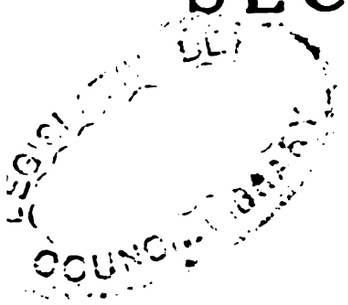
SECOND REPORT



FROM THE

JOINT SELECT COMMITTEE

ON THE

GOVERNMENT OF INDIA ACT, 1919 (DRAFT RULES).

Ordered, by the House of Commons, to be printed, 10th August 1920.

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SECOND REPORT.

FROM THE SELECT COMMITTEE APPOINTED TO JOIN WITH A COMMITTEE OF THE HOUSE OF COMMONS TO REVISE THE DRAFT RULES MADE UNDER THE GOVERNMENT OF INDIA ACT.

ORDERED TO REPORT—

1. That the Committee have met and concluded their consideration of the draft rules to be framed by the Government of India, and the Secretary of State for India in Council under the Government of India Act, 1919, which, under the provisions of that Act, require the approval of Parliament. The draft rules which are the subject of the present report are those provisionally presented to both Houses of Parliament in Command Paper 765, and the Committee understand that these drafts will now be reprinted with such modifications and amendments as are enumerated in this Report, and with certain further amendments recommended by the Government of India since the original drafts were framed, which the Committee have considered and approved. The Committee wish it to be understood that the observations contained in paragraphs 1 and 2 of their first report apply equally to the present drafts and that, as in the case of the drafts to which that report related, their remarks are confined to the few changes which they have effected. In all other respects the Committee accept the drafts as framed by the Government of India.

PART I.—*Rules under Section 1.*

2. *Rule 9.*—In sub rule (1) of this rule the Committee have inserted the words "the member of" before "the Executive Council," where the latter words first occur, and in sub-rule (2) they have inserted "or ministers" after the word "minister."

The disagreement with which the rule is intended to deal will, in most cases, be in origin a difference of opinion between two Departments, over one of which a Member of Council, and over the other of which a minister presides. The rule as drafted by the Government of India correctly recognises the corporate responsibility of Ministers and of the Executive Councillors for the purposes of discussion but the Committee think it important that when the decision is left to the Ministerial portion of the Government the corporate responsibility of Ministers should not be obscured. They do not intend to imply that, in their opinion, in every case in which an order is passed in a transferred department the order should receive the approval of all the ministers; such a procedure would obviously militate against the expeditious disposal of business, and against the accepted canons of departmental responsibility. But in cases which are of sufficient importance to have called for discussion by the whole Government, they are clearly of opinion that the final decision should be that of one or other portion of the Government as a whole.

Rules 14, 15, 16, 17 and 18.—Realising as they do the extent to which the success of the Reforms scheme will depend upon a satisfactory solution of the difficult question of the allocation of revenues to the provincial Governments and to the Central Government respectively, the Committee have given most anxious consideration to the proposals made to this end in the Report of the Financial Relations Committee appointed by the Secretary of State for India, and to the opinions of the various local Governments on this Report which have been laid before them. The Committee recognise the intricacy of the problem with which the Financial Relations Committee had to deal, and the difficulty, amounting almost to impossibility, of arriving at any solution which was likely to be acceptable to all local Governments. The proposals made by Lord Meston's Committee, and embodied in these rules, have met with a varied reception. They are endorsed by the Government of India, and some local Governments are content with the contributions proposed for them, while others dislike the ultimate standards; but certain provinces, particularly the three presidencies, are dissatisfied with the treatment of their own claims, and the Government of Bombay contest not only the amount of their contribution, but also the allocation of the heads of revenue on which the whole scheme is based.

The Committee see no reason to differ from the fundamental features of the proposals and they are definitely opposed to provincialising the taxation of income. They believe that such dissatisfaction as the proposals have aroused is inevitable in distributing resources between a central and provincial governments, and that the impossibility of removing by a stroke of the pen inequalities which are the result of long standing and historical causes has been overlooked. None the less the Committee would be glad, on grounds of policy, to alleviate the disappointment caused by the restraints which the system of contribution lays on the employment by the provinces of their revenues. In searching for such alleviation they have been materially assisted by suggestions from the Council of India, a body to whose advice great weight attaches inasmuch as it is the authority charged by law with the responsibility of controlling the revenues of India. Accepting the more important of these suggestions the Committee are of opinion :—

(1) That there should be granted to all provinces some share in the growth of revenue from taxation on incomes so far as that growth is attributable to an increase in the amount of income assessed. (The manner in which this share is to be assessed and its extent are stated in the new Rule 15 which the Committee have inserted, and it may be explained here that the figure 400 lakhs in that rule represents approximately 25 per cent. of the gross revenue estimated to accrue from Income-Tax and Super-Tax collected by provincial agency in the year 1920-21) ;

(2) That in no case should the initial contribution payable by any province be increased, but that the gradual reduction of the aggregate contribution should be the sole means of attaining the theoretical standards recommended by the Financial Relations Committee in paragraph 27 of their Report. (The manner in which this is to be effected is expressed in the revised Rule 18 which the Committee have substituted for the original rule based upon the proposals of the Financial Relations Committee.)

The acceptance of this latter proposal emphasises the intention, that the contributions from the Provinces to the Central Government should cease at the earliest possible moment. The Committee attach great importance to the fulfilment of this intention, and they are convinced that the opposition which the proposals of the Financial Relations Committee have evoked would be much diminished if it becomes possible for the Government of India to take steps to ensure the abolition of the contributions within a reasonably short period. They trust that the Government of India and the Secretary of State in Council will, in regulating their financial policy, make it their constant endeavour to render the Central Government independent of provincial assistance at the earliest possible date.

The Committee desire to add their recognition of the peculiar financial difficulties of the Presidency of Bengal, which they accordingly commend to the special consideration of the Government of India.

Rule 21.—The Committee have substituted the phrase " in the financial interests of India as a whole " for " in order to preserve the financial stability of India " as a preferable description of the circumstances in which the rule is to be applied. Without in any way wishing to facilitate interference on the part of the Government of India with the freedom of a provincial Government to dispose of its balances as it thinks best—a power which is intended to be used, and which the Committee feel sure will be used, only in exceptional circumstances—they think it undesirable that the description of the circumstances which justify its application should be such as might cause undue apprehension, and possibly adversely affect the money market.

Rules 27 and 28 and Schedule III.—The Committee have recast these rules and the Schedule referred to in them, and have introduced changes both of form and substance. In order to describe the effect of the rules as amended by the Committee they think it desirable to state certain general propositions on which they have proceeded.

In the first place they regard it as essential to draw a clear distinction between the powers of the provincial Government to sanction and incur expenditure on transferred subjects, and its powers in relation to expenditure on reserved subjects.

In the second place, they think that it is unnecessary and undesirable to prescribe by statutory rules under the Act of 1919 the extent to which the Secretary of State in Council is prepared to delegate to provincial Governments his powers of control over expenditure on reserved services. Such delegation has always in the past been effected by orders of the Secretary of State in Council made in virtue of the powers conferred by the proviso to section 21 of the Act of 1915, and the Committee recommend that this practice should be continued under the new regime. When the Act of 1919 comes into operation an order under section 21 of the earlier Act would necessarily assume an entirely new complexion, in view of the large measure of control over appropriations for reserved services vested by the new Act in the provincial Legislative Councils, and such an order might by its provisions well recognise the principles to which the Committee alluded in their observations on clause 33 in their Report on the Bill. Thus the Secretary of State in Council might in some cases permit the Governors in Council to dispense with his previous sanction to proposed appropriations for new reserved expenditure if a resolution approving the same had been passed by the Legislative Council. But whatever arrangement of this kind the Secretary of State in Council might think fit to make, the result would be a mere delegation of the Secretary of State's statutory powers of control, and his responsibility to Parliament would and must remain undiminished.

The Committee have therefore confined the scope of the present rules to expenditure on transferred subjects. It is the clear intention of the Act of 1919 that expenditure on transferred subjects shall, with the narrowest possible reservations, be within the exclusive control of the provincial legislatures and subject to no higher sanction save such as is reserved to the Governor by section 11 (2) (*b*) of the Act. But some reservations are required. The Secretary of State in Council must retain control over expenditure on transferred subjects which is likely to affect the prospects or rights of the all-India Services, which he recruits and will continue to control, and he must retain power to control the purchase of stores in the United Kingdom. But subject to these limitations Ministers should be as free as possible from external control, and the control to be exercised over expenditure on transferred subjects should be exercised by the provincial legislature, and by that body alone.

Lastly, the Committee have omitted that portion of the Government of India's draft rule in Schedule III which embodied what have been described as " canons of financial propriety ", not because they do not attach the greatest importance to the observance of these principles by all authorities entrusted with the expenditure of public funds from Ministers and Executive Councillors downwards, but because they think that it would be constitutionally impossible for the Secretary of State in Council to take power, in the rules which he is to frame under section 33 of the Act, to intervene in the administration of transferred subjects for the purpose of securing compliance with these canons, and that it would be inappropriate to lay down conditions in these rules which, so far as Ministers are concerned, there will be no power to enforce. They recommend therefore, that the substance of these rules should be enacted as part of the rules to be framed by the Secretary of State in Council under section 39 of the Act for the purpose of prescribing the duties of the Auditor-General, that the duty should be specifically laid upon that authority of conducting his audit with reference to these canons, and that any breach which he detects should be brought promptly to the notice of the local Government and of the Committee of Public Accounts. It will then be the duty of the Legislative Council to rectify irregularities of this description, and the manner in which notice has been taken of reports of the Auditor-General will be an obvious point to which the Parliamentary Commission would be likely to direct its attention.

Rules 30 and 31. Formal changes have been made in these rules.

Rules 32 and 33 have been redrafted, on the recommendation of the Government of India, so as to enable the Governor to cancel an order of allocation before the end of the normal period of its expiry should the disagreement which necessitated the order have been dissolved, or should his Ministers and Members of the Executive Council have devised by mutual consent a method of allocation which they prefer to that in force.

Rule 47.—A formal change has been made in this rule.

Rule 44.—The Committee have inserted at the end of the first sentence the words " for the orders of the local Government " with a view to securing to the Finance Department that its advice shall be considered by the Governor in Council or the Governor and Ministers, as the case may be, before a decision is taken which may involve disregard of that advice.

Rule 48 has been slightly expanded so as to provide for settlement, in case of disagreement between the Government of India and the provincial Government.

Rule 49.—A clause has been added, identical in form, *mutatis mutandis*, with a clause added to the corresponding rule under section 33, in order to enable intervention in transferred administration for the purposes of carrying out the provisions of the Act relating to the office of High Commissioner, the control of provincial borrowing, the regulation of the services, the duties of the Audit Department, and for the enforcement of certain rules which are intended to place restrictions on the freedom of Ministers, such as the rules requiring the employment of officers of the Indian Medical Service and the rules contained in Schedule III.

Schedule I, paragraph 20.—The Committee have thought it desirable to insert the words " made after consultation with the local Government or local Governments concerned," though they have little doubt that even were the words not inserted such consultation would invariably take place.

Schedule IV, Rule 10.—The Committee have omitted the forms appended to this rule as originally drafted and have made a consequential change in the wording of the rule. It appears to them unnecessary and undesirable to stereotype in statutory rules forms of which the details may well require periodical modification in the light of experience.

Rules under Section 2.

3. The Committee have recast Rules 2 and 3 of these rules in order

(1) to provide a more elastic specification of the purposes for which loans may be raised,

(2) to differentiate loans raised in India from those raised in the United Kingdom for the purpose of prescribing the sanctioning authority, and

(3) to enable the Government of India or the Secretary of State, as the case may be, to retain control over the effective rate of interest to be charged and the amount and form of the issue.

The reason which has influenced the Committee in deciding upon these last two provisions is that in the case of loans to be raised in India, the retention of control over provincial borrowing is in their view essential in the interests not only of the Central Government, but also of the provinces themselves (*e.g.*, to prevent unrestricted provincial competition). Similar considerations are applicable to the sterling borrowing operation of the provinces, and, apart from this, the Committee consider that the experience of the Secretary of State in Council in the London market is such that the chances of success of provincial loans in London will be for the present much greater if they are launched with his authority and on his advice.

Rules under Section 46.

4. These rules have been forwarded by the Government of India since the original drafts were provisionally presented to Parliament, and the Committee consider them the most appropriate solution of the problem they are intended to solve —namely, the settlement of the somewhat complicated question whether the large class of persons such as village officials, government pleaders, law lecturers, etc., who though in receipt of fees or small allowances from the Government are not whole-time Government servants, are to be regarded as officials for the purposes of the Act.

Rule under Section 33.

5. This rule [which as already stated is exactly parallel with the corresponding rule (49) under section 1] is confined to relaxation of the Secretary of State's control

and the Committee consider that no statutory divest-
over transferred subjects, nsferred field, is either necessary or desirable.
ment of control, except over the tra- ust large powers, administrative and
It is open to the Secretary of State to entr- provincial Governors in Coun-
financial, to the Governor General in Council and the p- or not to require
cil, and he will no doubt be largely influenced in deciding whether -ders when
reference to himself in any given case, or whether to interpose his o- essed
reference has been made, by the attitude of provincial public opinion as expr-
in the Legislative Council. But these matters cannot be regulated by statutory rules, and any authority which the Secretary of State may decide to pass on to the official governments in India will be a mere delegation of his own authority and responsibility, for the exercise of which in relation to central and reserved subjects he must remain accountable to Parliament.

General.

6. This concludes the Committee's observations on the draft rules. In the course of their deliberations they have, however, considered at the request of the Government of India, two cognate matters which call for some comment. In their Report on the Bill the Committee expressed the opinion that it would be a great advantage if, wherever possible, the Presidents of provincial Legislative Councils (who for the first four years are to be nominated) were persons with Parliamentary experience. The Government of India and the local Governments have given full consideration to this suggestion, and their views have been laid before the Committee. The consensus of opinion is that there would be great practical difficulties involved in carrying out the suggestion, and the Committee are prepared to defer to this opinion. They are glad, however, to learn that it is intended to give effect to their recommendation in this respect as regards the President of the Legislative Assembly.

7. The second matter which has been brought to the Committee's notice is the desire that they should reconsider the recommendation made in their Report on the Bill, that if a provincial Executive Council contains two members with service qualifications, neither of whom is by birth an Indian, it should also contain two non-official Indian members. The Committee have given their best consideration to the arguments upon which this request was based, but they see no reason to change their opinion. They recognise that this decision may involve a slightly greater man-power in the Government than present statistics would strictly justify, but they have little doubt that the increase of work arising out of the new legislative bodies will be such as to render past experience a doubtful guide as to the volume of business likely to fall upon the executive, and in any case they think it of more importance that as many Indian gentlemen as possible should obtain experience inside the government, than that the salaries of a few of them should be economised.

10th August, 1920.

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