CHAPTER 5.
THE FIRST COUNCIL OF STATE AND ITS WORKING

"The Record of this, the first council of state, will bear an honourable comparison with any of its successors and will endure as an example and a lesson in the sober and temperate exercise of the wide powers entrusted to it by the constitution."

--Lord Reading¹

"On you it lies by the conduct of your business and the justice of your judgement," said H.E. Lord Chelmsford the Viceroy and Governor-General of India inaugurating the first bicameral legislature "to convince the world of the wisdom of this great constitutional change."² Truly, on the first representatives of the people in the new councils their rested a very special responsibility. It is the first step which counts and the first council of state had to go far to dispel the doubts of those who had looked upon the new constitutional departure with gloomy forebodings.

The Council of State met for the first time on 3rd February 1921 under the able guidance of Sir Alexander Muddiman, the first president who occupied the chair for a sufficiently long time to carry the council well on its way to establish for it a worthy tradition of dignity and courtesy and no less a record of high efficiency.

1. H.E. the Viceroy's Farewell address to the I Council of State dated 17th September 1925.
2. H.E. Lord Chelmsford's inaugural address dated 9th February, 1921.
COUNCIL OF STATES' WORK IN DELHI SESSION—1921.

The Council of State met 17 occasions. Notice was received of 273 questions, of which 233 were actually answered. The number of resolutions, of which notice was received was 63 and of these 36 were actually moved in the Council. No bill was introduced in the Council of State by any non-official member, but 5 Government bills were introduced of which 4 were passed without amendment or reference to Select committee. Of the bills which originated in the Legislative assembly and were subsequently considered in the Council of State the Indian Finance Bill for the year was perhaps the most important. Out of 43 amendments of which notice was received, 15 amendments were finally carried in the Council and accepted by the legislative assembly. 6 bills were passed by the Council of State without amendment. These include the bills for fixing the salary of the Deputy President of the Legislative Assembly: For imposing an Indigo Cess: for the recognition of the Calcutta University: For duties on the Import and Export of Goods: For the imposition of Indian Tea Cess: and for certain matters in connection with Hindu Transfers and bequests.

Many important motions were discussed in the Council of State during the session. Perhaps the most weighty were moved by the Honourable (later Rt. Hon'ble) V. Srinivasa Sastry, of which one related to the appointment of a committee to reconsider the repeal of 'repressive laws' and the other to the amendment of enactments in regard to the use of Fire Arms for the purpose of suppressing disturbances. In the discussion on the first resolution, the Hon'ble member on behalf of Government
assumed the Council that a committee would be appointed as desired by the mover and cited the regulations and acts which government intended to include in the scope of recommendations.

The Second resolution which led to a lengthy discussion was put to vote part by part and 6 out of the 8 clauses were negatived in consequence of the opposition of government.

Among other important resolutions mention may be made of the one put forward by the Hon'ble Mr. Lalubhai Samaldas recommending that the Home Government be addressed with a view to the grant of Fiscal autonomy to India. A modification of the resolution by the addition of the words "With due regard to their responsibilities under the Government of India Act", which was put forward by the member for Commerce was adopted by the Council of State. Other commercial and industrial questions indeed attracted a considerable amount of notice. Resolutions were proposed by various members recommending a committee to explore the possibilities of the improvement of the existing government stocks; recommending the removal, as soon as circumstances should permit, of the restrictions on the export of food-grains; recommending an enquiry into the Exchange situation with a view to relieving the existing tension and recommending that India should secure an adequate share of the Indemnities and Reparations to be obtained from Germany. Among those questions which excited deep interest from their connection with the existing political situation, mention may be made of a resolution suggesting that full consideration be given to Public Opinion in India before any matters affecting the religious susceptibilities of Indian subjects were decided, of a resolution recommending the release of prisoners sentenced by martial law courts—which was withdrawn
and of a resolution recommending the establishment of a separate department to watch and safeguard the rights and interests of Indians Overseas. This last also was withdrawn when the member for commerce gave an assurance that every possible consideration would be given to suggestions in connection with the position of Indians abroad when the Bill to amend the Emigration Act was taken into consideration.

Simla Session 1921.

An examination of the proceedings of the Council of State in the Simla session 'reveal the extent to which the non-official members have continued the work the Reforms have thrown on them!'

The record of the I session was maintained and the officials continued 'to exhibit their realization of the changed spirit of the time'. The range of subjects covered, the spirit of independence not divorced from readiness to accept a compromise when it was prudent to do so, the mutual anxiety between the officials and non-officials to understand, and where possible, to meet each other's point of view; all justify the confidence with which one may look forward to the future. And that the officials are more than playing their part is clear from their amenability to non-official influence not only in the assembly where they are in a minority but also in the council of State where the parties are more evenly balanced.3

It may safely be asserted as to the work that the output was as large as the atmosphere in which it was achieved was pleasant. A careful study of the proceedings will convince any impartial reader of the capacity, knowledge, industry and

3 Introduction to Vol. II of India's Parliament.
independence of the members and the extent to which the officials have already adapted themselves to the new conditions.

In his farewell speech to the Council of State the Governor-General paid a glowing tribute to its work.

"In times of special difficulty, as times of transition must necessarily be, you have rendered a high service to your country by fulfilling to the best of your judgement the responsible role assigned to you by the constitution. You have dealt with the important affairs which have come before you according to your conscience and in a spirit of good sense and moderation. As I understand your views, you stand for progress and political advancement of India as rapidly as can be achieved with due regard to the dictates of prudence and wisdom and the special conditions appertaining to India. It is upon those broad foundations that you desire to construct the road to advance and to erect the superstructure destined to crown the efforts for greater contentment and happiness of the Indian people. In the knowledge that you have throughout acted in full accordance with these ideals and have been animated by a lofty sense of duty and steadfast determination to advance the interests of India, I respectfully bid you farewell and cordially wish you all happiness."

Throughout their deliberations the popular representatives revealed a sense of responsibility and of statesmanship which surpassed the most sanguine expectations even of those whose belief in India's capacity for responsible government was most firmly grounded. As Lord Chelmsford remarked in his
inaugural speech the principle of autocracy in the administra-
tion of India was definitely discarded. The officials were not
slow to exhibit their realisation of the changed spirit of the
time. Recognising the power of the new legislative bodies they
took them into confidence, sought their cooperation and admitted
their responsibilities. From the first day of the session the
attitude of official and non-official sides of India's legis-
lature was never for one moment in doubt. The tone and temper
of deliberations of the Council was an outstanding feature.
Non-officials had shown a sense of balance and responsibility
in their treatment of great questions and the Government
endeavoured to give the fullest possible effect to the
governing principles of the new constitution. At the time when
the new reformed were launched there was supreme need for spread-
ing of the constitutional gospel in the country. This could
best be achieved by the House by conducting the business in a
manner consonant with highest traditions of parliamentary proce-
dure. The Government were anxious to show that the reforms
were a distinct advance on the previous state of affairs. The
deliberations of both Houses had none of that unreality which
too often characterised the old imperial legislature council
with its solid official majority. The elected representatives
preponderating effectively were brought face to face with a
responsibility. Under the wise guidance of their presidents
both Houses proceeded to formulate for themselves healthy con-
ventions and traditions. The conduct of members was marked by
commendable sobriety. While utmost freedom of speech was
exercised as their unquestioned right members soon came to
favour wise, informed, pointed contributions to the solutions
of questions at issue, manifesting a steadily increasing impatience of banal, the verbose, and the offender against the channels of good taste. When all allowances are made for in-experience and for the imperfect appreciation of powers wielded for the first time it is impossible to escape the conclusion that India's new parliament passed through the ordeal of the First session with remarkable success.

In the second session also the work done by the Council in its thirteen day session was quite comparable in importance with the performance during the First session. 266 questions were asked and 203 were answered. 22 resolutions were moved out of which 18 were adopted, one negativised and three withdrawn. Ten official bills and seven were referred from the lower house. Both the questions and resolutions were directed to improve the tone and level of administration. Twelve rulings were given during this period. In the third session which commenced on 17th January, 1922 mutual good will and fellowship which had characterised the relations between the members, officials and non-official ever since the inauguration of the new legislature continued to be the dominating note of this session. At the commencement of the budget session of year 1922 current topics excited a larger share of the attention of both houses of legislature and occupied proportionate amount of time. The resolutions now as in previous sessions covered a very wide field indeed. Matters like election of India's representatives, treaty obligations, currency and exchange, the impressve policy of the Government, non-cooperation movement, retrenchment and national economy, recruitment to the
services, appointment of the Indian judges, improvement of railways and port trusts, separation of the revenue and expenditure accounts. In all these the house achieved no mean record of work.

The first assembly elected in 1920 consisted of those elected members who desired to give the reforms a fair trial and the Government was also anxious to show that the reforms were a distinct advance from the previous state of affairs and therefore, the two house generally cooperated. The result was that several measures were passed which can be called measures of improving the administrative system. The legislature passed the Press Law Repeal and Amendment Act of 1922 whereby the Press Act of 1910 which aroused considerable opposition in India was amended and so also the Press and Registration of Books of Act of 1867 power was retained to confiscate seditious documents subject to challenge by persons interested. The term of imprisonment under the two Acts was also reduced. In the Council of State a motion was successfully passed to appoint a Repressive Laws Committee to examine the Repressive Laws on the Statute Book and to report whether all or any of them should be repealed. The Committee presented a unanimous report on September 20th, 1921. It recommended the repeal of all the Acts and Regulations, 13 in number included in the terms of reference with two reservations. To give effect to the recommendations of the Committee the legislature (both houses agreeing) passed the Special Laws Repeal Act of 1922, which repealed the Bengal State Offences Regulation Act of 1808, the State Offences Regulation 1804, the Madras State Offences Act 1857, the Forfeiture Act 1857, the Defence of India Act 1915 and the
Anarchical and Revolutionary Crimes Act 1919. The third achievement of the legislature was the passing of The Indian Criminal Law Amendment Repealing Act 1922 which repealed certain provisions of the Criminal Law Amendment Act of 1908 used in Bengal to cope with terrorism. The fourth achievement was the Criminal Law Amendment Act 1923. By a resolution dated 27th December, 1921, the Government of India announced its acceptance of the principle that there should be equality of status for all people in British India in the matter of Criminal trial and proceedings and appointed a committee to consider the existing racial distinctions in the criminal procedure and report such modifications of the Law as should be adopted to carry out the principle. The Government accepted in the main the recommendations contained in the report, which were embodied in the Criminal Law Amendment Act 1923, passed by the legislature. According to this Act the Special privilege enjoyed till then by the Europeans to claim the right of trial by jury was taken away and in lieu of it a common procedure was substituted in the code of Criminal Procedure for trial by a mixed bench in summons cases and commitment to sessions in warrant cases. The right to trial by Jury in sessions cases triable by Jury was maintained and extended to India British subjects also. This was no doubt important achievement which secured to the Indian citizens important rights and placed him on a par with the European British subjects in India.
**DISCUSSION** in 1924-25.

**Council's attitude to the Finance Member's plan of debt redemption:**

This scheme was generally supported in the Council of State while the Assembly had criticised it. Sir Maneckji Dadabhoy, in particular who had himself pressed upon the notice of Government the importance of this matter characterising the Assembly's opposition to the scheme as ill-conceived. Demands were put forward in several quarters for the lowering of taxation, particularly of the super-tax, which was stated to be exercising an adverse effect upon the development of industry. But, as in the Assembly the question of Cotton Exercise aroused considerable feeling and Government were warmly criticised for taking no steps to remove what was stated to be a standing blot on their financial policy.

**Discussion in the Council of State:**

Government announced that they would move an amendment for the **restoration of the salt duty** to the original figure. On March 20, the Finance Bill was discussed in the Council of State. Meanwhile important sections of opinion throughout India had condemned in forcible terms the action of the Assembly, pointing out that for the sake of an illusory gain for the individual tax-payer important and substantial remissions to the provinces were being jeopardised. Certain provincial legislatures publicly displayed, by motions of adjournment to consider the matter how seriously they regarded the action of the Assembly. The Council of State was thus reflecting a very large element of responsible opinion when it accepted the motion of the Government to restore the salt-tax to the figure of Rs. 1-4-0
by 35 votes against 4.

Acceptance of the Council of State's Amendment by the Legislative Assembly

On March 21, 1924 the Finance Bill came up again to the Assembly. The position was somewhat delicate. Since the Viceroy had not "recommended" the bill to the Council of State, the Assembly was perfectly free to either to affirm or to contradict its previous decision. If the House elected to fix the salt tax at Rs. 1 Government would have been unable to secure its restoration. Fortunately, however, wiser counsels prevailed. The Finance Member definitely warned the House that the effect of a repetition of the previous vote would be a substantial reduction in the proposed remission of provincial contributions. Accordingly after a short but somewhat heated debate, the Assembly by 70 votes as against 50 accepted the amendment of the Council of State and restored the salt tax to Rs. 1-4-0.

This decision of the Assembly all the more fortifies the argument that second thoughts are necessary in taking decisions of vital importance and also shows the utility of the second chamber, the Council of State.

COUNCIL OF STATE--ITS RESPONSIBLE ATTITUDE.

Reflecting a very large measure of responsible Government

DISCUSSION ON BUDGET:

In the Legislative Assembly the Finance Bill was

Rushbrook Williams--India. p.142.
taken up for consideration on 16th March 1924. On the Finance Bill motions were moved for the reduction of the Salt-tax to 8 annas and to 12 annas. Both these were defeated by Government with the help of the European elected members and of some independent votes. There then followed a discussion of Mr. Ramaswami Iyengar's motion for reducing the salt-tax to Re. 1. The Finance Member urged that having voted the supply, it was incumbent upon the House to vote the ways and means: that if they did not agree with the taxes proposed by the Government it was their duty to suggest a substitute there and then or leave the matter till next year. The motion was strongly opposed by Sir Purushottamdas Thakurdas and certain others. But as the independents had not made it a party question, the Swarajists obtained sufficient support to defeat Government by 61 votes to 56. The consequences of the Assembly's acceptance of this motion were, from the point of view of the Finance Department very serious and Sir Basil Blackett announced that he was unable to move his projected resolution inviting the concurrence of the Assembly to the remission of certain of the Provincial contributions. Though the Finance Bill was passed the change was however made in the Salt duty which was changed from Rs. 1-4-0 to Re. 1 per maund. The Swaraj party opposed at every stage but were again defeated.

The Finance Bill as passed by the Legislative Assembly was placed on the table of the Council of State.

Discussion of the Reforms Enquiry Committee:

The Home Secretary moved a resolution on 11th September 1925 recommending to the Governor-General-in-Council to accept
the principle underlying the majority report of the Reforms enquiry Committee and to give early consideration to the detailed recommendations therein contained for the improvements in the machinery of Government.

While it had a difficult time in the Assembly, it had a much smoother passage in the Council of State. In the Assembly an amendment was moved by Pandit Motilal Nehru, the leader of the Swaraj party and ultimately after two days discussion, the amendment was carried against the Government by 72 votes to 45.

In the Council of State, too three amendments were moved. Hon'ble Mr. Phiroza Sethna then moved an amendment identical with Pandit Motilal Nehru's. Two other amendments to the resolution were moved, both of them on the lines of Mr. Sethna's amendment and speeches in support of them conveyed much the same ground as this.

Only Mr. Sethna's amendment got as far as a division and this was lost by 29 votes to 10. The resolution was eventually carried in the Council of State by 28 votes to 7.

Council of State and the Simon Commission:

On February 22, 1927 two non-official motions were moved in the Council of State urging the Government of India to appoint a committee to co-operate with the Simon Commission. Resolution by Hon'ble P.C.Desikachari

(1) The first of these was a resolution by P.C.Desikachari, member for a Burmese constituency who asked that the
members of the committee should be given equal status with the members of the Statutory Commission including the right to hear evidence taken in camera.

(2) An amendment was moved to the resolution by Sir Maneckji Dadabhoy limiting the scope of the committee to the procedure contained in Sir John Simon's letter to the Viceroy and Sir Sankaram Nair.

Sir Maneckji Dadabhoy recalled the advice given by Messrs. Tilak and Gokhale years before when earlier reforms had been granted and this was "Take what you can get and fight for more". Sir Maneckji could not see how John Simon's could have gone farther than he had and he advised his country not to throw away a golden opportunity because of resentment at an imaginary insult.

Sir Pheroze Sethna (Bombay) strongly opposed the proposal to appoint a committee and referred the recent vote in the legislative assembly as the vote of the thinking India. The original resolution was supported by eminent leaders like Srinivasa Iyengar, Pandit Motilal Nehru, Jayakar etc. At the end of the debate the division was taken on the main resolution.

Footnote: Earlier (on Feb 16th) a resolution was moved in the Legislative Assembly by Lala Rajput Rai, a Punjabi member declaring that the constitution and scheme of the Statutory Commission were wholly unacceptable to the House and that the Legislative Assembly would have nothing to do with the Commission at any stage or in any form. A counter proposition was put forward by Sir Zulfiqar Ali Khan, a prominent Muslim from the Punjab and leader of the Central Muslim Party in the Assembly, whose resolution declared that the procedure laid down by the Statutory Commission merited favourable consideration by the Assembly.
which was declared carried by 68 voted to 62. Hardly had this result been declared when a reporter of a nationalist daily newspaper in Delhi threw an attaché case down from the press gallery on to Sir Basil Blackett's head. Sir Basil was partially stunned for a moment but happily suffered no permanent injury. The assailant explained that his missend was meant as a reply to the speech delivered at Doncaster a few days ago previously by Lord Birkenhead.

This very narrow defeat in the second biggest division in the Assembly's history encouraged the supporters of the Commission to hope that the decision would be reversed by the Council of State when the same question came up for discussion.

The Government's reply to the debate was made by Mr. Haig, Home Secretary to the Government of India, who in urging acceptance of Sir Maneckji Dadabhoy's proposition said that the scheme provided for the very close participation of India's representatives in the vital enquiry which was about to be undertaken. By voting for it the Council would give a lead to the great body of opinion which lay beneath the political clamour. The Commission was the epitome of the British people and all the three parties in the Parliament had agreed to accept the scheme now before the House. In the end the resolution as amended by Sir Maneckji Dadabhoy was carried by 34 votes to 13.

The Council of State reversed the decision of the Assembly and voted for co-operation with the Simon Commission.
The Central and Provincial Legislatures had opportunities of discussing the proposals. The debates were temperate in tone and criticism although severe with regard to certain aspects of the Scheme was on the whole constructive.

In the Council of State adverse comment was mainly directed to the powers proposed for the Governor-General and the Governors, the maintenance of the Secretary of State's control over the services and the proportion of the Indian revenues that would be made non-votable. The speakers contended that these provisions constituted a serious encroachment on the power of the future legislatures and there was general agreement that endeavours should be made to get them modified at the Joint Select Committee.

DISCUSSION RE THE TRANSFER OF ADEN FROM THE GOVERNMENT OF INDIA TO BRITISH GOVERNMENT

The Upper House discussed on the 31st August the question of the transfer of the control of them from the Government of India to the British Government to the effect that while the military and political administration might be transferred to imperial control the Civil administration should remain with the Government of India.

Release of Political Prisoners:

A motion for the release of political prisoners was discussed in the Council of State. The usual agreement was used
by the sponsors of the resolution that such action would create "an atmosphere of goodwill for the successful working of the reforms". Mr. Hallett, the Home Secretary reaffirmed Government's well known attitude in the matter, pointing out that unless there were convincing reasons to believe that a general release would not be followed by a revival of the movement no change of policy was possible. The resolution was rejected.

Council of State's decision on the Lee Commission Report:

An important debate on the report of the Lee Commission on the Public Services took place and the Home member invited the Assembly to endorse in principle the main recommendations of the commission at the new places for recruitment and control of the services etc. A long debate lasting over three days resulted. The leader of the Swaraj Party in the Legislative Assembly Pandit Motilal Nehru opposed it and his amendment was carried by 68 votes to 46. The verdict was reversed by the Council of State, which after a lengthy discussion and the rejection of several amendments passed the Government resolution without decision.

Council rejects Neogr's Bill:

To amend the Railway Act in such a fashion as to provide against the reservation of railway compartments for any particular community. Despite the protests of the Government and of the elected European members the motion for consideration was carried by 50 votes against 36 and the Bill was passed without a division. It was subsequently rejected by the Council of State.
The Council of State was very jealous of protecting the privileges and the States of the members of the Council of State. On a number of occasions many members recorded their protest against any plausible encroachment or interference from the assembly. On 6-3-26 a resolution was moved in the council regarding the privileges and status and on this occasion its mover ⁶ said:

"The bicameral system has come to stay.... The existence of the House has got to be accepted as a cardinal principle of the Indian Constitution." ⁷

On another occasion speaking on the code of Criminal Procedure (Second Amendment Bill) the elected members took strong exception to some provisions and complained that the Second Chamber was always looked upon as a rubber stamp of all government measures.⁸

During the discussion on a resolution regarding the reduction of allowances of the members of the council of state, the Council took a strong stand against foregoing their privileges and the dignity of the House.

Thus the members were anxious to protect and safeguard the interests and privileges of the body.

During a debate on the Code of Criminal Procedure (Amendment) Bill, the Hon'ble Sir Maneckji Dadabhoy asserted that the council would always "most jealously watch its privileges, and could not allow or suffer to be done anything which would be incompatible with its dignity." ⁹

---

⁶ Hon'ble Mr. K.C. Roy (Bengal--nominated non-official).
⁸ Ibid.
⁹ Council of State, Volume II, 1921.