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THE PARLIAMENTARY SYSTEM OF GOVERNMENT IN INDIA

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INTRODUCTORY

In a few weeks India will be actively engaged in framing the details of her new Constitution, which will be federal in structure and will embody the British parliamentary system of government both at the centre and in the units or states. At some of the earlier sessions of the Constituent Assembly, when the main principles of the new Constitution were being laid down, there was a fairly strong current of feeling in favour of the American presidential system and this found expression in certain decisions of the Assembly not only to the mode of election of the head of the federation and of the heads of the constituent states, but also, to some extent, to the relations between the heads of the states and their ministers. This current is now weakening, but it may nevertheless leave some traces in the final version of the Constitution. It may be interesting at this stage to take a peep into the history of India, both remote and recent, and see how far her people have been accustomed to the theory and practice of parliamentary modes of government.

ANCIENT INDIA

In ancient India, there were a number of republics, but the predominant type of polity and, for long stretches of time, the only type, was the monarchial. The essence of the parliamnetary system is that the monarch or king must govern the state on the advice of ministers responsible to the people. How far did this system obtain in ancient India? According to the Code of Manu, which, in its present form, may be taken to have existed in the second century A.D., the king must have colleagues or ministers with whom he must discuss and consider all matters of state: "Even what is easy to do becomes very difficult if sought to be done unaided by one man; how much more so the business of the kingdom?"[1]

Kautilya's Arthasastra, whose date according to some scholars is the fourth century B.C. and according to others the third century A.D., enunciates the rule, "When there is an extraordinary matter, the Ministers and the Council of Ministers should be called together and

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[1] MANU, VII 30-31, 55-56, JAYASWAL, HINDU POLITY 288 (Bangalore 1943).

informed. There, whatever the majority decides to be done should be done (by the King) "[2] The Sukraniti which is placed by scholars in the twelfth century A.D or even later, but which embodies the doctrines and traditions of a far more ancient time, contains the injunction "Without the Ministers, matters of State should never be considered by the King, even if he is well-versed in all the sciences and in statecraft. A wise King must always follow the opinion of the members of the Council of Ministers. He must never stand on his own opinion. When the sovereign becomes independent, he plans for ruin, in time he loses the State and loses his subjects."[3] The Nitivakyamrita, a work of the tenth century A.D., states that "he is no true King who acts against the advice of his Ministers."[4]

It is therefore clear that the king in ancient India was not only expected to have ministers, but also to act upon their advice. The number of ministers varied. according to Kautilya's Arthasastra, Manu recommended twelve, Brihaspati sixteen, Usanas twenty, while Kautilya himself did not think it necessary to fix any particular number.[5] As so large a council could not always be consulted in practice, Kautilya recognises a kind of informal inner council of three or four ministers for constant consultation.[6] This may be compared to the evolution of the cabinet in England.

Were the ministers responsible to the people? The Mahabharata (which, in its present form, existed in the second century B.C.) contains a verse to the effect that "the King must invest only that Minister with jurisdiction who has lawfully earned the confidence of the *Paura-Janapada.*"[7] Even if we take the italicized word in its literal sense to mean the people of town and country (Dr. Jayaswal interprets *Paura* as the Assembly of the Capital and *Janapada* as the Assembly of the Realm) the verse appears to embody a strikingly modern conception. More significant however than this general injunction is an incident of Asoka's reign recorded in the Divyavadana, an important Budhist work. The city of Takshasila (Taxila) in the north became "hostile" and Asoka sent his son Kunala to pacify the people. The citizens in welcoming the Prince said "We are not hostile to Your Highness nor

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[2] ARTHASASTRA Bk. I Ch. 15, JAYASWAL, *op. cit.* at 288.
[3] SUKRANITISARA II, 2-4, JAYASWAL, *op. cit.* at 289.
[4] Quotation in NITIVAKYAMRITA, X, JAYASWAL *op. cit.* at 306.
[5] ARTHASASTRA Bk. I Ch. 15, JAYASWAL, *op. cit.* at 292.
[6] ARTHASASTRA Bk. I Ch. 15, BENI PRASAD, THEORY OF GOVERNMENT IN ANCIENT INDIA 125 (Allahabad, 1927).
[7] MAHABHARATA, SANTI-PARVAM LXXXIII 45-46, JAYASWAL, *op. cit.* at 260.

are we hostile to King Asoka, but to the wicked Ministers who come and insult us."[8] The distinction drawn between loyalty to the king and opposition to the ministers of the day is interesting and recalls the English decision of 1848 in *The Queen v. Fussell* that the expression "Government by law established" in the definition of sedition does not mean the administration of the day but the permanent government of the country, so that it is not sedition merely to attack the ministry of the day.[9] It appears from Asoka's inscriptions that the emperor made an order that the ministers at Taxilà were to go out of office every three years in order to prevent excitement or trouble among the citizens. Thus the idea that the king must change his ministers from time to time so as to make them acceptable to the people was not only familiar in theory but was occasionally acted upon in practice.

When we come to parliamentary procedure, we are on much surer ground, for the procedure of the Budhist Sangha or Monastic Order, of which there is ample evidence, anticipated to an astonishing extent the rules of business prevalent in the legislative assemblies of today Motions, resolutions, quorum, "whips," voting by secret ballot, open voting, first, second, and third readings, the right of free discussion, "tellers," the rule of decision by the majority, the appointment of committees to cut short debate, and so on, were all well known.[10]

It would be idle to pretend that the parliamentary system in all its modern detail was practised in ancient India, but we may perhaps venture to say that the essential conception was familiar.

MODERN INDIA

For the purpose of this paper, modern India may be taken to date from 1858 when the Crown assumed the government of its territories in India, which until then had been administered by the East India Company From that date until the Government of India Act, 1919, came into operation, the superintendence, direction, and control of the entire government of India was, generally speaking, vested in the Secretary of State in England. The Secretary of State, along with the other ministers of the Crown, was, of course, responsible to the Parliament of the United Kingdom, but although there were legislatures in India both at the centre and in some of the provinces ever since 1861, no

[8] DIVYAVADANA (Ed. by Cowell and Neil, Cambridge) 407-08, JAYASWAL, *op. cit.* at 261.

[9] STATE TRIALS, NEW SERIES, Vol. VI 723, 770.

[10] JAYASWAL, *op. cit.* at 90-101. BENI PRASAD, THE THEORY OF GOVERNMENT IN ANCIENT INDIA 324-27 (Allahabad, 1927).

part of the Indian administration was responsible to them in the constitutional sense. An element of such responsibility was introduced for the first time by the Government of India Act, 1919, which came into full force on January 3, 1921, and so remained until April 1, 1937, when it was superseded by the Act of 1935. The scheme of the Act of 1935 was in operation, except as to certain parts of it, from April 1, 1937, to August 15, 1947, when it was largely modified by and under the Indian Independence Act, 1947 The modified scheme is still in force; but a Constituent Assembly, which has been sitting from December 9, 1946, is now in the last stages of the process of framing a new Constitution.

Thus, for the purpose of studying the evolution of the Parliamentary system in modern India, we may divide the years from 1858 into four periods:

(1) From 1858 to December, 1920
(2) From January, 1921, to March, 1937
(3) From April, 1937, to August 14, 1947
(4) From and after August 15, 1947

First Period. During this period, as already remarked, no part of the government of India was constitutionally responsible to any legislature in India. The supreme executive authority in India was vested in the Governor-General in Council, who was required to pay due obedience to all such orders as he might receive from the Secretary of State in England.[11] Similarly, all provincial governments were required to obey the orders of the Governor-General in Council.[12] The Governor-General and the ordinary members of his executive council were all appointed by His Majesty for a term which in practice extended to five years.[13] As a rule, the Governor-General was bound by the decision of the majority of the council, but in certain exceptional matters he could act on his own authority and responsibility [14]

In the provinces, executive authority was vested either in a governor and members of his executive council, all appointed by His Majesty, or a lieutenant-governor and members of his executive council appointed by the Governor-General with the approval of His Majesty, or a lieutenant-governor similarly appointed, or a chief commissioner

[11] Section 33, Government of India Act, 1915.
[12] Section 45, Government of India Act, 1915.
[13] Sections 34 and 36, Government of India Act, 1915.
[14] Section 41, Government of India Act, 1915.

appointed by the Governor-General in Council.[15] But, as already mentioned, the provincial government was in every case required to obey the orders of the Central Government. It is clear that so long as the provincial governments were wholly subject to the Central Government and the Central Government wholly subject to the Secretary of State in England, neither in the provinces nor at the centre could the executive be constitutionally responsible in any respect to any legislature in India. For, "responsibility" in this sense implies that the administration is to be conducted in accordance with the advice of persons enjoying the confidence of the legislature and not the dictates of any external authority

The system outlined above remained in force for nearly sixty years. Then came World War I, which, among other things, intensified India's demand for "self-determination." The demand was conceded: on August 20, 1917, His Majesty's Government announced its policy of "the gradual development of self-governing institutions with a view to the progressive realisation of responsible government in British India as an integral part of the empire." The Secretary of State visited India and with the Viceroy drew up a scheme of reform, which, after examination by a Joint Select Committee of Parliament, was enacted as the Government of India Act, 1919.

Second Period. This Act came into full operation on January 3, 1921. Briefly, the effect of the Act and the rules made thereunder was (a) to create a number of governors' provinces, covering almost the whole of British India (the main exceptions being British Baluchistan and Delhi and, until 1932, the North-West Frontier Province),[16] (b) to demarcate certain subjects—described as "Provincial subjects"—for administration by the provinces, as distinguished from "Central subjects" to be administered by the Central Government,[17] (c) to subdivide the "provincial subjects" into two classes, "reserved subjects" and "transferred subjects."[18] Such subjects as education, public health, and agriculture were "transferred", while finance, police, the administration of justice, and certain other subjects were "reserved." The details of this subdivision are no longer of much importance. In each province, the governor was to administer the "reserved subjects" with the aid of an executive council, the members of which were, like the

[15] Sections 46, 47, 53, 54, 55, 58, and 59, Government of India Act, 1915.
[16] Sections 46 and 58 of the "Govt. of India Act" (*i.e.*, the Act of 1915 as amended by the Act of 1919).
[17] Section 45A of the "Govt. of India Act" and Devolution Rule 3 made thereunder.
[18] Section 45A of the "Govt. of India Act" and Devolution Rule 6 made thereunder.

governor himself, appointed by His Majesty [19] In respect of these subjects, the chain of responsibility was as before the Act of 1919—that is to say, the provincial government was subject to the Central Government and the Central Government to the Secretary of State.[20] The position was very different in respect of the "transferred subjects" the governor was to administer these with the aid of ministers appointed by himself and holding office during his pleasure.[21] No person could be a minister for more than six months, unless he was or became an elected member of the provincial legislature.[22] In relation to the "transferred subjects," the Governor was to be generally guided by the advice of his ministers.[23] As the ministers were to be responsible to and have the confidence of the provincial legislature, the control of the Secretary of State and the Central Government was correspondingly relaxed;[24] for otherwise the ministers would have had two masters and their position might have been impossible.

In each governor's province, there was a legislative council consisting of elected, nominated and *ex officio* members, at least 70 per cent of the total number being elected members and not more than 20 per cent being officials.[25] The provincial legislature could make laws for the peace and good government of the province subject in certain cases to the previous sanction of the Governor-General.[26] Almost all proposed expenditure was to be laid before the legislature in the form of demands for grants, excepting loan charges, statutory expenditure, and certain judicial and official salaries; but the governor could authorise a grant, even when refused by the legislature, if it related to a "reserved subject" and, in an emergency, even if it related to a "transferred" department.[27] He could also pass, over the head of the legislature, any bill in respect of a "reserved subject."[28] Every bill, whether relating to a "reserved subject" or a "transferred subject" required the assent of the governor and also of the Governor-General, and any Act, even after assent by the Governor-General, could be disallowed by His Majesty in council.[29]

[19] Sections 46 and 47 of the "Govt. of India Act."
[20] Section 45 of the "Govt. of India Act."
[21] Section 52 of the "Govt. of India Act."
[22] *Ibid.*
[23] *Ibid.*
[24] Section 19A of the "Govt. of India Act" and the Rules made thereunder; Section 45 of the Act and Devolution Rule 13.
[25] Section 72A of the "Govt. of India Act."
[26] Section 80A of the "Govt. of India Act."
[27] Section 72D of the "Govt. of India Act."
[28] Section 72E of the "Govt. of India Act."
[29] Sections 81 and 82 of the "Govt. of India Act."

Such, in broad outline, was the system of dyarchy introduced by the Act of 1919. It should be noted that the system was confined to the provincial sphere and that the Act made hardly any change in the structure of the Central Government. (It is true that the Central Legislative Assembly, consisting of about 100 elected members out of a total of about 140, was given power to refuse supplies except under certain heads of expenditure, but the Governor-General in council had an overriding power, if he was satisfied that the grant refused by the Assembly was essential to the discharge of his responsibilities.) Another point to be noted is that even in the provincial sphere, it was limited to certain subjects—namely, the "transferred subjects." And even in respect of these subjects, the ministers were responsible to a legislature which was not wholly elected and which contained an official bloc. Because of these limitations, the system failed to satisfy Indian public opinion; the Act of 1919 had provided for its examination by a commission at the end of ten years; but in 1927, even before the end of this period, a commission was appointed to inquire into "the working of the system of government, the growth of education, and the development of representative institutions in British India and matters connected therewith." The commission reported in 1930, recommending full responsible government in the provincial sphere in place of dyarchy, but no substantial change at the centre. This did not satisfy the Indian demand for reform and a new factor arose when certain rulers of Indian states, outside British India, expressed their readiness to enter into a federation of British Indian Provinces and Indian States if responsible government was extended to the centre as well. His Majesty's government thereupon convened a round table conference in London at which most sections of Indian opinion were represented; it held three sessions in 1930-32 and on the basis of its results, the British government framed a scheme of reform which, after steady opposition by certain elements in Parliament, ultimately emerged as the Government of India Act, 1935.

Third Period. The greater part of this Act came into force on April 1, 1937 We are not concerned here with the details of the measure, but only with the extent to which it introduced the parliamentary system of government in India both at the centre and in the component units or provinces. We have already seen that the Act of 1919 introduced it only to a limited extent in a limited sphere of provincial administration while leaving the central executive structure unchanged. The Act of

1937 extended it, with certain qualifications, to the whole of the provincial sphere and to a part of the central sphere.

The number of governors' provinces, which, from 1932, was nine, was increased to eleven by the separation of Sind and Orissa. Full responsible government of the British parliamentary type was provided for in each governor's province, subject to certain reservations to be mentioned presently The Governor was to be appointed by His Majesty and he was aided and advised in the exercise of most of his functions by a council of ministers who were to be appointed by him and to hold office during his pleasure, the implication—made more explicit in the Instrument of Instructions issued to the governor by His Majesty—being that he must appoint only such persons to be ministers as could collectively command the confidence of the provincial legislature and must terminate their office as soon as they ceased to do so.[30] As under the Act of 1919, a minister who for any period of six consecutive months was not a member of the provincial legislature automatically ceased to be a minister.[31]

There were, however, certain matters in respect of which the governor was required to act in his discretion without having to consult his ministers at all and certain other matters in respect of which he was required to exercise his individual judgment, though bound to consult his ministers.[32] In regard to both these classes of matters, the governor was under the general control of the Governor-General, who, in his turn, was under the general control of the Secretary of State and therefore of the parliament in England.[33] The area of responsible government in the provinces was thus restricted to some extent, though not to the same extent as under the Act of 1919.

Students of the Canadian and Australian constitutions will remember that they also contain certain provisions calculated to distinguish between the functions of the Governor-General and those of the Governor-General in Council, only in respect of the latter is the Governor-General required by the statute to act with the advice of his council.[34] In practice, however, the distinction has disappeared. The specific point arose in Canada in connection with the removal of Letellier de St. Just, Lieutenant-Governor of Quebec, in 1879. Under the letter of the Brit-

[30] Sections 48, 50, and 51 of the Govt. of India Act, 1935.
[31] *Ibid.*
[32] *Ibid.*
[33] Sections 54, 14, 313, and 314 of the Govt. of India Act, 1935.
[34] Section 13 of the British North America Act, 1867 and section 30 of the Commonwealth of Australia Constitution Act.

ish North America Act, the appointment of lieutenant-governors rests with the Governor-General in Council, while their removal rests with the Governor-General.[35] Nevertheless, His Majesty's government ruled that the Governor-General must act on the advice of the council in respect of both. It was doubtless felt that if the Governor-General insisted on the exercise of what he considered to be his statutory power, the ministry might resign and create a deadlock which there was no means of resolving under the Constitution Act.

The framers of the Government of India Act, 1935, presumably foresaw that the distinction which they had attempted to draw between the matters in respect of which the governor was required to act on the advice of his council of ministers and those in respect of which he was not so required would disappear in practice, unless special provision was made to resolve any consequential deadlocks. Accordingly, the Act gave power to the governor, acting with the concurrence of the Governor-General and subject to certain other safeguards, to proclaim what amounted to a suspension of responsible government in the province whenever he was satisfied that the government of the province could not be carried on in accordance with the provisions of the Act.[36]

It has been pointed out that under the Act of 1919, the provincial legislatures contained a certain number of *ex officio* and nominated members, so that ministerial responsibility to the elected representatives of the people was to that extent diluted. This defect was almost entirely removed in the Act of 1935. In five of the eleven governors' provinces, the legislature was to consist of a wholly elected single chamber; in the other six, it was to consist of two chambers, the lower chamber being wholly elected and the upper chamber predominantly so.[37]

So much for the provincial part of the new Act. The part dealing with the centre also provided for responsible government except with respect to defence, ecclesiastical affairs, external affairs and "the tribal areas" (certain areas near the frontier of India in the north-west and the north-east) [38] Unfortunately, the operation of this part of the Act depended upon the establishment of the federation and this required the accession of Indian states in sufficient number to satisfy certain prescribed conditions.[39] The necessary accessions did not take place,

[35] Sections 58 and 59 of the British North America Act, 1867
[36] Section 93 of the Govt. of India Act, 1935.
[37] Sections 60 and 61 of the Govt. of India Act, 1935.
[38] Sections 9 and 11 of the Govt. of India Act, 1935.
[39] Section 5 of the Govt. of India Act, 1935.

so that the federal part of the new Act never came into force. Consequently, the character of the Central Government remained much the same as before; and since the Act of 1919 too had made no substantial change in the central executive structure, the net result was that that structure remained essentially the same as during the period 1858-1920. It was not to be expected that Indian public opinion would remain satisfied with this state of affairs. World War II and the events which followed it, including the advent of the Labour government in England led, first to the establishment of a Constituent Assembly in India to frame a new constitution for the country and later, to the passing of the Indian Independence Act, 1947

Fourth Period. One of the main difficulties in the introduction of full responsible government at the centre had been that of reconciling Hindu and Muslim interests. A single central government with a single central legislature would ordinarily have meant the predominance of the majority community, both in the legislature and in the cabinet; and this the Muslims, who formed a minority of less than one-third of the entire population of India, were not prepared to accept. The Indian Independence Act, 1947 (which has been in force since August 15, 1947), has accordingly divided India into two parts, "India" and "Pakistan," "Pakistan" comprising certain areas in the north-west and the north-east where the Muslims form the majority of the population, each part has been styled a dominion, and full responsible government has been established in each under a provisional constitution. The provisional constitution consists mainly of the Act of 1935 with the omission of those portions which could be looked upon as subtractions from full responsible government. The permanent constitution is still to be framed, and for this purpose there is now a Constituent Assembly in session in each of the two dominions.