WORKING AND ORGANIZATION OF U. P. LEGISLATIVE ASSEMBLY 1919-1939

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The Legislature of a State means the Governor and one or two Houses of the State Legislature, as the case may be. The two Houses are known as the Legislative Council, (The Vidhan Parishad) and the Legislative Assembly, (The Vidhan Sabha).

One of the problems regarding the Provincial Legislatures that has evoked popular interest and has been the subject of controversy, is whether there should be Unicameral or Bicameral Legislature. The present work is an attempt to study the constitutional history and development of Bicameralism in the provinces of India specially in U.P., which has always been regarded as the key province of Indian politics. The material of this work has been derived mostly from Government publications, Acts, Reports, Documents, Proceedings of U.P. Legislative Assembly, Year Books and Standard books on Indian Constitutional History.

This dissertation contains four chapters and a conclusion. The first chapter is Introductory in which the historical background of provincial Legislative Councils before the Act of 1919 has been given. The
second chapter deals with the composition, functions and powers of the provincial Legislative Councils under the Act of 1919. The third chapter is based on the Bicameral Legislature in the provinces, specially to the composition, functions and powers of the U.P. Legislative Assembly under the Act of 1935. Fourth chapter covers the period of 1937-39 and is an attempt to study the working of the U.P. Legislative Assembly of the said period. In conclusion attempt has been made to present a criticism of the whole study.

I take this opportunity of acknowledging my indebtedness to Professor S. A. H. Haqqi, Head, Department of Political Science, for his meticulous and parental advice that I have received from him on every step and without which this work would have hardly been completed. In the same way I cannot forget the pains-taking trouble and competent guidance of Dr. M. Hashim Kidwai, my Supervisor, in getting the work completed.

Rehana Anir
CHAPTER I

HISTORICAL BACKGROUND

(INTRODUCTORY)
CHAPTER - I -

HISTORICAL BACKGROUND
(INTRUDUCTORY)

The history of the growth of Indian Legislature is in a way the history of the establishment of British rule in India which drew its authority from two sources, the Mughal grant of the Diwani (1765)¹ and the various charters and Acts passed in the British Parliament - empowering the East India Company to carry on the administration of her Indian possession. By the lapse of time the East India Company soon became a dominating territorial power in India, passing an ambitious policy of annexation which completed the decline of the leading Indian powers by the first half of the 19th Century.²

At the time of the establishment of British Rule there was no Legislature in India. The Regulating Act (1773) had created a Central Government with Governor-General and four Councillors. This body carried on the administration of Bengal and also had the power to exercise control over the Governors of Bombay and Madras in relation to war and peace. But it caused complications on account of the concentration of having all sorts of Legislative and executive powers.³

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and it was thought that there should be a sort of separation of Legislative and Executive function. T. B. Macanlay was the fore-runner of this idea as he believed in "a strong centralized executive Government in India with some kind of separate Legislature, subject to the control of Parliament." This led to the passing of the Charter Act of 1833, which provided for the appointment of a separate Law Member to the executive Council of the Governor-General. Under the Charter Act of 1833, Macaulay was appointed the first Legislative Councillor of the Governor-General's Council. He was not a regular member of the Executive Council but used to attend its meetings when the Council sat as a Legislative body. The powers of law-making were thus in the hands of Governor-General in Council of Bengal who was henceforth to be known as the Governor-General in Council of India. A law member was added to the Council whose duties were confined to Legislation. The Council thus became what is known as a "Rudimentary Legislature." For about two decades this system

continued to prevail on the Indian administration. But the increasing size of European population, the development of education and the freedom of press created problems of bigger size than what existed in 1833 and necessitated an improvement in the Legislative machinery of Government and this led to the passing of Charter Act of 1853. Thus Act made the law member a full member of the Executive Council of the Governor-General to sit and vote. In addition to this one representative each from the Governments of Madras, Bombay, Bengal, N.W. Provinces besides Chief Justice and one or two the other judges of the Supreme Court at Calcutta were also added to the Council for Legislative purposes. This marked a clear departure from the Act of 1833 which brought a little more separation between the executive and the Legislature.

In 1857 came the Grant using of Indians, which convinced the Government of England to thoroughly overhaul system of Indian administration. The Rule of the


East India Company was terminated and India began to be governed directly by the crown through the Secretary of State for India who was given all powers which formerly belonged to the Court of Directors and the Board of Control. This change was quite significant and was a landmark in the history of the Constitutional development of our Country.

The rising of 1857 was suppressed ruthlessly. It was termed as a Sepoy war and no effort was made to gauge Indian public opinion. Sir Syed Ahmad Khan was the first man in India who in his book 'Asbabe-Bughawate-Hind' pointed out that the rising was due to "Misapprehension of the intention of the Government by the people of India." To him the major cause of rising lay in the total exclusion of Indians from the Legislative Council. This view

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10. Appeared later on in England as the causes of the Indian Revolt (1857-58) Translated by Sir Auckland Colin & Co., Graham in 1873.


was also shared later by Sir W. W. Hunter who acknowledged that "The Chronic peril which enunciated the British power in India was the gap between the ruler and the Ruled." The non-admission of Indians into the Legislative Council and then total exclusion had resulted in many evils. The Government in their absence suffered with complacency since it has no means of knowing the reactions of its subjects to the laws and regulations it passed. Neither the Indians had any channel of expressing what they felt about the laws passed by the Government. By this Sir Syed proved that howsoever, sincere the intention of the Government, it were mistaken by the people who ultimately revolted. When the parliament of England discussed Sir Syed's book, Mr. Sale Beedan, then foreign Secretary, pleaded for the imprisonment of Sir Syed, whose insittings, he termed as revolutionary who held the Government, responsible for such revolt. But latter senses prevailed in the parliament and it did not accept the suggestion of the foreign Secretary.


On the contrary, most of the British papers supported Sir Syed and advised the Government to act on the recommendations made by the great loyalist. Consequently, the Government accepted many of the recommendations contained in his book, Asbab-e-Baghawat-e-Hind. Therefore, in 1861, the Government passed the Council Act and nominated Raja Narendra Singh (Maharaja Patiala), Raja Dinkar Rao (Dewan of Gwalior) to the Legislative Council. This was the beginning of the introduction of the Indian element in the Legislative Council which was to consist of the members of the executive Council not less than six and not more than twelve additional members nominated by the Governor-General. The same Act also provided for the establishment of Legislative Councils for Madras and Bombay and empowered the Governor-Generals to set up Legislative Council in other provinces which led to setting up of the Legislative Councils in Bengal, U.P. and Punjab in 1882, 1886, 1898 etc. etc. The Legislative Councils set up in 1862 had the power to make laws but it had not power over the budget and finance.

The period following the Act of 1862 was a period of national consciousness in India. A number of factors contributed to the rise of Indian nationalism. There were the establishment of political unity under the British Government, spread of western education and culture, the religious Renaissance, Economic discontent, British policy of Racial discrimination, influence of press and the vernacular literature, development in the means of communication and transport and the Ilbert Bill controversy forced the Indian middle-class to form the Indian national Congress.  

It was not so much to defend the Indians as it was thought a safety valve against the forces of integration in India. Sir A. O. Hume and other founders of the Congress felt that a wave of a awakening and discontent was fast developing and the British were under a danger of being submerged by this. The Indian National Congress was the outcome of this. The Indian middle class which was the result of western education, was gaining strength day by day and as there was a wave of social, religious and political reforms in India, a veritable beginning of a renaissance in Indian national life was visible.

17. Ibid, p. 18.
The rapid expansion of education and the opening of new service avenues provided more clerical jobs to the people of India. They were called 'the professional agitators' whose number rose as the days rolled on.  

In his confidential and private correspondence to Lord Northbrook (the outgoing Viceroy and Governor-General Lord Dufferin, the Viceroy and Governor-General of India), drew his attention to the rising influence of what he called the 'Babu politician'. In conclusion, however, he wrote, "I think I can safely say that however annoying may be the violence, childishness and perversity of the Bengalee press and of young Babu politicians, their influence at present is neither extensive nor dangerous." This shows that by 1885 the educated middle class in India had begun to exercise sufficient political influence.

The sixth annual session of the Indian National Congress held at Calcutta in 1890, Mr. Bradlaugh M. P. who was sympathetic of Indian National aspirations, introduced a Bill for the Reform of the Legislative Councils.  

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20. Ibid.

Indian nationalism was also thinking to give more powers to the Legislative Councils and to satisfy the sentiments of politically conscious Indians. Accordingly the Indian Council Act of 1892 was passed. The Act enlarged the size of the Legislative Councils and conferred some more powers to them. The Councils could now discuss (but not vote upon) the budget.22

The first decade of the 20th Century saw the rise of violent nationalism in India. Lord Curzon who succeeded Lord Elgin as Viceroy and Governor-General of India believed that the origin and development of the national Congress was due to the 'mismanagement and want of judgment', on the part of Lord Dufferin which resulted into the formation of the National Congress and then to agitational politics. Curzon belonged to the conservative section of British politics. To him expansion for Great Britain meant existence, contraction would signify decay. He therefore, viewed Indian national movement with great hostility23 and wrote Hamilton, the Secretary of State: "My own belief is that the Congress is lottering to its fall, and one of my great ambitions while in India is to assist it to a peaceful demise."24

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24. Hamilton Papers - Curzon to Hamilton, (Contd.)
It was the rising nationalism which had frightened Curzon and to check that he partitioned Bengal.\textsuperscript{25}

But the partition of Bengal accelerated the pace of the national movement and when Minto succeeded Lord Curzon in 1905 he found India on the brim of revolution which had become a matter of serious concern in England. How to deal with it was the question?

The outgoing and succeeding Viceroyds belonged to the same political School - The conservative - but the latter had no admiration for the former because of his policy that had invited sedition and revolution against so powerful regime as British. But he was helpless and wrote to Morley, the liberal Secretary of State, that, ".... We are mere sojourners in the land, only camping and on the march."\textsuperscript{26} The embarrassed Morley in reply wrote, "Your way of putting this helps me to realise how intensely artificial and unnatural is our mighty Raj, and it sets one wondering whether it can possibly last. It surely cannot, and our only

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Nov. 18, 1900 (Microfilmed and available in the Nehru Museum and Library (New Delhi)).
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\textsuperscript{25} Sabharwal and Gupta, \emph{op. cit.}, p. 26.

\textsuperscript{26} Mary, Countess of Minto, \textit{India Minto and Morley} (London:1935), p. 153.
business is to do what we can to make the neat transitional, whatever it may turn out to be something of an improvement... will your Reform policy, Natives on my Council, Decentralization, Economizing of taxation and the rest of our virtuous deeds really make a pin of difference in their feedings about British Rule." Minto was much worried and wrote back to Morley "It is indeed a problem India is, as you say in a transition state. It is our duty to make the best we can of the present. One can only wonder as to the future." The Morley-Minto Reforms were the outcome of this frustration which had developed in the inner circle of the Home Government and disappointed the Secretary of State.

By these reforms the Legislative Councils were again enlarged. The number of additional members of the central Legislative Council were fixed at 60, of whom not more than 24 were to be non-officials. The Governor-General nominated three non-officials to present certain specified communities and other seats by nomination. The Act introduced separate electorate for the Muslims by which Muslims were to elect Muslim

27. Ibid.
members for the Legislature. The powers of the Legislature were increased. It could propose resolutions on the budget and vote upon them. The members could ask supplementary questions as well.

The Morley-Minto Reforms were embodied in the Indian Council Act 1909 which were the outcome of rational movement in the country.

By these reforms the Legislative Council was again enlarged. The number of additional members was fixed at 60, of whom not more than 24 were to be non-officials. The Governor-General nominated three non-officials to present certain specified communities and filled to other seats by nomination. The Provincial Legislative Councils were constituted by a process of indirect election, the constituencies being municipalities, district boards, Universities, chambers of commerce, landholders, etc. These reforms also introduced the principle of Communal Electorates. Thus Muslims were to be elected only by Muslims and Hindus only by Hindus.

The Government of India took all possible care to make the Legislative Councils docile and manageable.

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bodies. The lawyer element had proponderated under the earlier constitution.31

Gokhale proposed that the Provincial Legislative Council should consist of 75 to 100 members, of whom not less than four-fifths should be elected by different constituencies and interests. To illustrate his point he wrote that in the Bombay presidency each district should return two members, on representing Municipalities and the other District and Taluk Boards.

The most salient feature of the Congress League Scheme was the provision for representation of the Mohammedans through special electorate to the Provincial Legislative Councils according to the following quota:
The Punjab - One Half of elected Indian members.
United Province - 30%.
Bengal - 40%.
Bihar - 25%.
Central Province - 15%.
Madras - 15%.
Bombay 33%.32

32. Ibid., p. 386.
The Provincial Legislative Council, according to Gokhale, was to be vested with powers to pass all Provincial Legislation. Its assent was to be secured before imposing or changing the burden of provincial taxation. Jinnah also echoed Gokhale when he said that the Council should have the power to pass all provincial Legislation and determine provincial taxation, and that all resolutions in connection with the Budget as also all questions of general administration should take effect unless voted by the Government.

In 1882 the Poona Sarvajanik Sabha proposed to increase the term of membership of Legislatures from two to three years, while Pakshina Ranjan had suggested a five-year term. The Sabha's scheme of composition of the Bombay Provincial Council was similar to that of Pakshina Ranjan in as much as both suggested that half the total number of members should be elected and the other half nominated by the Government.

The Sabha wanted the Municipal and District Committees to elect 12 members - 1 by the Bombay corporation, 4 by the Maharasta Division, 3 by the Gujrat Division and 2 each by the Sind and Karnatak Divisions.

The years following the Act of 1909 were very critical for the British in India. Tripoli and Balkan Wars roused the Muslims of India from slumber and there was a general hatred against the British. The British
Government indirectly supported the Balkan nationalism against the Turks and this went to enrage the Indian Muslims and they became anti-British. The Turks had presented a stout resistance but failed. Turkish army broke up. Half of it was wounded, captured and killed. This brought practically the end of the Ottoman Empire in Europe. This administered a severe blow to the Musalmans of India. Maulana Muhammed Ali and Maulana Abul Kalam Azad started the 'Comrade' and the 'Alhilal' in English and Urdu respectively. The style of both the papers inspired the Indian Muslims to overthrow the British Rule. Thus in the whole country the Muslims rose like a man. "An astonishing wave of sympathy for Turkey," says Jawahar Lal Nehru, 'roused Indian Moslems' which 'was keener and something almost personal'. The country was otherwise, exceedingly quite, the sole disturbing features being the frequency of revolutionary crimes in Bengal. The Legislative Councils were working

33. Charles Downer Hazen, Europe Since 1815, (Calcutta: 1955), pp. 567, 68, 69; See also The Indian Annual Register, 1912, pp. 352, 53.
well.  Then came the World War I 1914 with all its horror, in which Turkey sided with Germany. Maulana Mohammed Ali wrote his historic article 'The choice of the Turks;' in condemnation of the British Policy. Mohammad Ali was arrested and the press security of Rs. 10,000/- deposits for the 'Comrade' was confiscated. The Maulana had a number of admirers who opposed his arrest. Syed Husain deplored the British policy, calling it a short sightedness and asked for its revision.

After the Tripoli and Balkan incident the Muslim League had changed its constitution. Hitherto it was a body of loyal Muslims who were more or less 'yesmen' to the Government. But since 1912 a marked change had come on Muslim politics. League and Congress came much closer and the representatives of both the parties started attending the annual sessions of each other. The League session of 1912 had already declared its policy which stated it as 'The attainment to the system of self-Government suitable to India.' This was

a marked departure from its former policy of
loyalism and this it had come very close to the
Indian National Congress which had made self-
Government its goal much earlier.

The cordial relations between the Muslim League
and the Congress had reached a stage when it was
considered a crying need to hold annual sessions of
both the Organisations simultaneously to take a
unanimous decisions on issues affecting both the
communities for the country. In 1915 and 1916
League and Congress met at Bombay and Lucknow
simultaneously. The session of 1916 is very important
as it resulted, into an entente known as the 'Lucknow
Pact' between the League and the Congress which
said that 'Adequate provision should be made for the
representation of important minorities by elections,
and the Mohammadans should be represented through
special electorates on the Provincial Legislative
Councils.' It was proposed that in the Provinces
such as Bengal and the Punjab where Muslims were in
majority, they were to get slightly lesser number
of seats than their proportion, while in those Provinces
where they were in a minority, they were to get a
large number of seats. Thus Bangal having a Muslim
population of 54.6% was to get 40% Muslim seats, while
U.P. with a Muslim population of 14.33% was to
receive 30% Muslim seats. It also provided that for the Imperial Legislative Council 'One-third of the elected members should be Mohammadans elected by separate Mohammadan electorates in the several provinces in the proportion, as may be in which they are represented on the Provincial Legislative Councils by separate Mohammadan electorates....'

The war ended in 1918 with the defeat of Germany and India expected great Constitutional reforms i.e. the establishment of responsible Government from the British Government, on the eve of war the Allied Powers had declared that they were fighting 'to make the world safe for democracy' and grant the right of self-determination to weak nationalities, therefore, at the end of war the people of India hoped greater participation in the administration of their country. Montagu, the Secretary of State for India, in the debate of the House of Commons on August 20, 1917 said that "The policy of His Majesty's Government with which the Government of India are incomplete accord, is that


42. Gupta and Sabharwal, op. cit. p. 41.
of the increasing association of Indians in every branch of administration and the gradual development of self-Governing institutions with a view to the progressive realisation of responsible Government in India as an integral part of the British Empire.\(^{43}\)

Later Mr. Montagu toured India together with the Viceroy to ascertain public opinion. The above announcement was later on incorporated in the Government of India Act 1919 which is known as the Montagu Chelmsford Reforms after the name of the Viceroy and the Secretary of State. But the Act of 1919 fell short of the expectations of people of India because responsible Government was still a dream and it only envisaged partial responsible Government in the name of Dyarchy.

CHAPTER II

"Composition, functions and powers of Provincial Legislative Councils under the Act of 1919!"
The object of the Morely-Minto Reforms as stated in the previous chapter was not to introduce the parliamentary system of Government in India, as had been made clear by Lord Morley himself in his speech in the House of Lords. It was on the other hand, "To create a constitution about which conservative opinion would crystallise and offer substantial opposition to any further change,"¹ as stated by the joint authors of the 1919 Reforms. It is true that the moderates in India had entertained high hopes and believed that Reforms would result in modifying the bureaucratic character of Government and in offering the elected representatives responsible association with the administration.² Mr. Gokhale had hoped that, "The elected members would have all the opportunity that they needed of influencing the course of provincial business."³ Mr. Montagu, (Secretary of State) after holding discussions submitted his wide proposals in July 1918, jointly with the Lord Chelmsford (Governor General). It upheld Dyarchy⁴

2. Ibid., p. 64.
3. Ibid.; p. 65.
4. The word 'Dyarchy,' is compounded of two Greek words signifying 'two' and 'Governments' - it means, according to the 'Oxford English Dictionary,' Government by two rulers.
and specified certain development departments for transfer to the charge of elected ministers in which interference by the bureaucratic centre should be kept "within very closely defined bounds," and recommended all-round devolution of authority to the provinces. 6

British India, as described in the Montagu Chelmsford Report of April 1918, was then made up of nine major provinces and six lesser charges. The nine major provinces were the three presidencies of Madras, Bombay and Bengal, the four Lieutenant-governorships of the United Provinces, the Punjab, Burma and Bihar & Orissa, (Bihar and Orissa being one province) and the two chief commissionerships of the Central Provinces and Assam. The six minor charges were the North West Frontier Province, British Baluchistan, Coorg, 7 Ajmer the Andamans and Delhi. 8 In each of the eight major


7. A Legislative Council with very limited powers was set up on Coorg in January 1924. It consists of 15 elected members and 5 nominated members. The Indian Year Book 1927, p. 23.

provinces to which the Reforms of 1919 originally applied, the new Act set up a unicameral and triennial Legislature called a Legislative Council.

Political ideas are so rapidly assimilated by Indian progressives and the sense of novelty so quickly wears off that it is really necessary to pause and appreciate the extent of the transformation.

The Act of 1919 introduced several changes in the composition, powers and functions of the Provincial Legislatures. Only one Legislative chamber, known as the Provincial Council was provided in each province. The authors of Montford Report wrote, "We propose, that there shall be an enlarged Legislative Council, differing in size and composition from province to province, with a substantial elective majority elected by direct election, on a broad franchise, with such communal and special representation as may be necessary." 

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9. Originally in eight, then in nine and finally in 10 such provinces.

10. A similar arrangement was applied to Burma when it was created a Governor's province in January 2, 1923.
   Burma was added under sub-section I of Section 52 A of the Act.
   See, notification No. 225, dated October 7, 1921, in the Gazette of India (Extraordinary) 1921, p. 381, and notification No. 1192, dated January 2, 1923 in the Gazette of India (Extraordinary) 1923, p. 37.

11. Montagu Chelmsford Report, Part II, Ch. 4, para 145.
   See also Report on Indian Constitutional Reforms 1918 p. 146.
This sums up, admirably, the salient features of the Provincial Legislative Council set up under the Act of 1919.

In the Preamble to the Act the main Report of the Announcement of 1917 was re-affirmed in slightly different language. Thus the policy of Announcement had been necessarily described as that of the British Government and the Government of India: it could not be termed as 'the declared policy of Parliament.' The announcement had spoken of 'the progressive realisation of responsible Government in India.' Since Parliament was not entitled to impose any constitutional enactments on the states, 'India, was rightly changed to British India.'

Under the Act of 1919 the functions of the Provincial Government, in a Governor's Province were divided between those which were made over to popular control and those which for the time being remained in official hands. The former were called the transferred subjects and the latter the Reserved subjects.

12. The Announcement implied that the Government aimed at the ultimate establishment of full responsible Government in India as a whole. It was hoped that the states might some day associate themselves with British India. In that event the central Government of all India might be responsible to the central Legislature. But responsible Government also requires that the Legislature should be responsible to the people. The Announcement was only a declaration of policy: no promise could be given that it would be

(Contd.
Sir William Harris, the Governor of the United Provinces, dissented from this interpretation of the Act, and the Simon Commission seemed to agree with this view. They argued that if this process were to carried out, "There would be no subject reserved and nothing will be left for the official half of the Government to administer." The guiding principle of the division of Provincial subjects into the Transferred and the Reserved list had been indicated by the authors of Joint Report as "The guiding principle should be to include in the Transferred list those departments which afford most opportunity of local knowledge and social service, those in which Indians have shown themselves to be keenly interested. In pursuance of this principle concerned with the maintenance of law and order, were transferred. Nor should we expect the transfer of matters

executed.

13. Under Section 45 A (1) (d) of the Act of 1919, rules could be made for the transfer from the 'reserved' list to the 'transferred' list.

See also; Keith A. B., A Constitutional History of India (1600-1935), op.cit., p. 247.
Pylee M. V., Constitutional Government in India, op.cit., p. 76.

which vitally effect the well being of the masses who may not be adequately represented in the new Councils, such for example as questions of land revenue or tenant rights."  

The administration of the 'Reserved' subjects was to be carried out by the Governor-in-Council according to rules made by the Governor. In cases of differences of opinion in the Executive Council matters were to be decided by majority vote. If the Council was equally divided the presiding gentleman had the right to give a second or the casting vote. However, the Governor was given by statute the power of overriding the decision of the majority of his Council, if, in his opinion, "The safety, tranquillity or interests of his province or of any part thereof were essentially affected."  

According to the Government of India Act 1919, the administration of the Transferred subjects was to be


16. A. 29. "There shall be a Governor of every province who shall be appointed by the King and represent his majesty in the Province." Shiva Rao B., Framing of Indian Constitution, Nahn Report, August 1928, p. 65.

carried on by the Governor on the advice of his ministers, but he had the right to disregard the advice tendered by the ministers and to act as he deemed fit. In the case of finance the provision of funds was safeguarded in the case of reserved subjects by authorizing the Government to restore a grant which the council refused to pass or reduced if the Governor certified that the expenditure was essential for the discharge of his responsibility for a Reserved subject. In the case of Transferred subjects no such wide power was given, but the Governor was given power in case of emergency to authorize such expenditure as might in his opinion be necessary for the safety or tranquillity of the province or for the carrying on of any department.

The Legislative Councils of the provinces had grown from being modest expansion of the Governor's executive council into being large assemblies of Legislators. This growth had necessitated a change in

18. Section II (2) (a) of the Act of 1919, 9 and 10 Geo. V, Ch. 101.
19. Section II (2) (b) of the Act of 1919, 9 and 10 Geo. V, Ch. 101.
in their relation to the Governor. He formerly
presided in person at meetings of the Legislative
Council. He is no longer a member of the
Legislative Council, but he has the right of addressing
the Council and may for that purpose require the
attendance of its members. Each of the nine
Governor's Provinces had a Legislative Council
consisting of the members of the executive council
of the province concerned and of the members nominated
or elected in accordance with Rules made under the
Act. The Act of 1919 provides that at least 70%
of the members of a Legislative Council shall be
elected members and that no more than 20% shall be
official members. In the case of Burma 60 is
substituted for 70%.

20. Lectures by Ilbert and Meston, The New Constitution
of India, op. cit., pp. 52-53.
See also, section 72 A of the Act of 1919.

actual working. Longmans, Green & Co., Ltd.,
London 1933, p. 55.

22. Section 7 (2) of the Act of 1919, 9 and 10 Geo. 5 ch. 101.

23. The explanation of 'official member' is here necessary.
An 'official' within the meaning of the Act, is a person
in the whole-time civil or military service of the
crown in India and remunerated as such. He may be a
member of the Indian Civil Service or in Provincial
Service. He is appointed by the Governor to serve on
Provincial Council.

(op. cit.) para. 146.
See also - Banerjee D. N., The Indian Constitution and
its actual working, (op. cit.) p. 55.
According to the Rules framed under the Government of India Act, 1919, the strength of Legislative Council in the Governor's province was fixed as follows:

- Bengal: 139
- Bombay: 111
- Madras: 127
- U. P.: 123
- Punjab: 93
- Bihar & Orissa: 103
- Central Provinces: 70
- Assam: 53

Total: 819

The minimum number was fixed for each province. Apart from the elected members there were ex-officio members and nominated officials and non-officials. The executive councillors were ex-officio members of the Legislative Council. Other officials were nominated to provide stabilising influence and day to day knowledge of the administration. The non-officials were to be nominated for the purpose of giving all interests and communities a fair representation in the
Council. The President\textsuperscript{25} of the Council elected\textsuperscript{26} after the first four years by its own members and approved by the Governor. These recommendations were accepted by the Joint Select Committee and the Parliament and effect was given to them by the Rules framed under the Government of India Act 1919.

The strength and composition of Legislative Councils of major Provinces was as follows:

1. \textit{United Provinces} Legislative Council consisted of the members of the executive Council ex-officio, one hundred elected members, and such number of members nominated by the Governor as, with the addition of the members of the executive Council, amounted to twenty-three.

\textsuperscript{25} Section 9 (1) of the Act of 1919 (9 and 10 Geo. V, Ch. 101).

\textsuperscript{26} Joint Select Committee had considered carefully the question who was to preside over the Legislative Councils in the provinces. They were of opinion that the Governor should not preside, and they advised that, for a period of four years, the President should be appointed by the Governor. Wherever possible it would be a great advantage if some one could be found for this purpose who had Parliamentary experience. The Legislative Council should itself elect a Vice-President, and at the end of 4 years the nominated President would disappear, & the President and Vice-President would be elected by the Councils. The Committee attributed the greatest importance to this question of presidency of the Council. In their opinion,
Of the members so nominated not more than 16 may be officials and three must be persons nominated to represent respectively the following classes or interests, namely, (i) The Anglo-Indian Community, (ii) The Indian Christian Community, and (iii) classes which, in the opinion of the Governor, are depressed classes.

The Madras Legislative Council consisted of the members of the Executive Council ex-officio, 98 elected members, and such number of members nominated by the Governor as, with the addition of the members of the Executive Council, amount to 34. Not more than nineteen may be officials, and one is to represent the backward tracts and ten to represent the following communities, namely, the Paraiyans, Pallaus, Vallubans, Malas, Madigas, Chakkiliyans, Tolloiyans, Cherumans and Holeyas. The Governor at his discretion could make regulations providing for the selection of these eleven members by the communities concerned.

The Bombay Legislative Council consisted of the members of the Executive Council ex-officio, 86 elected members and such number of members nominated by the Governor as, with the addition of the members of the Executive Council, amount to twenty-eight. Of the members so nominated very greatly to the successful working of the new Councils.

The Report from the Joint Select Committee, on Clause 9 (1-5) of the Government of India Bill.
nominated, not more than sixteen may be officials, and eight must be persons nominated to represent the following classes or interests as given below:

(i) The Anglo-Indian Community 1
(ii) The Indian Christian Community 1
(iii) The labouring classes 3
(iv) Classes which, in the opinion of the Governor, are depressed classes 2
(v) The Cotton Trade 1

The Bengal Legislative Council consisted of the members of the executive Council ex-officio, one hundred and fourteen elected members, and such number of members nominated by the Governor as, with the addition of the members of the executive council, amount to twenty-six. Of the members so nominated not more than eighteen were to be officials and not less than six non-officials, and two to be persons nominated to represent respectively the following classes or interests, namely, (i) The Indian Christian Community, and (ii) Classes which, in the opinion of the Governor, were depressed classes, and two be persons nominated to represent the labouring classes.

The Punjab Legislative Council consisted of the members of the executive council ex-officio, seventy-one elected members, and such number of members nominated by the Governor as, with the addition of the members of the executive council, amount to twenty-three.
Of the members so nominated not more than fourteen may be officials, and five were to be persons nominated to represent the classes mentioned below according to the following distribution, namely:

1. The European and Anglo Indian Communities 2
2. The Indian Christian Community 1
3. The Punjab Officers and soldiers of His Majesty's Indian Forces 1
4. The Labouring Classes 1

The Bihar and Orissa Legislative Council consisted of the members of the Executive Council ex-officio, Seventy-six elected members, and such number of members nominated by the Governor as, with the addition of the members of the executive Council, amount to twenty-seven. Of the members so nominated not more than eighteen were to officials and nine persons nominated to represent the classes or interests hereinafter mentioned according to the following distribution:

1. Aborigines 2
2. Classes which are depressed classes, in the opinion of the Governor 2
3. Industrial interests other than planting and mining 1
4. The Bengal community domiciled in the province 1
5. The Anglo-Indian Community 1
6. The Indian Christian Community 1
(7) The Labouring classes

The Central Provinces Legislative Council consisted of the members of the executive council ex-officio, 3827 elected members and such number of members nominated by the Governor as, with the addition of the members of the Executive Council, amount to 35. Of the members thus nominated not more than eight may be officials, and seventeen must be persons nominated,28 as the result of elections held in Berar, and seven must be persons nominated to represent the classes mentioned below:

(1) Urban factory labourers 1
(2) The inhabitants of Zamindari and Jagirdari estates excluded from the area of any constituency 1
(3) The European and Anglo-Indian Communities 1
(4) Classes which were depressed in the opinion of Governor29 4

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27. Including one member for the Nagpur University Constituency.
28. Though actually elected, technically nominated.
29. Under Section 72 A (2) of the Act of 1919 members nominated to the Legislative Council of the C.P. by the Governor as the result of election held in the assigned Districts of Berar will be deemed to be elected members of the Legislative Council of the C.P. This provision meets the requirements of Section 72 A (2) of the Act which declared that at least 70% of the members of the Provincial Legislative Council must be elected.
The Assam Legislative Council consisted of the members of the Executive Council ex-officio, thirty-nine elected members and such number of members nominated by the Governor as, with the addition of the members of executive council, amount to fourteen. Of the members so nominated not more than seven may be officials and two non-official persons nominated to represent respectively the following classes; namely:

(1) The Labouring classes; and
(2) The inhabitants of backward tracts. The Governor may at his discretion make regulations providing for the selection of these two members by the communities concerned.

The Burma Legislative Council consisted of the members of the executive council ex-officio, 79 elected members and such number of members nominated by the Governor as, with the addition of the members of the executive council amount to 24. Not more than fourteen were to be officials and two persons nominated to represent the following classes, namely:

(1) Indian Commerce; &
(2) The Labouring classes.

The composition of Legislative Councils in the Provinces and the distribution of the elected members in the different Legislative Councils is shown in two tables on the next pages.
So far as the actual composition of the nine Legislative Councils was concerned, the existing distribution was as follows:\(^{30}\)

**Table No. 1**

<table>
<thead>
<tr>
<th></th>
<th>Statutory minimum</th>
<th>Elected</th>
<th>Nominated, Officials &amp; Executive Councillors</th>
<th>Nominated non-officials</th>
<th>Actual Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Madras</td>
<td>118</td>
<td>98</td>
<td>7 + 4</td>
<td>23</td>
<td>132</td>
</tr>
<tr>
<td>2. Bombay</td>
<td>111</td>
<td>88</td>
<td>15 + 4</td>
<td>9</td>
<td>114</td>
</tr>
<tr>
<td>3. Bengal</td>
<td>125</td>
<td>114</td>
<td>12 + 4</td>
<td>10</td>
<td>140</td>
</tr>
<tr>
<td>4. United Provinces</td>
<td>118</td>
<td>100</td>
<td>15 + 2</td>
<td>6</td>
<td>123</td>
</tr>
<tr>
<td>5. Punjab</td>
<td>83</td>
<td>71</td>
<td>13 + 2</td>
<td>8</td>
<td>94</td>
</tr>
<tr>
<td>6. Bihar &amp; Orissa</td>
<td>98</td>
<td>76</td>
<td>13 + 2</td>
<td>12</td>
<td>103</td>
</tr>
<tr>
<td>7. Central Provinces</td>
<td>70</td>
<td>55</td>
<td>8 + 2</td>
<td>8</td>
<td>73</td>
</tr>
<tr>
<td>8. Assam</td>
<td>53</td>
<td>39</td>
<td>5 + 2</td>
<td>7</td>
<td>53</td>
</tr>
<tr>
<td>9. Burma</td>
<td>92</td>
<td>80</td>
<td>14 + 2</td>
<td>7</td>
<td>103</td>
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<table>
<thead>
<tr>
<th>PROVINCES</th>
<th>Non-Mohammadan</th>
<th>Mohammadan</th>
<th>Sikh</th>
<th>Indian Christian</th>
<th>European</th>
<th>Anglo-Indian</th>
<th>Land-Holders</th>
<th>University</th>
<th>Planting</th>
<th>Commerce &amp; Industry</th>
<th>Mining</th>
<th>General</th>
<th>India - Urban</th>
<th>Karen - Bara</th>
<th>TOTAL</th>
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<tr>
<td>Madras</td>
<td>65</td>
<td>13</td>
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<td>5</td>
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<td>1</td>
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<tr>
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<td>2</td>
<td>2</td>
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<tr>
<td>Bengal</td>
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<td>5</td>
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<td>-- 4</td>
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<td>--</td>
<td>--</td>
<td>--</td>
<td>71</td>
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<tr>
<td>Bihar &amp; Orissa</td>
<td>48</td>
<td>18</td>
<td>--</td>
<td>1</td>
<td>5</td>
<td>1</td>
<td>-- 2</td>
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<td>76</td>
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<tr>
<td>Central Provinces</td>
<td>29</td>
<td>4</td>
<td>--</td>
<td>--</td>
<td>-- 2</td>
<td>1</td>
<td>1</td>
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<td>38</td>
</tr>
<tr>
<td>Assam</td>
<td>20</td>
<td>12</td>
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<td>--</td>
<td>-- 5</td>
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<tr>
<td>Burma</td>
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<td>1</td>
<td>-- 5</td>
<td>-- 53</td>
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<td>--</td>
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<td>--</td>
<td>79</td>
</tr>
</tbody>
</table>

The distribution of the elected members in the different Legislative Council is as shown in the above Table. 

31. Out of 65 seats allotted to Non-Mohammadans, 28 seats were reserved for non-Brahmins; 'provided that if the number of non-Brahmin candidates at the date of election was less than the number of reserved seats, the number reserved shall be reduced to the extent of that deficiency'. Madras Electoral Rule 4, Schedule I.

32. Seven out of 46 seats were reserved for the Maharas; but no seat was to be deemed to be a reserved seat for the purpose of any election ... if the constituency concerned was already represented by a Mahatta members or if there was no Mahatta candidate.

33. If the members from Barar who - though they were nominated after their election -- were to be deemed as elected members under Section 72 A of the Act, were included in this calculation, the corresponding numbers in the case of central provinces will be : Non-Mohammadan 4; Mohammadans 7; Landholders 3; University 1; Commerce & Industry 2; and Mining 1; Total 55.

34. 'This seat (Shillong) is filled by general electorate including Mohammadans, there being no separate Mohammadan urban constituency.' India in 1920. p. 249.
The Legislative Council in a Governor's province was constituted for three years; but it could be dissolved earlier by the Governor who could also prolong its life for a further period not exceeding one year, by notification in the official Gazette of the province, if in special circumstances, he so considered fit. Within six months, or within nine months with the sanction of the Secretary of state, of the dissolution of a Legislative Council, the Governor was required by the law to appoint a date for the next session of the Council.\textsuperscript{35}

The system of elections recommended by the Montford Report was a direct one and was to be based on as broad a franchise as possible.

The franchise was broadened. Communal representation was not only recognised but further extended.\textsuperscript{36} The authors of the Montagu-Chelmsford Report

\textsuperscript{35} See Section 8 (1) of the Act of 1919 (9 & 10 Geo. V. Ch. 101.).

\textsuperscript{36} The Montagu-Chelmsford Report, in more than one passage, indicated its intention that the franchise for the Legislative Council should be broad. "The Franchise Committee was "to measure the numbers of persons who can in the different parts of the country be reasonably entrusted with the duties of citizenship." M/C Report Para 225.
expressed their opinion that communal electorates were opposed to the teachings of history, that they perpetuated class divisions, stereotyped existing relations and constituted, "a very serious hindrance to the development of the self-Governing principle."\(^{37}\)

But, none the less, the joint authors felt constrained, so far as the Muhammadans were concerned, to admit this system in the Constitution, they were framing, and to concede a similar arrangement to the sikhs of the Punjab. The simple explanation was given that the facts were too strong for the Muhammadans relied on past assurances which they regarded as vital to their interests and which the community as a whole protested must not be withdrawn. They pointed out the fact that they were given special representation with separate electorates in 1909.\(^{38}\) Moreover, the argument for a separate Muhammadans electorate was materially strengthened by reason of an agreement which had been

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38. But the authors of Montford Report wrote, "We see no reason to set up communal representation for Muhammadans in any province where they form majority of the voters."
*The Report of Indian Constitutional Reforms, 1918*, p. 149.
arrived at in 1916 between Hindu and Muhammadan leaders and which went by the name of the 'Lucknow Pact.'

But once the principle was accepted in the case of the Muslims and the Sikhs, it was impossible to deny it to the others communities and the Franchise Committee recommended the extension of communal electorates to Indian Christians in Madras, to Europeans in Madras, Bombay, Bengal, the United Provinces and Bihar & Orissa, and to Anglo-Indians in Madras and Bengal. The Joint Select Committee considered the claims of the non-Brahmins in Madras and the Marathas in Bombay also favourably and recommended reservation of seats for them in plural-member constituencies.

A University seat was provided in each province, except Assam, Bengal has two. University representation was first proposed in the time of Lord Dufferin as one means for expressing such corporate opinion as they existed in the country and it was included in the


Indian Councils Act of 1892. The authors of the Montagu-Chelmsford Report wished to limit special electorates as much as possible and doubted whether University representation needed to be retained; they did not make any positive recommendation in either sense. 41

The Joint Select Committee, however, retained University representation, but recommended the extension of the University Franchise to all graduates, of over seven years standings, a recommendation to which effect had been given in the Electoral Rules.

For membership of either chamber of the Indian Legislature or of a Governor's Legislative Council, there were certain general qualifications common to them all and a few special qualifications peculiar to each Legislative body. 42 For instance, a candidate to be eligible for election as a member of the Council of State must not only possess the common qualifications, but must satisfy the special conditions requisite for election to the Council of State either from a general constituency or from a 'special' constituency in any


province, as the case may be. No person is eligible for election as a member of the council to represent a general constituency other than the European constituency, unless he is registered as an elector of the constituency or of any other constituency in the province other than the European constituency.\(^{43}\) To be eligible for election as a member of the council to represent a special constituency or the European constituency, a person must have his name registered on the electoral roll of the constituency.\(^{44}\) 'General constituency' in the U.P. Legislative Council means a non-Muhammadan, Muhammadan or European Constituency. 'Special Constituency' meant a 'Talukdars,' Agra Landholders, University, or commerce and Industry constituency.

The qualifications for the voter varied from province to province; and in urban, rural and landlord constituencies, but the disqualifications were the same in all cases, namely that a person who (a) was not a British subject; or (b) was a female; or (c) had been

\(^{43}\) In the United Provinces a Muhammadan could represent a non-Muhammadan constituency in the Local Legislative Council, & Vice Versa.

\(^{44}\) *Section 7 (4) C* of the *Act of 1919.*
adjudged by a competent court to be of unsound mind or (d) was under 21 years of age was not entitled to have his name entered on the electoral roll.

The qualifications prescribed for voters in general constituencies were as follows:
Residence in the Constituency during the previous twelve months and either payment of municipal taxes, amounting, in most cases, to not less than Rs. 3/- per annum; or (b) occupation or ownership of a house of the annual rental value of Rs. 36/- per annum in the majority of the provinces; or (c) assessment to income-tax or an annual income of not less than Rs. 2,000/- in the case of urban constituencies; and in rural constituencies, the holding of agricultural land assessed at an annual value as a rule, of Rs. 10/- to Rs. 50/- per annum. The Chief qualifications for the voter in a landholders constituency was the possession of a landed estate assessed to land revenue varying from Rs. 500/- (in the case of the Punjab) to Rs. 5,000/- (in the case of United Provinces).

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45. The amount fixed in the large cities - Calcutta, Bombay and Madras was very much higher.
46. Considerably lower amounts were fixed for Muhammedans in Bengal, and in Bihar & Orissa.
47. In the United Provinces, the amount was Rs. 25/- per annum.
No special qualifications were required from the candidates seeking election to the provincial Legislatures, except that they were not less than 25 years of age and were voters or qualified to be voters in the constituency for which they were standing provided they did not possess the qualifications.

According to Pylee,50 "The Provincial Legislative Council had four different types of functions. These were:

(1) Interrogatory    (2) Deliberative
(3) Legislative and  (4) Financial

As compared with the Councils under Morley-Minto Reforms, the powers51 of the councils were considerably increased.

The provincial councils enjoy much larger powers than the central Legislature in all matters excepting Legislation.52

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49. Residential qualifications were imposed on the candidates only in the three provinces of Bombay, the Punjab and the Central Provinces.
50. Pylee M. V., Constitutional Government in India, op. cit., p. 79.
51. Section 10 of the Act of 1919 deals with the powers of the new Councils.
I - LEGISLATIVE POWERS:

The law-making powers of the province have, therefore, been exercised since 1921 by a single chamber, whose composition and powers were extensive. The Provincial Legislature had the power to make laws "for the peace and good Government, of the territories for the time being constituting that province." Before the 1919 Act, previous permission of the Governor-General was required for every Legislation. After 1919, previous sanction was no longer necessary or Provincial matters except only in the following cases:

(1) Imposing or authorizing the imposition of any tax unless the tax is one exempted from this provision by Rules made under the Act.

(2) Affecting the public debt of India, or the customs duties, or any other tax or duty for the time being in force and imposed by the authority of the

54. Section 10 (1) of the Act of 1919.
56. Section 10 3(a) of the Act of 1919.
Governor-General in Council for the general purposes of the Government of India, provided that the imposition of a tax above will not be deemed to affect any such tax or duty;

(3) Affecting the discipline or maintenance of any part of His Majesty's naval, military or air forces.

(4) Affecting the relations of the Government with foreign princes or states.

(5) Regulating any central subject.

(6) Regulating any Provincial subject which has been declared by Rules under the Act to be, either wholly or partly, subject to Legislation by the Indian Legislature, in respect of any matter to which such declaration applies.

(7) Affecting any power expressly reserved to the Governor-General in Council by any law for the time being in force.

(8) Altering or repeating the provisions of any law which is declared by Rules made under the Act to be a law which could not be repealed or altered.


58. Ibid, Part II.
by it without such previous sanction.

Finally, the Provincial Legislative council of any province did not have power to make laws affecting any Act of Parliament. 59

Every bill required the assent of the Governor-General, before it became an Act. The Governor could return a bill for the consideration of the Governor-General before giving his assent. The Governor-General could also return a bill for reconsideration and could further reserve it for the consideration of His Majesty's Government. Certain types of bills were compulsorily required to be so reserved by the Governor for the consideration of the Governor-General. The Legislative Powers of the Councils were very much limited by the Legislative powers of the Governor. The Governor had the usual power of veto. He had also the power of 'certification' which meant that if the Legislature refused to pass a Bill relating to a reserved subject the Governor could certify that its passage was 'essential for the discharge of his responsibility for the subject.' 60 By so certifying it the bill was put in the same position as though it had actually been passed by the Legislature.

59. Section 10 (4) of the Act of 1919.
II - EXECUTIVE POWERS:

The Councils were given greater control over provincial administration. The executive powers of a Legislature were those powers by which it was enabled to influence the executive in its working. The members of the councils could ask questions and supplementary questions of the ministers and councillors. The right of asking supplementary questions were extended to all members. Apart from it, the members could also move resolutions and adjournment motions. "The councils were for the first time, given the right of removing Ministers by passing a vote of no confidence or vote of censure against them." Such a vote was effective only against the ministers because they alone were made responsible to the councils. Ministers were duly bound to resign, when such a motion was passed. The Councillors had no such obligation, even when they were censured by the Council, because they were responsible to the Secretary of State and the Parliament and not to councils.

"The Councils were given greater control over provincial administration through the power of interpretations, asking supplementary questions, moving motions of adjournment, passing resolutions and the power of voting

supplies."  

But they could exercise control over the administration of the 'transferred subjects' and not over that of the 'Reserved subjects'. For the administration of the reserved subjects the Governor's acting with his executive councillors was responsible to the Governor-General and through him to the Secretary of State. This division of responsibility and the consequent limitation upon the control of Legislative Councils over the provincial administration were evident from many provisions relating to their financial and Legislative powers.

III - FINANCIAL POWERS:

A statement of the estimated annual expenditure and revenue of a Governor's province was presented to Local Legislative Council in each year, on such day as the Governor described. This was referred to as the Provincial Budget. The limitations imposed by earlier Legislation on the functions of the councils were swept away, but special rules were laid down for finance. The Government of India Act, 1919 required the presentation of the Financial statement to the


63. Section 11 of the Act of 1919.
Legislative Council each year and the making of proposals for the appropriation of the revenue in the form of demand for grants. "The council may assent, or refuse its assent, to a demand, or may reduce the amount therein referred to either by a reduction of the whole grant or by the omission or reduction of any of the items of expenditure of which the grant is composed;" provided that:

(a) "The Local government shall have the power to restore any item relating to a reserved subject, if the Governor certifies that the expenditure is essential to the discharge of his responsibility for the subject.

64. Section 11 (2) of the Act; see also India in 1919, p. 240.

65. Under this provision of the Act, the Governor has, in respect of Reserved subjects, power to restore, in the word of His Excellency Lord Lytton, Governor of Bengal (1922-1927), 'every single grant in the Budget which has been rejected with regard to Transferred subjects, however, he has no power whatever his wishes may be, to restore a single grant.

(Lord Lytton speech in Bengal Legislative Council). The Statesman (Dak Ed.), March 26, 1924.

66. The Legislative Council had control over only 25% of the expenditure, subject to the Governor's power of restoring an item of expenditure by the Council if that expenditure was essential to the discharge of his responsibility.
(b) The Governor shall have the power in cases of emergency to authorise such expenditure as may be in his opinion necessary for the safety or tranquility of the province, or for the carrying on of any department, and

(c) That all proposals for appropriation of revenues shall be made on the recommendation of the Governor alone."

The financial powers of the Legislative Councils were still further restricted by Clause 11 (3) of the Act of 1919 which required that the proposals relating to the following heads of expenditure shall not be submitted to the Councils:

1) Contributions payable by the Local Government to the Governor-General in Council;
2) Interest and sinking fund charges on Loans;
3) Expenditure of which the amount is prescribed by or under any law;
4) Salaries and pensions payable to or to the dependents of -- (a) persons appointed by or with the

68. *India in 1919*, pp. 242-243.
69. The Provincial contributions to the Government, of India have been completely and finally remitted with effect from the year 1928-1929.
approval of His Majesty or by the Secretary of State in Council; (b) Judges of the High Court of the Province; (c) The Advocate-General; (d) Persons appointed before the 1st of April, 1924, by the Governor-General in Council or by a local Government to services or posts classified by Rules under the Act as superior services and posts; and
(5) Sums payable to any person who was or had been in the civil service of the crown in India, under any order of the Secretary of State in Council, of the Governor-General in Council, or of a Governor, made upon an appeal made to him in pursuance of Rules made under the Act.

The power of restoration by certification had been rather frequently used since the inauguration of the Reforms in the year 1924. The Governors of Bengal and central provinces exercised this power in order "to restore practically all the Budget demands for Reserved subjects, which were rejected by their Legislative Councils. The financial power of the Councils were greatly limited by the powers the Governor on money matters.

70. The Amrita Bazar Patrika (Dak ed.), April 16, 1924.
71. The Statesman, (Dak ed.), March 26, 1924.
From the preceding account it would be evident that the Legislative Councils was given control over the administration of the transferred subjects; all it could do was to influence the administration of the Reserved subjects. Resolutions passed by it were binding in case they related to the transferred subjects but were mere recommendations if they pertained to the Reserved half.

The Provincial Councils of 1919 were, no doubt, a great improvement on the type of Legislative Councils that India had under the Act of 1909. The number of their members were considerably increased. Elected majorities were introduced everywhere. The Provincial sphere of Legislation was demarcated. Presidents were allowed to be elected for the first time. The right of voting grants was newly given. A part of the Provincial executive was made removable by the Councils for the first time which gave Indians, experience in conducting responsible or parliamentary Government. The right of moving adjournment motions was given. The franchise was considerably enlarged, which gave the Councils a more representative character. Even the Councillors, though irremovable by the Legislature, became subject to its influence because they could be daily subjected to questions and supplementary questions. They could also be influenced by resolutions and adjournment motions.
A Council could refuse to oblige a Councillor by not passing a law as he desired it, which compelled him to go to the Governor and have recourse to the extraordinary powers of Legislation of the latter.

Defects of the Legislative Councils, in the first place, the Legislative, financial and executive powers of the Governors limited a great deal. the similar powers of the Council. Secondly, the vicious principle of separate or communal electorates was not only retained for Muslims, but it was even extended to other communities like Sikhs. Thirdly, the nominated bloc, i.e., nominated officials and nominated non-officials generally voted according to the wishes of the Governors. As the elected members were divided on the basis of 'interest' and 'communities' the importance of the nominated bloc increased a great deal. With the help of the official votes, the Governors, often, kept unpopular ministers in the saddle, got enacted unpopular measures and could give a show of popular approval to their elections.

Fourthly, the Legislative Councils were not given the power to remove councillors. The power was specifically denied to them, because of the system of Dyarchy. As the Councillors were incharge of vital subjects, an important part of the administration was, thus kept beyond the control of the Provincial Legislature.
"Provincial Legislature has no power whatever to say in what proportion the revenue of the country, should be allocated between 'Reserved' & 'Transferred' departments respectively, it has no control whatever over the revenue allocated to the Reserved subjects. All that it can to say to the Ministers : "We refuse our assent to your demand", or, "We reduce the amount referred to in your demand either by a reduction of any of the items of expenditure of which the grant is composed." It is ridiculous to describe the limited control exercised by the councils in relation to the 'Transferred' subjects as 'an effective control over the purse.'\(^\text{72}\)

Finally, the whole system of electorate was so devised based as it was on representation of 'interests', 'classes' and 'communities' - that it encouraged the formation of 'petty groups' in the councils. The conditions were hardly congenial for the formation of real type of political parties. As there were no regular parties except the Swarajist Party in C.P. & Bengal - there was no effective control over the ministry.

Whatever, the shortcomings may be, anyhow, Legislative Councils provided members and ministers training in parliamentary Government, a form which India was destined to choose even after Independence. Our oldest parliamentarians were the product of these Councils.
CHAPTER III

"Composition, Functions and Powers of Provincial Legislative Assemblies under the Act of 1935, with special reference to U. P. Legislative Assembly."
CHAPTER III

Composition, Functions and Powers of Legislative Assembly under the Act of 1935, with special reference to the U. P. Legislative Assembly.

The dyarchical system introduced in the provinces by the Government of India Act 1919 resulted in a complicated system of administration. The United Provinces Government's Memorandum to the Reforms Enquiry Committee described the Act as, "Obviously a cumbersome, complex, confused system, having no logical basis, rooted in compromise and defensible only as a transitional expedient."\(^1\) Dyarchy as a scheme for the introduction of responsibility in a limited sphere was a failure. "The provincial Legislatures failed in actual practice to influence the administration of even the transferred departments as much as they were expected to do under the provisions of the Act."\(^2\) The division of provincial subjects into reserved and transferred proved to be a very awkward one for it had been done quite arbitrarily.\(^3\)

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3. Ibid., The U. P. Government also held the view in their Memorandum that Dyarchy had failed due to political reasons, due to the inability of Indians to work a democratic constitution with the introduction of responsibility there had been deterioration particularly in the departments of Local-self Government and Education.
It is alleged against the working of the 1919 constitution that though joint responsibility of ministers was intended, the ministers were not allowed to develop it except in Madras during the first two years. The Governor consulted his ministers individually and each minister was responsible for his department alone. In U. P. there was only one solitary instance in 1927, where the ministers worked, though entirely of their own accord, on the principle of joint responsibility. On the whole the new constitution could not satisfy the nationalists opinion, and it was enforced at a time when the non-co-operation movement was gaining strength. The followers of the movement reframed from entering the new Legislative Council.

With the year 1920, begins a new era in the History of the nationalist movement in India. For in that year Gandhiji entered the Indian political scene, "bringing into the field his novel political experiments which resulted in an exceptional stress and strain culminating into the ultimate independence of India in 1947."  

Under the advice of Mr. Gandhi, the All India Khilafat Committee adopted his non-cooperation programme.

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This was followed after four months, by the Congress Session of Calcutta. The liberals having already left the Congress in 1913, it was controlled now by Extremist. Yet, however, Mr. Gandhi's proposal of non-cooperation did not find a smooth sailing, and it was opposed by Pandit Malviya, Mrs. Annie Besant, C. R. Das, B. C. Pal and Mr. Jinnah. The resolution for non-cooperation was, however, eventually adopted by the Congress by a narrow majority of eleven votes. This put Mr. Gandhi at the pinnacle of the Congress Organization, and when it met in its Nagpur session in December, 1920, Mr. Gandhi's programme was re-affirmed by an overwhelming majority.

5. The novel experiment of non-violent, non-cooperation or Satyagraha of Gandhiji had been a subject of great criticism. Sir C. V. Chintamani called it "Just one of those double negatives, if there be any other, which did not make an affirmative." Indian Politics since the Mutiny, p. 187.

6. The Nagpur Session of 1920 was indeed another turning point in the history of India's freedom movement for three reasons. First, the old constitutional means to secure political concessions were abandoned, and all the peaceful and legitimate means were now to be adopted by the Congress for the purpose. Secondly, the old aim of self-Govt., within the British Empire, if possible and outside, if necessary," was declared the necessary goal. And thirdly, Tilak having died on July 31, 1920, Mr. Gandhi became an undisputed leader of the Congress and directed its destinies through his novel experiments: Indian Constitutional Documents, Vol. III (1917-1939), Ed. Banerjee, A. C. 1949, (A. Mukherjee and Co., Calcutta) p. 163.
The general condition of U. P. during the year, (1922-1923) were much favourable than in 1921-22. Financial stringency and political agitation were the most prominent features of 1921-22, but show a noticeable improvements in 1922-23. "The improved political and economic outlook is a prominent feature in the revenue administration reports." In matters of provincial interest, the District Board Bill of U. P., attracted considerable attention. The chief points which provoked attack were communal representation and the provisions relating to taxation.

The period, (1923-1924) opened with controversy between the "No Changers" and Swarajists of the Congress party over question of Council entry. Bitter though the controversy became in some other parts of India, the Swarajists of these provinces had the support of the bulk of non-cooperators from the beginning of the movement to abandon the boycott of the Councils. Recriminations were reserved for the Liberal Party, the enormity of whose conduct in entering the Councils when the Gandhian programme enjoined abstention became the

8. Ibid., p. 4.
More apparent to extremists with their own decision to utilize the constitutional machine for attaining their objects. The resignation of the Ministers of the provinces, (U. P.) in May, 1923 did little to alter this attitude.

A special session of the Congress was held at Delhi in September, 1923 under the Presidentship of Maulana Azad. And by this time the atmosphere had yet further changed in the favour of Swaraj Party. The Swarajists fought in 1923 the second elections under the new Constitution of 1919. In these elections they secured 45 out of 145 seats in the Central Legislative Assembly.

Political conditions in U. P. in 1924-25, did not differ in any marked degree from those of the previous year. "The extremists lost further ground, and their leaders met with little success in their appeals for funds."

10. The 'Swaraj Party' was formed as the Parliamentary wing of the Congress by C. R. Dass and Pt. Motilal Nehru. 'Swaraj' was main aim of the Party. For details see, Shiva Rao B. Framing of India's Constitution. (Ed) Select Documents. Vol. I (New Delhi, the Indian Institute of Public Administration), pp. 55-6.

Public meetings were held in many places on the release of Mr. Gandhi and the death of Mr. C. R. Das, but there was little spontaneous enthusiasm. On the other hand, the Schism between the 'No-Changers' and the Swarajists widened. "Events outside India made the Khilafat a spent force." The Liberals as a political party can hardly be said to have recovered from their defeat at the polls in 1923. The landholders as the result of their continued numerical strength in the Legislative Council possess as a single party more weight than all the others when they act together.

The outstanding feature of the situation was the diversion of energy from politics to communal controversy, the pact between the two major communities was short-lived, and all pretence at unity had been abandoned. Relations grown steadily worse and were strained throughout the year. There was a wave of communal riots in many towns of northern India.

12. The Khilafat national University founded by Mohd Ali and other Khilafat leaders left the province, (U.P.) being removed from Aligarh to Delhi - Ibid. The Turkish national assembly at the instance of Mustafa Kamal abolished the institution of Khilafat. This was a total blow to the Khilafat movement in India

13. Indian year Book and Who's who, (Bombay, the Times of India Press, 1924-25), p. 70.

14. Except Aligarh no serious Communal Riot occurred in this year
The Congress of 1925 affected the Province, (U. P.), more intimately than usual as the annual session was held at Kanpur in December. The Congress soon split into three camps, the Swarajists reiterating their faith in civil disobedience and their determination not to work the reforms, the Responsivists pledged to responsive co-operation so far it suited their interests, and the Hindu Sabha Party standing for Hindu nationalism and strengthened by the growing communal friction throughout the province. Faced thus with opposition from two quarters, the Swaraj Party made no attempt to carry out their threat of civil disobedience. Later on the Sabarmati Pact of April, 1926, represented an attempt by the Swarajist leader to re-unite its broken ranks, but the fact was soon repudiated. On December 29, 1925, the National Liberal Federation adopted a resolution on constitutional reforms which was moved by C.Y. Chintamani. On the provincial sphere, in the text of resolution it was reproduced that, "Provincial Government should be responsible to the respective Provincial Legislative Councils which should be wholly elected."  

According to Section 34 of the Reforms Act of 1919 a Statutory Commission had to be appointed "at the expiration of ten years after the passing of the Act for the purpose of enquiring into the working of the system of Government and the development of representative institutions in India, with a view to extend, modify or restrict the degree of responsible Government then existing in India." In its report, after studying the existing situation, the commission made several recommendations which can be studied as follows.

Regarding the provinces, the commission recommended that:

1. The Dyarchy now having lived its purpose should be abolished and Ministers nominated from among those commanding majorities in the Legislatures, should be entrusted with the full control of the Provincial administration. These Ministers should be jointly responsible to the Legislature. But the constitution

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17. In November 1927, an Indian Statutory Commission under Sir John Simon was appointed to examine whether Indians were fit for being entrusted with a further instalment of responsible Government.


19. The Commission consisted of: Sir J.A. Simon (Chairman), Lord Brumham, Lord Strathcona, the Hon. Mr. E.C.G. Cadogan, Col. Lane Fox, Mr. C.R.Attle, and Mr. Stephen Walsh who resigned before any meeting of the Commission was held and was replaced by Mr. Vernon Hartshorn.
of the cabinet should be elastic so as to enable the Governor to introduce an official element into it, if he considers it necessary.\textsuperscript{20}

2. The Central Government should not unnecessarily interfere in the administrative and Legislative functions of the provinces, but the Governors should be granted some special powers where with to over-ride the advice of the ministers, where thought necessary.\textsuperscript{21}

3. The Franchise in the Provincial Legislatures should be widened so as to treble the electorate and included in it the largest number of women voters.

4. Unless some better method was agreed upon, certain important minorities should be adequately protected by continuing the system of electorates. The depressed classes should be given representation by special reservation of seats.

5. The Legislatures should be enlarged, while the constituencies should be reduced to a manageable size. And the Provincial Councils instead of being purely Legislative bodies should be given certain powers of recasting their own representative system.


\textsuperscript{21} \textit{Ibid.}, p. 151
6. The Provinces should be given enlarged financial resources.  

7. The question of re-distribution of provincial areas should be taken up at once and the cases such as of Sind and Oriya-speaking people should be considered first.

8. Burma should be separated from India and provision for a separate constitution for it must immediately be made.

9. North-West Frontier province should acquire a separate Legislature and both it and Baluchistan should be given the right to representation at the centre.

10. In future, the commission said, each province should be, as far as possible, a mistress in her house.  

The Commission came out to India twice between September 1928 and April 1929 and collected a large amount evidence, mainly from official sources, on the different points of its enquiry. The views of the Local Governments which were mostly of a conservative nature were also submitted to it the U. P. Government wanted Dyarchy to continue only with a greater number

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24. The Report of the Commission which was published in 1930 was condemned as reactionary by nationalist opinion.
of transferred subjects under ministers jointly responsible to the lower house of a bi-cameral Legislature. Finance it said, should be semi-independent under the Government. The proposals of the Statutory Commission did not appeal to the Indian public in general and, due to their anomalous nature, became unpopular in India.

In Bombay on May 19, 1928, a small Committee of nine members with Pt. Motilal Nehru as its Chairman to go into the matter and draft a constitution for India by July 1928, was appointed by the Congress. Nehru Report was one of the most constructive efforts made by any organization in India, and it placed an ideal before the country which could never be replaced.


26. This Committee known as the Nehru Committee held as many as 25 sittings and ultimately prepared a unanimous report which was placed before the All-Parties Conference, meeting again at Lucknow, under the Chairmanship of Dr. Ansari.

Regarding the provinces, the Report said:

1) That the provinces would be created on linguistic basis with a view to "planning of Muslim majority Provinces against Hindu majority provinces.

2) The need for a complete Provincial Autonomy was admitted and the Report said;

3) Powers should be divided between the centre and provinces on the basis of a federal structure; the residuary powers going to the centre in order to make it strong. In this recommendation the lines of the Canadian Constitution were adopted.

4) The local Legislature of any province has power, subject to the provisions of this act, to make laws for the peace and good government of the territories for the time being constituting that province. 28

On 31st October, 1929 the meeting of a Round Table Conference 29 was announced. It met in London between November 12, 1930 and January 19, 1931.


29. It was attended by 89 delegates, 57 of whom represented the British India, while 16 were the princes nominated by the Viceroy to represent the states and the rest represented the three parties in the British Parliament.
The Conference said that the provinces would be given full responsible Government with enlarged Legislatures and wider franchise.\textsuperscript{30} It was at this session that the consensus arrived at was that the central government should be federal and not unitary, as the Maharaja of Bikanir favoured it on behalf of the Indian rulers.

The announcement\textsuperscript{31} created an excellent impression amongst all political groups and parties in India except the Congress which rejected the offer and decided in December 1929 to resort to direct action for the attainment of its declared goal of "complete Independence," for India.\textsuperscript{32} On March 5, 1931 was signed the famous Gandhi-Irwin Pact. And on March 5, the Mahatma called the movement to a halt.

The second session of the Conference was held between September 7, and December 1, 1931.\textsuperscript{33}


\textsuperscript{31} Lord Irwin's (Viceroy of India 1926-31), announcement of 1929.

\textsuperscript{32} \textit{India in 1932-33} (Delhi), 1934, p. I

\textsuperscript{33} For details see, \textit{The Indian Round Table Conference,} (First Session), proceedings, pp. 505-8.
The deliberations of the Round Table Conference culminated in a White Paper issued by the British Government in March 1933, which modified that of December 1931. The White Paper was examined by a Joint Select Committee consisting of 16 members each from the Commons and the Lords, under the Chairmanship of Lord Linlithgo, before which the Indians Association etc. submitted memorandums and appeared as witnesses. The White Paper proposed bicameral Legislature only for three provinces, but it was said that after ten years of the working of the new constitution the Provincial Legislatures shall be able to address His Majesty for a change in the number of their chambers.

The proposals were very unpopular in India primarily because of the vast powers that they gave to the provincial Governor. Alongwith the Communal Award of 1932, which provided for representation in the Legislatures on a communal basis, these proposals came as a blow to Indian expectations.

34. The United Provinces, Bengal & Bihar.
36. The proposals were found unacceptable by nationalist Indian opinion. On March 3, 1934 meeting at Ranchi, under the Presidentship of M. A. Ansari, the Swaraj Party conference passed a resolution rejecting the White Paper proposals and demanding the convening of Constituent Assembly to frame an acceptable constitution for India - India in 1933-34, p. 4.
At last on the basis of above recommendations, a Bill was drawn, and passed as the Government of India Act, 1935. These were the circumstances, or the causes which led to the enactment of the Act Part III of the Government of India Act of 1935 provided for what is generally known as "Provincial Autonomy".

Under the Government of India Act, 1935, the provincial Legislatures were to consist of the King, represented by the Governor, and one of two chambers. The question of introducing this system was carefully examined by Mr. Montagu and Lord Chelmsford and was rejected as both inexpedient and unnecessary in the province. Second Chambers had been established in six provinces on the ground that there is enough material for their establishment. It was also stated that, in view of the enlarged powers of the Provincial Legislatures, it was necessary to create a second chambers to secure the representation of vested interests.

37. The Act consists of 473 Sections and sixteen Schedules. Of these 321 sections and ten Schedules deal with India - The establishment of a Federation, and the position of British India and the Indian states in relation to it. The rest apply to Burma, which by the Act ceased to be part of India.

38. Section 60 (a) provided for two chambers "in the provinces of Madras, Bombay, Bengal, the U.P., Bihar and Assam."


40. The Act of 1935 established a Doubled Chambered Legislature, - The Lower, or more important House, (Contd.)
Only eight out of the nine Indian provinces had a Legislature under the Government India Act, 1919. The Act of 1935, provided every Governor's province with a Legislature, and in six of them, of which the U. P. was one, it was Bi-cameral.

The strength of the Legislative Assemblies also varied from province to province. Thus the total membership of the Assembly of Bengal was 250, of Bombay 175, Madras 215, Assam 108, Bihar 152, United Provinces 228, Central Provinces and Berar 112, Punjab 175, Sind and Crissa 60 each and of the North-West Frontier Provinces it was 50. The official blocs in the Assemblies were completely done away with and all their seats were now to be filled by direct elections. The life of the Assembly was to be five years, unless dissolved earlier by the Governor.  

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41. The North-West Frontier Province to which reforms were not applied had no Legislature.

42. See Section 61 (2) of the Act of 1935.
Membership of both the Federal Legislature and a Provincial Legislature was prohibited. It was provided that, if a person is chosen a member of both Legislatures, then, at the expiration of such period as may be specified in rules made by the Governor of the province that, persons seat in the Provincial Legislature is to become vacant, unless he has previously resigned his seat in the Federal Legislature.

It will be observed that each Assembly consisted of elected members only; the nominated bloc whose presence formed such an important feature of the Provincial Legislature under the Act of 1919 was done away with altogether. The electorate in every province is divided into different communities and interests. "It is formed in accordance with the terms of the communal Award given by the British Government on August 4, 1932 as modified by the

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43. See Section 68 (2) of the Act of 1935.


45. Communal Award was given by Mr. Ramsay Macdonald in 1932.
Poona Pact and by the creation of the new province of Orissa.\textsuperscript{46}

The table on next page clearly shows the composition of various Assemblies.

The size of the Assemblies of the different provinces was fixed by the Constitution Act.\textsuperscript{47} In keeping with the democratization of the Constitution in other directions, the size of the Assembly was also much enlarged in comparison with the size of the Dyarchy Legislatures. Generally, the increase in the number of seats was by about a hundred or more. One important feature of the new Assemblies was the absence of any nominated or official members.\textsuperscript{48}

By the table on next page, it is clear that the Award created as many as 17 different electorates.

\begin{thebibliography}{99}
\bibitem{47} \textit{Fifth Schedules of the Act of 1935}.
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<td>TOTAL</td>
<td>56</td>
<td>37</td>
<td>8</td>
<td>38</td>
<td>28</td>
<td>1</td>
<td>10</td>
<td>1</td>
<td>1</td>
</tr>
</tbody>
</table>
The Legislative Assembly of the United Provinces contained a total of 228 seats, whereas during the 1919 Reforms its Legislative Council had a total of 123 seats of which only 100 were elected. Under the Act of 1935 the Legislative Assembly had one member for every 466 square miles of area, and on an average 19 members for every four districts and one member for every 2,17,608 of the population.

In the U. P. Assembly there were 140 general seats of which 20 were reserved for the Scheduled Castes, 64 seats for Mohammedans, 2 each for Europeans and Anglo-Indians, 3 for Industry and commerce, 3 for Labour, 6 for land-holders, 1 for Universities and 6 for Women of which 2 were for Muslim women.

An Order-in-Council formed the constituencies for election to the Assembly.

To be a voter for the U. P. Assembly's election, a person had to be a resident of the territorial constituencies and to possess any of the following qualifications.

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50. According to the U. P. Gazette (Official paper), 1931, the area of the U. P. is 106,248 sqm. miles and there were 48 districts. According to the census of 1931 the population was 496,14,833.

51. See, the Table No. 3

52. The Government of India (Provincial Legislative Assemblies) Order, 1936.

53. See, Part V, para 1, Sixth Schedule to the Act of 1935.
1) Payment of income-tax or Municipal tax on an income of at least Rs.150/- a year;

ii) Ownership of a house or building of the rental value of Rs.24/- a year which in the case of Scheduled Caste members was only Rs.12/- a year;

iii) Ownership of land whose revenue was, or would be Rs.5/- a year;

iv) Tenancy of land of rental value of Rs.10/- a year;

v) Under-proprietorship in Oudh of land whose under-proprietory rent was Rs.5/- a year;

vi) Ownership of free simple estate, or payment of any land revenue or cesses or being a Khaikar or a Shilpkar's representative in the Hill Patties of Kumaon.

A person shall also be qualified to be included in electoral roll for any territorial constituency if he is proved in the prescribed manner to have passed the Upper primary examination.

All persons who had served in the regular military forces were to be included in the electoral rolls of territorial constituencies.


Women had some special qualifications.\textsuperscript{57} Pensioned widows or mothers of persons who had done military service were also qualified to vote. Wives of persons with certain income or property qualifications prescribed for the purpose (which were higher than the property qualifications for an ordinary vote\textsuperscript{55}) were also enfranchised.

There were no special qualifications for memberships of the Legislature. Candidates for the seats of women and special interests had to be qualified to vote for the particular seat they wanted to contest. For the other seats, candidates had to be qualified to vote for any seat of the same class, that is to say, in the case of general and Muhammadian seats, a voter in one constituency could contest from any constituency in the province.\textsuperscript{58}

Every Legislative Assembly had to choose, a Speaker and a Deputy Speaker from among its members.\textsuperscript{59}

Both the Houses had equal powers but the Legislative Council had no voice in the matter of grants and had no initiative in Financial Bills. Conflicts between the two Houses were settled in joint sitting.

\begin{itemize}
\item \textsuperscript{57} Para 8 and 9, \textit{Op.cit.}
\item \textsuperscript{58} Report on the Administration of U.P. (1936-37), p.3.
\item \textsuperscript{59} Section 65(1) of the Act of 1935
\end{itemize}
The powers of the Legislative Assembly under the Act of 1935 can be divided in the Legislative Powers, the Financial Powers and the Deliberative Powers.

The Provincial Legislative was empowered to make laws for the province on all matters included in the Provincial Legislative list. The Federal Legislature could also pass laws in respect of provincial subjects if;

1) The Chambers of the two or more Provinces passed a resolution paying for such resolution.60

ii) If the Governor-General so authorised the Federal Legislature by issuing a proclamation of emergency and then subject to the previous sanction of the Governor-General.61

The Legislative Assembly could also pass laws in respect of matters enumerated in the concurrent list, but if there was any inconsistency between the Federal Law and the Provincial Law in the concurrent field, the federal Law prevailed.62 The Provincial List contained subjects of primarily local interest and importance such as Public order, police, public Health,

60. See, Section 100(3) of the Act of 1935.
61. Section 104 and 107 of the Act of 1935.
62. Section 107 (i) of the Act of 1935.
agriculture, land revenue, excise duties etc. 63

The concurrent list included, in one part, subjects related to legal procedure and law on certain matters of general interest, in another part of the list were included subjects which required regulation by uniform laws, e.g. factories, labour, cinematograph films, etc. A subject not included in any of the three lists could be legislated upon by the Provincial Legislature, if the Governor-General so decided. 64

The jurisdiction of the Legislative Assembly terminated with the borders of the province and matters not relating to the province fell outside its purview.

There were three main limitations on the powers of the Provincial Legislature. 65

1. It was a non-sovereign law-making body. It had subordinate law-making powers derived from the British Parliament and possessed no constituent powers. 66

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64. Section 104 of the Act of 1935


66. Section III of the Act of 1935.
2. It could not pass laws discriminating against British persons or British goods.67

3. The Governor could stop discussion with respect to any bill, clause or amendments which was likely in his opinion to affect the discharge of his special responsibility for the prevention of any grave menace to the peace or tranquility of India or any part thereof. The Governor was instructed to reserve a bill for the consideration of the Governor-General if it repealed or was repugnant to a Parliamentary Act, or so derogated the powers of a High Court as to endanger its position, or altered the character of permanent settlement, or which, in his opinion, would discriminate against British or Burmese subjects or goods.

The Legislative Assembly, "Shall have power to assent, or refuse assent, to any demand or to assent to a demand subject to a reduction of the amount special therein."68

67. Section 113 of the Act of 1935.
68. Section 79(2) of the Act of 1935.
Financial Bills could not be introduced or moved except on the recommendation of the Governor. The Legislature had no control over that part of the expenditure which was declared charged on the revenues of the province. This included:

1) Salary and allowances of the Governor and other expenditure relating to his office.

2) The salaries and allowances of the ministers, judges of the High Court and the Advocate-General.

3) Debt charges included interest and sinking fund charges.

4) Expenditure connected with the administration of Excluded Areas. 69

5) Sums required to satisfy any judgment, decree or award of any court or arbitral tribunal.

The Governor had been given power to restore in the final schedule the amount of any demand for grant rejected or reduced by the Legislative Assembly, on the ground that it was necessary for the discharge of functions connected with his special responsibilities.

69. Certain backward areas in the provinces were classified as excluded areas and they were placed under the exclusive control of the Governor.
The provincial Legislature was also empowered to pass Financial Bills, i.e.,

1) Bills that would impose new, or increase the rates of existing taxation.  

ii) Bills that would regulate the borrowing of money or any other financial obligations of the province.  

iii) Bill that would declare any item of expenditure as charged upon the revenues of the province, that is make it non-votable, or increase the amount of any such item.

The powers of the Legislative Assembly were restricted in the executive sphere as well. The Assembly could compel the registration of the Ministry by expressing no-confidence in it. It could also explore the weakness of the Government through questions resolutions, adjournment motions and budget debates.

The provincial Legislature did not enjoy any constituent powers. The Joint Parliamentary Committee did not consider it "Practical politics" to confer such powers on the Provincial Legislature.

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70. Section 82 (1)(a) of the Act of 1935.

71. Section 82(1)(b) and also Section 163 and item 5 of list II given in the 7th Schedule to the Act of 1935.

72. Section 82(1)(c).

73. Section 84(1)(c) of the Act of 1935.

74. Joint Parliamentary Committee Report, para 375, p. 221.
There were some statutory provisions regarding the transaction of the business of the Legislature. 75

To conclude the whole discussion, the Provincial Legislature as envisaged in the Act of 1935, was much better than that of under the Act of 1919. The size of the chambers was considerably increased, the system of direct elections was introduced, and the nominated non-officials were completely done away with it in the Assembly, through a small number of them was retained in the Council. The franchise qualification were lowered and the members enjoyed a better freedom in their criticism and control of the executive, and the ministry could even be removed by a no-confidence vote of the Assembly.

In the central Legislative Assembly on September 17, 1937, S. Satyamurti said, "That the Government of India Act of 1935 does not carry out even the recommendations of the Round Table Conferences. Secondly, it does not accept a single recommendation of the famous Aga Khan's Memorandum; thirdly, it is against the resolution of this House passed less than three years ago on the Joint Parliamentary Committee's Report; Fourthly, it is against the resolutions of the Congress, the Muslim League, and all progressive bodies in this country"......" J. L. Nehru characterised the Act as the machine with strong brakes and no engine.

75. Section 73-87 of the Act of 1935.
It also can be said that the provincial Legislatures were utterly powerless in every sphere of activity and that the Governor controlled every sphere of provincial administration. The association of the King Emperor as an integral part of the Legislature, was an anomalous feature. The second Chamber a citadel of reaction, was thrust on six provinces against their desire. The ministers were given no power to demand and force the dissolution of the Assembly. The communal and class representation was extended and some communities were given an undue representation. The Muslims, thus with their 7.1 and 14.8% population respectively in Madras and U.P. were given 13% and 27% seats in the respective Legislatures. The Europeans with their population only of less than 1/35%, go as many as 3% seats in the Provincial Legislatures.

The franchise qualification, though lowered, were still very high, so that as much as 73% of the adult population go no right to vote.

The exclusion of certain matters from the powers of legislation and the necessity of securing a previous sanction of the Governor-General and Governal for the introduction of certain classes of legislation in the provincial Legislatures, together with many other limitations on the financial, executive and Legislative powers of the Legislature, made the Provincial Autonomy.
a mere farce. A major part of provincial expenditure was declared non-votable, and even the expenditure that was subject to vote, made only a mockery of the Legislatures authority. For any cut or rejection of demand could easily be restored by the Governor. The Governor's powers to regulate the conduct of the Legislature and exclusion of the police Department and the Superior services from the Legislatures powers of control; this was all unfortunate.

Thus, the system of Provincial Autonomy, whether considered from the viewpoint of external control or from that of internal responsibility, fell far short of a perfection. Though a considerable progress was made, yet the goal of complete Provincial Autonomy lay far off.
CHAPTER IV

Working of the U. P. Legislative Assembly

(1937-39)
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Working Of The U. P. Legislative Assembly,

(1937-39)

The Federal Part of the constitution of 1935 had to be kept in abeyance, as the required number of Indian States had failed to accede to it. The Part III of the Act of 1935, dealing with the Provincial Autonomy, was, however, put into operation from April 1, 1937. The interval between the passage of the Act and the inauguration of the Provincial Autonomy was used in the preparation of electoral rolls, delimitation of constituencies etc. and the holding elections.

Of the different parties which contested the elections, the Congress did so, not with a view to working the constitution but in order to wreck it. The Muslim League, however, decided to accept the Provincial Scheme, "for it was worth," though it rejected the federal part of

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the Act. The Liberals although dissatisfied with certain parts of the Constitution, also decided to give a fair trial to it. The Justice Party of Madras and the others too followed suit, and thus the first elections under the new Constitution of 1935, turned out to be a lively affair.  

No meeting of the United Provinces Legislative Council as constituted under the Montagu Chelmsford reforms was held in 1937. With the introduction of the new constitution the Legislative Council was replaced by two bodies; the United Provinces Legislative Assembly (Lower House) and the U.P. Legislative Council (Upper House). The Legislative Council was primarily intended by the framers of the constitution to exercise a check upon measures passed by the Assembly. The Governor could summon a joint sitting of the two chambers (either after 12 months or at-once according to the nature of the Bill), to resolve the difference between the two houses.

4. Ibid.
In 1936, Pandit Nehru was elected President of the Congress, and at its annual session at Lucknow he expounded his views with his usual frankness and clarity. He was a socialist, he said in effect, because only by socialism, involving 'vast and revolutionary changes', could India's problems and the world's be solved.

Congress fought the election in U. P. with so vigorously and effectively, which can be shown from the following quotation:

"As the time for the election approached, they developed their activities, not spasmodically but continuously, through their resident workers in every village. Meetings and processions, slogans and flags the exploitation of grievances, promises which held out the vision of a new heaven and a new earth, stirred the countryside into a ferment such as it had never before experienced. The sense of impending change awakened the villages. The Government, which had in past agitations opposed the Congress with the weight of its authority, now stood inactive. It was too much to expect that the villagers would understand the constitutional

necessity for this attitude. He felt that the British Raj was wakening, that the Congress Raj was coming, and, as so often happens, threw himself definitely on what seemed to be the winning side.  

In the Legislative Assembly of U.P. the Congress Party secured 138 or about 61% of the total number of seats. Its strength increased later by nine. The Congress Party in the Legislature included Muslims and at one time their number was nine, i.e. about 14% of the total Muslim seats in the House. The Muslim League Party started with 27 members, i.e. 42% or less than half of the total number of Muslim seats in the House. Later on its strength increased to about 40.

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8. Ibid.
The table on next page shows the numbers of seats contested and won by the Congress, (1937) in United Provinces Legislative Assembly. From this table it can be seen that the Congress won all the 14 seats in the general Urban constituencies while in the General Rural Constituencies, it contested 109 out of 110 seats and succeeded in capturing 100 seats. In the scheduled caste constituencies the Congress, 17 out of 20 seats and captured 16 seats. In the Muslim constituencies the Congress contested 9 out of 66 seats and lost all. In the special Labour constituencies the Congress secured all the 3 seats. The Congress did not put up any candidates from the special constituencies of land-holders, Indian Christians, Anglo-Indian and Commerce. It contested and won the University seat. Congress captured all the four seats reserved for women. In April, 1937, the first ministry\(^9\) was framed in U.P., under the new Constitution. The Governors invited the leaders of the second largest parties in their respective Provinces, to form the Government. The interim non Congress ministries were thus formed, but they, having no complete hold over the Legislatures, failed to run a smooth Government.

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9. The ministry was popularly called 'interim' ministry.
United Provinces Legislative Assembly Table showing number of seats-contested and won by the Congress, 1937.

<table>
<thead>
<tr>
<th>No. of seats in Leg. Ass. of the U.P.</th>
<th>Seats contested by the Congress</th>
<th>Unopposed Congress returns</th>
<th>Seats won by the Congress</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. General Urban (Women included)</td>
<td>14</td>
<td>1</td>
<td>14</td>
</tr>
<tr>
<td>2. General Rural (Women included)</td>
<td>110</td>
<td>109 4</td>
<td>2 100 4</td>
</tr>
<tr>
<td>3. Scheduled Castes (urban)</td>
<td>4</td>
<td>13</td>
<td>2 12</td>
</tr>
<tr>
<td>4. Scheduled Castes (Rural)</td>
<td>16</td>
<td>2</td>
<td>-</td>
</tr>
<tr>
<td>5. Muslim (Urban)</td>
<td>13</td>
<td>7</td>
<td>- 3</td>
</tr>
<tr>
<td>6. Muslim (Rural)</td>
<td>53</td>
<td>3</td>
<td>-</td>
</tr>
<tr>
<td>7. Labour</td>
<td>3</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>8. Landholders</td>
<td>6</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>9. Indian Christians</td>
<td>2</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>10. Anglo Indians</td>
<td>1</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>11. Europeans</td>
<td>2</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>12. European Commerce</td>
<td>2</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>13. Indian Commerce</td>
<td>1</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>14. University</td>
<td>1</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>228</strong></td>
<td><strong>153</strong></td>
<td><strong>5 134</strong></td>
</tr>
</tbody>
</table>


The Congress secured approximately 65% of the total number of votes cast and won 59% of total seats in the Assembly.
The Congress Party wanted a guarantee that the Governor would not obstruct the policy adopted by the ministers by day-to-day interference in the administration on the plea of his special responsibilities.

The Working Committee insisted that, "Without specific assurances as required by the Congress, popular Ministries will be unable to function properly and without irritating interference." The All-India Congress Party considered the views of the Congress party and in a meeting held at Delhi, decided to allow the Provincial Congress Parties to form ministries.

In the U. P., the Congress ministry was formed in consultation with Pt. Govind Vallabhb Pant, the leader of the Congress Party.


11. It consisted of Pt. Pant, the Chief Minister who held the portfolios of Finance and Home Affairs, Mrs. Vijay Lakshmi Pandit, Minister for Local-self Government, Mr. Pyare Lal Sharma for Education, Mr. Hafiz Ahmad Kidwai for Revenue and Jails, Hafiz Muhammad Ibrahim for Communications and Dr. K. N. Katju for Rural Development, Justice and Excise.
The first meeting of the United Provinces Legislative Assembly under the new constitution was held on July 31, 1937. The Assembly elected Shri Purshothamdas Tondon (Congress), as speaker and Mr. Abdul Hakim (Congress), as Deputy Speaker. The vigorous election campaign made the general masses acquainted with political issues. About 63% of the total electorate exercised their vote.


2) The Muslim League Party with 28 members led by Chaudhri Khaliq-uz-Zaman; and

3) 25 members who belonged to no Party.

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12. United Provinces, p. 2 The first session of U.P. Legislative Assembly under the new Act opened at Lucknow on the 29th July, 1937. Pandit Govind Ballabh Pant, the Premier, performed the flag salutation ceremony attended by thousands of persons. The quorum of the House was 38.

The Legislative Assembly had several Committees. It was empowered to appoint Committees for, "any of its internal business." To go through a particular bill a Select Committee could be appointed, whenever so decided by the House. Twenty one members, including the mover of the bill and the minister concerned, comprised a Select Committee. The Select Committee had to report on the bill within two months of the reference to it unless the time was extended. It was, however, not necessary that every bill be referred to a Select Committee.

The Assembly held 31 meetings during the year, 1937; 28 days were devoted to Government business and 3 days to non-official business.

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13. See, Standing Order 27, The U.P. Legislative Assembly Rules and Standing Orders made under Section 84(3) of the Act of 1935.


17. There was the Standing Finance Committee consisting of 14 members elected by the House with the Finance Minister as its Chairman. Another was the Public Accounts Committee consisting of the Finance Minister and 11 other members elected by the House. See, Standing Orders 86 A and Rules 60 and 61.
On second August, a statement by Govind Ballabh Pant, Premier, on the immediate programme of the ministry, and an adjournment motion tabled to discuss the Palestine Report, which was subsequently disallowed by the Governor;18 were the feature of the Assembly of 2nd August.18 Outlining the Ministry's programme and the Congress Policy, the Premier said that the Congress, "Would continue to combat the Government of India Act. and the policy underlying it."19 It was declared that in its attitude towards minorities they would be guided by the declaration of the Fundamental Rights adopted at the Karachi, session of the Congress.20 The ministry should attempt to promote unity between all communities, caste and creed. The premier appealed for co-operation to all sections of the House for the attainment of this object. For the future Pandit Pant outlined a

20. Ibid.
comprehensive programme of prison reforms, improvement in the administration of the Local-self Government department, drastic change in the present policy and the agrarian problems. Premier said that two committees consisting of all sections of the Legislature would be set-up, one for examining the existing laws relating to the Land Revenue and tenancy with a view to revision, and the other to consider the steps necessary to remove the burden of rural indebtedness and proposed relief measures. The above motion for general approval of the Congress Government policy, as outlined by him on 2nd August was adopted by the Assembly on 3rd August.  

Nawab Sir Muhammad Yusuf, Deputy Leader of the Party, wanted to initiate a discussion on the statement made by the Premier. It was the signal for a concerted opposition from the Independent Party to the Premier's motion. The Nawab of Chatteri and others, took strong exception to the Premier's motion as it gave them no other option than either, to approve or reject the Government's policy. After the above discussion the U. P. Assembly next passed the U. P. Ministers' Salaries Act, and the U. P. Parliamentary

Secretaries (Removal of disqualification Act), 1937.  

The United Provinces Ministers' Salaries Act, laid down that ministers should be paid Rs. 500/- per month and be entitled to free residence. The U. P. Legislature (Officers' Salaries) Act laid down the salaries of the Speaker, Deputy Speaker, President and Deputy President and provided for a free residence for the Speaker. The U. P. Parliamentary Secretaries, (Removal of disqualification), Act enabled parliamentary Secretaries to continue to be members of the Provincial Legislature.

The statement of objects and reasons for the Act is as follows:

"It is intended to appoint Parliamentary Secretaries to assist the ministers in the discharge of their departmental duties and in the Legislature and


23. By an enactment of the Legislature, the Speaker was granted a salary of Rs. 500/- per month and the Deputy Speaker Rs. 2,000/- a year. U. P. Legislature Officers' Salaries Act V of 1937.


pay them salaries. The office of the Parliamentary Secretary will, therefore, be an office of profit under the Crown in India and therefore in the absence of an Act of the Provincial Legislature declaring it to be an office, which does not disqualify its holder for being chosen as, or for being a member of the Provincial Legislature, the Parliamentary Secretaries will under Section 69 (1) (a) of the Government of India Act, 1935, be so disqualified. This bill has been framed with the object of removing this disqualification."26

The Budget session of the Assembly commenced on the 2nd September. On September 6th the Premier presented to the Legislative Assembly the Budget estimate for the province for the year 1937-38. He explained that in presenting this Budget he was in many ways powerless to implement the policy of the Government. He criticised the provisions of the constitution "by which all elastic sources of revenue were reserved for the centre."27 He explained that

The Budget for 1935-36 and that for 1936-37 had an estimated revenue deficit of Rs. 30 Lakhs and Rs. 63 Lakhs respectively. The original deficit was Rs. 41 Lakhs, but, owing to changes primarily in increase of receipts estimated under certain heads, the deficits at the time the present Government took over charge was reduced to Rs. 30 Lakhs. He explained the provisions of the Budget, and showed that by economies (including Rs. 6 Lakhs on travelling allowance and Rs. 14 Lakhs on departmental expenditure) and by other methods it had been possible to convert a deficit, which had been Rs. 41 Lakhs under the original budget estimates and which had been reduced to about Rs. 30 Lakhs as a result of steps taken by the interim Ministry into a surplus of Rs. 4½ Lakhs. Additional expenditure amounting to Rs. 17 Lakhs was, however, proposed and the final estimated deficit was therefore Rs. 12½ Lakhs. The main item in the new expenditure was a sum of Rs. 10 Lakhs which was allotted

30. Rs. 20,000/- for rural Libraries, Rs. 20,000/- for improving production and sale of pure ghee, Rs. 3 Lakhs for the supply of good seed to villagers, Rs. 2 Lakhs for the supply of fertilizers, Rs. 37,500 for the development of animal husbandary, Rs. 2,000/- for fruit development.
Coupland R., Indian Politics, op.cit., p. 146.
to rural development.

On 7th September, Pandit Pant, the Premier, moved a bill for the imposition of a tax on entertainments and other amusements and on certain forms of betting which was referred to a Select Committee consisting of the Minister-in-charge and 20 others. The U.P. Entertainments and Betting Tax Act\textsuperscript{31}VIII, imposed a tax on amusements and betting on the lines of the Acts in force in Bengal, Bombay and the Punjab.

The Temporary Postponement of execution of Decrees Act\textsuperscript{32} (Act No. X of 1937) was subjected to certain amendments as a result of discussion. Its object was to prevent agriculturists from being compelled to pay up amounts which they could not really afford to pay, or which it was inequitable that they should be called upon to pay pending Legislation on the subject.\textsuperscript{33} The Act provided that the execution of certain types of Decrees against agriculturists should be postponed as a temporary measure.\textsuperscript{34}

There was a long discussion in the Assembly to make valuable suggestions in the agricultural field.

\begin{itemize}
\item \textsuperscript{31} Assented by Governor on October 22, 1937 and published in U. P. Gazette dated October 30, 1937. This Act came into force on 15th November 1937.
\item \textsuperscript{32} Assented by the Governor-General on 20th December, 1937, and Published in U. P. Government Gazette, dated January 1, 1938.
\item \textsuperscript{33} The U. P. Local Acts, op. cit., Vol. II, pp. 1635-38.
\item \textsuperscript{34} Report on the Administration of U. P., (1937-38), p. 33.
\end{itemize}
On Friday, 17th September, 1937, Raja Jagannath Baksh Singh said in the Assembly, "that the Government should take such steps as to make a definite measure in the Agricultural product of the province. That is, generally the development of agriculture, and also to accord such facilities for marketing of the rural produce as will be required for this purpose." He further said, "I know that the Minister-in-Charge of this department in the past could not satisfactorily accede to my demand. I do not particularly complain against that Government for this. I know that it was not a responsible Government in the true sense of the meaning." Pandit Dwarka Prasad also criticized the Government's Policy regarding agriculture in the province. Dr. Bishwnath Mukerji taking part in the discussion said, "In my opinion there are three things to which the Government should pay attention:—

1. Removal of the poverty of the Indian agriculturists
2. Mass education on a larger scale. The Government should spend large sums of money to improve the education of the Indian agriculturists. I think this is the most vital point that is, affecting the

36. Ibid., pp.549-50
Government's agricultural policy today.

3. Want of mutual co-operation. Neither do I find that the Government has got the desire to create a spirit of co-operation in the Indian agriculturists. The Government has failed up to this time.\textsuperscript{37}

The most important and urgent problem of the country, declared the Congress Session of 1936 at Lucknow, "is the appalling poverty, unemployment and indebtedness of the peasantary.\textsuperscript{38} Pending the formulation of a fuller programme,\textsuperscript{38} the election manifesto of 1937, 'The Congress ... stands for a reform of the system of land-tenure and revenue and rent and an equitable adjustment of the burden on agricultural land, giving immediate relief to the smaller peasantry by a substantial reduction of agricultural rent and revenue now paid by them and exempting unremunerative holdings from payment of rent and revenue. The question of indebtedness requires urgent consideration and the formulation of a scheme including the declaration of a moratorium, an inquiry into and scaling down of debts, and the provision of cheap credit facilities by the State.\textsuperscript{39}"

\textsuperscript{37} Ibid., pp. 552-553.

\textsuperscript{38} Indian Annual Register, (1936-37), Vol. I, p. 250.

\textsuperscript{39} Ibid.
On 15th September, two cut motions under the head "Land Revenue", in connection with the recent stay orders passed by the Government were discussed and withdrawn in the Assembly. Regarding rent collections, it was urged by Zamindars that they should be given a proportionate remission in revenue and this formed the subject-matter of the first cut motion moved by certain members, many of whom made no secret of their hostility to the Zamindari system. They dwelt upon the atrocities perpetrated by the Zamindars and Talukdars on the tenantry and one of them declared that there was no good Zamindar in the whole Province.\(^40\)

The Agra Tenancy (Amendment) Act, 1937\(^41\) enabled tenants in certain permanently settled areas to sue for abatement of rent and extended the period for instituting these suits. The object of the Act is stated to be as follows:

"At the beginning of 1936 when the question of introducing a bill to amend temporarily the United Provinces Land Revenue Act to provide for the revision during the currency of existing settlement of rent and revenue on the basis of the present level of prices was under consideration, Government accepted the representations

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\(^40\) The Indian Annual Register, (1937), Vol. II, p. 223.

of the Zamindars of the permanently settled tracts of the Benaras division and Azamgarh district that those areas should be excluded from the scope of the Bill and should be dealt with separately. Assembly then appointed an Assistant Director of Land Records to make inquiries into the position in these areas during the summer of 1936. As a result of his inquiry and an examination of legal position Government accepted the view of the Board of Revenue that to regularize the position regarding remission in these areas, existing roster rates should be revised on the basis of the new price level and that actual abatement of rent should be made in suits by tenants under section 61 or Section 62, Agra Tenancy Act.*442

Government therefore proposed, in order to give all tenants adequate opportunity to get their rents abated and in order that the new rents and the original permanent land Revenue may be brought into force from 1346 Fasli, that the period for instituting abatement suits in these areas be extended to the whole of the coming Revenue year. The above Act was intended to achieve this object.

The most important Act passed, and the only one which provoked lively discussion, was the U. P. Stay of

Proceedings (Revenue Courts Act.). On assuming office the Congress Government, had stayed various revenue proceedings in order to protect cultivators. These orders had been attacked as being illegal, and Legislation was therefore, introduced to legalize the position. Some concession was made to the interests of the Zamindars, and the Bill was slightly more favourable to them. Accordingly the Zamindars were not anxious to vote against the bill. The Bill provided for the stay of all original suits for arrears of rent prior to 13\textsuperscript{4} rabi and provided for the stay of other proceedings including ejectment. The views were expressed by M. Rafi Ahmad Kidwai, the Minister for Revenue and Mr. A. P. Jain his parliamentary Secretary, that the promulgation of the Stay Orders entailed no injustice on the Zamindars. The Zamindars generally urged that it was unequitable to stay the proceedings of rent realization of revenue or to refund revenue that

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had already been paid. Subsequently, certain defects which were brought to the notice of Government were removed in the U. P. stay of Proceedings (Revenue Courts), Amendment Act.

In the field of education, it was expressed in the U. P. Assembly, on 22nd September, that the University education needs to be thoroughly overhauled and it no longer meets the requirements of the province. One member expressed his view that the English education was responsible for slave mentality prevalent among Indians. Maulvi Fasihuddin who sponsored the cut motion, considered that the modern system of education imparted in the Provincial Universities was responsible for acute unemployment among the educated classes. There was a lively debate on another cut motion, urging the abolition of the Teachers' Training College at Allahabad and the training School at Lucknow and Agra. The suggestion found no favour with the Government and the motion was eventually withdrawn.

46. Ibid., p. 224

47. But in the opinion of Mr. H. G. Walford, English Education had produced patriots like Mahatma Gandhi and had raised national consciousness among Indians.
One cut motion was moved on 23rd September, to press the adoption of Hindustani as the medium of instruction in the intermediate colleges and Schools. Except Nawab Sir Muhammad's note the motion received an enthusiastic support by all sections of the House. The second cut motion drew the attention of the Government towards the inadequate provision for the spread of secondary education among the depressed classes. However, it was decided in a resolution that two committees should be appointed to revise the present educational policy.

In August-October 1937, a resolution reiterating the Congress demand for the withdrawal of the 1935 Act, and the convening of a Constituent Assembly to frame a new constitution was adopted by the Assembly. The text of the resolution is produced below.

"This Assembly is of opinion that the Government of India Act, 1935, in no way represents the will of the Nation and is wholly unsatisfactory as it has been

48. The first Committee will deal with primary and vernacular education and will bring it into line with the recommendations of the Abbot Report. Secondary education up to the Pre-University stage is to be discussed in the Second Committee.

designed to perpetuate the subjection of the people of India. This Assembly demands that this should be repeated and replaced by a constitution for a free India framed by a Constituent Assembly elected on the basis of Adult franchise, which allows the Indian People full scope for development according to their needs and desire.

An Amendment was moved to this resolution. The amendment by which the Muslim League wished to provide that representation on the constituent Assembly should be based on the Communal Award was keenly debated. The Muslim League members were not willing to accept the assurance of the Premier that minorities would be equitably treated in the composition of a Constituent Assembly. The amendment was put to vote and defeated.

On the whole, in the Legislative Assembly of U.P., during the year, eleven Bills which were passed, received the assent of the Governor and became Law.

The Introduction of 'Provincial Autonomy' in 1937 and its working by the Congress for six months in U.P. Assembly had demonstrated the fact that the


Act of 1935, despite the criticism to which it had been subjected, offered great possibilities for the development of democratic institutions; The Ministry determined to extract the maximum advantage out of the Act in the minimum space of time, and this resulted in a remarkable intensification of the democratic experiment in almost every sphere of administration.  

The United Provinces Legislative Assembly held 79 meetings during the year 1938, of which 70 were utilized for Government and 9 for non-official business.

For rebuilding the social, Cultural and economic Life of rural areas, U.P. Government selected for intensive work about 20 centres in each district, each centre comprising 20-30 villages and placed in charge of an organiser who is to act as the friend, guide and philosopher of the inhabitants of his centre.

During the year 1938, the U. P. Legislative Assembly passed many important Bill. Such as, the U. P. Borstal Bill, introduced in the Assembly on January 25, and

passed by the Assembly on 20th April. It provided for the establishment of one or more Borstal institutions for adolescent offenders. It empowers criminal courts not below a magistrate of the first class to pass orders detaining youthful offenders in Borstal institutions for a term not less than two years and not more than seven years when it is considered that by reason of the criminal habits or tendencies or association with persons of bad character it is expedient that he should be detained in a Borstal institution instead of sending him to prison.54 This Act also empowers appellate courts to substitute for an order of detention in a Borstal institution a sentence of imprisonment. Provisions has also been made for transfer of prisoners from jails to a Borstal Institution by order of the District Magistrate. It was provided, that the scope of bill is not limited to any particular class of criminals, but the provisions may be applied to a person convicted of any crime.55

In clause 15 provision has been made for the release of prisoners detained in a Borstal institution on licence.56 In addition to other procedural provisions,

55. Ibid.
provisions has also been made empowering the Provincial Government to make rules for carrying out the objects of the Act and to extend the application of the Act to prisoners up to the Age of 23 and to females. U.P. Offenders’ Probation Bill and the U. P. Prisoners Release on Probation Bill were also passed on the same date. In the U. P. and Bihar, a crisis developed in February, 1938, when the Congress Governments took up the question of releasing the political prisoners in order to fulfill their promises. The Governor saw in this a grave menace to peace, and the Governor-General intervened by issuing orders against this step under Section 126 (5). This was a challenge to the Ministries which put in their resignation as a


60. Section 126 (5), ‘Without prejudice to his powers under the last preceding sub-section, the Governor-General, acting in his discretion, may at any time issue orders to the Governor of a province as to the manner in which the executive authority thereof is to be exercised for the purpose of preventing any grave menace to the peace or tranquillity of India or any part thereof.’
protest. G. B. Pant, the Chief Minister of U.P. wrote in his resignation letter to Governor, on 15th February,

"It is inconceivable that release of no more than 15 political prisoners, some of whom were merely boys when they were convicted, and several of whom have undergone long terms of imprisonment and are due to be released within a few months in the usual course, can be a grave menace to peace and tranquility of any province in India. We have every reason to believe and are definitely assured that they have abjured the path of violence......
The Jail authorities have a similar impression....." 61

Lord Linlithgow (Viceroy), in his long statement on 22nd February, 1938 said that, "As regards the particular issue of the release of prisoners, so far as the Governors are concerned there is no going back on the policy of readiness to examine individual cases, and the Governors remain ready to agree to release after examination, where no undue risk in their own Province, or in other provinces, is involved. There is no impropriety, whatever may be suggested to the contrary, in their requiring such individual examination, or in their declining without it to accept the advice of their Ministers......." 62


62. Ibid., pp. 140-2
Gandhiji on 23rd February, 1938 said that, "The situation in the U.P. and Bihar is totally different. The ministers there are bound by the manifesto which gave them victory at the polls. They had not only examined the cases of all prisoners whose release they were seeking but, being fully aware of their responsibility for the due preservation of peace in their provinces, they had personally secured assurances from the prisoners in question that the latter no longer believed in the cult of violence." 63

Moreover, the interference of the Governor-General, on outside authority, in the affairs of an autonomous Province, was also taken a serious exception to. Here again, however, the situation was timely saved as a result of a compromise between the Congress High Command and the Viceroy, Lord Linlithgow, whereby it was agreed to that the release would be effected gradually after considering each case on merit. Obviously it was only a face-saving device for the Governor and the Viceroy.

On March 1, 1938, the U.P. Legislative Chambers (Members Emoluments) Bill was introduced in the Assembly, and passed on April 25, 1938, after a prolonged discussion. The salary of the members of the U.P. Assembly was fixed

by a Legislative enactment of August, 1938 at Rs.75/- a month. It was also provided for travelling allowance and a daily allowance of not more than Rs.3/-. 

Only two taxation measures were introduced. These were the Court Fees (Amendment) Bill and the Stamp Amendment Bill. Amendments to these measures passed by the Legislative Council were not acceptable to the Legislative Assembly and hence a joint sitting of the two houses became necessary. On 1st December the United Provinces Legislative made history today by holding the first joint session of the two Houses to resolve the deadlock over the Stamp and Court Fees Bills and continued for four days.

On 21st December, Mr. Rafi Ahmed Kidwai, Minister for Revenue, announced in the Assembly an important scheme framed by the Government, to provide land for landless Labours in villages. It was as follows:—

1. "A resident of a village who is neither a landholder nor tenant of any land may apply to the Assistant Collector-in-Charge of the Sub-division that he wished to cultivate land in his village on receipt of such application the assistant collector shall after

64. U.P. Legislative Act V of 1938.

satisfying himself by such enquiry as he thinks fit that the applicant intends to cultivate will proceed as follows:

(a) Allot to him land which is in the cultivation of a landlord assessed to more than Rs.25 local rates.

(b) If no such land is available, allot to him land which is in the cultivation of a landlord assessed to Rs.25/- or less than Rs.25/- as local rate and who cultivates more than 20 acres.

2. The applicant shall become a hereditary tenant of the land allotted to him under the provisions of this clause and shall be liable to pay such rent as the assistant collector may determine.

3. In a case coming under clause (c) of sub-clause I the right of the tenant shall cease in the land allotted and the Assistant Collector shall determine the rent payable by him for the remainder of his holding.\(^66\) A number of amendments were discussed and the Assembly adjourned to January 3rd.

In the field of education, the demand for grants were considered on 23rd March. The debate took place over the cut motion moved by Khan Bahadur Lieut Sultan Khan who urged that the intermediate Girls college of Aligarh be raised to a degree college. In March, the Government of the United Provinces appointed a committee

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66. Indian Annual Register, 1938, pp. 139-40; also see, Proceedings of U. P. Legislative Assembly, 21st December 1938, Vol. IV, Nos. 4 and 5.
to examine and report on the primary and secondary stages of education. 67

The Basic Education became known in the Congress provinces as the 'Wardha Scheme,' 68 or, less respectfully, as 'Mr. Gandhi's latest fad.' But in fact, of course, it was not a novelty. The technique of Basic Education has been developed in Britain and some of the British colonies, on the continent of Europe and in America in the course of the last twenty years and more. As the head of the Education Department of the United Provinces put it in 1938, "This scheme is not a political stunt or a party slogan, but an adoption to Indian needs of educational changes which have won acceptance in Europe and America and have revolutionised the elementary stage of education in England." 69

In August a Basic Training college was started at Allahabad to train men graduates in new educational methods, concentrating attention on one or two basic crafts. 70 A successful completion of the course was to


68. This Scheme was a product of the genius of Mahatma Gandhi who himself appointed an experts' committee to go into the matter as he desired and submit its report. The report thus prepared presented the nation with a scheme of education which is popularly known as the Wardha Scheme or the Scheme of Basic education under the Constitutional reforms of 1935.


entitle the student to a departmental diploma equal in status to the L.T. Degree. A committee was also appointed to inquire into the working of the Universities and to recommend necessary improvements. With the object of removing illiteracy Government started a special section under the Education Department under an Education Expansion Officer. Nine hundred and sixty adult schools were to be started, 768 additional Libraries were to be established, and 3,600 reading rooms were to be opened. On 4th April, the minister of education explained that what the Government had done and what they were going to do for Muslim education in the province Mr. Mahabir Tyagi criticised the minister for making concessions to communalists though he was a socialist. Muslim members stressed the usefulness of Maktabs and Islamia schools where Muslim boys imbibe the Muslim culture, a culture distinct from other cultures. Dr. Hussain Zahir, however, strongly opposed the resolution. Muslim education, he said, was not as backward as it seemed to be. He urged that every effort should be made to wean away boys from Maktabs and Islamia Schools in which the equality of instruction was not as good as in other schools. An additional recurring grant of Rs. 50,000/-

71. Ibid., p. 21; Also see, Indian Annual Register, 1938, Vol., II, p. 240.
74. Ibid., p. 192.
was sanctioned for the expansion of education among the depressed classes.

The U. P. Legislative Assembly re-assembled after the X'mas holidays on the 3rd January 1939 and resumed consideration of the Tenancy Bill. It passed clause 21 which specified what classes of tenants would enjoy hereditary right. Mr. Phool Singh (Congressite), was accepted by the Government and most others, emanating from the opposition benches were opposed and rejected by the House.75

In August, 1937, the Congress Government came into powers, mainly with the support of Kisan votes, and the question of the revision of Tenancy Laws was taken up in right earnest. In February, 1938, the author of this commentary was placed on special duty to assist in the drafting of the United Provinces Tenancy Bill76 which was introduced in the Legislative Assembly in April following


76. The U.P. Tenancy Act, 1939. Act No. XVIII of 1939, (As amended by Act No. I of 1940), Passed by the U.P. Legislative Assembly on 24th April, 1939, and by the U.P. Legislative Council on 16th September, 1939. Received the Assent of the Governor on 6th December, 1939, under Section 75 of the Government of India Act, 1935.
the Zamindar members of the Legislature looked upon this measure as a challenge to their order and as a result of their opposition the passage of the Bill was delayed beyond all expectations. The important changes introduced by the U.P. Tenancy Act of 1939 are these:

1) A change has been made in the definition of 'Grove land'. Under the Act all trees whether they occupy the land for a longer or shorter period, constitute a grove. At the same time a definition of "Crops" has been introduced, which makes it clear that Bushes, etc. are not trees.

2) A tenant of a rent-free grantee or a grantee at a favourable rate of rent is sub-tenant in all cases. This lay at rest the old controversy as regards his status.

3) Restrictions have been placed on freedom of contract in the case of reclaimed land, and all tenants of such land will, from the start, be hereditary tenants.

77. The "Note on the United Provinces Tenancy Act," circulated by Government to its officers has been largely used in enumerating changes introduced by the new Act.

78. Section 3(6) of the Act of 1939.

79. Section 3(5) of the Act of 1939.

80. Section 3(22) of the Act of 1939.

81. Section 4(3).
iv) There was no reduction in the area of landlord who had been less than 50 acres of, he could retain a minimum of 50 acres.  

The main features of the U.P. Tenancy Act 1939 are the conferment of hereditary rights of occupancy on all statutory tenants and some non-occupancy tenants, the tightening of the provisions relating to ejectment and the revision of rents payable by tenants at stated intervals so that they may not exceed a certain percentage of the estimated value of the crops.

The debate on the Employment Tax Bill commenced on the 16th March and continued till the 18th. When Sir Jawala Prasad Shrivastava concluded his criticism with a note of warning to the Government, about the adverse result of their financial policy on money markets, business and trade. He implored the Government not to produce the impression in money markets that the Government was wasting public money. Captain Pocock who followed held that as a result of the proposed tax the problem of unemployment among educated middle classes had become more acute. He protected against the discriminatory


nature of the tax. Kunwar Sir Maharaj Singh opposed the Bill and feared that within twelve months the House would be called upon to pass fresh taxation measures. On 23rd March, Premier Pant replied to the criticisms made inside and outside the House and the Bill was referred to a Select Committee. The Bill was taken up by the Assembly on the 13th April and on the next day it was passed after the motion for third reading was strongly opposed by Kunwar Sir Maharaj Singh, Sir J.P. Srivastva, and Captain Pocock. They warned the Government that the middle classes would be adversely affected by the measures and unemployment among the educated classes would increase a great deal.

In United Provinces, by the summer of 1939 basic education had been introduced in 59 schools, in four 'Compact' areas, and in 28 isolated schools. 84

In September India was declared a belligerent power in the war against Germany without consultation with any of her popular bodies. The All-India Congress Party condemned this in difference towards the representative bodies. On 22nd October 1939, the All-India Congress Committee adopted a resolution asking the Congress ministers in the province to resign from office lest they be associated with British policy. On 30 October, 1939, the U.P. Legislative Assembly adopted, by an overwhelming majority of 127 votes to 2 a lengthy resolution moved by the Premier, expressing its opinion, "That the Government cannot associate itself with British policy." This was followed by the resignation of the Congress ministry. The text of this important resolution is as follows:

"This Assembly regrets that the British Government have made India a participant in the war between Great Britain and Germany without the consent of the people of India and have further in complete disregard of Indian

85. On 3rd September, Lord Linlithgow said, "I am confident that India will make her contribution on the side of human freedom as against the rule of force and will pay a part worthy of her place among the great nations and the historic civilizations of the world.", Indian Annual Register, (1939), Vol. II, p. 21.

86. For details see, The U.P. Assembly proceedings, Vol.XXI Nos. 2-4 pp. 181-223, 26th to 30th October,
opinion passed laws and adopted curtailing the powers and activities of the provincial Governments. This Assembly recommends to the Government to convey to the Government of India and through them to the British Government that in consonance with the avowed aims of the present war, it is essential in order to secure the co-operation of Indian people that the principles of democracy with effective safeguard for the Muslim and other minorities be applied to India and her policy be guided by her people; and that India should be regarded as an independent nation entitled to frame her own constitution and further that suitable action should be taken in so far as it is possible in the immediate present to give effect to that principle in regard to present Government of India. 87

During its life of about two years and three months, the Assembly met about two hundred times. It considered and passed about fifty bills and some bills were still pending when it was prorogued last. The average time taken by a bill in getting through the House was about fifty days. The last meeting of the Assembly was held on October 30, 1939, when after adoption of the War Resolution, it was prorogued sine die.
CONCLUSION
CONCLUSION

The composition and functions of the Legislative bodies in India had to be changed seven times in course of ninety-four years, between 1853 and 1947. The development of the Legislative institution has a close connection with the history of Legislature in India.

The whole discussion can be classified into two parts: (1) The system of Dyarchy and (2) The system of Provincial Autonomy. The system of Dyarchy was in operation in the Provinces from 1911 to 1937 and the system of Provincial Autonomy from 1937 onwards.

The Provincial Councils of 1919 were, no doubt, a great improvement on the type of Legislative Councils that India had under the Act of 1909. The number of their members was considerably increased. Elected majorities were provided everywhere. The Provincial sphere of Legislation was demarcated. Presidents of these bodies were elected for the first time. The right of voting grants was also given.
A part of the Provincial executive was made removable by the Council for the first time which gave Indians experience in conducting responsible or parliamentary Government, the right of moving adjournment motions and censure motions was also given. The franchise was considerably enlarged, which gave the councils a more representative character. Even the Executive Councillors, though irremovable by the Legislature became subject to its influence because they could be daily subjected to questions and supplementary questions. They could also be influenced by resolutions and adjournment motions. Inspite of its values the system of Dyarchy failed. Many factors were responsible for this. The Legislative, financial, and executive powers of the Governors limited the authority and powers of the Councils and went to make them ineffective. The vicious principle of separate or communal electorates was not only retained for Muslims, but it was even extended to other communities like Sikhs and Indian Christians. The nominated bloc, i.e. nominated officials and nominated
non-officials generally voted according to the wishes of the Governor. As the elected members were divided on the basis of 'interests' and 'communities', the importance and influence of the nominated bloc increased a great deal. With the help of the official votes, the Governors, often, kept unpopular Ministers in the saddle, got enacted unpopular measures and could give a show of popular approval to their elections. The Legislative councils were not given the power to remove councillors. The power was specially denied to them, because of the system of Dyarchy. As the councillors were incharge of vital subjects, an important part of the administration was, thus kept beyond the control of the provincial legislature. The whole system of electorate was so devised - based as it was on representation of 'interests', 'classes', and 'communities' - that it encouraged the formation of 'petty groups' in the councils. The conditions were hardly congenial for the formation of real type of political parties.
As there were no regular parties, except the Swarjaist Party in C. P. and Bengal there was no effective control over the ministry.

Under the Act of 1935 the provinces stood for the first time on their own feet in all their domestic affairs. Only in the last resort, only for 'preventing any grave menace to the peace or tranquillity of India or of any part thereof', could the Governor-General formally intervene. One of the Chief reasons for welcoming the introduction of full responsible Government in the provinces was the belief that 'popular' ministries would be able to take a bolder course in the field of social reform, than the Governments of the old regime.

The provincial Legislature as envisaged in the Act of 1935, was much better than that under the Act of 1919. The size of the chambers was considerably increased, by the wider franchise, the Legislature became more democratic and were more representative character and the nominated were likewise abolished in the Assembly, though a small number of them was retained in the council. The franchise qualification were lowered and the members enjoyed a better freedom
in their criticism and control of the executive, and the ministry could even be removed by a no-confidence vote of the Assembly.

To conclude, the working of U. P. Legislative Assembly, (1937-39) it can be said, that during its life of two years and a quarter the U. P. Legislature passed about fifty bills which became the law of the province. Most of them were of minor importance and brief.

To cite the different acts and measures, it can be said that, these enactments covered a wide range of subjects. Most of the Legislation in U. P., was fundamentally of a reformativ nature. Some laws only amended the existing laws on the subject. Some laws were regulated for the first time, covering different aspects of the social and economic life of the province, such as, the U.P., Borstal Act, the U.P. Release of Prisoners or Probation Act, the U.P. Public Gambling Act, the U. P. First Offenders Probation Act, the U.P. Sugar Factories Control Act. The U.P. Rent and Revenue (Relief) Act of 1938 gave relief to the agriculturists in case of agricultural calamities. The U.P., Tenancy Act, which was enforced in 1940, not only consolidated laws relating to agricultural tenancies and connected matters, but introduced
some important changes in the rights of the peasant vis-a-vis the landlord, curbed some absolutist powers of the Zamindars, and added to the peasants sense of security. This Act was the longest one, and occupied a major portion of proceedings; it was vehemently opposed by the landlord members at every stage of the progress.

The members of the U. P. Legislative Assembly enjoyed certain privileges during the said period. They had freedom of speech in the House and were immune from any legal proceedings against them for speeches in the House. One important feature of the new Assemblies was the absence of any nominated or official members. This was a distinct improvement over the composition of the Dyarchy Legislatures, which had an official bloc.

The first hour of the Assembly's Proceedings was reserved for the questions. It was called the "Question House", an important daily feature of the Assembly. 'Majority Rule' was generally enforced with little consideration of, and no compromise with, minority opinions.
The U. P. Assembly, during the period, had been specially vigilant in the observance of Civil Rights and Liberties. Their activities in this connexion have been varied. The new Government lifted the ban imposed under the criminal Law Amendment Act upon a number of associations in Kanpur, Allahabad and in other districts of the province.

With a view to ensuring the proper working of the administrative machinery on a national basis, orders were issued by the Government to establish relations of mutual trust between the administration and the Congress Organizations and workers. The Provincial Congress Committee in its turn issued similar instructions to co-operate with the Administration.

Freedom of the Press, was recognised by the U.P. Government, to be the best assurance of Civil Rights. Strict impartiality in the distribution of court notices, advertisements and the like was ordered to be observed. With a view to checking corruption in services, the U.P. Government have set-up Anti-corruption Department, which was the first of its kind in any province.
Labour welfare work also made progress and there were 5 such centres in Kanpur and one in Lucknow, during the period. The object was to wean the workmen away from drink and drugs. Each centre had a dispensary, a reading room and arrangements were made for games and recreation, including Cinema shows, Radio, pictures etc.

The U. P. budget also showed a few important features. Economy has been the guiding motive of the Ministry. They have reduced their own salaries, the travelling bills of the officers and the contingent charges. New officers, as in the Rural Development scheme, have been recruited on a lower scale of salaries.

However, the U. P. Legislative Assembly well exercised its powers and accomplished in a short time, mainly due to the stable majority behind the Government.

In the end, it would not be justified if the role and behave of Governor during 1937-39 is not mentioned, who, during this whole period, acted in accordance with the spirit of the Constitution and acted as the Constitutional Head and did not interfere in the work of ministers.
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