British statesmen, with a full knowledge of the difficulties which Indian members of the legislature would have to meet on account of intrigue and jobbery, which are defects by no means confined entirely to oriental forms of administration, were undoubtedly right in advocating the progressive method of advancement in the art of political government. Thus the *Government of India Act* of 1919 sanctioned the dual control system, which meant that certain subjects were to be transferred from British to Indian control, others were to be reserved entirely for control by the ruling power.

Subjects transferred to Provincial Control, i.e., subjects to be under Indian Ministers responsible to the Provincial Legislature, were:

Local Self Government.

Public Health—sanitation, medical administration, hospitals and medical education.

Education of Indians.

Public Works Department.

Agriculture and Fisheries.

Co-operative Societies.

Excise and Drugs (not opium, as far as its growth and sale were concerned).

Subjects reserved for control by the Centre, through Imperial servants in the provinces, the Governor of the Province being the Head of the Executive Council, which generally consists of two Europeans and two Indians, were:

Land Revenue and Administration.

Irrigation and Canals—water storage.

Famine Relief.

Department of Justice.

The Police.

Control of newspapers and printing presses.

Prisons and Factories.

The latter list is illuminating; it shows how clearly the British civil servant in India knows the country and its people, and that can be said without any idea or sense of disparagement of many Indians in the Service. Note now a very important clause in the Act which states that "Whenever any measure is proposed before the Governor in Council whereby the safety, tranquillity or interests of his province may be essentially affected, he may on his own authority adopt, suspend, or reject the measure in whole or in part". That applies to both transferred and reserved subjects. This forms the crux of the Indian question: "Why give us responsibilities, and then take them away when our opinion is not in accord with that of the ruling power?"

As a step in training for greater usefulness and fuller responsibility, the dual system had great possibilities. But to those Indians who could see in it only the dominating hand of the Governor, ready by a stroke of the pen to bring to naught schemes born of inexperience, such a system was an anachronism, an insult to intelligence, a bar to progress, a trick of the British *Raj* to hold the whip hand, a move, not even subtle, on the part of the "heaven born" to safeguard their superior position as members of "the ruling race". Nevertheless, in spite of much criticism and odium, many Indians of intelligence and culture have continued to "work the system", and have worked it splendidly. Dyarchy has brought home to many Indians, who had had no previous experience of the task of government, the difficulties of administration and the meaning of responsibility; but as long as Indian Ministers are given power without full responsibility, as long as there is no sign forthcoming of a further "progressive realisation" of their desires to rule their own country, dyarchy must defeat its own end. It comes ultimately to serve as a sharp instrument of cleavage between those, British and Indian, who should be harnessed to one great purpose, namely the government of a unified India. From recent pronouncements of British statesmen it would appear that the hope of the future lies in the abolition of dyarchy in provincial government, and its ultimate disappearance in an All-Indian Federation.

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The factors which make for difficulties peculiarly associated with rule in India are naturally numerous. The vast area, with its 330 millions in large towns and in almost countless villages, affords a perfect setting for human administrative endeavour. Of the total population over 220 millions are Hindus, about 70

millions are Mohammedans. The latter are a type markedly different from Hindus, and are not originally or exclusively Indian, but they are spread throughout India as a result of a series of invasions from the North and West which have taken place between the 12th and the 16th centuries. Splendid monuments of Moghul architecture, such as the Forts at Agra and Delhi, the Taj Mahal at Agra and the Pearl Mosque at Delhi, stand as a perpetual reminder of the extent and greatness of the Moghul domination. In British India alone, out of a total population of 250 millions, Hindus number 163 millions and Mohammedans 60 millions. And to add to the difficulty of distance and of numbers, there is also the complication arising from a multitude of languages. While there are over 200 vernaculars for India, the languages which have to be learned by the Indian civil servant are chiefly Urdu and Hindi, i. e. the two forms of Hindustani, the former being in the Arabic script, the latter in Sanscrit. Bengali, Punjabi, Pushtu, Tamil, and Telegu are others a knowledge of which is sometimes necessary. In the legislatures the language is English. It is evident that if a member from the Madras Presidency is to understand one from the Punjab, English must be the medium for conversation.

Another difficulty is the extremely small number of this great population which can exercise the privilege of voting. Take two examples only, and they are quite typical. Out of 50 million people in Bengal only 1,250,000, or 2.5 per cent, are electors. This figure represents 9.7 per cent. of the male and 0.3 per cent. of the female population. In Madras with 43 millions, 3.2 per cent. vote; 11.6 per cent. of the male and 1.0 per cent. of the female population. As an average for the whole of British India, it may be taken that 3 per cent. of the people vote, i. e. 10 per cent. of the male and 1 per cent. of the female population. And why should these figures be so low? It is because the qualification to vote is a property qualification, and few men and still fewer women in India own property in their own right. This means that certain junior members of Hindu families of excellent status and of very good education, who have no property rights, are therefore not entitled to vote. This qualification rules out of the electorate the tillers of half the cultivated area of the Punjab, as it does the under tenants in Bengal and the Central Provinces, and the tea garden employees of Assam, numbering over a million.

Because of the dictates of their respective faiths, Hindus and Mohammedans create one of the most difficult problems that have ever confronted statesmen, namely, the problem of communal

antagonism. The problem lies mainly in Bengal and the North-West parts of India. Communal feeling is unfortunately intensified by religious practices which only too easily provoke mutual ill feeling and even hatred. The cow is sacred to the Hindu: it is sacrificed at certain festivals by the Moslems. The sound of Hindu music is an abomination to-day to Mohammedans as they worship: it was not so twelve years ago. Because of the different Hindu and Mohammedan calendars, it is not infrequent to find religious ceremonies taking place by both faiths on the same day. When the one rejoices and the other mourns on the same day, at or about the same place, then the police have a time of special anxiety. Despite much that has been done by leaders on both sides, and by the police, the most trivial incident may be the spark to kindle a furious blaze of communal hatred which may result in many deaths and take weeks to quench. The first three years, 1926-27-28, of Lord Irwin's tenure of office as Viceroy were marked by a terrible loss of life in Calcutta, Lahore and Rawal-Pindi, about 500 lives being lost and over 5,000 men wounded. To walk or drive through the deserted and guarded bazaar at Rawal-Pindi in July, 1926, was to realise how true the Viceroy's words were, when he said that "The country seemed to be under the mastery of some evil spirit, which so gripped the minds of men that in their insanity they held themselves absolved from the most sacred restraints of human conduct."

This communal rivalry is not due to communal representation; it has a deeper cause. When there were no reforms in practice, no self-government was thought of, and all authority was in British hands, Hindu-Moslem rivalry never reached such heights of stupidity and tragedy. The simple reason was that the members of one community, even if they were in a definite minority, had little or nothing to fear from the other; for with a paramount power strictly impartial and admittedly just, communal tension never became a menace to civil peace. But when self-government became a possibility, then began the struggle between Hindus and Mohammedans for political power. It is only recently that the growing national spirit has tended to temper this evil. It is, of course, a religious tension; and to anyone with a knowledge of the antipathies and animosities which are all too common, be they ever so volubly denied by both classes, it is clear that the problem will not be settled in a generation. The question as to whether these two communities should have separate electorates or joint electorates with reserved seats in the legislature is and will be for a long time to come the cause of heated controversy and much bad feeling. It

is difficult to foresee the day when you will find a true Mohammedan, to whom there is no God but Allah, working in full and free co-operation with an unbeliever, especially when that unbeliever is an idolator. The Mohammedans as a whole are not prepared to give up communal representation; they are not prepared to give up "that provision by law whereby a particular religious community shall be represented in a popular legislature solely by members of its own body." This, of course, is an obstacle to the growth of the spirit of common citizenship. While communal electorates do not tend to mitigate the evils of racial distinction, while they do form a hindrance to self-government, they nevertheless serve a very useful purpose at this stage of development in that they safeguard law and order. Communal antagonisms are only too likely to be roused in joint electorates when under the heat of political argument the restraints of ordinary life are so easily thrown to the winds. So strongly do Mohammedan leaders defend the communal electorate that moderate leaders in the Hindu ranks are entirely resigned to the idea. But the Hindus as a whole favour joint electorates, with seats reserved in the legislature on the basis of population. Similar electoral difficulties have arisen in the Punjab with the Sikhs; but enough has been said to help one to a realisation of one of the great difficulties confronting British statesmen to-day.

It has always been a standing disadvantage to the Government of India that it has never had press representation. In a country where the vernacular press, in the interests of fanatical nationalism, indulges in gross misrepresentation and distortion of news, it would certainly have served some useful purpose if the Government had secured some means for the dissemination of truth and for the exposure of lies and calumny. The British Government in India has never done so. The two or three British owned newspapers have in most cases supported the Government; the Indian Press, with newspapers printed both in English and in the vernacular, would certainly fall from grace were it to attempt to be so impartial. There are no restrictions on the Press except such as are imposed by the ordinary criminal law, and one thus finds the Indian-owned newspapers fruitful ground for the most audacious statements calculated to rouse intercommunal hatred to its highest pitch, and to breed bitterness and discontent amongst the people. The repeal in 1919 of the Press Act of 1910, for which Indians clamoured, has revealed what Indians can do with their much desired freedom, namely to indulge in unlicensed abuse of the power of the Press. The entire absence of a Govern-

ment Press is a serious handicap. The only party papers are *The Hindu* of Madras, a Congress organ, and the non-Brahmin paper, *Justice*. These, like many other Indian-owned papers, are written in English, and reach a very high standard of journalism. Leading articles in the best English style, showing a mastery of polemic which betokens an English university training, are an everyday occurrence. These higher-class papers do not always disagree with the Government policy, but on the subject of reforms it is surprising how active their editors are in finding flaws and magnifying them beyond all just proportion. The vernacular press, read by literates and read to more illiterates, always condemnatory of the Government and continually pointing to injustice, political or communal, has an influence much greater than its limited circulation would suggest.

In the first legislatures (1921-23) following the passing of the Reform Bill of 1919, only moderates of both Hindu and Moslem opinion were represented. This was due to the fact that the "non-co-operation" campaign led by Mr. Gandhi during 1919 and 1920 had resulted in a widespread vilifying of the Administration, and a decision of its leaders not to seek places in the new Government. Mohammedans had taken part in this non-co-operation campaign, hoping to force the Imperial Government to restore the Sultan of Turkey to something of his pre-war importance, and thus to preserve as they thought the political and religious future of Islam. The non-co-operation movement, which demanded civil disobedience, was responsible for a great deal of disorder. The Moplas, the Moslems of Madras, turned upon their Hindu rulers, who represented the Government which they had been told was effete, and murder and arson were rife. In Bombay, on the day that the Prince of Wales arrived in 1921, loyalists and non-co-operators produced a riot which left 53 dead and over 400 wounded in the main streets of that great city. In Chaura Chauri twenty-one Indian police constables were killed by fanatical followers of Mr. Gandhi. As an act of contrition for the fact that his followers had fallen from the great ideal of "non-violence", Mr. Gandhi reduced his diet. Shortly afterwards he returned to his task, threatened Government with widespread civil disobedience, and thereupon found himself in prison at Poona (March, 1922).

With the waning of Mr. Gandhi's popularity, the removal of the apprehensions which Mohammedans had for their religion, and the abolition of the Kalifat by Mustapha Kemal Pasha, the non-co-operative movement was rendered ineffective. But with and out of its virtual disappearance there arose an even greater problem, that of communal strife, for now that reforms were afoot it seemed

but wise to both Hindus and Mohammedans to secure representation in the Legislative Assemblies. Now we find a new idea of embarrassing the Government, arising in the ranks of the Congress or Nationalist Party. They sought election to the Assembly of 1923, pledging themselves to "a uniform, continuous and sustained obstruction with a view to making government through the Assembly and the Councils impossible". "For the policy of boycott was substituted one of wreckage within the legislature". Such is the mentality of the Swarajists, the Congress Party, the Nationalists of India! They have proved absolutely ineffective in the administration, but it is to the opinion of such people when they loudly proclaim the satanic designs of the British administration that many people listen.

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#### THE NEW CONSTITUTION.

The changes set forth in the *Government of India Bill, 1935*, briefly stated are: the formation of a Central Executive (the Governor-General in Council) responsible to the Secretary of State and through him to parliament; and of provincial executives responsible to provincial legislatures, that is to say, the establishment of self-governing provinces, which means the abolition of dyarchy. The provinces are thus to be linked to an All-India Federal Government in which they will be largely represented. The Governor-General will have full control of the Departments of Defence and Foreign Affairs, and is empowered to exercise his individual judgment in taking whatever steps he may deem necessary in order to deal effectively with terrorism or any menace to the peace of the State. He will also be responsible to the Secretary of State for safeguarding the financial stability and credit of the Federal Government. There is no attempt to copy British institutions by a mere repetition of the constitutional law of the United Kingdom; such an attempt would be valueless, because for the proper working of parliamentary government in India it is essential to have "safeguards", which are designed to secure four main objectives, namely:

1. Flexibility, so that the constitution may be given every chance to develop along lines which may appear necessary for the best advantage of the country.
2. Strong executives in the provinces, which are very necessary where there is so often an entire absence of disciplined political parties.
3. An efficient administration; and
4. An impartial authority to hold the scales between conflicting interests.



In the provinces dyarchy is thus abolished, and the Governors will now act on the advice of Ministers selected from and responsible to the legislatures. In view of the impossibility of unqualified majority rule as understood in the West, a Governor may have occasionally to exercise his authority on his own responsibility. Definite rulings are given as to when and where such autocratic authority may be exercised. Under the title of "Governor's special responsibilities" are placed:

- (a) The prevention of any menace to the peace and tranquillity of the province.
- (b) The safeguarding of the legitimate interests of Ministers.
- (c) The safeguarding of minorities and the pensionary rights of public servants and their dependants.
- (d) The prevention of commercial discrimination.
- (e) The protection of the rights of the Indian States and the rights and dignity of their Rulers.
- (f) The securing of the execution of orders lawfully issued by the Governor-General.

In the N. W. Frontier and Sind Provinces are also added:

1. Any matter affecting the Governor's responsibilities as agent of the Governor-General in the Tribal and Trans-Border areas.
2. The administration of the Sukkur Barrage over the Indus.

Such safeguards are essential to-day, and no British Government would ever dream of neglecting them. Indians regard them as unnecessarily elaborated, and destructive of that sense of responsibility with which they feel themselves endowed.

It is seen that in the new constitution one of the most controversial of subjects has been definitely settled; law and order has become a provincial legislative responsibility. The statement in the Joint Select Committee's report has been maintained: namely, "The Committee are unable to conceive a government to which the quality of responsibility could be attributed if it had no responsibility for law and order". The protection of the Police from any suspicion of political influence or pressure is secured by the exercise of the Governor's responsibilities. The Bill supports an important point to which reference was made in the Report, namely, the necessity of protecting the records of the Intelligence or Special Branches of the Police which are engaged in combatting terrorism. It is in the public interests that no leakage of information should occur, and that what must be strictly and rightly held as official secrets should be carefully guarded. This is a most important point.

To those with no knowledge of India, such safeguards may appear a little overdone. But when, as in India, we have leaders in political thought who condone acts of violence and terrorism, who regard political murders merely as unfortunate accidents, and who loudly acclaim the criminal as a martyr when he suffers the extreme penalty of the law, then, to say the least of it, certain precautions are not unnecessary. Indians of extreme political views may cavil at central control in such respects; but as long as terrorism is rampant, and as long as communal hatred lasts, such control is not only a necessity, it is a duty. Irrespective of Indian or western opinion, British statesmen in India will continue calmly to administer justice in a manner that is the envy of the whole world. These proposals indicate how clearly British statesmen recognize that all political advancement is essentially an evolution dependent upon the growth of knowledge, and that, as a people become more and more politically articulate, they must be afforded increasing facilities for the expression of public opinion.

The passing of the Bill does not automatically lead to Federation. It is necessary before this is achieved that one-half of the Indian States on the basis of population and of representation in the Upper Federal Chamber must accede. By signing Instruments of Accession, individual Rulers of States can come into the Federal Scheme, and it is apparent that a sufficient number of the Princes are willing to make the necessary sacrifices of sovereignty which will thus allow both Houses of Parliament to present an Address to the King asking that, by Royal Proclamation, Federation be legally brought into existence. For a successful All-India Federation the inclusion of most, if not all, the Indian States is essential. The cost of bringing the States into Federation will be as nothing compared to the loss in time, money and energy of leaving them out. The association of representatives of Indian States with those of British India at Delhi and Simla will bring the integral parts of the Great Dominion into closer harmony, and aid materially in determining that type of government which will prove most suitable to the needs of a unified India. The Indian Princes represent some of the most loyal, cultured and conservative elements in Indian politics, and they would bring to the councils of the Upper Federal Chamber a wealth of administrative talent and experience, a conservatism and calm dignity that would be of distinct advantage in tempering the ardour and zeal of those less experienced in the art of government.

## THE LEGISLATURE.

The Viceroyalty of India is a position unique in political administration. Through its office India has been served by some of the most distinguished of British statesmen. Reference has already been made to the discretionary powers of the Governor-General; he is His Majesty's representative for the exercise of the functions of the Crown. He will hold in his hands the whole executive power of the Federation, and he will have as his advisers a Council of Ministers which will not exceed ten in number. The Council is responsible to the Legislature, the Viceroy is responsible through the Secretary of State to the home parliament. The Central Legislature is to be composed of an Upper Chamber known as the Council of State, and a Lower Chamber or Federal Assembly. The Council of State will consist of 104 representatives of the States and of 156 members the majority of whom will be elected directly on a high franchise exercised by about 100,000 persons. The Council will be permanent, but one-third of its members will retire every third year by rotation. Certain seats will be set apart for minority representation, a very important factor in Indian politics, and some six seats will be filled by non-official members nominated by the Viceroy. Election to the quinquennial Federal Assembly, made up of 125 States' representatives and 125 British Indian Members, will be controlled by the provincial Assemblies. Here Hindus, Mohammedans, Indian Christians, depressed classes, Sikhs, Europeans, Merchants' Chambers, etc., will be represented. The Provincial Legislatures will consist of two legislative Chambers in Bengal, Bombay, Madras, the United Provinces, Bihar and Assam. The Upper House or, as it will be called, the Legislative Council will be a permanent body, one-third of its members retiring every third year. The Lower House, to be named the Legislative Assembly, will be elected quinquennially in all Provinces. It is in the Legislative Assemblies that the political life of the masses of India will have its greatest expression. Communal strife will certainly not be apparent by its absence. To prevent in some measure the blighting effect of absurd prejudices and of inane antipathies, which are so curiously characteristic of political and religious fervour in the West as much as in the East, the allocation of seats set out in the schedules of the Bill is based on the Communal Award made by His Majesty's Government in 1932, known as the Poona Pact.

One of the most outstanding features of the Bill, second only to the great fact of Federation, is the enormous increase in the

electorate, from 3 to 14 per cent. of the adult population of British India and 27 per cent. of the whole population of the country; an increase from 3 to 36 million people. Bengal with its 50 million inhabitants will have its electorate changed from a little over two million to eight million. Did ever the India Congress Party, even in its sanest movements, suggest a change so fundamentally and politically sound? Such a change will be an added strain on the country's budget, but such is part of the cost of progress. The three points upon which the Bill and its forerunner, the Joint Select Committee's Report, were based, namely All-Indian Federation, Provincial Autonomy and Responsibility with Safeguards at the Centre, have withstood all criticism and remain the basis upon which the whole fabric stands. In its present form the Bill marks a great advance in the development of the political life of India. It does give India a constitution which can be worked, and it is hoped that the moderate elements will defend this Bill and repudiate all attempts of Congress to wreck it. Congress with its all or nothing policy has been one of the greatest curses to India: the cry that "the new Reforms constitute merely self-government tempered with Viceregal absolutism" is calculated to delay markedly advance towards Dominion Status. In fact, if allowed full sway Congress would destroy all that Indian and British statesmen have hoped for India. It is to be hoped, however, that the keen intelligence of educated Indians will rise superior to mere cavilling obstructionism, and that the new reforms may be truly a step towards full and unconditioned self government. The new Reform Bill is a constructive measure of transcendent importance for the future not only of India but of the whole British Commonwealth of Nations.

Those who take fear into their counsels concerning self-government in India should take heart of grace from the words of such an expert on Indian affairs as Sir John Thompson, Chairman of the Union of Great Britain and India, Chief Commissioner at Delhi from 1928 to 1932, who recently said that "The British have done more to make India a nation than all her previous rulers. They have preached a new doctrine and initiated her in its practice, and now all are agreed that the time has come for another advance. Further stages lie beyond, and if India, taught by us, shows herself capable of handling full democracy, our country will be able to inscribe on its banners the proudest of all human achievements".