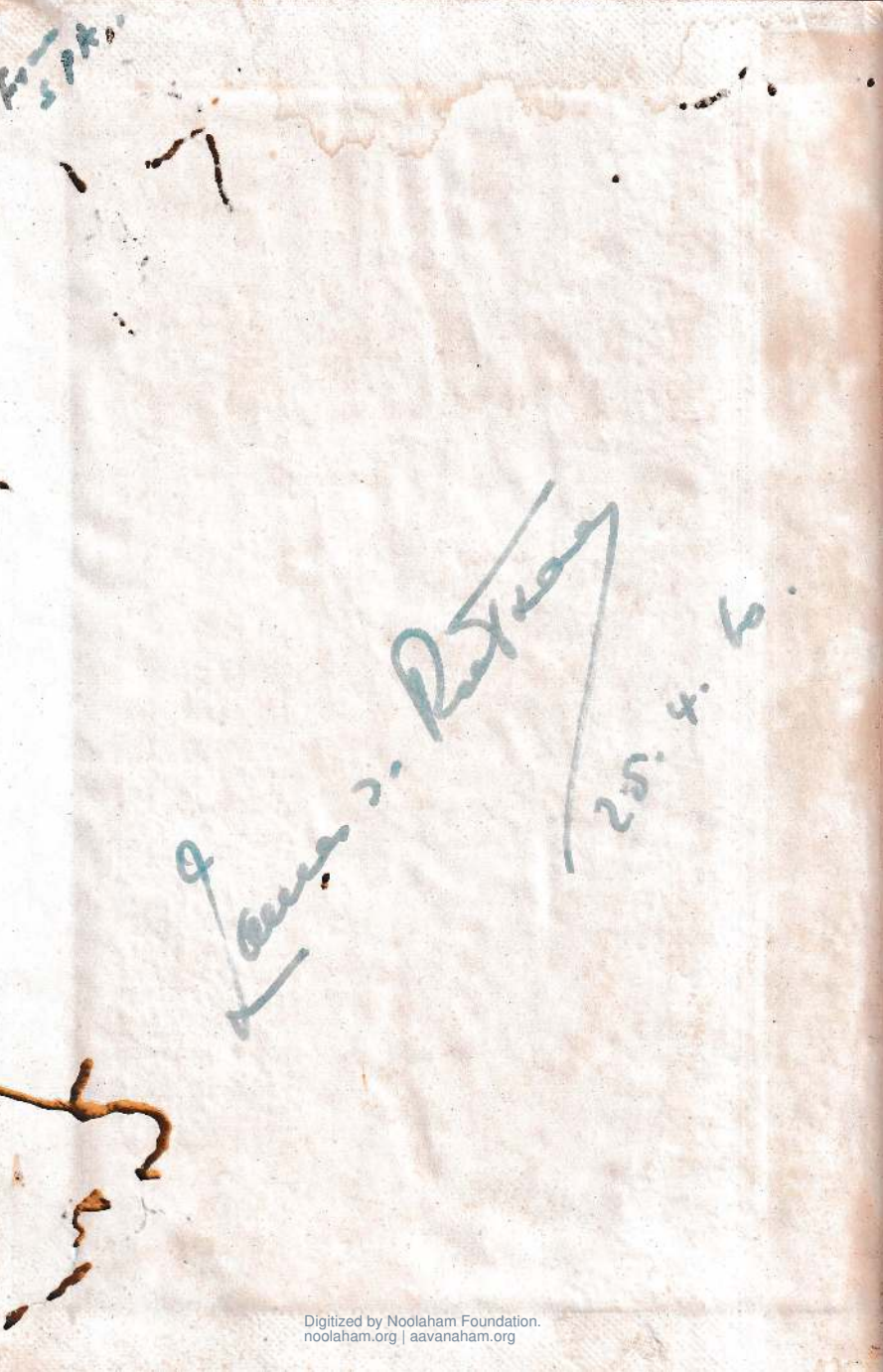
PARLIAMENTARY GOVERNMENT IN CEYLON, 1948–1958.

by
S. NAMASIVAYAM



To

CANA. & HARI.

PARLIAMENTARY GOVERNMENT IN CEYLON, 1948 - 1958.

by

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To

CANA. & HARI.

"Political freedom comes alive, only when it is utilized to achieve other freedoms—freedom from poverty, freedom from disease, freedom from ignorance, freedom from fear. Nor is that all. We have to fan the flickering flame of democracy, so that each individual is assured of those freedoms, for which democracy has always stood, and which safeguard man's self-respect and secure decent, honest and fair dealing between man and man. In a wider sphere we must enter into friendly relations with other nations of the world and play our part worthily in all international organizations, in order that we may make our fullest contribution, small though it may be, to the peace and prosperity of all mankind.

Those are the high tasks that face Free Lanka in the future."

Hon. Mr. S. W. R. D. Bandaranaike, Leader of the House of Representatives on February 10, 1948 in that House.

PREFACE

Ceylon is front page news again today just as that Island was in 1948 when it secured full responsible government. A study of the recent constitutional developments in that country is, therefore, very opportune. This work may be considered as a kind of sequel to "The Legislatures of Ceylon, 1928-48" written by me some years back and is an endeavour to continue the constitutional story for another ten years.

In this case too, I have mainly relied on the local Hansards, command and sessional papers relating to Ceylon and the Ceylon Statutes. The appropriate references to these and other primary and secondary authorities used by me have been listed at the end of this work in Appendix D.

Although this study refers to the period 1948-58, mention should be made here to the following important constitutional decisions that have been taken by the Government this year, which will, in all probability, be a part of the Constitutional Law of Ceylon even before this work appears in print. Those decisions relate to the repeal of the Ceylon Constitution (Special Provisions) Act, No. 35 of 1954 and the Indian and Pakistani (Parliamentary Representation) Act, No. 36 of 1954, and the lowering of the age limit of voters from twenty-one to eighteen. The repeal of the first Act has enabled the appointment of a Delimitation Commission and the early reconstitution of electoral districts. The effect of the repeal of the other Act is the abolition of the Island-wide multi-member constituency for the election of four Indian members which was created in 1954.

Although I am a member of the Ceylon public service, this study is no expression of official views and it consists exclusively of personal opinions and observations on Ceylon institutions and on the working of its Constitution.

"Legislatures of Ceylon, 1928-48" was written in Oxford and it is a happy coincidence that this survey too was written there. It is not often that an alumnus from Oxford whose

permanent home is abroad has the chance of revisiting his old university and working in familiar surroundings. I am fortunate that I have had this opportunity more than once. I am indebted, in particular, to Queen Elizabeth House, a new institution in Oxford, established for the furtherance of Commonwealth Studies, for furnishing me with ideal surroundings for writing a work such as this. I am very thankful to Miss June Brown for deciphering a rather untidy manuscript and typing it at breakneck speed. I am also greatly indebted to the members of the library staffs of the Commonwealth Relations Office and Rhodes House, Oxford, for their courtesy, patience and assistance.

S. NAMASIVAYAM

Colombo, February 14, 1959.

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ABBREVIATED REFERENCES

In this work, unless the context otherwise requires—

"Col." means Column and "Cols." mean Columns;
"Constitution" means the Ceylon (Constitution) Order in Council, 1946, as amended by subsequent Orders in Council;

"Constitution of Ceylon by Sir Ivor Jennings" means the Constitution of Ceylon by Sir Ivor Jennings, third edition, 1953, published by the Oxford University Press;

"Hansard" means Parliamentary Debates, Ceylon House of Representatives;
"No." means Number; and
"Vol." means Volume.

CHAPTER I

Introduction

Parliamentary Government is facing a serious challenge today and Asiatic and African leaders do not view its institutions with the same hope and faith that they did a little over a decade ago. In Burma, Pakistan and the Sudan those institutions were discarded, some hope temporarily, and in Ceylon in mid-1958 an emergency was declared. That emergency at the time of writing is in operation, though many of its restrictive features have been relaxed or removed. Even when emergency control was at its height, Parliamentary Government functioned, and the control operated within the framework of parliamentary institutions and in accordance with the law.[1] Nevertheless, many foreign observers, particularly friends of Ceylon in Britain, are wondering whether even in Ceylon, where familiarity with British institutions seemed to augur well for that form of government, its future is at stake and its institutions are imperilled.

The writer does not pretend to be a prophet, but in his view the constitutional developments in Ceylon during the last ten years seem to indicate the continuance in that country of Parliamentary institutions. Therefore, a survey of those institutions during the period 1948-1958 is useful and this work is an attempt to provide such a survey. Such a study, however, can only be appreciated if it is prefaced by some description of the country and its people and of the Donoughmore Constitution, the constitution in operation in Ceylon during the period 1931 to September 1947.

The Country and people

Ceylon is a mango-shaped island of great charm and beauty, situated slightly north of the equator and south-east of India and separated from that vast sub-continent by the narrow Palk Strait, a shallow sea of some forty miles across. Its area is 25,332 square miles, being, therefore, a little smaller than Eire and a little over a quarter of the size of the United Kingdom. It is mainly a tropical country, subject to two monsoons

and it has two ports of great commercial and strategic significance, Colombo and Trincomalee. Its population in the middle of 1956 was estimated at 8,929,000.[2] Ceylon's population rose from 2,400,380 in 1871, the year of the first decennial census to 8,097,895 in 1953, the year when the last census was held, the population increase in 82 years being 237.4 per cent.[3] This colossal rate of increase has complicated substantially her political and economic problems. The country's economy depends on her export trade in tea, rubber and coconuts and the money secured by selling those and certain other products helps to pay for its imports of essential commodities, chiefly rice, other foodstuffs and textiles.

Ceylon is multi-racial and tri-lingual. Its population according to races was, in June 1956, estimated as follows[4]:—

Sinhalese	6,262,000
Ceylon Tamils	1,002,000
Indian Tamils	959,000
Ceylon Moors	521,000
Burghers and Eurasians ..	48,000
Indian Moors	43,000
Malays	32,000
Europeans	7,000
Veddahs	3,000
Others (including Pakistanis) ..	52,000

The Sinhalese, the majority community in the island, are divided into low-country and Kandyan Sinhalese, the number of the former according to the 1953 census was 3,469,512 and of the latter according to that census was 2,147,193. The former mainly resided in the coastal areas and a portion of the North-western Province, while the latter inhabited the remaining part of that Province and the hill country consisting of the Central, Uva and Sabaragamuwa Provinces. The Sinhalese are of Aryan origin, while the Tamils both Ceylon and Indian are of Dravidian stock, the original home of those three communities being Indian. The ancestors of the Sinhalese are reputed to have settled in Ceylon about the sixth century B.C. while the ancestors of the Ceylon Tamils came over much later accompanying the various South Indian kings and chieftains on their periodic invasions of Ceylon. As a result of these invasions, Tamil rule was established in the Northern and Eastern Provinces of Ceylon which are

still predominently Tamil areas. The Indian Tamils consist largely of a fluctuating labour population, which was brought in during the last century principally by the British to open out and cultivate the rubber and tea plantations. Both the Ceylon and Indian Moors are the descendants of Arab traders, the former of Arab traders resident in Ceylon and the latter of such traders resident in India. Like their ancestors, the Moors resident in Ceylon today are mostly engaged in trade. The Malays are the descendants of troops brought by the Dutch from Java during the Dutch occupation of the country and the Burghers are the descendants of the Dutch who continued to remain in Ceylon after the British took over. The Veddahs are considered to be the aborigines of Ceylon.

The classification of the population in terms of religion, according to the census of 1953, are as follows:[5]—

All religions	.. ..	8,097,895
Buddhists	.. ..	5,209,439
Hindus	.. ..	1,610,561
Muslims	.. ..	541,506
Christians	.. ..	724,461
Zoroastrans	.. ..	1,295
Free thinkers	.. ..	1,750
Agnostics	.. ..	865
Others	.. ..	8,018

Three languages are spoken in Ceylon: Sinhalese, Tamil and English. The language that is spoken by the majority of the people is Sinhalese, but Tamil is spoken almost exclusively in the Northern and Eastern Provinces of the island and by the Indian Tamils in those parts occupied by them. The percentage of literacy in Ceylon was, according to the 1953 census, 65.4%[6]

Despite a period of foreign occupation of nearly four and a half centuries, the way of life of the people, particularly in the rural areas—and Ceylon is essentially rural—is what it was centuries ago. They generally wear the same clothes, eat the same food, observe the same festivals and speak in their vernacular tongues, as their ancestors did centuries ago. Western civilization touched only a very small proportion of the people and persons who acquired it profited by it. They were included among the governing class, in the early

stages of Crown Colony Government holding the lesser posts. With the acquisition of full responsible government, there has been a revolt against the English-educated Ceylonese and an important aspect of the present unrest is the dissatisfaction of the Sinhalese-educated middle-class with the English-educated members of that community.

The Donoughmore Constitution

Ceylon achieved Dominion Status after having experienced various forms of Crown Colony Government, the chief feature of which in the early stages was the dominance of the official and nominated elements in the legislative assembly of the island. By 1923 that dominance had been replaced in the Legislative Council by a majority of elected members. But the lack of control which that assembly had over executive actions and the inability of the Governor and the Executive Council in the face of opposition from the Legislative Council to give effect to their policies made a reform of the Constitution imperative. The result was the Donoughmore Constitution which was in operation in Ceylon from 1931 to September 1947. That Constitution contained a scheme to bridge the gap between Crown Colony and full responsible government, a scheme which sought to reconcile the problems of power with those of responsibility. That Constitution included provisions in respect of the following significant matters :—

(1) It provided for universal adult suffrage ;

(2) it abolished communal representation and provided for territorial representation ;

(3) it conferred a large measure of control over matters of internal self-governmnt to the elected representatives of the people; and

(4) it established a system of Executive Committees into which the legislature divided for the consideration of administrative and other matters.

The provisions of sub-paragraphs (1) and (2) of the preceding paragraph were incorporated in the present Constitution. The internal autonomy inherent in the Donoughmore Constitution was transformed into the full responsible government of the present Constitution. The only provision in the Donoughmore Constitution that was not included in the present

Constitution was the Executive Committee system, but that system was naturally out of place in a Constitution, the integral part of which was a Cabinet collectively responsible in respect of all matters to Parliament.

The politicians who operated the Donoughmore Constitution were very critical of its provisions, particularly because it reserved certain spheres of legislative and executive control to the representatives of the imperial government. But on the whole that Constitution served a very useful purpose by providing a school of instruction and experience to Ceylonese politicians and by enabling them to work a scheme of internal self-government in the absence of organised parties and without encroaching over-much on minority interests. The Secretary of State for the Colonies in moving the second reading of the Ceylon Independence Bill of 1947 paid the following tribute to that Constitution which most objective students of institutions will endorse :—

"It is only necessary for me to mention the work of the Donoughmore Commission and the bold steps taken in the Constitution which emerged from that inquiry. It was an experiment in adult suffrage and in responsible democracy, and it contributed much to the political maturity and drive for effective democracy of the people of Ceylon. The system established by that Constitution worked for fifteen years without serious political trouble, and it stood the strain of a world war."[7]

The Donoughmore Constitution was succeeded by a short-lived Constitution which was in operation for a little over five months. It embodied most of the principal features of the Constitution that took effect on February 4, 1948 but under it the Governor still had certain significant reserve powers. Those reserve powers for all practical purposes meant nothing because even before that Constitution came into operation the British Government had made a declaration that as soon as necessary agreements had been negotiated and concluded on terms satisfactory to the Governments of the United Kingdom and Ceylon, immediate steps would be taken to confer upon Ceylon full responsible status within the Commonwealth.

The Public Service, Judiciary and Local Government

Parliamentary Government depends for its success on an impartial public service and an independent Judiciary. No

attempt has been made in this survey to deal with matters relating to such service or to the courts. But it may here be said in passing that the present Constitution provides for such a service and a Judiciary.

Matters relating to public servants come within the purview of the Public Service Commission, a body consisting of three officers appointed by the Governor-General whose impartiality and independence are maintained by the fact that their salaries have been charged on the Consolidated Fund.[8] One of the chief reasons for its establishment was the desire to allay minority fears that recruitment to the public service may otherwise be partial and made in the interests of the majority community. In addition to control over matters of recruitment, that Commission has powers and duties in connexion with the transfer, dismissal and disciplinary control of public officers. Its powers in regard to the lesser Government employees have been delegated to heads of Departments and other senior officials. There is no doubt that the existence of an independent Public Service Commission serves a very useful purpose in the field of recruitment. Its powers, however, over transfers, dismissals and disciplinary action sometimes can bring the Commission into conflict with Ministers and Permanent Secretaries, and it might be better in the interests of efficiency and departmental harmony if those powers were exercised by Permanent Secretaries. During the last decade there has been considerable unrest among the public service, manifested by periodic strikes. The matters of dispute centre round conditions of service, particularly salaries, wages and allowances, trade union rights and participation in politics. The steep rise in the cost of living justifies a revision of salaries and wage rates, particularly in the lower grades of the service, but concessions in the matter of trade union activity and political participation, which may affect the impartiality of the service or any part of it, should not be granted.

The Judiciary in respect of Ceylon consists of a hierarchy of Courts ranging from the Privy Council to the Rural Courts. Whether or not a particular dispute or offence is tried by one court or another depends as in other countries largely on the amount involved or the gravity of the alleged offence. The lesser civil matters are inquired into and disposed of in the Courts of Requests and the Rural Courts. The lesser offences are

tried and punished in the Magistrates' Courts and in the Rural Courts, as the last-mentioned courts have civil as well as criminal jurisdiction. In addition to those courts, provision has recently been made, under the Conciliation Boards Act, No. 10 of 1958, for the settlement of certain disputes and the compounding of some offences by Conciliation Boards consisting generally of persons resident in the locality in which the dispute in question arose or the offence was alleged to have been committed. In the case of such disputes and offences, trial in the ordinary civil and criminal courts will not be possible, until recourse has first been had to the procedure specified in that Act. The Judges of the Supreme Court are appointed by the Governor-General, hold office during good behaviour and are not removable except by the Governor-General on an address of the Senate and the House of Representatives. Their salaries are charged on the Consolidated Fund.[9] The lesser Judiciary consisting of District Judges, Commissioners of Requests, Magistrates and Presidents of Rural Courts are appointed by the Judicial Service Commission, a body comprising of the Chief Justice, a Judge of the Supreme Court and one other person who is or was such a Judge. That body is also concerned with matters relating to transfer, dismissal and disciplinary control. It has been suggested that control over those matters should be transferred from that Commission to a Minister but it is the writer's view that such a transference is inexpedient and may affect the independence of the Judiciary. When Ceylon becomes a Republic, the Privy Council will cease to be the ultimate court of appeal for Ceylon. The Ceylonese are a litigious people and they have had considerable faith in the Privy Council. But a concomitant of republican status is the severance of this connection. Its place, however, may be taken by a bench consisting of five Supreme Court Judges.

Local Government in Ceylon is characterised by a multiplicity of local authorities ranging from Municipal Councils to Village Committees. In 1957, there were seven Municipal Councils, thirty-six Urban Councils, thirty-eight Town Councils and four hundred and three Village Committees.[10] Their functions are very similar to those of local bodies in Great Britain and their great problem is the lack of adequate funds to exercise and perform all their powers and duties. It is possible that another local authority, the Regional Council, to cover a larger area than that covered by the

existing local authorities and exercising greater powers than those exercised by such authorities, will be established. This is a matter that has been referred to in another connexion in a later Chapter. If such an authority is established, an endeavour should be made to simplify Local Govrnment by having a few local authorities with well-defined powers that do not conflict or overlap.

CHAPTER II

CITIZENSHIP

Ceylon citizenship was a consequence of independence. The Government of the day when introducing the Ceylon Citizenship Bill in the House of Representatives made this clear. It also frankly announced to its critics that it had dispensed with certain principles laid down in other citizenship enactments like birth and residence in view of the peculiar circumstances of Ceylon. That these were the important considerations in the mind of the Government can be gathered from the speech of Mr. S. W. R. D. Bandaranaike, the then Leader of the House, during the second reading of that Bill. On that occasion he declared that "the subject is undoubtedly important in one sense. It is formal in the sense that it is a matter that does not need discussion, that every country, particularly a free country, needs citizenship laws. In a sense it is formal because a definition of citizenship is one of the first steps that any free country should take, which has been taken by every other country that has attained freedom in recent years..... Before the bar of public opinion of this country we are perfectly prepared to justify the provisions of this Bill, which may in certain respects, I admit, differ from the provisions in other countries where some of the problems we have do not exist, where such problems have not been permitted to arise for the simple reason that immigration laws have existed in these countries from the very start, where a situation obviously arises which is quite different from the situation that exists in our country. I state it quite plainly that the provisions of this Bill are directed to our particular circumstances,...."[11]

The law relating to citizenship in Ceylon today is embodied in the Citizenship Act, No. 18 of 1948, and the Indian and Pakistani Residents (Citizenship) Act, No. 3 of 1949, as subsequently amended.[12] The principal change from the past was the introduction of descent as the determining feature in citizenship. This change had far-reaching effects on other constitutional matters such as the law relating to franchise. Before the enactment of these laws one had to be a "British

Subject'', not subject to certain disabilities, and possessing the requisite residence qualification to be qualified to vote in parliamentary elections. Their enactment was the prelude to alterations in the franchise law, the chief effect of which was that a parliamentary voter had to be a ''citizen of Ceylon'' within the meaning of the Country's laws and not a ''British subject''. Its immediate consequence was the disfranchisement of a substantial portion of the Indian Tamil voters in the county. This change hit the members of the English community in Ceylon as well. As one had to be qualified to be a voter to be eligible to be a Senator or a member of the House of Representatives, the alteration consequently shut out the greater part of the Indian Tamil and English communities resident in the Island from membership of Parliament and from holding ministerial office. The significance of the change will be realised if one noted that while at the 1947 General Election, there were 7 Indian Tamils elected to membership of the House of Representatives, at the two succeeding elections no persons belonging to that community were elected. Apart from securing the election of 7 Indian Tamil representatives, the fact that the franchise could be exercised by a substantial proportion of voters of Indian origin influenced the results in fourteen other constituencies where the Indian Tamil electors voted for left-wing candidates of their choice.[13]

Ceylon citizenship, since the enactment of the two Acts referred to in the preceding paragraph, can be acquired either by descent or by registration. The law relating to the acquisition of citizenship by descent is specified in the Ceylon Citizenship Act, while the law relating to the acquisition of citizenship by registration is specified in that Act and also in the Indian and Pakistani Residents (Citizenship) Act.

Citizenship by descent

Ceylon citizenship by descent can be acquired in one of the following ways :

(1) In the case of a person born in Ceylon before November 15, 1948, he will have the status of a citizen of Ceylon by descent—

(*a*) if his father was born in Ceylon, or

(*b*) if his paternal grandfather and paternal great grandfather were born in Ceylon.

(2) In the case of a person born outside Ceylon before November 15, 1948, he will have the status of a citizen of Ceylon by descent—

(*a*) if his father and paternal grandfather were born in Ceylon, or

(*b*) if his paternal grandfather and paternal great grandfather were born in Ceylon.

(3) In the case of a person born in Ceylon on or after November 15, 1948, he will have the status of a citizen of Ceylon by descent if at the time of his birth his father was a citizen of Ceylon.

(4) In the case of a person born outside Ceylon on or after November 15, 1948, he will have the status of a citizen of Ceylon by descent if at the time of his birth his father was a citizen of Ceylon and if, within one year from the date of his birth or within such further time as the Minister of Defence and External Affairs may for good cause allow, his birth was registered at the office of a consular officer of Ceylon in the country of birth or at the office of that Minister.

An examination of this list will show that the basis of citizenship by descent is a very stringent one. Considerations or principles that matter in other countries such as birth, naturalisation, incorporation of territory or adoption do not affect the question of citizenship at all. In fact, citizenship by descent rests exclusively on a family connection with Ceylon covering at least two generations. In regard to this matter of citizenship by descent it should also be noted that there are provisions in the Act bringing the position of persons born out of wedlock in line with that of persons born in wedlock and that of posthumous persons with that of persons born before the death of their fathers.[14] Another matter, though of a different kind, is the fact that in the case of persons born on or after November 15, 1948, the citizenship of his father, a requisite qualification, need not be citizenship by descent. It may be citizenship by registration (see preceding clauses (3) and (4)).

Citizenship by registration

Citizenship by registration can be acquired either under the Citizenship Act or under the Indian and Pakistani Residents

(Citizenship) Act. Such citizenship under the first Act can be acquired if the applicant for such citizenship conforms to the following requirements :—

(1) the applicant—

(*a*) is a person whose mother is or was a citizen of Ceylon by descent or would have been a citizen of Ceylon by descent if she had been alive on November 15, 1948 and who, being married has been resident in Ceylon throughout a period of seven years immediately preceding the date of his application, or, being unmarried, has been resident in Ceylon throughout a period of ten years immediately preceding that date, or

(*b*) is a person who is born outside Ceylon of a father having Ceylon citizenship and who himself would have been a citizen of Ceylon but for the failure to register his birth in the prescribed manner, or

(*c*) is a person whose father before or after his birth ceased to be a citizen by descent because of acquisition of, or failure to renounce, any other citizenship or, because of failure to execute a declaration of retention, or

(*d*) is the husband, wife, widow or widower of a citizen of Ceylon by descent or registration and has been resident in Ceylon for one year, or

(*e*) is a person who has satisfied the Minister of Defence and External Affairs that he has rendered distinguished public service or is eminent in professional, commercial, industrial or agricultural life, or

(*f*) is a person who has been granted in Ceylon a certificate of naturalisation under the British Nationality and Status of Aliens Act, 1914, of the United Kingdom, or Letters Patent under the Naturalisation Ordinance, 1890, and has not ceased to be a British Subject ;

(2) the applicant is of full age and of sound mind; and

(3) the applicant is or intends to continue to be resident in Ceylon.

Applicants who belong to category (*a*) of clause (1) of the preceding paragraph become automatically entitled to this form of citizenship, if he makes the application for citizenship in the appropriate manner. In the case of applicants who belong to the other categories, the Minister has a final discretion. In the case of persons who belong to categories (*b*) and (*c*) of the said clause, he has the power to disallow the applications on grounds of public policy and in the case of persons belonging to category (*d*) of that clause he can refuse the application in the public interest. In the case of applicants who belong to category (*e*) of that clause, apart from the Minister having to satisfy himself that the applicants do in fact conform to the requirements specified in the clause, only 25 such applications can be granted each year.

Further, the Citizenship Act enables applicants for registration to procure also the registration as citizens of Ceylon of their minor children.[15]

To meet in some measure the disadvantage imposed on the Indian Tamil community by the alteration of the citizenship law, another category of citizenship by registration was created by the Indian and Pakistani Residents (Citizenship) Act, No. 3 of 1949. By the very nature of the qualifications prescribed only persons, whose origin was in a territory which, immediately prior to the passing of the Indian Independence Act, 1947, formed part of British India or any Indian State, could obtain registration under that Act.

In order to obtain citizenship by registration under that Act, the applicant had to conform, among others, to the following requirements :—

(1) He had to make his application within two years of November 15, 1948 ;

(2) he had to be possessed of a special residential qualification;

(3) if he was married, his wife too had to conform to certain residential qualifications ;

(4) he had to be possessed of an assured income of a reasonable amount or be the holder of some suitable business or employment ;

(5) he should be free from any disability or incapacity which may render it difficult or impossible for the

applicant to live in Ceylon according to the laws of Ceylon; and

(c) he had to renounce any citizenship rights in any other country which he may have acquired.

Of these requirements, the most important was the special residential qualification referred to in clause (2) of this paragraph. This qualification consisted of the minimum period of residence specified below, followed by an uninterrupted residence in this country thereafter up to the date of the application for registration :

The minimum period is—

(*a*) in the case of an unmarried person or a person whose marriage has been dissolved by death or divorce, ten years of uninterrupted residence in Ceylon before the first day of January, 1946, and

(*b*) in the case of a married person, seven years of such residence.

The Citizenship Act, No. 18 of 1948, seeks also to prevent dual citizenship[16] and to provide for the loss of Ceylon citizenship. It specifies a number of circumstances in which citizenship by registration may be lost and of these the most significant, in the writer's view, is the power of the Minister of Defence and External Affairs to declare by order that a person shall cease to be a citizen of Ceylon if he "has so conducted himself that his continuance as a citizen of Ceylon is detrimental to the interests of Ceylon."[17]

Among the other interesting features of the citizenship law of this country is the fact that a citizen of Ceylon is not a British subject or Commonwealth citizen under the law of Ceylon, although a citizen of Ceylon in the United Kingdom, by virtue of his Ceylon citizenship, is a British subject or a Commonwealth citizen[18] and as such entitled to enjoy various civic and political rights in the United Kingdom. In this connection, it should be observed that a British subject in Ceylon though not a citizen of Ceylon is also not an alien.[19]

CHAPTER III

THE QUEEN, THE GOVERNOR-GENERAL AND MEMBERSHIP OF THE COMMONWEALTH

The Governor is the keystone of the government arch in a colony but the Governor-General in a Dominion or in a country which has secured full responsible status within the Commonwealth may be regarded as a decorative piece in the governmental structure. Nevertheless the Governor-General is a part of that structure and therefore it is necessary in a constitutional study such as this to provide a description of the nature of his office and powers.

The Governor-General

The written law relating to this office in Ceylon is embodied in the Constitution, the Ceylon (Office of Governor-General) Letters Patent, 1947 and the Royal Instructions. 1947.[20]

The office itself is constituted by Letters Patent and appointments to the office are made by Commission under the Royal Sign Manual and Signet and such appointments hereafter will bear the countersignature of Ceylon's Prime Minister.[21] Before the Governor-General enters on the duties of his office, it is his duty to have the Commission appointing him as such to be read to him in the presence, of the Chief Justice, or in his absence, of some other Judge of the Supreme Court and of as many members of the Cabinet as can attend. He is then obliged to take the oath of allegiance and the official oath before such judge.[22]

Under section 5 of the Constitution his salary has been fixed at £8,000 a year and charged on the Consolidated Fund.[23] That section also stipulates that the salary of a holder of such office cannot be altered during his tenure of office, but although this provision has been inserted to secure a permanence in the matter of salary, this object will not be achieved for that provision can be amended like any other provision of the Constitution, if the requisite majority prescribed by section 29 (4) of the Constitution is obtained.

If there is a vacancy in the office of Governor-General or if he is absent or incapable of performing the duties of his office, a successor can be appointed by observing the same procedure that is followed for the appointment of the Governor-General.[24] In the event of such an appointment not being made, the person for the time being holding the office of Chief Justice is required to act for him, an inappropriate and embarrassing requirement, as it is possible that such person's actions as the chief executive officer in the country may come up for judicial scrutiny. It is therefore preferable if a person is appointed expressly to act for the Governor-General, or a Deputy Governor-General is appointed if the circumstances are appropriate for the Letters Patent provide for the appointment of a Deputy. Incidentally it may here be mentioned that though the present Constitution of Ceylon has been in operation for over ten years no appointment of a Deputy Governor-General has been made. It may even be useful to include in any new republican Constitution, as in India, for the appointment of a Vice-President.

Following the pattern in the Unitd Kingdom where the Sovereign is the formal head of the armed forces, the Governor-General is also Commander-in-Chief of Ceylon and its dependencies and is so referred to in the Constitution, the Letters Patent constituting his office and the Royal Instructions issued to him. Although these documents refer to him as having certain powers over the island's dependencies, Ceylon does not appear to have any dependencies. The Maldive Islands have been sometimes incorrectly regarded as such but they are not a part of Ceylon. They are in fact an independent Republic, with Britain having certain obligations in the matter of defence and external affairs.

The Governor-General like the Sovereign is the "custodian of social ethics" to use the expression of one writer, and hence there is a great obligation on him as well as on the members of his family to observe the highest moral standards and to set an example of clean living and high conduct. This aspect of the matter was well summarised by Dr. N. M. Perera, the member for Ruwanwella, when he said in the House of Representatives on July 9, 1954 in the course of a debate on a motion that the Governor-General "must.....be a sort of beacon light that will shed lustre and light in our social and political life....",[25] and is one that is very relevant

in the context of Ceylon today as standards in the country are very lax. Although his powers a. the succeeding paragraphs will show are formal and exercised on ministerial advice, his influence can be considerable as he, if the choice is a good one, becomes in the course of time a reservoir of experience. In countries like Ceylon it may be difficult to appoint a suitable person as Governor-General who has had little or no connexion with politics but once a Governor-General is appointed he should endeavour to divest himself of earlier political associations and act as impartially as is humanly possible. In the social sphere, like the sovereign in constitutional monarchies, the volume of his work is considerable covering such diverse duties as laying the foundation stones of public buildings, entertaining visiting dignitaries, being present at parades, fancy bazaars and prize-givings, opening agricultural and industrial centres, and addressing academic and other cultural institutions.

His more important powers can be grouped under the two following headings: those powers which he exercises on behalf of the sovereign and those powers which have been conferred on him expressly to be exercised by him independent of outside agencies.

Among the powers which he exercises on behalf of the sovereign are the opening of Parliament, the delivery of the throne speech, the giving of assent to Bills, certain powers specified in the Letters Patent constituting the office of Governor-General relating to appointments, the grant of pardon and the disposal of lands and the power of executing and signing certain instruments which ordinarily require the sovereign's signature.

In Ceylon although the customary practice has been for the Governor-General to open Parliament after a prorogation or dissolution of Parliament and to deliver the speech from the throne, there have been two occasions in the last ten years when these acts were performed by other persons : the Duke of Gloucester opened Parliament on behalf of his brother King George VI on February 10, 1948,[26] and delivered the speech from the throne and Her Majesty Queen Elizabeth II opened Parliament and delivered the speech on April 12, 1954.[27] In the case of assent to Bills, the part played by the Governor-General is expresed in section 36 of the Constitution, which

requires that Bills passed by the two Chambers of Parliament "shall be presented to the Governor-General, who may assent in His Majesty's name, or refuse such assent. Under Article 9 of the Letters Patent, the Governor-General is empowered to constitute and appoint in the name of the sovereign and on his behalf "all such Judges, Commissioners, Justices of the Peace and other officers as may lawfully be constituted or appointed by Us, and ... may ... dismiss or suspend from the exercise of his office any person in Our service in the Island, or take other disciplinary action as respects any such person." Under Article 10 of the Letters Patent, the Governor-General in the name and on behalf of the sovereign can pardon convicted offenders or remit in whole or in part their sentences or any other penalties imposed on them. Further, under Article 11 of those Letters Patent, the Governor-General can in the Queen's name and on her behalf "execute... grants and dispositions of any lands ... within the Island which may be lawfully granted or disposed of by Us."

Further the Governor-General by virtue of section 3 of the Royal Executive Powers and Seals Act, No. 43 of 1954, can, "if for any reason the sovereign's signature to an instrument requiring the Sovereign's Sign Manual cannot be obtained, or whenever the delay involved in obtaining the sovereign's signature to such instrument would, in the opinion of the Prime Minister, frustrate the object thereof or unduly retard the despatch of public business, ... execute and sign such instrument on behalf of the sovereign."

The powers the Governor-General exercises independent of outside agencies include—

(*a*) a collection of powers customarily associated with the operation of Cabinet Government such as the summoning, proroguing and dissolving of Parliament and the appointment of the Prime Minister, the other members of the Cabinet and the Parliamentary Secretaries; [28]

(*b*) the making of certain appointments provided for in the Constitution ; and

(*c*) certain powers derived from ordinary legislation and exercisable by him in emergencies.

Among the appointments he is empowered to make under the Constitution are the appointment of six members of the

House of Representatives to represent interests, not represented or inadequately represented in the House, the nomination of one-half of the Senate, and the appointment of the members of the Public Service and Delimitation Commissions, Supreme Court Judges, Permanent Secretaries, the Secretary to the Cabinet and the Auditor-General.[29]

Under the Public Security Ordinance, No. 25 of 1947, and the Army, Navy and Air Force Acts, the Governor-General possesses certain powers to deal with emergencies. As the Governor-General in view of a serious public emergency was compelled to exercise those powers in Ceylon in the last week of May, 1958, and as certain emergency regulations made under that Ordinance are at the time of writing still in force, it will be useful at this stage to examine some of the more important provisions of that Ordinance and those Acts in their form at the time of that emergency. Under section 2 (1) of that Ordinance, during a public emergency or in the event of such an emergency being imminent, the Governor-General is empowered, if he considers it necessary in the interests of public security and the preservation of public order or for the maintenance of supplies and services essential to the life of the community, to bring into operation, by Proclamation published in the Gazette, the essential provisions of the Ordinance. The fact of the issue of the Proclamation has to be communicated forthwith to Parliament, and those provisions continue in operation only for one month unless a fresh Proclamation is issued. The provisions of the Ordinance that are brought into operation relate to the enactment of regulations by the Governor-General, on the recommendation of the Prime Minister, for the purpose of controlling and bringing to an end the emergency. Such regulations usually include extraordinary measures relating to search, detention, arrest, the requisitioning of articles and the censorship of news. Further, those regulations can be amended or revoked by a resolution of the House of Representatives. It will, however, be observed that despite the emergency, the law provides the following useful democratic safeguards : the early communication of the Proclamation to Parliament, the continuance of the emergency for monthly periods, the enactment of the regulations being dependent on the recommendation of the Prime Minister, the civilian head of the Government and the power of the House of Representatives to amend or revoke any of the regulations. Under the Army, Navy and

Air Force Acts the Governor-General has the power to call out, by Proclamation, certain units in times of emergency for the performance of essential civilian duties but, as in the case of action taken under the Public Security Ordinance, the reason for the issue of such Proclamation has to be communicated forthwith to Parliament.

The Governor-General exercises the powers conferred on him, with the exception of the appointment of the Prime Minister, on ministerial advice. In the case of the appointment of the Prime Minister the Governor-General acts on his own discretion. In the exercise of this discretion, however, he is obliged to observe certain conventions and rules. This requirement to follow ministerial advice is derived from section 4 (2) of the Constitution which stipulates that the "powers, authority and functions vested in His Majesty or the Governor-General shall . . . be exercised as far as may be in accordance with the constitutional conventions applicable to the exercise of such powers, authority and functions in the United Kingdom by His Majesty."

During the period 1948 to 1958 Ceylon has had three permanent Governors-General, two of whom were Englishmen.

Ceylon's first Governor-General was Sir Henry Monck-Mason Moore who was Governor of Ceylon when the country secured Dominion Status. Sir Henry was no stranger to the Ceylon political scene as he had spent his first years of official life as a cadet in the Ceylon Civil Service holding his first appointment in the service in 1910. Thereafter, except for a short period during the First World War, he remained in the Island until 1922, occupying different posts in the service, including that of Additional Assistant Colonial Secretary. In 1944 he returned as Governor of Ceylon and held that post until his elevation as Governor-General in February 1948. It might have been expected that his early Ceylon associations connected with the operation of a typical Crown Colony Constitution followed by a period as Governor in a Constitution where the Governor still had considerable reserve powers would have made him unsuitable to play the part of Governor-General in a newly created Dominion. But he performed his duties with perfect constitutional propriety. His relations with his Ministers were cordial and he was popular with the people.

His successor Herwald Ramsbotham, first Viscount of Soulbury, was also no stranger to Ceylon. He had spent some months in Ceylon in 1944 and 1945 as Chairman of a Commission sent by the United Kingdom Government to examine the constitutional structure of the country and suggest substantial reforms. The present Constitution of Ceylon is largely based on the recommendations of that Commission. Hence he was well suited for the post of Governor-General. Like Sir Henry he too can generally be regarded as having performed the duties attached to his office in accord with the customary conventions associated with the office of a Dominion Governor-General. There has, however, been some doubt as to whether he followed the appropriate constitutional procedure when he made his first appointment of Mr. Dudley Senanayake as Prime Minister of Ceylon. This matter will be considered in detail in a subsequent chapter. Distinguished in appearance and courtly in manner he proved an admirable host to the Queen and the Duke of Edinburgh when they visited Ceylon in 1954. Possessed of a fine mind nurtured in the humanities he made every effort to make himself acquainted with the indigenous culture, arts and crafts and, thanks to his patronage, there began an increased interest in these matters.

Lord Soulbury was succeeded by Sir Oliver Goonetilleke in July 1954. Sir Oliver is the first Ceylonese permanent holder of the office of Governor-General. Unlike some of other Ceylonese who have held high political and public office, Sir Oliver was not born to the purple. His career can be divided into two parts: a long period as a public servant the main part of which was spent in the Auditor-General's Department of which he became the head in 1931 and a short period in politics during which he was Minister of Home Affairs and Rural Development, Minister of Agriculture and Food and Leader of the Senate, and Minister of Finance. Among the other offices he held were that of Civil Defence and Food Commissioner during the period of the Second World War and that of Ceylon's High Commissioner in the United Kingdom during the years 1948 to 1951. He was closely associated with Mr. D. S. Senanayake, the first Prime Minister of Ceylon, in the latter's efforts to secure Dominion Status for the country. Sir Oliver is tactful, suave and extremely industrious and has a happy knack of dispensing with red tape. He has also the gift of getting things done swiftly and

efficiently during a crisis, amply proved in his work as Civil Defence and Food Commissioner during the Second World War and in his work during the public emergency in May and June 1958. Although connected by ties of friendship, sentiment and possibly even preference with the U.N.P.[30] leaders of yesterday, he is giving his best to the Government of today and thus laying the correct foundations for the proper exercise of powers by future holders of the office of Governor-General. Both as a public officer and as a politician he has served his country well.

The Queen, etc.

During the period 1948 to 1958, the sovereign had certain powers in relation to Ceylon which could not be delegated to any officer or authority even the Governor-General. Among such powers were the making of treaties, the declaration of war, and the appointment of ambassadors and other diplomatic and consular agents and the appointment of the Governor-General. In all these matters Her Majesty, like the Governor-General, acts on the advice of Her Ministers in Ceylon. This position has been given statutory expression in section 4 (2) of the Constitution, the text of which appears earlier in this Chapter.

Ceylon's independent status within the Commonwealth was given further statutory recognition by the enactment of the Royal Titles Act, No. 22 of 1953, and the Royal Executive Powers and Seals Act, No. 43 of 1954. Under the first Act, the Parliament of Ceylon gave its assent to the Queen adopting in relation to Ceylon of the title "Elizabeth the Second, Queen of Ceylon and of Her other Realms and Territories, Head of the Commonwealth." By virtue of section 2 of the second Act instruments under the Sovereign's Sign Manual had to be countersigned by the Prime Minister.

By virtue of the fact that the character of the Commonwealth has changed from an association of white peoples with its centre at Westminster to an association consisting predominantly of persons belonging to the coloured races with its centre somewhere in India, there has been some agitation for the inclusion of representatives of such races in the Royal Household and for the periodic presence and residence of the sovereign in parts of the Commonwealth outside Great

Britain. It will be useful if the advisers of Her Majesty pay some attention to this agitation.

A Joint Select Committee of the two Chambers of Parliament was appointed in 1957 to make recommendations, among other matters, in regard to the establishment of a Republic in Ceylon. The question of the establishment of a Republic raises the significant matter of the manner of appointment of its head, the President, and his powers.

In most republican constitutions of today one of the following methods are followed for the selection of the President :—

(1) the election of a President by the participation of elected members of the legislative assemblies of the states or of representatives of the states, constituting the Republic,
(2) the election of a President by the popular vote of the people expressed either directly or indirectly ; and
(3) the election of a President at a joint sitting of the two Houses of Parliament.

Method (1) by its nature is only suitable in a federal constitution. It is true that the most influential Ceylon Tamil party of today is strongly advocating a federal structure but all the other important political parties, whether of the right or the left do not favour the conversion of Ceylon into a Federal State and, hence, it is the writer's view that Ceylon will continue to have a unitary constitution. Method (2) is the method by which the President is elected in both Eire and Finland. In Eire the President is elected directly by popular vote while in Finland the people elect an electoral college consisting of three hundred persons who in turn elect the President.[31] It is the writer's view that this method is also unsuitable for Ceylon as elections of this nature can affect the impartiality of Presidents and are expensive both to the State and the candidate. Further, responsible persons in Ceylon are not quite so sure of the usefulness of adult suffrage for the choice of holders of office and representatives in local and legislative bodies as they were some years earlier. The third method appears to me to be the most suitable one for countries like Ceylon. It is not expensive and the electorate is a selective one representative of all the important parties in the country.

The earlier British connexion and the familiarity of the country's leaders with the working of the English form of Cabinet Government seem to indicate that the President, if such an office is created for Ceylon, should possess similar powers to those of the Queen in the United Kingdom. The exercise of any greater powers may result in an unhealthy and embarrassing clash between him and the Prime Minister.

Membership of the Commonwealth

Full responsible status does not necessarily result in membership of the Commonwealth. Mr. Lennox-Boyd, Secretary of State for the Colonies, in a statement which he made on May 11, 1956, in relation to Ghana made this position clear. In that statement he declared that "if a general election is held Her Majesty's Government will be ready to accept a motion calling for independence within the Commonwealth passed by a reasonable majority in a newly elected Legislature and then to declare a firm date for the purpose. Full membership of the Commonwealth is, of course, a different question, and a matter for consultation between all existing members of the Commonwealth." Ceylon, however, has been accepted as a member of the Commonwealth and its Prime Minister has periodically represented the country at the annual Prime Ministers' conferences in England.

The question has been and is being asked whether there are any distinct advantages in ex-colonial countries like Ceylon being members of the Commonwealth. The position has been made difficult by the existence of such matters as the apartheid policy in South Africa which countries such as Ceylon strongly disapprove and by the preference of those countries to keep clear of the political alignments and groupings of the white Dominions in the sphere of foreign affairs. Further, the strong historical ties which link the other Dominions to the Mother Country and the Queen are missing in the case of the non-white Dominions. It is, however, the writer's view that the advantages accruing to Ceylon from membership of the Commonwealth are greater than the benefits which she may enjoy by being outside it. Probably, the greatest advantage which a country gets from such membership is her capacity to obtain significant information on a number of matters and to consult or secure the advice of the other members. Further, it is able to make use of the diplomatic personnel of the other members, particularly the United

Kingdom, for purposes of representation at international conferences and, also, such membership makes available the vast defence resources of a powerful association of states in time of war or in cases of attack. Just as Ceylon gains out of this association, the other members too derive advantages out of Ceylon's membership, for, apart from the strategic value of Ceylon in any Commonwealth defence arrangement, she will be able to provide the other members of Commonwealth with useful information obtained through her connection and ties with Asiatic powers, which will otherwise be unobtainable to such members. It may be useful in this connection to consider the matter of the grouping of different parts of the Commonwealth for particular purposes, such as a special smaller association of the Asiatic members of the Commonwealth or a grouping of members of the Commonwealth particularly interested in immigration and emigration matters. Sometimes, it has been found in practice that Prime Ministers of certain Commonwealth countries are unable, owing to the exigencies of the situation in these countries, to be present at the annual Prime Ministers' Conferences in the United Kingdom. If, however, there are small groups of Commonwealth countries, periodic meetings between the members of those groups will be both easier and practicable. Finally, one might say with Pandit Nehru that "membership of the Commonwealth since it involves no commitments, can do no harm."

CHAPTER IV

THE CABINET

The Cabinet was an institution of government which was alien to Ceylon in October 1947, when Mr. D. S. Senanayake, constituted his first Cabinet. The Donoughmore Constitution did not provide for such an institution. The Board of Ministers established under that Constitution consisted of the Chairmen of the Executive Committees into which the State Council, the legislature of the day, was divided for the performance of its executive functions. These Chairmen were selected by their respective Executive Committees, the Committees themselves consisting of a heterogeneous collection of Councillors linked by no common political philosophy. Further, the Board was only required to be collectively responsible to the Council for matters of finance. This heritage has made difficult the smooth working of the existing constitution.

The provisions of the Constitution relating to the Cabinet

The absence of earlier associations with the operation of Cabinet Government made it necessary for the inclusion in the Constitution itself of the customary principles relating to such Government. Thus the Constitution expressly provides for the method of appointment of the members of the Cabinet and Parliamentary Secretaries, for the Head of the Cabinet to be the Prime Minister, for the observance of the principle of collective responsibility to Parliament, and for such members and Secretaries to hold office during Her Majesty's pleasure. Further, it makes it obligatory that every Cabinet should have a Minister of Justice and a Minister of Finance and that at least two Ministers will be members of the Senate, of whom one is required to be the Minister of Justice. Ministers and Parliamentary Secretaries are given four months within which to secure seats in Parliament and it also stipulates that the Prime Minister should be in charge of the Ministry of Defence and External Affairs.[32]

The Constitution does not expressly indicate the part played by the Prime Minister in the choice of his Cabinet colleagues.

Section 46 (1) of the Constitution, which is the relevant provision, merely states that the "Cabinet of Ministers shall be appointed by the Governor-General," but for the purpose of ascertaining the rules observed by the Governor-General in choosing the Prime Minister and in appointing as his Cabinet colleagues persons recommended by him, one has to depend on section 4 of the Constitution, which applies to Ceylon the conventions of the United Kingdom.

Appointment of Prime Minister

During the period 1948 to 1958, there have been five appointments of Prime Ministers in Ceylon : the appointment of Mr. D. S. Senanayake after the General Election of 1947, the appointment of his son Mr. Dudley Senanayake 4 days after his father's death, his second appointment after the General Election of 1952, the appointment of Mr. J. L. Kotelawala, in October 1953, and the appointment of Mr. S. W. R. D. Bandaranaike, after the General Election of 1956. The convention which the Governor-General should observe in Ceylon in his choice of the Prime Minister is the British convention of appointing the acknowledged leader of the majority party in Parliament or the person acknowledged as such by a coalition which commands a majority there. In the application of this convention, the Governor-General is generally assisted by the results of a General Election or the advice of the previous Prime Minister expressed at the time of his resignation. In the choice of Mr.D.S.Senanayake, Mr.Dudley Senanayake after the election of 1952 and Mr. Bandaranaike, the Ceylon Governor-General was assisted by the results of a General Election. Although the choice of Sir John Kotelawala in October, 1953, was not dependent on a General Election, it was clear at that time that he was the recognised leader of the majority party in Parliament. In regard to the first appointment of Mr. Dudley Senanayake, however, there has been controversy. An objective study of the facts of the time would show that there was a certain amount of doubt in some quarters whether he was the recognised leader of the majority group in Parliament. In such a case, the usual practice to follow is for a formal meeting of the majority party or majority group in Parliament to be summoned and for the members of such party or group to indicate their mind. Mr. J. L. Robson referring to the practice in New Zealand where the usage in regard to this matter is similar to that in Ceylon stated that the "constitutional convention that has evolved is that the caucus

of the Government party will elect a new leader and will thus indicate to the Governor-General whom he should commission to form a new Ministry . . . "[33] This convention was recently observed in South Africa on the death in August 1958, of Mr. J. G. Strijdom, Prime Minister of South Africa, when a meeting of the party caucus of the Nationalist Party, the majority party in Parliament, was convened to elect a successor, and the choice of that meeting, Dr. H.D. Verwoerd, was sworn in as the Prime Minister. Had this convention been followed in Ceylon on that occasion, the dissatisfaction of certain sections at the first appointment of Mr. Dudley Senanayake would not have been manifested.[34] Whatever constitutional irregularities there may have been in this appointment, it was cured by the dissolution of Parliament at the request of Mr. Dudley Senanayake shortly afterwards. When he was asked to form a Government for the second time, it was as the acknowledged leader of the party in power in Parliament, determined on the results of a general election.

There is also provision in the Constitution under which an Acting Prime Minister can be appointed. Section 49 (3) of the Constitution provides for the appointment by the Governor-General, whenever a Minister is for any cause unable to perform the functions of his office, of a person to act in his place. As "Minister" in this provision, by reason of the terms of section 46 (2) of the Constitution, is wide enough to include a Prime Minister the power contained in that provision enables such an appointment.

Composition of the Cabinet

In November 1958, the Cabinet consisted of—

(1) the Prime Minister who was also the Minister of Defence and External Affairs,
(2) the Minister of Finance,
(3) the Minister of Lands and Land Development,
(4) the Minister of Justice,
(5) the Minister of Industries and Fisheries,
(6) the Minister of Agriculture and Food,
(7) the Minister of Labour, Housing and Social Services,
(8) the Minister of Home Affairs,
(9) the Minister of Local Government and Cultural Affairs.

(10) the Minister of Posts, Broadcasting and Information,
(11) the Minister of Transport and Works,
(12) the Minister of Commerce and Trade,
(13) the Minister of Health,
(14) the Minister of Education, and
(15) the Minister of Nationalised Services and Road Transport.

In regard to the assignment and distribution of subjects, there were very few substantial differences between this Cabinet and the Cabinets of the other three Prime Ministers. Except for the addition of one portfolio recently, that of Minister of Nationalised Services and Road Transport, and the reallocation of certain subjects like "lands", "social services", "housing" and "fisheries" from one Ministry to another, the Cabinets were constituted, in the matter of subjects and functions, on similar lines. In one respect, however, there was a substantial difference between the present Cabinet and the preceding ones. In all the other Cabinets, there was minority representation, for instance, two Ceylon Tamils and one Muslim ; but in this Cabinet there is no Tamil representation. Further, in the other governments, minority interests were taken into account in the choice of Parliamentary Secretaries,[35] but in the present government there are no members of the minority communities among them. In certain quarters it has been thought that a Cabinet of 15 is too large for a small country like Ceylon. In this connexion, it should be noted that New Zealand, with a population of one-third the size of Ceylon, had in 1958, a Cabinet of 16, and Australia and S. Africa, with populations slightly larger than that of Ceylon, had in the same year Cabinets of 16 and 14. Another matter of some interest is the fact that the Prime Minister is also in charge of the subjects Defence and External Affairs. It may be a good thing, if the Prime Minister is relieved of those subjects and they are assigned as in other countries to a separate Minister or Ministers. Such a change can only be effected by an amendment of the Constitution.

Collective Responsibility, etc.

To English observers, bred in the traditions of British Cabinet Government, Ceylon does not appear to be observing strictly to the principles of collective responsibility. There has been from time to time during the last decade individuals

or groups within the Ceylon Cabinet expressing outside the Cabinet room opinions different from established Cabinet policy, and Prime Ministers have had to draw the attention of members of their governments of the importance of observing that principle, if Cabinet Government is to be properly conducted. In a Note on collective responsibility issued by Mr. D. S. Senanayake and dated April 14, 1948, he furnished for the benefit of members of his Government a classic summary of his views on the matter, which any British Prime Minister would have been proud of. In that Note he stated that "differences of opinion between Ministers should not be discussed in public but should be brought before the Cabinet for decision . . . Since it is the function of Opposition parties to exploit differences of opinion among Ministers in order to weaken the Government's popular support, Ministers should . . . refrain from any expressions of opinion which appear to suggest a difference within the Government. The fact that one Minister seems to have broken these conventional rules is not a justification for a similar breach by another Minister. It is a matter for the Prime Minister, who will first ascertain whether the former Minister has been properly reported . . . Ministers accept collective responsibility for all the decisions of the Government whether they have come before the Cabinet or not. They are therefore expected to vote with the Government even if they opposed the decision in the Cabinet or knew nothing about it because it did not come before the Cabinet. A Minister who is defeated in the Cabinet and who does not resign necessarily accepts the decision of the majority and must support it". There is a tendency among foreign observers who study the Ceylon political scene to exaggerate the significance of any difference which they may note or hear about among members of the Government. Politics in Ceylon, as the country is a small place, and as everybody seems to know everybody else, is a far more open matter than in other countries. Further, as in eighteenth century England, people rely much more on back-stair gossip than is done in other places and individuals who pretend to know about what is happening are much more numerous than elsewhere. In point of fact the indications are that Ceylon politicians have realised the significance of collective responsibility for the efficient working of Cabinet Government. Throughout the last ten years many Ministers, when they have found it difficult to remain in the Cabinet in view of pronounced differences with the accepted Cabinet view, have resigned. Thus, Mr. C.

Suntheralingam, Minister for Commerce and Trade, resigned on December 14, 1948, from the Cabinet of Mr. D. S. Senanayake, and Mr. S. W. R. D. Bandaranaike the then Minister of Health and Local Government resigned from that Cabinet in July, 1951. Similarly, Mr. R. G. Senanayake, Minister of Commerce, Trade and Fisheries in Sir John Kotelawala's Cabinet resigned from that Cabinet in July, 1954, while Mr. S. Natesan, the Minister of Posts and Broadcasting, resigned from the same Cabinet in January, 1956. Mr. Suntheralingam, Mr. Bandaranaike and Mr. Natesan after resignation, with the approval of the Prime Minister, gave the Ceylon House of Representatives a reasoned statement for their resignations. In fact, the sensitiveness of certain Ceylonese leaders to this Cabinet practice is well shown in the reprimand given by Mr. D. S. Senanayake to Mr. Suntheralingam in respect of his conduct in not resigning from the Cabinet immediately before abstaining from voting on the second reading of the Indian and Pakistani Residents (Citizenship) Bill. Mr. Senanayake in a letter to Mr. Suntheralingam dated December 11, 1948, stated as follows :—"As you are undoubtedly aware, the proper procedure for a member of the Cabinet, so long as he remains in the Cabinet, is to vote with the Government on any Government measure that comes before the House. If any Minister does not wish to associate himself with any particular measure that is brought forward by the Cabinet he must not appear as a member of the Cabinet at the time the measure is taken up and his clear duty then is to send in his resignation."[36] Mr. Suntheralingam, also a keen believer in the need for the observance of the correct constitutional proprieties, resigned almost immediately afterwards. Although there has been a growing tendency for this rule and other Cabinet practices to be observed, such practices should be consistently observed if Parliamentary Government is to become suitably established in the country.

Another important subject relating to the Cabinet is the principle of Cabinet secrecy. Two important aspects of that principle are the obligation that proposals before the Cabinet for discussion should not be disclosed until the Cabinet has approved those proposals and the requirement that Cabinet Ministers remaining in the Cabinet should not divulge their opposition to a Cabinet decision during a Cabinet meeting after the decision has been taken. In countries like Ceylon where the attraction for publicity is great, members of the

Government are tempted to divulge Cabinet proposals and decisions before those matters should be made public, but such members would do well to control themselves in this respect. In fact, all four of Ceylon's Prime Ministers appear to have repeatedly reminded their colleagues of the need to strictly observe this principle.

Cabinet Government in Ceylon will be considerably strengthened if there is provision, as in India and South Africa, for Ministers who are members of one House to appear and speak in the other House in support of their policies, without having the right to vote.

Parliamentary Secretaries

Reference has already been made to the office of Parliamentary Secretary. In Mr. Bandaranaike's Government there were 15 Parliamentary Secretaries in November 1958, while Mr. D. S. Senanayake had 10 Parliamentary Secretaries, Mr. Dudley Senanayake 9, and Sir John Kotelawala 14 at the beginning of his Government and later 11. The Constitution, in section 48, provides that, if Parliamentary Secretaries are appointed at all, there should be not more than two in the Senate, presumably to attend in the Senate to matters in the charge of Ministers who are not members of that body. Further, in view of the requirement also in that section that not less than two Ministers should be in the Senate, one of whom should be the Minister of Justice, there should be at least two Parliamentary Secretaries in the Lower House to attend in that House to business relating to the powers and duties of those two Ministers. These requirements make it essential that there should be at least four such Junior Ministers, but in the writer's view, however, four is hardly adequate for the functions which they can and ought to discharge. Among the duties they can perform is the giving of assistance to their Ministers, particularly busy Ministers. For instance, some Ministries, like Labour, Housing and Social Services, are concerned with a multitude of subjects and functions and, in a properly coordinated Ministry dealing with these matters, there will be a distribution of these between the Minister and his Parliamentary Secretary. However, in a well conducted government, the parliamentary duties of Minister and Parliamentary Secretary are distributed, the Minister opening a debate on a matter relating to his Ministry and his Parliamentary Secretary winding up the debate, or the Parliamentary

Secretary being responsible for answering questions in regard to the work of such Ministry. Further, they can relieve Ministers by presiding over meetings of departmental Committees appointed occasionally to coordinate work within the Ministries. In Ceylon, it appears as if these government men are not used as much as they should. If they are, they can prove to be a useful reservoir from which future Ministers are recruited.

They are in fact part of the Government and resign along with the other members of the Cabinet.

Cabinet Secretariat

An essential part of Cabinet organisation is the Cabinet Secretariat. The chief officer of that Secretariat is the Secretary whose appointment and duties are specified in the Constitution. Under section 50 of the Constitution he is to be appointed by the Governor-General, and that section also provides that he is to be in charge of the Cabinet Office, and that he is, in accordance with such instructions as may be given to him by the Prime Minister, to summon meetings of the Cabinet, to arrange the business for and keep the minutes of such meetings and to convey the decisions of the Cabinet to the appropriate authorities for necessary action. When this Secretariat was first established in Ceylon an important Treasury official, at first the Deputy Secretary to the Treasury and later the Permanent Secretary for Finance, performed the duties of the Secretary to the Cabinet in addition to his other tasks. This Treasury official was assisted by an Assistant Secretary. It was soon realised that there was no real advantage in a Treasury connection for the Cabinet Secretariat and for some time now in Ceylon there has been a full-time officer functioning as Cabinet Secretary. It should be noted that Ceylon does not follow the British practice of keeping a record of the arguments put forward in the Cabinet for and against important proposals discussed there. The record that is kept is a record of the decisions actually taken. No matter affecting different Ministries is placed before the Cabinet without previous consultation and agreement between the Ministries concerned and an indication in the relevant Cabinet paper that such consultation and agreement has been reached. If such agreement is not reached, a written statement of the view of the Ministries concerned prepared by the Permanent Secretaries to those Ministries are attached to the Cabinet

paper, so that the Cabinet as a whole may resolve the differences between the Ministries and reach a decision. All proposals submitted to the Cabinet which involve finance have attached thereto, a memorandum prepared by the Treasury setting out the financial implications of the proposals. Further, as in England, there are Cabinet committees. These have taken in Ceylon the form of ad hoc committees and permanent committees. Among the ad hoc committees appointed was the Cabinet committee appointed in 1954 to examine, and report on, certain matters relating to the Indo-Ceylon problem, with special reference to the question of immigration, and the committee appointed in May 1956, by the Cabinet to examine the unemployment problem. An example of a permanent committee of the Cabinet is the committee entrusted with the preparation of the list of the Bills that are to be introduced each session and the determination of priority among those Bills. This last sub-committee has also the task of carefully examining the various provisions of Bills and of drawing the attention of the Cabinet to any provisions therein that may be unusual or controversial.

Four Prime Ministers

Since independence, Ceylon has had four Prime Ministers. Mr. D. S. Senanayake, his son Mr. Dudley Senanayake, Sir John Kotelawala and Mr. S. W. R. D. Bandaranaike. There are many similarities in background and outlook among these leaders. They belonged to the landed aristocracy, were of the same community, caste and religion and had been educated in the same kind of school. The three younger men had also the advantage of being up at an English University, two at Cambridge and one at Oxford. They all belonged in fact to the English-educated class who had wrested political power by constitutional means from the British Government and who had become its heirs, exercising its powers and charged with its responsibilities. All four of them had a long political novitiate before they came to be appointed as Prime Ministers. Mr. D. S. Senanayake's connections with legislatures going back to 1924, when he was a member of the Ceylon Legislative Council, a body which functioned in a Constitution where the Ceylonese possessed considerable powers of criticism without any responsibility for government. All of them were members of the State Council, the legislature constitued under the Donoughmore Constitution, Mr. Dudley Senanayake's membership going back to 1936, while the membership of the

other three went back to 1931. All four of them before they were Prime Ministers held ministerial office, the three older men holding such office during the operation of the Donoughmore Constitution. In politics, in the pre-independence era, they were all stout champions of Dominion Status for their country. They have consistently upheld the democratic institutions of government and have been essentially non-communal in outlook. Their patriotism, sincerity and integrity have been undoubted. In certain respects their policies, however, differed, for while Mr. D. S. Senanayake and Sir John Kotelawala, followed a right of centre policy, the policies of the other two were socialistic and definitely left of centre. In foreign affairs, while Mr. D. S. Senanayake and Sir John Kotelawala pursued an anti-communist line, Mr. Bandaranaike observed an enlightened neutralism.

CHAPTER V

SENATE

The Senate is an institution peculiar to the existing Constitution, for a second chamber was no part of any of Ceylon's earlier Constitutions. Among the potent reasons for its establishment was the belief that it would effectively safeguard minority interests, a view which later events have proved to be wrong.

The Provisions in the Constitution relating to the Senate[37]

Most of the essential provisions relating to the Senate were embodied in the Constitution. That document provided that the Senate was to consist of thirty persons, fifteen of whom were to be elected by the other Chamber and fifteen to be nominated by the Governor-General. The nominations on the first occasion were to be held after the selection of the elected Senators, and, therefore, the Governor-General was empowered, whenever there was a vacancy among the appointed Senators, to fill that vacancy, except when there was at the same time a vacancy among the elected Senators when he was required to defer his nomination until the elected Senator was chosen. The elected Senators were chosen according to the principles of proportional representation, each voter having a single transferable vote. In the nomination of the appointed Senators, the Governor-General was expressly required to nominate persons who "he is satisfied have rendered distinguished public service or persons of eminence in professional, commercial, industrial or agricultural life, including education, law, medicine, science, engineering and banking." In the exercise of this function, however, the Governor-General was obliged to act on the advice of the Prime Minister. Apart from the last consideration, applicable in law only to appointed Senators, the qualifications required, subject to one significant exception, were similar to those required for a member of the other House, for by section 12 of the Constitution it was provided that "a person who is qualified to be an elector shall be qualified to be elected or appointed to either Chamber." The exception consisted of an age requirement that candidates for membership of the

Senate should not be less then thirty-five years of age. Their tenure of office was provided for in sections 8 and 73 of the Constitution. Section 73 specified the term of office of the first Senators while the earlier section laid down the general law on this matter. In the result in the case of the first set of Senators groups of ten each, determined by lot, were to retire after two years, four years and six years, as the case may be. In the case of Senators appointed thereafter, except those who are appointed to fill a casual vacancy, their term of office is six years with a third of their number retiring every second year. Those appointed to fill a casual vacancy are appointed for the unexpired portion of the term of office of their predecessor. Section 8 also stipulates that the Senate is to be a permanent body and that the dissolution of Parliament should not affect the tenure of office of Senators. This provision which may appear to be illogical only means that the composition of the Senate is not affected by dissolution. As a legislative body, however, during the period of dissolution, it will have no functions to discharge.

In respect of powers, the Ceylon Senate has the power of delaying money bills for one month and other bills for a little over one session. The period of a session is determined by the Governor-General acting on the advice of the Prime Minister. Under the appropriate sections, the Speaker of the House of Representatives is given wide powers for he, after consultation with the Attorney-General or Solicitor-General decides whether a bill is a money bill or not, and whether or not, in the case of other bills, the procedure laid down before a Bill is presented to the Governor-General has been complied with and the Bill so presented is substantially the same as the Bill that was originally introduced in the Senate. The Speaker's decision on those matters is subject to no appeal.

The Constitution also provides that matters before the Senate should be decided by a majority of the votes of the Senators present and voting and that the President of the Senate should only exercise his vote if there was an equality of votes. Section 20 of the Constitution fixes the quorum for meetings of the Senate at six.

Composition of the Senate

The composition of the Senate since independence has so far been very representative of the racial groups in the country.

In the first Senate there were eighteen Sinhalese and twelve persons belonging to the minority communities, of whom five were Ceylon Tamils, two were Tamils of recent Indian origin, two were Englishmen, two were Muslims and one was a Burgher. In Mr. Dudley Senanayake's time in July, 1952, there were twenty Sinhalese Senators and ten Senators of the minority communities, of whom five were Ceylon Tamils, two were Tamils of recent Indian origin, one was a Muslim, one was an Englishman and one was a Burgher. In December, 1953, when Sir John Kotelawala was Prime Minister, there were nineteen Sinhalese Senators and eleven Senators of the minority communities, of whom four were Ceylon Tamils, two were Tamils of recent Indian origin, three were Muslims, one was a Burgher and one was an Englishman. In June, 1957, with Mr. Bandaranaike as Prime Minister, there were twenty-three Sinhalese Senators and seven Senators belonging to the other racial groups, of whom four were Ceylon Tamils, two were Muslims and one was a Burgher. It will, therefore, be seen that the rather elaborate constitutional arrangements for securing adequate communal representation achieved the purpose for which those arrangements were devised. Despite such representation, the Senate was ineffective as events later proved to check the passage of communal legislation.

Although in plural societies it is customary to analyse institutions on racial lines, an analysis on the basis of occupation or economic interest also furnishes interesting results. In the first Senate there were seven Senators whose interests were substantially commercial or industrial, five who were lawyers and five whose principal occupation was the management of land or the supervision of estates. In November, 1952, with Mr. Dudley Senanayake as Prime Minister, there were seven with industrial or commercial interests, seven lawyers and four ex-public servants. In December, 1953, when Sir John Kotelawala was Prime Minister, there were seven lawyers, six with industrial or commercial associations and four ex-public servants. Finally, in June, 1957, during Mr. Bandaranaike's regime there were four lawyers, four with industrial or commercial connections, four representing the landed interests and five ex-public servants.[38]

The work of the Senate

The matters that interested the Ceylon Senate were substantially the same as those that exercised the minds of the members

of the House of Representatives. This was generally so both as to the topics of discussion and the lines on which the discussion proceeded. According to the Standing Orders the course of business was similar to that of the House of Representatives : first, a number of formal or minor items like the taking of oaths or the making of affirmations, messages from Governor-General, announcements by the President and the presentation of petitions, then, question time, thereafter, public business consisting of debates on motions and bills and finally the adjournment preceded occasionally by a discussion on the adjournment motion. In concrete form, the main items of public business considered by the Senate as in the case of the other House are—

(1) the debate on the speech from the throne,

(2) the debate on the annual Appropriation Bill,

(3) debates on bills other than money Bills, and

(4) discussions on motions moved by members of the Government or private members ; and

(5) the discussion and approval of subsidiary legislation, required by Statute to be placed before the Senate.

A study of the way in which Senate time was utilised by members during the last decade will show that it was not effectively used to improve the business of Government or legislation. While in the other House on most days when the House was sitting Opposition and Government back-benchers asked questions from Ministers and question time was exhausted, there were numerous occasions in the Senate when question time was not utilised at all. A list of such occasions prepared after a study of the proceedings of the Senate is specified in Appendix A. Similarly, the half-hour permitted at the end of the daily sitting for discussions and questions on matters of public emergency and the like was often not used. Apart from these considerations, there have been a number of occasions when the Senate adjourned for the day within an hour of its meeting and often it interrupted its business for the day long before 6 p.m., the time fixed by its Standing Orders for such interruption. Its normal hours now are governed by a Standing Order passed on April 5, 1949, which provided that the Senate was to meet at 2-30 p.m., interrupt its business at 6 p.m. and adjourn without question put at 6-30 p.m.

The Senate's record has generally been that of endorsing the work of the House of Representatives. Although it cannot initiate money bills, it has the power to introduce any other Bill. Despite this power, very few Bills of any importance were introduced in the Senate. Among those so introduced were the Mortgage Bill of 1949, the Partition Bill of 1950 and the Muslim Mosques and Charitable Trusts or Wakfs Bill of 1956. Technical Bills of a non-controversial type should in the first instance be introduced and discussed in the Senate as preliminary discussion and amendment there, particularly in the quiet atmosphere of a Senate Select Committee, definitely improves a Bill and saves the House of Representatives a considerable amount of work and time. During its period of existence it only rejected one Bill, the Bill relating to the suspension of capital punishment.[39] Nor has it been substantially successful in securing the amendment of legislative measures. There have, however, been a few cases when amendments moved in the Committee stage of a Bill by Opposition Senators have been accepted by the Government. Both the Mortgage Bill of 1949 and the Partition Bill of 1950 have been improved by amendments proposed by Opposition Senators.[40] If it is difficult to obtain the Government's approval to amendments proposed by Opposition Senators to Bills introduced in the Senate, it is far more difficult to obtain such approval to Senate amendments to Bills which have already been first passed in the Lower House, as the Government dislikes the task of having to consider such Bills again for the purpose of approving or rejecting the amendments. Nevertheless, there has been at least one case when such amendments were approved. Amendments were accepted in the Senate to the Industrial Disputes Bill of 1950, a measure which had already been passed by the other House and those amendments were thereafter approved in that House.[41]

As the Senate was a permanent body and the Senators retired in groups at intervals of two years, a change of Government caused by a dissolution and a general election did not immediately affect the composition of the Senate. In consequence, after the general election of 1956, the Opposition was numerically stronger than the Government in the Senate. It was, therefore, expected that the Senate would now at least play an effective role, acting in suitable cases as a delaying mechanism, and realise the expectations its architects had for

it. But apart from its rejection of the Suspension of Capital Punishment Bill, a matter referred to earlier and a vigilance for personal liberties and parliamentary privileges displayed by Opposition Senators in June and July 1958, during the public emergency,[42] they do not appear to have made use of their strength.

The Reform of the Senate

The Joint Select Committee of Parliament appointed in 1957, was required, among others, to consider the position of the Senate and to make such recommendations as it may deem fit in regard to its future. A well-constructed second chamber can perform very useful functions in any Constitution, even in one where its place is definitely subordinate to that of the Lower House.

The first matter to be determined in regard to any second chamber is its composition. Useful second chambers functioning today if examined according to the manner of its composition can be classified as follows :—

(1) second chambers constituted so as to give adequate and fair representation to the States into which the country is divided ;
(2) second chambers constituted by nomination alone ;
(3) second chambers constituted by the application of the joint principles of election by the Lower House and nomination ;
(4) second chambers constituted by the participation of the local areas of a unitary state ; and
(5) second chambers constituted largely by the representation of vocational or occupational interests.

It is useful to consider which of these methods should be followed or adopted in constituting a reformed second chamber for Ceylon. Method (1) is inapplicable in Ceylon as the country is not a federal state, nor is there in the writer's view any likelihood of such a state being established in Ceylon in the near future by constitutional means. Method (2) though followed in Canada, is unsatisfactory as the choice can be capricious and the opportunities for patronage and corruption are great. Method (3) is the one followed in Ceylon today. It can result in the Upper House being composed of mere nominees of the party in power, chosen not for any merit,

but for services rendered to the party. Method (4) generally results in the establishment of a chamber where the interests of local authorities predominate. Further, if the parties that dominate national politics control also local politics, the second chamber becomes a reflection of the Lower House and the members of that chamber are creatures or nominees of that House. Method (5) generally takes one of the two following forms. The Senators are selected by persons belonging to the same vocational group as themselves or they are selected by electors unconnected by occupational or vocational ties. To illustrate, in the former case, Senators representing the universities will be selected only by University graduates. In the latter case, Senators representing the Universities will be chosen by a heterogeneous collection of electors not connected to each other by any common interest. An adaptation of Method (5) is followed in Eire and was followed for the constitution of one-half of the Spanish Senate in the days of the Spanish Monarchy. Such an adaptation, the writer feels, is the most suitable method for the constitution of an useful Senate in Ceylon. The interests that should be represented are—

(*a*) education, the arts and sciences,
(*b*) agriculture and fisheries,
(*c*) industry, commerce and banking,
(*d*) law,
(*e*) medicine,
(*f*) engineering,
(*g*) labour,
(*h*) public administration, and
(*i*) local authorities.

The Senators representing those interests should be selected by persons who belong to those interests and special provision should be made that the electors should endeavour to select persons who have distinguished themselves in their particular vocations or occupations.

In the matter of powers, it is the writer's view, that a reconstituted second chamber should not exercise any greater powers than the present Senate. This will prevent friction with the other House and conform to the accepted British practice of today. But even a second chamber with such diminished

powers can discharge useful functions. Among the functions it should discharge are the following :—

(1) it should safeguard minority interests, not necessarily only racial interests ;
(2) it should protect fundamental rights, whether such rights are expressed or implied.
(3) it should delay hasty legislation,
(4) it should initiate, carefully scrutinize, and improve non-controversial Bills of a technical character ;
(5) it should improve Bills introduced in the other House which for lack of time are hastily examined and passed there ;
(6) it should initiate all private Bills, thus saving considerably the time of the other House ;
(7) it should, through a specially constituted Committee, carefully examine all subsidiary legislation, that Committee to draw the Senate's attention to any unusual or extraordinary features in such legislation ; and
(8) it should debate matters of public importance of a non-controversial kind which the other House has not the time to discuss.

The Ceylon Constitution does not prevent its upper chamber from discharging any such functions. It is only that, either through lack of initiative or lack of interest, the Senate in the past has not concerned itself with such matters. A second chamber constituted on the lines recommended in this Chapter can, however, be expected to discharge consistently and with a sense of responsibility such functions.

CHAPTER VI

THE HOUSE OF REPRESENTATIVES

Composition

Provisions relating to delimitation

The first Ceylon House of Representatives was to consist of 101 members of whom 95 were to be elected.[43] Future Houses of Representatives could have more or less than that number of members, depending on considerations such as population changes and the like, provision for making the necessary alterations being embodied in Part IV of the Constitution. Under that part there is an obligation to appoint Delimitation Commissions within one year after the completion of every census and those Commissions are required to divide the country into electoral districts taking into account certain considerations for the purpose, for instance, the protection of minority interests. The number of members of that House are dependent on the number of such districts. Ceylon had as a result of the recommendations of the Donoughmore Commission[44] abandoned communal representation, but, being a plural society, some concession had to be made to the fact that the country was composed of people belonging to different races, castes and religions. The concessions made in this direction were expressed in section 41 of the Constitution. That section, by providing for weightage in favour of sparsely populated areas, by directing members of Delimitation Commissions, whenever there was in any area a substantial concentration of persons united by a community of interest, whether religious, racial or otherwise, to constitute electoral districts so as to give representation to such interest and by making provision for multi-member constituencies, enabled the representation of substantial minority groups. The provisions of Part IV of the Constitution were, however, suspended in 1954, for a period of ten years.[45] In effect, therefor, the number of constituencies and their boundaries were in 1958, what they were when the existing Constitution was brought into operation. The position is made worse by the fact that the present number of 95 members was reached on the basis of the 1931 Census.[46] The unreality of the

electoral picture in consequence and the urgent necessity for a redelimitation of constituencies were brought out, on November 7, 1957, by Mr. Leslie Goonewardene, Member for Panadura in the present House, during a debate, on a motion for the appointment of a Joint Select Committee of the two Houses to examine the matter of the revision of the Constitution. In the course of his speech on that day he made the following observations :—

> "The population of this country has grown in certain areas, largely in the coastal districts, at a rate which far exceeds the growth of population in the hinterland..... ..... To add to the fact that the population has grown in the western, southern and, to some extent, in the northern districts while the population of the territory at the centre obviously has not expanded, to add to the disproportion that has arisen by that fact, another development has taken place in the meantime which has rendered this disproportion even greater.
>
> In the centre of the country a large number of voters of Indian origin were deprived of their votes but the constituencies continue to exist as before. I would draw the attention of the House to the Talawakele constituency which in the 1947 election had 19,700 voters who returned one member. What happened in the 1952 election ? 2,500 registered voters returned a member ; in the 1956 election 4,700 voters, the entire voting strength of Talawakele, returned one member, while I believe 60,000-odd voters in the Panadura electorate and in the Avissawella electorate were each entitled to return one member and as many as 70,000 registered voters in the Kelaniya electorate were entitled to return only one member .... This is not a system of representation that can in one's wildest dreams be described as democratic.....'"[47]

These considerations will show that there is an urgent need for a fair reconstitution of the electoral districts. A Delimitation Commission has just been appointed and it is also to be hoped that the Commissioners will give weightage to minority interests in the same way as it did in 1946, when the first Delimitation Commission was appointed. The need for such weightage is

much greater today, in view of increased minority fears, than it was in 1946.

The Franchise

One of the significant features of the Ceylon Constitution is the existence of universal adult suffrage. Adult suffrage has been operating in Ceylon since 1931, and, it can be said that until quite recently most people have been generally satisfied with its operation. There is, however, today some doubt as to its efficiency in societies like Ceylon, for it could be made the instrument by extremist and irresponsible politicians to inflame the masses, unless it is preceded by a comprehensive system of education and the development among the community of a high civic sense. The franchise law is embodied in the Ceylon (Parliamentary Elections) Order in Council, 1946, as subsequently amended.[48] The vote in Ceylon under that law during the period 1948 to 1958 was exercisable by adult citizens of Ceylon, having a six months' residence qualification in the appropriate electoral district and not subject to certain mental or legal disabilities. The principal change from the position in the pre-independence era is the replacement of the qualification of being a "British subject" by Ceylon citizenship. The consequences of this change have already been commented upon.[49]

Composition of the House of Representatives

The table specified below furnishes an analysis on a racial basis of the results of the three general elections held in Ceylon after independence.

	General Election[50]		
	1947	1952	1956
Sinhalese	68	75	74
Ceylon Tamils ..	13	12	12
Indian Tamils ..	7	1	—
Muslims	6	6	7
Burghers	1	1	1

This table will show that the hopes of the Soulbury Commissioners that their delimitation scheme substantially embodied in the Constitution would furnish adequate representation of the minorities were generally speaking justified. Throughout this period the minorities constituted a little less than a third of

the population of the country and they secured in the last two general elections 20 seats. If to that number is added the six appointed members, also a recommendation of the Commissioners, they cannot be said to have been seriously underrepresented. The scheme of the Commissioners was partly upset by the disfranchisement of the Indian Tamil vote, but they could not have been expected to anticipate this development.

It is convenient at this stage to analyse the composition of the House of Representatives, immediately after each General Election, according to the party or group label of the members.

The tables specified below constitute analyses on this basis

General Election of 1947[51]

Party, etc.	Recognised Abbreviations	No. of M.Ps
United National Party	(U.N.P.)	42
Lanka Sama Samaja Party	(L.S.S.P.)	10
Bolshevik-Leninist Party		5
Tamil Congress	(T.C.)	7
Ceylon Indian Congress		6
Communist Party	(C.P.)	3
Independents		21
Labour Party		1

General Election of 1952[52]

Party, etc.	Recognised Abbreviations	No. of M.Ps
U. N. P.		54
Sri Lanka Freedom Party	(S.L.F.P.)	9
L. S. S. P.		8
T. C.		4
Federal Party	(F.P.)	2
Labour Party		1
Viplavakari Sama Samaj Party	(V.L.S.S.P.)	1
Independents, including the Speaker of the previous House of Representatives who stood as an Independent		12
C. P.		3
Republican Party		1

General Election of 1956[53]

Party, etc.	No. of M.Ps
Mahajana Eksath Peramuna (M.E.P.) ..	52
N. L. S. S. P.	14
Federal Party (the majority Tamil Party) ..	10
U. N. P.	8
C. P.	3
Other Tamil Parties	2
Independents	6

A study of these tables bring out a number of interesting facts. Firstly, it shows that the parliamentary scene is overcrowded with parties or rather than it consists of a number of political groups. It is for this reason that throughout this period Parliament has been the stage of a clash between two conflicting groups of parties, for both the Government and the Opposition, if one uses the political terminology of the West, have been coalitions. This weakness has been particularly so in the case of the Opposition groups and has been well illustrated by the fact that, unlike Britain, Ceylon has never had a "Shadow Cabinet" ready to replace the Government when it has lost its popularity. Another great weakness lies in the number of persons who contest elections as Independents and, though the number considerably decreased in the last general election, still some find it convenient to contest elections without a party label. In the 1947 general election, 196 candidates contested as Independents, 104 of these lost their deposits and 26 were elected. In the 1952 elections, 85 contested as Independents, 38 of these lost their deposits and 11 were elected. Needless to say, the presence of Independents both as candidates and as members of the House of Representatives makes the working of Cabinet Government difficult.

A study of the last three tables will show that the members of the House of Representatives can be classified as follows :—

(1) the U.N.P. members ;
(2) the M.E.P. members ;
(3) members belonging to the then Marxist parties : the L.S.S.P., V.L.S.S.P. and the C.P. ;
(4) a group of Tamil and Muslim members, the majority of the Tamil members in 1956, belonged to the Federal Party ; and
(5) a number of Independents.

The U.N.P. was a party formed somewhere in 1946 in anticipation of independence. It was the party which was the backbone of the Government until April, 1956. It was a right centre party. The M.E.P. consisted of a group of politicians holding rather different views from one another who on the eve of the 1956 general election combined with the set purpose of defeating the U.N.P. at the elections. It succeeded in its object and it consists today of the three following groups : the S.L.F.P. to which party the majority of the members of the M.E.P. belong, the V.L.S.S.P., a Marxist group which was once a part of the L.S.S.P., and a number of Independents. The M.E.P. is a left centre party. The L.S.S.P. is a party which was formed in the thirties and is, generally, regarded as Trotskyist in its outlook to distinguish it from the C.P. which follows the Stalinist line. The principal Tamil party today is the Federal Party which, as its designation indicates, desires a federal structure for Ceylon and considers this as the most suitable solution for the country's minority problem. The U.N.P., L.S.S.P., S.L.F.P. and C.P. have a central party organisation and constituency associations. They all bring out weeklies disseminating party views and drawing the attention of the public to the acts of commission and omission of the other parties. Of these parties, the one that is best organised is the U.N.P. which is reputed to have a party fund consisting of over a million rupees, collected by the judicious use of patronage. The membership of the House of Representatives is still bourgeois in origin. Despite the presence in the House throughout the last decade of a number of left-wing members, the representatives of the working class, with one recent exception,[54] did not belong to that class. They consisted largely of persons belonging to the English-educated middle class, some of whom had been educated at Universities in England and the Inns of Court. Their championship of working class rights was not derived from any personal knowledge of economic want but from the normal reaction of intelligent and sensitive minds to the problems of poverty. The majority of the members still belong to the English-educated middle class but many of them in the Sinhalese-speaking areas had, during the general election of 1946, to depend for election on the support of the Sinhalese-educated petit bourgeois, consisting of the politically conscious Buddhist priests, the Sinhalese-trained teachers and the indigenous medical practitioners. Such persons will not for long be satisfied in acting as canvassers for the election of others,

but will soon be making a bid for their own election to the House of Representatives.

Throughout this period women have been represented both in the Senate and the House of Representatives. In the House of Representatives of today there are three female members, one of whom is a Cabinet Minister and the present Deputy President of the Senate is also a woman.[55]

In addition to the elected element in the House of Representatives, the Constitution provided in section 11 for the appointment by the Governor-General, after each general election, of a number of persons not exceeding six in number to represent any important interest which in his view is not represented or inadequately represented. The Governor-General exercises this power of appointment on the advice of the Prime Minister. The interests that have usually been represented in this period under this power were firstly racial and secondly commercial, for the persons generally appointed belonged to the Burgher, European, Indian and Malay Communities, the European members representing also the commercial interest. The future of the Appointed Members is another matter that is to be considered by the Joint Select Committee of Parliament that has recently been appointed to make recommendations in regard to the reform of the Constitution. It is essential that important interests that cannot secure representation in the House of Representatives by election should find representation there by some other method and nomination by the Governor-General is a suitable method for that purpose. But if the members so nominated are merely to echo the views of the party in power in the House of Representatives, their appointment does not appear to serve any useful purpose. Mr. E. F. N. Gratiaen, who during his short period as an Appointed Member pursued an independent line, on January 15, 1948, during the course of a debate on a matter relating to the amendment of sections 13 (3) (b) and 21 (1) (d) of the Ceylon Constitution gave the following apt description of what the duties of such a member should be :

"I can say that to my mind the duty of an Appointed Member is to keep clear, as far as one can, of party politics and to assist any Government which is appointed on the basis of a majority of the elected Members of this House, to govern the country on constitutional lines ; and in the same way,

with a proper sense of humility, to assist the Opposition by keeping his eye on the Government."[56] To these functions must be added the function of protecting the interest which he was appointed to represent, whenever such protection did not conflict with the national interest.

Miscellaneous Matters Relating to Elections

One of the chief reasons in the past for the general optimism in regard to the working of adult suffrage rested on the fairly large percentage of voters who exercised their votes. In the 1947 elections this percentage was 56.2, in the 1952 elections the percentage was 70.48 and in the 1956 elections the percentage was 76. If electors who were largely illiterate or semi-illiterate could be made to exercise their votes, it proved according to some that the grant of universal franchise was justified. Further, in consequence of such grant and the desire of the candidates to woo the masses to secure the vote for themselves, there was a very useful expansion of the social services in the country. Universal adult suffrage, in the absence of a comprehensive system of education, can be utilized by extremists to rouse racial and other sectional passions. Despite this consideration, it is not now possible in Ceylon to withdraw or modify in any way the grant of universal suffrage, for once such suffrage has been granted and been used with some success for over twenty-seven years, its withdrawal or modification will not be tolerated. Further, the grant of greater powers of self-government to a colony should not be indefinitely postponed on the ground that a substantial section of its electorate is illiterate and cannot, therefore, be given the vote. This, however, is a matter not of any practical importance in Ceylon today. In view of the possibilities for abuse, a great responsibility is cast on leaders in countries like Ceylon where the voters are largely uneducated to see that they do not at election times inflame them or arouse their worst passions. Finally, every effort must be made to see that they are, without unreasonable delay, politically educated suitably. Another consideration, arising out of the largely semi-illiterate character of the electorate is the method used for voting in Ceylon. Throughout the last ten years candidates have been assigned symbols and voters have been required to make a cross on the ballot paper alongside the symbol of their choice. As it was customary during the 1947 and 1952 general elections for candidates belonging to the same party to use different symbols, provision was made in

the Ceylon (Parliamentary Elections) Amendment Act, No. 16 of 1956, for the purpose of encouraging such candidates to use the same symbol. Under that Act, not later than ten days after the date of the publication of the Proclamation dissolving Parliament, the Secretary of a political party was given the power to apply for an approved symbol which was to be used at the elections and which was to be common to all the members of his party and, if such an application was made, the Commissioner of Parliamentary Elections was empowered to allow such application. The use of symbols for the purpose of voting made difficult the spoiling of ballot papers. In the 1947 general election the percentage of spoilt ballot papers was 2.25 and in the 1952 elections, the percentage of such papers was 1.46.[57]

One of the chief electoral anomalies today is the fact that the member elected is usually the choice of a minority of voters in the constituency. This feature of elections is most obvious in countries like Ceylon where persons belonging to several parties contest each constituency. To put the matter in a different form, the party representation in the Lower House often does not numerically correspond to the number of votes polled for the party. Thus, in the 1952 general election in Ceylon although the U.N.P. secured the votes of 43.96 % of the electorate, they were able to get 54 seats, while the S.L.F.P. and the three Marxist parties after having obtained the votes of 38.12% of the electorate secured only 22 seats. Various devices such as the second ballot, the different forms of proportional representation, and the alternative vote have been suggested to rectify this defect. It is the writer's view that all these forms suffer from the disadvantage that certain preferences, a part of the votes cast, or some of the candidates themselves at some stage of the counting cease to be taken into account. If voters are expected to cast their votes for a candidate or specify their preferences, such votes or preferences should not, before the final decision is announced, be distributed among other candidates. Nor should a candidate at the bottom of the poll be eliminated and his votes distributed among others before the election is finally concluded. The "symmetrical method"[58] described below does not involve any of these defects. Further, that method of election enables the election of candidates truly representative of majority opinion in their constituencies. It operates in single-member constituencies and the voter, if the contest is between more

than two candidates, is given two preferences. The first preferences of a candidate are added up, the total then multiplied by two and to the figure obtained by such multiplication is added the second preferences. The candidate who secures the highest total by this means is the winning candidate. The writer is of the view that this method can usefully be adopted in Ceylon.

There were certain unwholesome features in the conduct of elections in Ceylon. Each of the three general elections held covered a number of days. The 1952 general election covered the four days May 24, 26, 28 and 30, 1952, while the 1956 election covered April 5, 7 and 10, 1956. As the Government for the time being had control over elections, the criticism was urged that it fixed the dates of elections to suit their candidates. Further, the results of a first day's election in a country like Ceylon where party politics are not clearly defined, can affect subsequent results. It is, therefore, strongly recommended that during a general election, the contests in every constituency should be held on the same day. In this connexion, it is interesting to note that the Department dealing with parliamentary elections and the head of that department during the period under review fell under the control of the Minister of Home Affairs. It has been felt by some members of the House of Representatives that such control may be used in favour of candidates sponsored by the majority party or group at election times. To remove such fears, a department under the control of an independent officer is to be created. He is to function independently of any Ministry and his appointment, salary and other conditions of service are to be determined in the same manner as such matters are determined in the case of Supreme Court Judges or the Auditor-General. In short, the proposed new Commissioner of Elections is to be appointed by the Governor-General and his salary is to be charged on the Consolidated Fund. He is to hold his office on good behaviour and he is to be removable by the Governor-General upon an address of the Senate and the House of Representatives. Among other useful election reforms that are soon to be introduced in Ceylon are postal voting and the prohibition of the conveyance of votes to the polls by candidates. These reforms have already been introduced in India.

Another matter of some interest in relation to elections in Ceylon is the number of election petitions filed after an election.

That number, after the general election of 1947, was nineteen, after the general election of 1952, twenty and after the election of 1956, four. Forty-three election petitions are a considerable number. Among the reasons assigned for the number of such petitions in Ceylon are the absence of well-defined parties, the prevalence of bribery and corruption in the country, and the inability among Ceylon candidates to take defeat, as the English do, gracefully.

CHAPTER VII

THE PROCEDURE OF THE HOUSE OF REPRESENTATIVES AND PRIVILEGES OF PARLIAMENT

Procedure

The procedure in the Ceylon House of Representatives, as in the case of other similar bodies, is governed largely by Standing Orders. The Constitution provided that the first Standing Orders were to be made by the Governor, but that such Orders could be amended or revoked by the appropriate Chamber of Parliament.[59] Those Orders were in large measure based on the Standing Orders of the House of Commons and on the usages and practices of that House. The object of those Orders, as in other countries where the British form of parliamentary government operates, is to enable the Government to dispose of its parliamentary business expeditiously.

The days and times of the sittings of the House were prescribed by Standing Order. Generally at first, the House, unless it otherwise ordered, sat on alternate weeks on Tuesdays, Wednesdays, Thursdays and Fridays, the hours being on the first three days from 2 p.m. to 6 p.m. and on Fridays from 10 a.m. to 5 p.m. The rules that govern this matter today originated in September 1954, when the House of Representatives decided that the House, unless it otherwise directed, was to sit on alternate weeks in each month, commencing on the first Tuesday of each month sitting in the first week on Tuesday, Wednesday, Thursday and Friday and in the alternate week on Thursday and Friday, the hours of sitting, with the usual intervals, being on Tuesday and Thursday from 2 p.m. to 7-30 p.m., on Wednesday from 2 p.m. to 8-30 p.m. and on Friday from 10 a.m. to 5 p.m.[60] Despite these rules, the House, exercising the power it has under the Standing Orders to vary the days and times, often fixed other days and times, the changes being made at the instance of the Government in the interests of the disposal of Government parliamentary business. When the change from the earlier practice was introduced in September, 1954,

Mr. J. R. Jayewardene, the then leader of the House of Representatives, who moved the motion for the adoption of the new procedure, stated in the House that its effect would be that the House would sit thirty-one hours each month and that there would be five hours each month for the disposal of private members' motions.[61]

The Standing Orders also prescribe the order of business in the House. Under Standing Order 20 of the House of Representatives, the business of the House was to be transacted in the following order :—

(1) the taking of oaths of allegiance or the making of affirmations by new members,
(2) messages from the Governor-General,
(3) announcements by Mr. Speaker,
(4) election of Senators,
(5) presentation of papers,
(6) presentation of reports of Committees of the House,
(7) petitions,
(8) questions,
(9) motions at the commencement of public business not requiring notice,
(10) motions at the commencement of public business requiring notice, and
(11) public business.

In addition to these items, there may be a debate on the motion to adjourn with which the day's business concludes. This long list of parliamentary business can be classified under the three following main headings :—

(*a*) parliamentary business before question time,
(*b*) question time ; and
(*c*) parliamentary business after question time.

Although there are seven items of business that can be taken up before question time, only one or two such items come up in the House on any particular day. Therefore, the business before question time is disposed of swiftly, often in five to ten minutes. Parliamentary business does not, as in the House of Commons, commence with prayers. Further, matters such as motions for new writs or motions for unopposed returns which sometimes appear in the House of Commons agenda before question time, do not come up in Ceylon's House of

Representatives. The presentation of petitions is an interesting, though an unimportant item of business that can be taken up before question time. As in England, petitions before they can be placed before the House must satisfy rather elaborate requirements and those requirements have been one of the chief reasons for the public not making any considerable use of this procedure. Petitions usually take the form either of petitions submitted by individuals for the redress of personal grievances, or of petitions submitted by groups of persons for the redress of collective grievances. The petition of Mr. T. K. T. Ossen for re-employment in the Government Printing Department, presented to the House by Mr. A. E. Goonesinha on February 24, 1948, is an illustration of the former class of petitions, while the petition presented on the same day by Mr. T. B. Subasinghe on behalf of a number of residents of a village area for the restoration of a village road[62] and the petition of some three thousand five hundred persons presented by Dr. N. M. Perera on November 4, 1952, praying for a reintroduction of the rice ration and a decrease in the price of sugar is an illustration of the latter class.[63] The normal procedure when a petition is presented in the House is to refer it to the Public Petitions Committee, a Select Committee of the House consisting of five persons nominated by the Committee of Selection. That Committee is presided over by the Speaker and its function is to consider all petitions that have been referred to it and to report to the House on the action that should be taken thereon. Normally, the Committee recommends either that the petition should lie on the table of the House or that it should be referred for report to the Minister who is in charge of the subject mentioned in the petition.

As in Britain, question time is a vital part of parliamentary business. Its significance now is far greater than it ever was, for in consequence of the dominant control which the Government exercises over such business and Parliamentary time, this procedure is probably one of the best methods available to the Opposition to obtain information, criticise the Government and generally ventilate grievances. As in England this procedure is hedged in by a number of rules, their object being to shut out frivolous, unnecessary and libellous questions. Question time in the Ceylon House of Representatives normally commences about five to ten minutes after the Parliamentary day begins and can last for half an hour.[64] The

answer can either be given orally or it can be a written answer. The oral answer is obligatory when the questioner in giving notice of the question stipulates that he requires such an answer. In the nature of things, such questions and answers are more popular than questions for which an answer can be given in writing as the member asking the question secures the publicity he is seeking. Questions asked in Ceylon's Lower House are governed by the following rules :—

(1) no member can ask more than three questions requiring an oral answer on any one day ;
(2) not more than one subject should be referred to in any one question and a question should not be of excessive length ;
(3) a question must not refer to any debate that has occurred or answer that has been given within the same session ;
(4) a question must not contain any argument, inference, imputation, epithet or ironical expression or must not be made the pretext for a debate :
(5) a question must not be asked as to the character or conduct of any person except in his official capacity and a question making or implying a charge of a personal character may be disallowed;
(6) a question must not ask for an expression of opinion or for the solution of an abstract legal question or of a hypothetical proposition : and
(7) a question must not be asked about proceedings in a Committee which has not been placed before the House by a report from that Committee.[65]

Supplementary questions arising out of questions may also be asked and these may be asked not only by the original questioner but by any other member. Supplementary questions too are governed by rules : the Speaker can disallow a supplementary question if it infringes the rules mentioned earlier as to the admissibility of questions and a supplementary question must not introduce matter not included in the original question.[66]

In Ceylon most of the questions asked in the House of Representatives are generally of a local character. An M.P. for a constituency ordinarily inquires about a matter relating to his constituency or constituents and seeks redress. The

Ceylon Hansards furnish numerous examples of such questions. Thus, one finds the member for Chavakachcheri inquiring on July 27, 1948, from the Minister of Transport and Works whether he is aware of the unsatisfactory state of the bus service from Kodikaman to Jaffna via Chavakachcheri.[67] To take an illustration from March, 1951, the member for Trincomalee asked the Minister of Health and Local Government what is the amount due to the Urban Council of Trincomalee in respect of rates on account of properties requisitioned for defence purposes since 1942.[68] To give another illustration, the member for Galle on February 24, 1953, inquired whether an irrigation contractor named Baronchiappu of Galle made complaints in October 1952 against the Irrigation Engineer, Galle, and asked for an inquiry, and why such an inquiry had been denied him.[69] The fact that questions are often of a local character is to be expected for the best spokesman for a constituency is its parliamentary representative. But, sometimes, questions tend to be rhetorical like a question asked by one member on January 15, 1948, whether the Minister of Labour and Social Services was aware of the distress prevailing in certain specified areas.[70] Such questions make one feel that there is some justification for the following remarks of a Minister of the United Kingdom Government of 1954 "that most of the questions asked in the House are not a genuine attempt to improve the administration, they are to advertise the member who asks them . . . "[71] But despite the nature of some of the questions asked, question time serves in Ceylon as in other parts of the Commonwealth a very useful purpose, for it enables the public in the picturesque expression of one writer to see into "loathly nooks and crannies" of the body politic.

The most important item of Parliamentary business after question time is public business, and of public business the significant matters are Public Bills and government motions. During this period the following matters are usually discussed or debated upon :—

(*a*) the speech from the throne,
(*b*) the Annual Appropriation Bill,
(*c*) supplementary estimates, and
(*d*) government motions and Public Bills.

Government business has precedence over all other business on every day except on a Wednesday where ordinarily business

initiated by Private Members can be taken up and disposed of. But even on Wednesdays on a motion moved by a Minister and approved by the House, Government business can be made to take precedence over Private Members' business.[72]

The procedure in regard to Public Bills introduced by the Government follow much the same procedure as in England : the first reading, second reading, committee stage, report stage and third reading. That procedure is modified in certain respects in the case of Public Bills introduced by Private Members and in the case of Private Bills, that is, Bills affecting or benefiting particular persons, associations or corporate bodies. The procedure in regard to Public Bills introduced by Private Members differs from the procedure in regard to Government Public Bills in the following matters :

(1) in the former case a special motion applying for leave to introduce the Bill must be made and allowed, while in the latter case no order of the House is necessary for the introduction of the Bill,[73] and

(2) after leave to introduce the Bill is given, it is referred to the Minister or Parliamentary Secretary concerned with the subjects or functions to which the Bill relate for report and no further action can be taken on it until such report is made to the House. This practice does not apply in the case of Government Public Bills.

The procedure in regard to Private Bills, that is, Bills affecting particular persons, bodies or interests, differs from the procedure relating to Public Bills in the following respects :—

(1) a statement of the proposed Bill, its nature and objects must be advertised in the Government Gazette and in at least one newspaper circulating in Ceylon not less than one month before the application for leave to introduce the Bill is made.

(2) such Bills, unlike Public Bills, cannot be considered in a Committee of the whole House. The committee stage of such Bills consists of the examination of the Bill by a Standing or Select Committee of the House.

(3) the committee stage in the case of such Bills is more elaborate than in the case of Public Bills. The

> Standing Orders require that the committee examining the Bill should require proof of the facts and other allegations set forth in the Bill from its promoters. As in the case with other Bills, amendments can be made in Committee but no amendment can be made if it is repugnant to the principles set out in the advertisement relating to the Bill which is published at the initial stage of the proceedings.[74]

As such Bills are usually introduced by Private Members, the special procedure in regard to Bills so introduced apply in this case also.

The parliamentary sitting is concluded with the motion to adjourn which is introduced half an hour before the time fixed in the Standing Orders for adjournment. Often matters of urgent public importance are discussed during this period. On some occasions the proceedings during this stage tend to seem like question time, Opposition members pressing the Government to give immediate answers to questions relating to matters of urgency and public interest. Thus, during the proceedings on the motion to adjourn on August 18, 1954, an M.P. inquired from the Prime Minister "whether he would take immediate action to get the Members of the House and the Senators to declare their assets and liabilities from the year 1947 up to now." To that question the Prime Minister gave the following answer :—

> "With regard to the question of our declaring our assets, there is no provision for doing so. If any of us want to declare our assets we can easily do that and you can open out a file and keep it with you . . ."[75]

Again, during such proceedings on January 24, 1958, an M.P. asked the Minister of Education whether his statement that the Government is now not in a position to take over the assisted schools is correct and, if so, whether it is a policy statement of the Government or not. To this question the Minister replied that the Government had made no decision on the matter, but that the financial implications underlying the taking over of such schools by the Government were being examined.[76]

Just as in the British House of Commons parliamentary business in the Ceylon House of Representatives is facilitated by the existence of Committees of the House. There are in that House the following Committees :—

(1) standing committees,
(2) select committees,
(3) the Committee of Selection,
(4) the House Committee,
(5) the Public Accounts Committee,
(6) the Standing Orders Committee, and
(7) the Public Petitions Committee.

Most of the important matters relating to those Committees are dealt with in the Standing Orders.

Both the Standing Committees and the Select Committees are Legislative Committees concerned with the committee stage of Bills. The personnel of the Standing Committees is appointed by the Committee of Selection. There are today two Standing Committees A and B, each Committee consisting of thirty members, seven constituting a quorum. Bills, other than Bills relating to finance, are ordinarily examined in one or other of the two Standing Committees, but, if upon a motion of a Minister or Parliamentary Secretary, the House so decides a Bill may be referred to a Select Committee nominated by the Speaker.[77] Such a Committee, without the leave of the House, cannot consist of more than ten members.[78] The quorum for a meeting of a Select Committee is usually three[79] and it can continue its investigations despite the fact that the House may be adjourned.[80]

The Committee of Selection consists of the Speaker, who is the Chairman of the Committee, and seven members nominated by the House at the commencement of each session. Its duties consist of nominating the members of various committees of the House, such as the Standing Committees and the House, Standing Orders, Public Accounts and Public Petitions Committees. The Committee of Selection too can proceed with its work despite the adjournment of the House.[81]

The House Committee consists of the Speaker who is the Chairman of the Committee and five other members. That Committee is expected to consider, and advise on, matters

connected with the convenience of the members of the House of Representatives.[82]

The Standing Orders Committee consists of the Speaker, a Deputy Speaker, the Deputy Chairman of Committees and four other members of the House. The duty of that Committee is to report on all matters relating to standing orders which may be referred to them by the House.[83] The change effected in September 1954 in regard to the days and times of sittings of the House was brought about by a recommendation of that committee.

The Public Petitions Committee consists of the Speaker as Chairman of the Committee and five other members of the House. Its duty is to consider the subject-matter of all petitions presented by members in the House and to report on the action to be taken thereon.

Some mention will be made of the Public Accounts Committee in the part relating to financial procedure.

No survey of procedure can ever be complete without an account of the Speaker and his powers. The Constitution provides for his election at the first meeting of the House of Representatives after a general election and, in case of a vacation of that office, caused otherwise than by a dissolution, for an election at the first meeting following such vacation.[84] The Standing Orders provide for the manner of his election if more than two persons have been proposed for the office. Under Standing Order 4 of the Standing Orders of the House of Representatives, in the event of more than two candidates being proposed for election, provision is made so as to secure the election of the candidate who obtains an absolute majority of the votes cast by the process of the exclusion at each ballot of the candidate who obtains the smallest number of votes. Two matters contribute to the impartiality of his office : he should not be contested in his constituency nor should he be contested if he stands for election as Speaker. These two principles could have operated only in the case of one Speaker during the last decade, that is, in the case of Mr. (later Sir) Albert Peries. But although after his first election as Speaker, he was not contested when he was proposed for the office a second time, he was contested in his constituency on both occasions that he stood for election as a member after his first appointment as Speaker.

The powers and duties of the Speaker of the House of Representatives approximates to those of the Speaker of the House of Commons. Due to the different associations of the two Houses the Ceylon Speaker, unlike the Speaker of the Commons, does not have to make a formal claim on behalf of his House to the undoubted rights and privileges of that House. Among his powers and duties are the following :—

(1) he is the custodian of the rights of minorities and should endeavour to see that every minority interest is given a fair hearing in the House ;
(2) he is responsible for the maintenance of order [85] in the House and, in the exercise of this power, he can suspend a sitting of the House which he did on April 6, 1955,[86] or request a member to withdraw, or take action the effect of which is the suspension of a member from the sittings of the House which he did on that day when he suspended the Member for Moratuwa and on June 19, 1957,[87] when he suspended the Member for Vavuniya ;
(3) he is the Chairman of several Committees of the House, a matter already mentioned ;
(4) he issues certain certificates in relation to Money Bills and Bills amending the Constitution, a subject which will be dealt with later in greater detail ;
(5) he allots Bills to Standing Committees[88]
(6) he appoints at the commencement of every session a Chairmen's panel of not less than four members to act as temporary Chairmen of Committees, from which panel also he selects persons to be Chairmen of Standing Committees ;[89]
(7) he is responsible for the management of the buildings and the general administration of the Chamber [90] and
(8) he has the power to regulate the conduct of the business in the House which is not provided for in the Standing Orders.[91]

There are three kinds of certificates which the Speaker issues. Such certificates are conclusive as to the facts stated therein and are not to be questioned in a court of law. The first kind of certificates relates to Bills amending the Constitution and before such a Bill is presented for the Royal Assent, it should have endorsed therein a certificate of the Speaker that the

number of votes cast for the Bill in the House of Representatives amounted to not less than two-thirds of the whole number of members of the House (including those not present).[92] The second kind of certificates relates to Money Bills and before such a Bill is sent to the Senate or is presented to the Governor-General for Royal Assent, it should bear a certificate under the Speaker's hand that it is a Money Bill.[93] The third kind refers to Bills (other than Money Bills) which have not been passed by the Senate and, in the case of such a Bill, before it is presented to the Governor-General for the Royal Assent it should have endorsed therein a certificate under the hand of the Speaker that the procedure prescribed by the Constitution for the enactment into law of such Bills, despite the opposition of the Senate, has been complied with and that the Bill so presented is identical with the Bill originally sent to the Senate from the Lower House.[94] The Speaker before issuing the certificates relating to Money Bills and Bills that have not passed the Senate is obliged to consult the Attorney-General or the Solicitor-General.

The quorum for meetings of the House has been fixed at twenty. But despite this provision the proceedings can continue with a smaller number of members than twenty present,[95] unless the attention of the presiding officer has been drawn to this fact. The language of proceedings in the House is governed by Standing Order 13 which stipulates that the "business of the House shall be conducted in English but any member, the consent of Mr. Speaker first being obtained, may address the House in Sinhalese or Tamil and any such speech shall be recorded in the Hansard in the language in which it was spoken." There is, however, in fact a kind of standing consent given by the Speaker under which speeches in Sinhalese and Tamil can be delivered, the speeches being simultaneously translated into English. There is no procedure by which English speeches may be translated simultaneously into the vernacular languages, although there is agitation for such translation. It was customary until quite recently for nearly all the members to be garbed in western attire but there has been since 1956 an increasing number of members, though still not a majority of them, who wear national dress which takes the form of a white cloth wrapped round the lower part of the body and an upper garment, also of white cloth, which resembles a collarless shirt. The hall where the debates are held is circular, the Government members and the Opposition

facing each other. The Speaker sits on a high heavily carved chair wearing a black silk embroidered gown with the Clerk to the House seated just below him. That Officer is appointed by the Governor-General on the recommendation of the Prime Minister and is removable only by the Governor-General on an address of the House of Representatives.[96] The Clerk to the House in consultation with the Speaker is responsible for maintaining discipline among the members of his staff.[97] The Standing Orders provide that, in the event of a casus omissus, the usages and practices of the House of Commons were to be followed.[98]

The Ceylon House of Representatives will do well to adopt certain practices in use in other legislative assemblies. The system of balloting for determining precedence among private members' Bills and private members' motions followed in the House of Commons may be usefully copied in Ceylon. Further, the practice in the Union of South Africa where a Minister who has his seat in one House can speak in the other in support of measures for which he is responsible should be introduced in Ceylon. In addition, certain provisions of the Indian Constitution relating to the office of the Speaker of the Indian House of the People may with benefit be adopted in Ceylon. In that Constitution, there is provision for the removal of the Speaker of the House if a resolution to that effect is passed by an absolute majority of the members on the roll of the House. Moreover, his salary is charged on the Consolidated Fund. Furthermore, Ceylon procedure will be strengthened if there is constitutional provision for a joint sitting of the two Houses for the resolution of differences between the Houses. Finally, Committees of the House similar to the Committee on Government Assurances, the Business Advisory Committee and the Committee on Private Members' Bills, of the Indian House of the People, may be established in Ceylon. The first of those Committees is concerned with ascertaining the extent to which assurances given by Ministers on the floor of the House have been implemented. The second Committee allocates the time to be taken over the various measures which the Government proposes to introduce, determining in particular the time to be taken over the different stages of Government Bills. The third Committee scrutinizes carefully Private Members' Bills seeking to amend the Constitution, allocating time for different stages of such Bills and classifies such Bills according to urgency.

Financial Procedure

Financial procedure in Ceylon approximates closely to the procedure in Britain. As in Britain such procedure is governed by the following principles :—

(1) the grant of public money and the imposition of taxes to be initiated by the Government ;
(2) such grant and imposition to be ultimately determined by the Lower House alone ;
(3) the ventilation of grievances by the Opposition before the authorisation of public expenditure by Parliament ; and
(4) the provision of machinery for verifying whether the money voted has been spent on the purpose for which it was voted.

The first principle has been given legislative expression in section 69 of the Constitution, according to which "No Bill or motion authorising the disposal of, or the imposition of charges upon, the Consolidated Fund or other funds of the Island, or the imposition of any tax . . . shall be introduced in the House of Representatives except by a Minister, nor unless such Bill or motion has been approved either by the Cabinet or in such manner as the Cabinet may authorise." The second principle is illustrated by the fact that the Upper House can only interpose a month's delay if it disagrees with financial measures of the Government. The debate in the Lower House on the Appropriation Bill both during the second reading and the Committee Stage is more detailed and critical than discussions on other legislative measures and, before the various votes embodied in that Bill, are passed any grievances which the Opposition may have against the Departments, in respect of which those votes are sought, are ventilated. Finally, the scrutiny, which is made of the accounts of the Departments by the Auditor-General and the Public Accounts Committee of the House, is adequate for ascertaining whether the money voted for a particular purpose has been spent on that purpose.

The authorisation of public expenditure by Parliament takes one of two forms. It consists of either a periodic or ad hoc authorisation of money for a particular service, such as the authorisation expressed in the Annual Appropriation Act or in resolutions of the Lower House sanctioning Supplementary

estimates, or a standing authorisation charging the expenditure on a service on the Consolidated Fund. The Constitution provides several illustrations of the latter form. The pensions and gratuities payable to certain classes of public officials, the interest on the public debt, and the salaries of the Governor-General, Supreme Court Judges, the appointed members of the Judicial Service Commission, members of the Public Service Commission and the Auditor-General have been charged on the Consolidated Fund and do not, therefore, come up annually for legislative sanction.[99]

The Constitution also provides for the establishment of the Consolidated and Contingencies Funds.[100] The former is the Fund from which most public expenditure is disbursed, whether such expenditure is authorised under the Appropriation Act or under resolutions of the House of Representatives or under permanent legislation like the provisions of the Constitution referred to in the preceding paragraph. That Fund is also the reservoir into which flows all taxes, imposts, rates and duties of the Island not allocated to specific purposes. The latter Fund is a fund which may be utilized to meet urgent calls for public moneys but the moneys paid out of that Fund have to be replaced forthwith and for that purpose a supplementary estimate has to be passed.

Apart from expenditure disbursed out of the Consolidated and Contingencies Funds, there is also expenditure paid out of various loans raised under particular Statutes, for instance, the National Development Loan Ordinance, No. 32 of 1945. It, sometimes, happens in such cases that, pending the raising of loans under such Statutes, moneys are advanced for expenditure to be incurred thereunder from the Consolidated Fund, such advances to be eventually repaid out of those loans.

The Constitution also provides that no public money is to be actually withdrawn from the Consolidated Fund, even though there may be the legislative authorisation referred to earlier, unless such withdrawal is also authorised by a warrant under the hand of the Minister of Finance or is authorised by the Governor-General in a case where he has dissolved Parliament before the annual Appropriation Bill is passed.[101]

The chief financial legislative measure in any year is the Annual Appropriation Act. The entire proceedings connected with its enactment cover the following stages [102] :—

(1) the preparation of the estimates of the Departments for the twelve months commencing on the first day of October of any year by the Departments and their submission to the Permanent Secretary supervising those Departments not later than the fifteen day of March of that year :

(2) the consideration of those estimates by the Permanent Secretary in consultation with the Departments concerned and their submission to the Treasury for its report ;

(3) the submission thereafter by the Permanent Secretary of those estimates with the Treasury report thereon to his Minister for consideration ;

(4) the consideration and alteration, if necessary, of those estimates by the Minister, in consultation with his Permanent Secretary and other appropriate authorities and the submission of the approved estimates to the Cabinet through the Minister of Finance not later than the thirtieth day of April of that year ;

(5) the scrutiny of those estimates by the Cabinet, the inclusion of the estimates as approved by that body in the Appropriation Bill, and the submission of that Bill and the estimates of revenue and expenditure to the House of Representatives before the end of June of that year or as soon thereafter as circumstances permit ; and

(6) the consideration of that Bill and those estimates in that House and the passing of the Bill in that House and in the Senate.

Under Standing Order 74 of the Standing Orders of the House of Representatives a period of twenty days, being days before the twentieth day of September, is allotted for all the proceedings in that House connected with the Bill. That Standing Order provides further that the number of days allotted for the second reading of the Bill should not exceed seven and that, on a motion made by a Minister, the said period of twenty days may be extended by a further two days, if those days were to be concerned with the Committee Stage of the Bill. Proceedings during a debate on the Appropriation Bill, under that Standing Order continues, with intervals for meals, from 10 a.m. to 8-30 p.m. Unlike in England, there is no examination of estimates in a Committee of Supply or of taxation

proposals in a Committee of Ways and Means. After the second reading of the Appropriation Bill, where there is a repetitious and unplanned discussion of matters of policy, financial and otherwise, the estimates are examined in detail in a Committee of the whole House, where the discussion again is uncoordinated and relates in general to numerous unrelated matters of financial detail. In these discussions particularly, in the second reading, most members participate, in the case of some it is the only speech they ever make during the year. It would be most useful if the Opposition organises its criticism, distributing the estimates to be criticised among various members of its group and apportioning the arguments to be used among them.

A characteristic of financial procedure in Ceylon is the frequent recourse that is had to the passing of Supplementary Estimates. This practice is partly a legacy from the days of the Donoughmore Constitution, partly the consequence of bad estimating, and partly the difficulty to anticipate unexpected expenditure. During the operation of that Constitution any endeavour at the request of the Financial Secretary to utilize the surplus on one sub-head to meet expenditure on another, known in Treasury circles as virement procedure, was viewed by the members of the State Council with considerable suspicion, as Finance was a subject outside the scope of their direct control and, hence, that officer was obliged in such cases to present a Supplementary Estimate for the approval of the House. Today, however, this practice can be abandoned as finance is no longer a subject outside the control of the Ministers. Nevertheless, due to bad estimating the number of supplementary estimates has not considerably decreased. The present Constitution, by providing for a Contingencies Fund to meet urgent and unforeseen expenditure, has provided a method by which recourse to such estimates can be avoided and it is hoped that the Contingencies Fund will be more frequently availed of for meeting such expenditure.

Virement procedure is more popular today than it was before independence. It is governed by the following useful safeguards :—

(1) before recourse is had to such procedure there should be Treasury sanction ;

(2) the additional money to be utilized in respect of the sub-head in question should not cause an excess on the total vote of which that sub-head forms a part.

(3) the additional money so to be utilized should be in respect of a service which is definitely within the ambit of the vote as described in the estimates ;
(4) application for recourse to that procedure should be made with due regard to the observance of possible and necessary economies ; and
(5) if that procedure is to be used for securing additional funds to meet a charge on personal emoluments, there should be no violation of existing salary scales.[103]

The House of Representatives does not cease to have control over the estimates once the votes are passed. It has, after the enactment of the Appropriation Act, the important task of seeing whether the money voted for particular services have been used for those services. The Auditor-General and the Public Accounts Committee of the House are the two authorities provided by the Constitution for the purpose. The Auditor-General is an officer appointed by the Governor-General and holds his office during good behaviour. His salary, as mentioned earlier, is charged on the Consolidated Fund and he can be removed from his office by the Governor-General on account of ill-health or mental infirmity or upon an address of the two Chambers of Parliament. He is obliged to audit the accounts of all departments of the Government, including the offices of the Cabinet, the Clerk to the Senate, the Clerk to the House of Representatives, the Judicial Service Commission and the Public Service Commission, and to report to the House of Representatives on the outcome of his investigations.[104] That report should not concern itself on the policy of the government or whether the nation is securing value for its money but should refer to such matters as accounting procedure, whether the money voted has been used for the purpose for which it was voted and whether financial and other regulations relating to the expenditure of such money has been complied with.[105] The Public Accounts Committee is a Committee of the House of Representatives consisting of not more than seven members, selected in such a manner as to give adequate representation to the Opposition parties

and groups in the House. Its function is to examine the accounts of the departments together with the reports of the Auditor-General thereon. That Committee has in particular the duty to draw the attention of the House of Representatives to "excesses" incurred by departments in respect of services over and above the amounts that have been voted for such services. The procedure relating to this matter is laid down in Standing Order 129 of that House. Under that Standing Order the Committee is obliged to specify in their report to the House whether the excess is on the vote or only on a particular sub-head which forms a part of the vote. Further, the Committee is obliged to report, if the excess is on a sub-head, whether the vote itself, in consequence has been exceeded and if the vote has not been exceeded, whether the excess was incurred with proper authority and due regard for economy. If the vote has not been exceeded and has been incurred after securing the necessary authorisation and with due regard for economy, no further action is necessary. Otherwise, a motion will have to be moved and approved in a Committee of the whole House to meet the excess.

Financial procedure in Ceylon is satisfactory in so far as it enables the Parliament, particularly the House of Representatives, to ascertain whether the sums voted have been appropriated for the purposes for which they were voted. But such procedure is not useful for ascertaining whether such sums, to adapt the words of one writer, have been spent wisely or well, or whether the accounts presented accurately represent the state of the nation's finance.[106] The existing system makes for over-estimating through fears of possible deficiencies and over-spending through fears that surpluses left over will contribute to future cuts. In addition, Ceylon should do away with the misleading and, probably, illegal practice of token votes.[107]

Privileges of Parliament

The privileges of the Ceylon Parliament are, unlike the privileges of the Commons, not derived from history, usages or custom but originate from statute. The Constitution empowered the making of such a statute and, further, provided that, until such a statute was enacted, the privileges of the two Chambers of Parliament were to be the same as those of the State Council.[108] The privileges of that assembly were defined in the State Council Powers and Privileges

Ordinarce, No. 27 of 1942. The Constitution also limited the powers of Parliament in the matter of the enactment of privileges by providing that no privileges of those Chambers could exceed those for the time being held or enjoyed by the Commons House of Parliament of the United Kingdom, a limitation of doubtful legality which restricted the legislative competence of Ceylon's Parliament and which could be overridden by an amendment of the Constitution passed by a two-thirds majority.

The Ceylon Parliament exercising the powers conferred upon it by the Constitution passed the Parliament (Powers and Privileges) Act, No. 21 of 1953. Under that Act, the privileges, immunities and powers of Senators and Members of the Ceylon Parliament consist of—

(1) freedom of speech, debate and proceedings in the appropriate Chamber of Parliament, which could not be questioned in any court or place outside such Chamber ;
(2) freedom from liability to civil or criminal proceedings, arrest, imprisonment, or damages for statements made or for any matter or thing brought before such Chamber by petition, Bill, resolution, motion or otherwise ;
(3) freedom, except for contraventions of that Act, from arrest, detention or molestation in respect of any debt or matter which may be the subject of civil proceedings while proceeding to or in attendance at or returning from any meeting or sitting of such Chamber ;[109]
(4) non-liability in damages or otherwise for any act done under the authority of such Chamber and within its legal powers ; and
(5) such and the like immunities as are for the time being held, enjoyed and exercised by the British House of Commons and its members.

The privileges of the Ceylon Parliament of today certainly exceed the privileges which members of the State Council possessed, for Councillors did neither enjoy the privileges specified in sub-paragraphs (3), (4) and (5) of the preceding paragraph nor the privilege of freedom of proceedings referred to in sub-paragraph (1) of that paragraph.

The Act also declared various matters specified in the Schedule to be breaches of privilege punishable in certain cases by the Supreme Court only and in certain others cases by that Court as well as the appropriate Chamber of Parliament. The breaches that are punishable by the Supreme Court are specified in Part I of Appendix C,[110] and consist of the more serious breaches of privilege and are punishable with imprisonment of either description for a term which does not exceed two years or to a fine not exceeding five thousand rupees or to both such imprisonment and fine.[111] The breaches that are punishable by the House are specified in Part II of that Appendix, and refer to less serious matters than those dealt with by the Court and are punishable by admonition at the bar of the House or removal from the precincts of the House or, in the case of a member of the House of Representatives or a Senator, suspension from the service of the House for a period not exceeding one month.[112]

But before matters relating to privilege can be brought before the Supreme Court, the following procedure has to be observed :—[113]

(1) a complaint should be made by a member to the President of the Senate or the Speaker of the House of Representatives in his chambers of the alleged breach of privilege ;

(2) a written record, made on oath or affirmation, should be taken by the President or Speaker or any other member authorised in that behalf by the President or Speaker or the Clerk to the appropriate Chamber if so authorised, of the statement of the member making the complaint relating to that breach and of the statements of any other persons whose evidence may be relevant ;

(3) upon such a complaint or if required so to do by a resolution of the appropriate Chamber, the President or the Speaker may refer the matter to the Attorney-General for report, transmitting, with the reference, the statements recorded under the preceding sub-paragraph ;

(4) the Attorney-General should then inquire into the matter of the alleged breach and ascertain whether there is sufficient evidence to warrant the taking of further steps in respect of that breach ;

(5) the Attorney-General should after that inquiry report to the appropriate Chamber whether or not in his opinion there is such evidence ;

(6) the appropriate Chamber should consider that report and decide on the action that should be taken ;

(7) if that Chamber after consideration of the report decides that the Attorney-General should make an application to the Supreme Court to inquire into, and dispose of, the matter of the alleged breach, the Attorney-General should make that application ;

(8) the Supreme Court should, if such an application is made, cause notice to be served on the person who is alleged to have committed the breach of privilege to show cause why he should not be punished for the breach ; and

(9) the Supreme Court, if no cause is shown or no sufficient cause is shown why such person should not be punished, should punish him for the breach.

There was recourse to the various stages of this rather elaborate procedure in 1955 in a matter in which three members of the House of Representatives were involved. On April 6, 1955, the Speaker suspended one member and also the sitting of the House and thereafter vacated his chair. Thereupon, one member proposed another member to take the Speaker's chair which the other did.[114] On a complaint made to the Speaker in his Chambers in accordance with the provisions referred to earlier and after compliance with those provisions, the matter came up for inquiry in the Supreme Court. The chief matter which the Supreme Court had to determine was whether the conduct of the member who proposed another to take the Speaker's chair and the occupation of that chair by that other member were breaches of privilege that could be questioned or impeached in proceedings in the Supreme Court. It was held that the actions of those two members were not justiciable by the Supreme Court, as those actions were protected by sections 3 and 4 of the Parliamentary (Powers and Privileges) Act which provided for freedom of speech, debate and proceedings in the House and for freedom from liability to civil and criminal proceedings, arrest, imprisonment or damages for statements made on any matter or thing brought before the House of Representatives by petition, Bill, resolution, motion or otherwise. The judge in that case also stated that such conduct could be conduct punishable by the House.[115]

In the case of a breach of privilege punishable by a Chamber of Parliament, which has been referred to the Attorney General for report, that Chamber cannot take any action unless the Attorney-General has reported that there is sufficient evidence to warrant the taking of further steps in respect of that breach. Further, such Chamber cannot punish a person for such breach if an application in respect of the breach has been made to the Supreme Court.

This account of the privileges of the Ceylon Parliament will show that there are many significant differences between the position in Ceylon in regard to this matter and the position in the United Kingdom. Naturally, in Ceylon there is no claim made by the Speaker of the House of Representatives on behalf of that House at the commencement of a new Parliament in respect of its privileges. Although the privileges of the Lords and Commons form part of the privileges of Parliament, there is a difference in content between those privileges, for there are a number of privileges, like freedom of individual access to the Sovereign and the exclusive right to initiate Bills which affect the rights of the peerage, which are peculiar to the Upper House. This distinction does not at present apply to the Ceylon Parliament, as the privileges of the two Houses are the same. It is, however, possible by the amendment of the Parliament (Powers and Privileges) Act to confer additional privileges on one House which the other will not enjoy or restrict some of the existing privileges to a particular House. Further, while the House of Lords is prevented, by a privilege of the House of Commons, from amending Money Bills, in Ceylon there is no such privilege and the Senate may amend such a Bill, but no such amendment will take effect unless it is approved by the other House. Furthermore, the Ceylon Parliament does not enjoy the following privileges of the House of Commons: the right to have a favourable construction of its proceedings, the right of access to the Sovereign as a body headed by the Speaker to present an address, and the right of the Commons to provide for its proper constitution. Finally the powers of punishment which the Ceylon Chambers of Parliament enjoy are limited and rightly do not extend to the power to imprison or fine which the House of Commons can still in certain circumstances exercise.

CHAPTER VIII

LEGISLATIVE POWERS OF PARLIAMENT

The Ceylon Parliament consists of the sovereign and the two Chambers of Parliament and for Parliament to exercise its legislative powers, those three units should cooperate. Ceylon's legislative powers are enshrined in the two following enactments: the Ceylon Independence Act, 1947, and the Ceylon (Constitution) Order in Council, 1946,[116] as subsequently amended. The fact, however, that those enactments have been passed by legislative bodies of the United Kingdom, has been used by certain critics of those measures to show that there are still certain limitations to Ceylon's freedom. The Ceylon Independence Act is an Act passed by the British Parliament. The Ceylon (Constitution) Order in Council, 1946, and the amending Orders in Council are Orders that were enacted by the King in Council. This consideration does not limit Ceylon's freedom or legislative powers, for those documents can be replaced or amended by virtue of powers embodied therein. The Indian Independence Act, 1947, the Indian counterpart of the Ceylon Act, has been repealed under powers contained in that Act and the Indian Constitution was framed and passed by a Constituent Assembly. The Ceylon Act can be repealed under paragraph 1 (2) of the Schedule to that Act, while, if the Government so thinks fit, it can set up a Constituent Assembly to re-enact its Constitution. There, therefore, does not appear to be any real significance in the different procedures adopted by the two countries. Further, it should be noted that the two Ceylon measures were not imposed against the country's will from Westminster or Whitehall but were enacted at the request of Ceylon's leaders in order to save time and for reasons of convenience. Although there were some doubts in certain quarters as to the advisability of basing the country's freedom as well as the legislative competence of its Parliament on British enactments, subsequent events have shown that those documents did not conceal any legislative trap, for Britain has not, since February 4, 1948, the official date on which Ceylon secured full responsible government, interfered in any matter relating to its internal or external affairs.

The Ceylon Independence Act, 1947, embodied most of the relevant provisions of the Statute of Westminster, 1931. In many important respects its provisions were also similar to those of the Indian Independence Act, 1947, but there were two significant deviations on which the Opposition in the Ceylon House of Representatives concentrated their attack, when the provisions of the Ceylon Act were considered in that House. The first difference consisted in the fact that while future Acts of the Parliament of the United Kingdom could only extend to Ceylon as part of the law of Ceylon if "it is expressly declared that Ceylon has requested, and consented to, the enactment thereof,"[117] the corresponding provision in the Indian Act provided that such Acts could only extend to India if "it is extended thereto by a law of the legislature of the Dominion."[118] The second difference consisted of the absence in the Ceylon Act of express provision to amend that Act, while the Indian Act contained such a provision. The first difference arose out of the fact that while Ceylon in this matter followed the phraseology of the Statute of Westminster, 1931, India followed South Africa's example and adopted the text of the Status of the Union Act, 1934, of the South African Parliament. In the Ceylon case, the application of the United Kingdom Act depended on an express declaration in that Act that the Ceylon Government, that is, the Ceylon Cabinet for the time being had requested and consented to such application. In the South African and Indian cases such application rested on the enactment of legislation by the Union and Indian Parliaments. In the South African and Indian cases, the procedure laid down was the consequence of the view, held with considerable justification in certain responsible legal quarters, that, if the British Government was disposed so to do, it could dispense with the requirements relating to the request and consent of the Government concerned and pass United Kingdom legislation affecting such Government, and that, such legislation being legislation subsequent to the Statute of Westminster, would prevail over the relevant provisions of that Statute. The legal basis for this view was the well established rule of interpretation that a later law prevailed over an earlier one. Ceylon, however, like Canada was and is satisfied with the procedure set out for this purpose in the Statute of Westminster. If, however, the Ceylon Government wishes to adopt the more elaborate South African or Indian practice in this matter it can do so by amending section 1 (1) of the Ceylon Independence Act.

Section 1 (1) of the Ceylon Independence Act can also be used for the amendment of the Ceylon Constitution. The procedure for such amendment is specified in section 29 (4) of that Constitution and requires a majority of not less than two-thirds of the whole number of members of the House of Representatives (including those not present). It has been found exceedingly difficult by different Governments in Ceylon to secure that majority even for the passage of useful non-contentious amendments. In strict law it is possible for the Ceylon Government, if it so desires, to request the British Government to pass an United Kingdom Act incorporating the subject-matter of the necessary amendments. If such an Act is passed and it contains the declaration that it has been enacted with the request and consent of the Ceylon Government for the time being, it will be operative in Ceylon. In this way it is possible to get over the difficulty relating to the requirement that a two-thirds majority is necessary for a constitutional amendment. So much for the legal position. But, in practice, it is extremely doubtful that any Ceylon Government would request the British Parliament to pass legislation relating to a matter in respect of which legislation can be enacted by the Ceylon Parliament and for which a special procedure is prescribed. Such a course would only court justifiable criticism from the Opposition and a substantial loss of popularity. Further, it is even more doubtful that the British Government would agree to enact such legislation, particularly as there is procedure for this purpose in the Ceylon Constitution. The real object of section 1 of the Ceylon Independence Act, however, is to enable the British Government to apply legislation relating to matters common to the Commonwealth, such as the royal succession, to its members.

There is a difference in phraseology between paragraph 1 (2) of the First Schedule to the Ceylon Independence Act and section 6 (2) of the Indian Independence Act. While the latter Act makes express provision in that section for the amendment of "this," meaning the Indian Independence Act, "existing" and "future" Acts of the United Kingdom Parliament in so far as they are part of the law of India, the Ceylon Act only makes express provision for the amendment of "existing" and "future" Acts of such Parliament in so far as they are a part of the law of Ceylon. On the basis of this difference in phraseology some have endeavoured to argue

that the Ceylon Parliament has no power to amend the Ceylon Independence Act. Such an argument is untenable as the Ceylon Independence Act will obviously be an "existing" Act at the time when the Ceylon legislation seeking to amend or repeal it is passed. Further, except for certain express limitations inserted in the Constitution for particular purposes, limitations which do not affect this matter, there have been no restrictions, since the time when Ceylon secured full responsible government, to the legislative competence of the Ceylon Parliament.[119] It is useful to remember, in this connexion, that both South Africa and Eire have used section 2 of the Statute of Westminster, from which paragraph 1 (2) of the First Schedule to the Ceylon Act is derived, to amend that Statute, although that section does not provide specifically for the amendment of "this Act."[120]

There are also very significant provisions relating to the legislative powers of the Ceylon Parliament in the Constitution. Those provisions are embodied in section 29 which runs as follows :—

"29 (1) Subject to the provisions of this Order, Parliament shall have power to make laws for the peace, order and good government of the Island.

(2) No such law shall—

(*a*) prohibit or restrict the free exercise of any religion ; or

(*b*) make persons of any community or religion liable to disabilities or restrictions to which persons of other communities or religions are not made liable ; or

(*c*) confer on persons of any community or religion any privilege or advantage which is not conferred on persons of other communities or religions ; or

(*d*) alter the constitution of any religious body except with the consent of the governing authority of that body, so however, that in any case where a religious body is incorporated by law, no such alteration shall be made except at

the request of the governing authority of that body : .....
.....
.....[121]

(3) Any law made in contravention of sub-section(2) of this section shall, to the extent of such contravention be void.

(4) In the exercise of its powers under this section, Parliament may amend or repeal any of the provisions of this Order, or of any other Order of His Majesty in Council in its application to the Island :

Provided that no Bill for the amendment or repeal of any of the provisions of this Order shall be presented for the Royal Assent unless it has endorsed on it a certificate under the hand of the Speaker that the number of the votes cast in favour thereof in the House of Representatives amounted to not less than two-thirds of the whole number of members of the House (including those not present).....
.....
....."

Apart from the legislative restrictions embodied in this section, the only other provisions of the Constitution which constitute a limitation to the legislative competence of the Ceylon Parliament are those contained in section 39.[122] Those provisions provide for the disallowance of legislation having certain financial implications by the sovereign through a Secretary of State. But in this matter of disallowance the Sovereign, in view of section 4 of the Constitution will act on the advice of the Ceylon Government. Those provisions have been included in the Constitution to safeguard the country's credit and do not in practice substantially limit the legislative capacity of the Parliament.

Most Asian Constitutions have a comprehensive Chapter relating to Fundamental Rights. Ceylon is an exception to

his rulte and the only provisions in the Ceylon Constitution which can be regarded as constituting in any way such rights are the provisions of section 29 (2). Those provisions are very limited in scope and provide only for protection against racial and religious discrimination. There is a substantial body of responsible opinion that is doubtful whether this section even affords adequate protection against such discrimination and advocate the inclusion in the Constitution of an extensive Charter of Fundamental Rights, a matter that will be considered in detail in a later Chapter. This section came up for judicial scrutiny in the case "Kodakan Pillai v Mudanayake.[123] The central matter at issue in that case was whether two Acts of the Ceylon Parliament, the Citizenship Act, No. 18 of 1948, and the Parliamentary Elections (Amendment) Act, No. 48, of 1949, were invalid on the ground of repugnancy to the provisions of section 29 (2), of the Constitution. In both the Ceylon Supreme Court and the Privy Council it was decided that those Acts were valid, and those two legal tribunals also laid down the principles that were to be observed when the validity of statutes such as these were being determined. The principles are set out below :—

(1) the scope and effect of a legislative measure should be ascertained from its actual provisions and it is only in the case of real ambiguity that one should refer to other materials, such as, command papers, government sessional papers and official reports of proceedings in Parliament, to ascertain such scope and effect.

(2) the effect of a statute that should be determined is its necessary legal effect and not its ulterior or remote effects. Nor should one seek to ascertain the social, economic or political effects of such a statute.

(3) where a statute is tested for ascertaining whether it contravenes section 29 (2) (*b*), the two following matters should also be decided—

(*a*) whether a community has been discriminated against, and

(*b*) whether such discrimination affects in like manner other communities as well.

In short, the Privy Council after applying those principles in Kodakan Pillai v Mudanayake concluded as follows :—

"Is it in the present case legislation on citizenship or is it legislation intended to make and making Indian Tamils liable to disabilities to which other communities are not liable? It is as the Supreme Court observed a perfectly natural and legitimate function of the legislature of a country to determine the composition of its nationals?"

In this connexion, it might be stated that in all similar matters, those are the kind of questions that should be determined. It is not for the writer at this stage, when it is still possible for the validity of the Official Language Act, No. 33 of 1956, to be tested in the Court, to express his opinion on the question of its validity. He is, however, of the view that it is very probable that the Court in determining that question will ask itself whether the Official Language Act is legislation on the matter of language or whether it is legislation intended to make and making Ceylon Tamils liable to disabilities to which other communities are not liable? The validity of that Act will depend on objective answers to those questions.

In this connexion, it is useful to examine the implications of section 29 (4) of the Constitution. That section does not strictly impose a limitation on legislative power. It stipulates that before a Bill amending or repealing any of the provisions of the Constitution is presented for the Royal Assent it should have endorsed on it a certificate under the hand of the Speaker that the number of votes cast in favour of the Bill in the House of Representatives amounted to not less than two-thirds of the whole number of members of the House (including those not present). Still, if it is proved that in the case of a Bill amending the Constitution, the provisions of that section have not been complied with, the Bill will be invalid.

Another connected matter of considerable importance is the question whether the Constitution provides adequate legislative machinery to enable Ceylon to secede from the Commonwealth, if it so thinks fit. Ceylon's legal connexions with the Commonwealth depend on—

(1) United Kingdom Acts of Parliament; and
(2) United Kingdom Orders in Council.

The former in so far as such Acts apply to Ceylon can be repealed or amended under paragraph 1 (2) of the First

Schedule to the Ceylon Independence Act, 1947, and the latter in so far as such Orders are part of the law of Ceylon can be amended or repealed under section 29 (4) of the Constitution. The Ceylon Government exercising its powers under those provisions can, therefor give effect to its intention to secede.

Questions as to the validity of legislation have been raised as points of order in the House of Representatives. Thus, during the discussion in the House of Representatives on October 18, 1949 of the second Bill introduced in 1949 for the amendment of the Ceylon (Parliamentary Elections) Order in Council 1946, Mr. S. J. V. Chelvanayakam, Member for Kankesanturai, asked the Speaker to rule that the Bill was out of order as it contravened section 29 (2) of the Constitution. The Speaker in ruling that the discussion on the Bill should be proceeded with stated as follows :—

> "The point of law which my hon. friend has raised may be a good one, or a bad one. I am only concerned with the fact whether this House has a right to bring before hon. members a Bill of this nature . . . this House has a right to bring in any law in this House, and to legislate on any matter it likes. The law may be good, or the law may be bad, and if it goes against Section 29 of the Order in Council then sub-section (3) of that very Section which the hon. Member quotes operates. If the law is bad, the law would be void. It is not for me to say whether the law is good or bad. The Judiciary is there and it is a matter for them."[124]

There is no doubt that the position taken up by the Speaker in this matter was the correct one. In short, the preceding paragraphs will show that there are certain limitations to the sovereignty of Ceylon's Parliament. Despite these limitations, Ceylon is a sovereign state.

CHAPTER IX

CONSTITUTIONAL IMPLICATIONS OF THE PROBLEM OF MINORITIES IN CEYLON

Ceylon is a plural society consisting of a collection of racial, religious and linguistic groups. The divisions according to race are the significant divisions for the purposes of this chapter. The minority problem in Ceylon is fortunately not complicated by the social disabilities that characterise it in parts of Africa and America. Far from the Sinhalese, the majority community in Ceylon, having a feeling of racial superiority over the Indian and Ceylon Tamils, the two chief minority groups in the country, that community has a considerable regard for, and is even slightly jealous of, the industry of the Indian Tamil labour population and the mental agility and intelligence of the Ceylon Tamil middle class, such regard and jealousy being contributory factors in the creation of the problem.

During the last decade, this problem centred on two matters : the relations between the Sinhalese and the Indian Tamils and the relations between the Sinhalese and the Ceylon Tamils. The purpose of this chapter is to examine the constitutional implications of those relations.

The following figures which represent the estimated numerical strength of the communities in June 1956 concerned will assist in an understanding of the problem :—

Sinhalese	.. ..	6,262,000
Ceylon Tamils	..	1,022,000
Indian Tamils	..	959,000
Ceylon Moors	..	521,000
Indian Moors	..	43,000
Others (including Pakistanis)	.. ..	52,000

Another matter of interest which is of significance is the division of Sinhalese into low-country Sinhalese consisting

in 1953 of 3,469,512 persons and Kandyan Sinhalese consisting in that year of 2,147,193 persons.

It is evident from the communal riots that occurred in Ceylon in June, 1956 and May 1958, that racial passions, hitherto unknown in the country, have been aroused. It, therefore, appears as if the safeguards provided in the Constitution for the protection of minority rights have proved inadequate. It is, therefore, useful at this stage to examine the nature of those safeguards.

The provisions in the Constitution for the creation and definition of electoral districts, with special attention to the matter of the weightage of minority interests, referred to in detail in an earlier chapter,[126] constitute an important minority safeguard. Despite such provisions relating to weightage, the system of representation in Ceylon is substantially territorial. There was in 1954 a minor encroachment on the territorial character of representation when provision, in consequence of an agreement between the Governments of India and Ceylon, was made for the creation of a special multi-member constituency, the voters for which were to be persons of Indian or Pakistani origin, for electing four members to represent those persons.[127] Although such provision was made no elections for that constituency have been held and it has recently been decided that such elections are not to be held at all. The Soulbury Commission reaffirmed the view of the Donoughmore Commission that communal representation was in the context of Ceylon conditions, harmful, and accordingly, despite efforts in certain influential quarters to reintroduce this principle, the Soulbury Commission[127] recommended the continuance of territorial representation. As there are some in Ceylon who feel that the revival of communal representation in some form will reduce the present growing communal feeling in the country, it will be useful to reproduce the following enlightened observations of the Donoughmore Commission on the matter :—

"In surveying the situation in Ceylon we have come unhesitatingly to the conclusion that communal representation is, as it were, a canker on the body politic, eating deeper and deeper into the vital energies of the people, breeding self-interest, suspicion, and animosity, poisoning the new growth of political consciousness, and effectively preventing the

development of a national or corporate spirit . . . there can be no hope of binding together the diverse elements of the population in a realisation of their common kinship and an acknowledgement of common obligations to the country of which they are all citizens so long as the system of communal representation, with all its disintergrating influences, remains a distinctive feature of the Constitution.''[129] These observations are still valid and, in the writer's view, even the present tension between the two chief races in the country do not warrant a reintroduction of communal representation. Apart from these constitutional arrangements relating to representation, the provision for the appointment of six members by the Governor-General on the recommendation of the Prime Minister, to represent interests not represented or inadequately represented in the House of Representatives, a matter also referred to in an earlier chapter, is an additional minority safeguard.[130] It has been also shown earlier [131] that these arrangements have, with one significant exception, secured fairly adequate numerical representation of minority groups in the lower House. The number of members (including the appointed members) representing minority groups in that House since 1952 has been 26. The exception, however, is the matter of the representation of the Indian Tamils.

At the General election of 1947 there were seven Indian Tamils elected and the Indian Tamil vote influenced the results in fourteen other constituencies. But in view of the alteration of the franchise law in 1949, representation of Indian Tamils by persons belonging to their own community has disappeared altogether. The Ceylon Government, however, made certain arrangements for their representation : *firstly*, by the creation of the special communal electorate for the election of 4 members to represent Indian Tamil interests, and *secondly*, by enabling Indian Tamils to secure citizenship, which is the essential requirement for the exercise of the franchise, under a specially enacted law, the Indian and Pakistani (Residents) Citizenship Act. Although four years have elapsed since legal provision was made for the creation of that electorate, no elections for that electorate were held and as mentioned earlier, it was recently decided that no such elections are to be held at all. In regard to the second matter, out of a total 237,034 applications for citizenship, by December 31, 1956, only 15,184 applications, involving 55,155 persons, have been allowed.[132] It is possible that by the time of the next elections

most of those applications will be disposed of. If this happens, there is a possibility of two or three Indian Tamil representatives being elected.

Other safeguards provided for in the Constitution for the protection of the minorities were the Senate, an independent Public Service Commission, and the provisions of section 29 of the Constitution prohibiting the enactment of discriminatory legislation. It has already been shown that the minorities during this period secured fairly adequate numerical representation in the Senate.[133] The composition of the Public Service Commission in the same period was non-communal and, although there has been suggestions that attempts have been made by responsible politicians to influence its members, public service recruitment by this body has been generally equitable. The scope of section 29 has been found to be limited and not entirely satisfactory as a minority safeguard.[134]

These then are the constitutional safeguards in Ceylon for the protection of minority interests.

During this period the Indian Tamil minority in Ceylon have felt considerably aggrieved at Ceylon's attitude in regard to them in respect of such matters as citizenship, the franchise, immigration and emigration. Persons belonging to this community have not found any of these constitutional safeguards useful for these have not prevented the passage of legislation affecting their position as citizens and as voters. In fact, despite the fact that there were thirty-three members[135] belonging to the minority communities in Ceylon's first House of Representatives, representation slightly greater than the number of the persons belonging to those communities in the island warranted, the Citizenship Act, No. 18 of 1948, the Immigrants and Emigrants Act, No. 20 of 1948, and the Ceylon (Parliamentary Elections) Amendment Act, No. 48 of 1949, were passed. This was partly due to the fact that frequently, even when matters vitally concerning the minorities came up in Parliament, their representatives did not necessarily vote together, a fortunate matter from a national standpoint. Of course, it must also be mentioned in this connnection that the voting in the House of Representatives among the Sinhalese members was also divided. This legisfation was also passed in the Senate where minority representation was even more favourable than in the Lower House. It should, therefore,

be noted that numerical representation which is proportionate to population is no guarantee against enactment of discriminatory legislation when the party in power has a substantial majority in Parliament. Nor did the Indian Tamils find section 29 of the Constitution a protection against the enactment of the statutes in question, which to them was discriminatory, for the Courts before which their validity was tested, by the application of objective tests, decided that those statutes were not discriminatory and in order.[136] The object of this legislation was the protection of the interests of persons belonging to the Kandyan Sinhalese community, who according to a considerable body of Sinhalese opinion, were being deprived of employment and land by the presence in their traditional homelands of nearly a million Indian Tamils.

The relations between the Sinhalese and the Ceylon Tamils during the period 1948-1955 were generally cordial. This is reflected in the debates in the two Houses and even in voting, where the Ceylon Tamil vote on many controversial issues was divided. To illustrate, three Ceylon Tamils voted together with thirty-eight Sinhalese and all the Muslim members present for the passing of the second reading of the Citizenship Bill of 1948, while two Ceylon Tamils, twenty-four Sinhalese and all the Indian Tamil members voted against such passing.[137] On the second reading of the Indian and Pakistani (Residents) Citizenship Bill of 1949, six Ceylon Tamils voted with thirty-six Sinhalese and five Muslims for the Bill while three Ceylon Tamil members, all the Indian Tamil members and twenty-two Sinhalese members voted against the Bill.[138] To give one further illustration, on a motion, discussed on March 2, 1951, relating to the national flag, a matter which could quite easily result in a vote on communal lines, nine Ceylon Tamils and thirty-two Sinhalese voted for the motion while three Ceylon Tamils and seventeen Sinhalese voted against the motion.[139] Further, right up to the end of 1955 the general attitude of the government was one of partnership with the Ceylon Tamils. Mr. D. S. Senanayake, Ceylon's first Prime Minister, on January 16, 1948, on a debate on a private member's motion relating to the national flag, stated as follows :—

" . . . I would like to say here that if there is any feeling amongst any community, especially the Tamil community that we want to lord it over them, or that we want to get some

symbol just to show the superiority of the Sinhalese, it is all wrong because it was pointed out both in this House and outside that the Sinhalese do not have that intention at all... Even today I can assure you that there is nothing that we would like more than to feel that Sinhalese, Tamils and all people in this country should form one people ... There is no question of one community being inferior or superior to any other community. All people have equal rights and we all form one people in this Island.''[140] Sir John Kotelawala as late as October 1955, when he was Prime Minister during a debate on a private member's motion relating to the official languages of the country, stated as follows:—

''I should, however, like to add for the information of both the Sinhalese-speaking people and the Tamil-speaking people, whose continued cooperation we need to build a strong, unified and progressive nation in this country, that the party and the Government of which I am the head, has reiterated quite recently that Sinhalese and Tamil should be the official languages throughout the country, and are determined to find a satisfactory solution for any outstanding questions connected with the transition from English to Sinhalese and Tamil in keeping with the fundamentals of democracy. To the Sinhalese-speaking people, I would say that we lose nothing by being fair by the Tamil-speaking people who wish to preserve their culture and their language quite as intensely as we want to preserve ours.''[141]

Further, the first three Prime Ministers of Ceylon had in their Governments Ceylon Tamil representatives : they always had two Ceylon Tamil Ministers in their Cabinets, Sir John Kotelawala having in addition in his Government two Parliamentary Secretaries of that community and the two Senanayakes a Parliamentary Secretary each. There is no Tamil representation in the Government since the General Election of 1956.

There came into being a substantial change in the relations between the Ceylon Tamils and the Sinhalese in April 1956, with the endeavours of the present Government to implement its language policy. That policy was an important item in its election programme, and in seeking to give effect to it, the Government was only following a legitimate democratic practice. In fact, one of those who appreciated this important

consideration was, strangely enough, Mr. S. J. V. Chelvanayakam, the Leader of the Federal Party, the principal Ceylon Tamil party in the country, who in the course of a speech in the House of Representatives on November 26, 1957, on a motion relating to the appointment of a Joint Select Committee to consider the revision of the Constitution, stated "... it is quite another thing to ask the Hon. Prime Minister who had been returned on the Sinhala only official language policy to go counter to that in this Parliament in which he has had that policy converted into an Act ..."[142]

The Government's official language policy was given statutory expression in the Official Language Act, No. 33 of 1956, and the Tamil Language (Special Provisions) Act, No. 28 of 1958. The first Act declared the Sinhala language, the language of the Sinhalese people, the majority community in Ceylon, to be the one official language of Ceylon. There was also provision under the first Act for the continuance of the language or languages hitherto used, for a period not exceeding four years, for any official purpose, if the Prime Minister considers the immediate use of the Sinhala language for that purpose impracticable.[143] Under that provision administration is being for the present generally carried on in English. The second Act was passed in September 1958, and provided for a reasonable use of Tamil for certain purposes of a quasi-official character. Those purposes were the use of Tamil as a medium of instruction in secondary and higher education, its use for examinations for entry into the public service subject to certain qualifications, its use for communication between private individuals and officials and between local authorities in the Northern and Eastern Provinces and officials, and its use in those Provinces for prescribed administrative purposes without prejudice to the terms of the Official Language Act. Although the provisions of this second Act do not satisfy in full the demands of a substantial body of Tamil opinion, a certain amount of the acrimony and bitterness associated with the language controversy would have been avoided had that Act been enacted earlier.

Apart from the need to give effect to the people's mandate expressed at the general election, there were other reasons for the enactment of those measures. Those reasons were competently summarised, in the following terms, by Mr. Philip Gunawardena, Minister of Agriculture and Food in the present

Government, in the debate on the second reading of the Official Language Bill :—

"No, Sir, they must accept the position that the language of the majority must be the common language, for convenience, in order to save unnecessary expenditure of money, to prevent the dissipation of energy and unnecessary duplication of officials for various types of work. Let us accept that position, and in a few years, I am sure, my Tamil friends, people who have competed with the Sinhalese at competitive examinations and beaten them hollow, will be able to compete in examinations conducted in the Sinhalese language and beat the Sinhalese and win more places in the administration... This Bill is introduced not for the purpose of driving out our Tamil friends from the Public Service..... I would ask my hon. friends from the Northern and Eastern Provinces to look at this problem in a realistic manner and to help the Government which is a People's Government which will serve the people of this Island whether they be Tamils, Burghers, Moors or any other community in the same way that they will treat the Sinhalese—please understand that. There will be no discrimination at all....."[144]

Despite those reasons a large number of Ceylon Tamils are opposed to the policy embodied in the Official Language Act, No. 33 of 1956. Their point of view can be gathered from the following observations of Mr. S. J. V. Chelvanayakam during the second reading of the Official Language Bill of 1956 :—

"We are opposed to the Sinhalese only principle because it means not merely the degradation of the Tamil language. What is more important is that it means the reduction of people whose mother tongue is Tamil to an inferior status in this country ... We will all become political untouchables and that is the reason why we are fighting this Bill at the highest level, not on the question of how it is to be implemented, but on the question of whether this Bill should be based on the Sinhalese only principle or not ... Perhaps unfortunately or perhaps fortunately the Jaffna man has made Government service an industry, but he realises that his future does not lie in that department of life. But merely because there has been a larger percentage of Tamils in the Public Service than their numbers warrant, I cannot understand how that can be made a serious argument on this language issue...

After all, even the M.E.P. [145] must be interested in good government and that can only be produced by the satisfaction of the minorities, especially such a large minority as the Tamil-speaking people of this country. It is for that purpose and for the purpose of equality of status of the people that speak the language rather than for the language itself that we are one hundred per cent opposed to this 'Sinhalese Only' principle, and I think I will not be overstating the position if I state that in the Northern and Eastern Provinces, never has there been such a combination of thought as has been evinced on this problem because the consequences are something that every man, woman and child has to bear in those parts. [146] The Ceylon Tamils in short, founded their case against the language policy of the M.E.P. Government on a combination of reasons which included emotional as well as economic factors.

But apart from language, the colonisation policy of the government, particularly in the Northern and Eastern Provinces, was another cause of dispute between the Ceylon Tamils and the Sinhalese during this period. It was alleged that large groups of Sinhalese colonists were being deliberately settled in those provinces with the intention of undermining the predominant Tamil character. This aspect of the matter was considered when the Bandaranaike-Chelvanayakam Pact of July 1957, was entered into and signed. [147] According to that Pact the powers of Regional Councils, which were to consist of local representatives, were to include the power to select allottees to whom lands within their areas of authority were to be alienated and the power to select labour for colonisation schemes.

A considerable section of responsible opinion among the Ceylon Tamils feel today the same sense of disappointment in regard to the provisions in the Constitution for the protection of minority interests as the Indian Tamil community felt a few years earlier. Those provisions have not prevented the enactment of a legislative measure like the Official Language Act. Nor have those safeguards been a bar to other alleged acts of discrimination.

An important matter that is, therefore, exercising the minds of students of institutions in Ceylon today is the problem of devising further constitutional safeguards for the protection

of minority interests. The following are some of the devices proposed :—

(1) a federal structure for Ceylon ;
(2) a scheme, which is not a federal scheme, but which provides a greater weightage for minorities than that which exists today ;
(3) the establishment of Regional Councils with considerable powers of autonomy ; and
(4) the inclusion in the Constitution of provisions relating to Fundamental Rights.

Method (1) is the one that has been advocated by the Federal Party. Although that Party has been consistently advocating a Federal structure for the country, it has not still put forward a coordinated and planned scheme as to the nature of the structure that it hopes to establish. Mr. G. G. Ponnambalam, the member for the Jaffna constituency and the Leader of the Tamil Congress Party, the most popular Ceylon Tamil Party in 1947, in a speech on May 3, 1956, on the debate on the address of thanks to the throne made the following observations, which are very relevant in this connection :—"The Federal Party merely stated that it stood for Federation..... It has not placed before others of my way of thinking, or for that matter, of the Sinhalese, precisely what this federal state is ... But let it be clearly understood that you cannot hope to have the intellectual support of any right-thinking Tamil unless you have the guts to go out in the open and put down in detail what your federal constitution is. What is the composition of the legislature in a federal constitution ? Is it to be unicameral or bicameral ? If it is unicameral, I wish to know what the representative character of that unicameral legislature is to be. If it is to be bicameral, I wish again to know what the House of Representatives is going to be and what the composition of the Upper House is going to be. Next I wish to know what are going to be the particular subjects and functions of the Central Government and what are the subjects of the federating units ? There is another matter. What are the subjects over which the Central Government and federating units are to have concurrent jurisdiction ? ... Lastly I refer to the question of Tamil-speaking people who have become permanently settled, particularly in the Up-country area of this country. I wish to know what their position is to be in a federal constitution ... Would the federating unit

embrace them or not ? ''[148] Apart from these very vital considerations, there is also the matter of the Ceylon Tamils, not an inconsiderable number, who are permanently resident in other parts of Ceylon, particularly in Colombo. Are they to be sent back to the Northern and Eastern provinces from where their ancestors originally came ? In this connexion, it is more than possible that this group will not voluntarily wish to abandon their posts, their properties and their homes. In addition to these matters, a federal structure in a small country is an expensive business involving the duplication of institutions and personnel. There is already a dearth of competent technical personnel in Ceylon and federalism is bound to make that shortage more acute. But, probably, the greatest obstacle to federalism is the fact that none of the acknowledged Ceylon parties, with a predominantly Sinhalese composition, whether of the right or the left, are in favour of this solution.

Method (2) if it involves the reintroduction of communal representation is unsatisfactory for the reasons already mentioned.[149] Even if it involves any other scheme of weightage, it will certainly not be acceptable to the Ceylon Tamil minority. This was made quite clear by Mr. S. J. V. Chelvanayakam in his speech on the debate on the address of thanks to the throne on May 2, 1956, when he said ''we need not refer any more to it because nobody now advocates weightage in representation.''[150]

Method (3) has a number of champions both among members of the Bandaranaike Government of today, including the Prime Minister himself, and among the Tamils. In fact, a scheme based on this device was an important part of the Bandaranaike-Chelvanayakam Pact of July 1957. The scheme contemplated by that Pact included the following features :—

(*a*) The Northern Province of Ceylon was to form one regional area and the Eastern Province of Ceylon was to be divided into two or more regional areas. The boundaries of those areas were to be specified in the legislation prepared to give effect to that scheme.

(*b*) Provision was to be made in such legislation to enable—

(*i*) regional areas to amalgamate even beyond their provincial limits,

(*ii*) the division of such areas into two or more parts, subject to ratification by Parliament,

(*iii*) two or more such areas to collaborate for specific purposes of a common interest,

(*iv*) the appointment of a Delimitation Commission to carve out electorates, and

(*v*) direct elections of Regional Councillors.

(*c*) in the matter of powers Regional Councils were to have control over such matters as agriculture, co-operatives, lands, land development, colonization, education, health, housing, social services, water schemes and roads.

Although that Pact is no longer in existence, a scheme of regional autonomy, prepared on lines similar to those mentioned in the Pact, will go a considerable way towards allaying minority fears.

There is a considerable amount of vagueness in regard to the matter of Fundamental Rights. There does not appear to be any clear declaration of the Fundamental Rights that are contemplated. Some of those who advocate a Charter of such rights, probably, have the Indian Constitution in mind. The provisions relating to Fundamental Rights in that Constitution can be grouped under the two following main headings:—

(*a*) a group of rights relating to matters such as equality, individual liberty, and personal freedom, and

(*b*) a group of rights relating to the removal of social disabilities, race discrimination, and the improvement of the condition of women and children.

The rights under heading (*a*) are in England protected under the common law. Some of those rights, such as the obligation that an accused should be brought before a Magistrate within twenty-four hours of his arrest and the requirement that an arrested person should be informed of the charge are matters that are provided for in the Ceylon Criminal Procedure Code. Further, some of the rights under heading (*b*) like those regulating the employment of children in hazardous occupations

and those prohibiting social discrimination in public places have been made the subject of special legislation in Ceylon.[151] Further, Indian example has shown that the constitutional provisions relating to Fundamental Rights have been the source of considerable litigation arising out of the ambiguity of those provisions. Nevertheless, there is a feeling among a considerable section among the minorities that the inclusion of such provisions in the Constitution will protect their interests. Their inclusion will also be a continual reminder to the Government and others to be watchful of such interests and will, thus, make it difficult for encroachments to be made on the freedom and liberty of the minorities. Finally, if Government in the national interest desires to impose economic and social controls, the existence of such rights will ensure that the democratic process will be adopted for the imposition of such controls. It is the writer's view that, despite certain disadvantages, the inclusion in the Ceylon Constitution of provisions relating to Fundamental Rights will be useful and will also help in allaying minority fears and suspicions.

In short, it is the writer's view that the Constitution can be considerably strengthened in the interests of minorities by the inclusion of provisions relating to Regional Councils and Fundamental Rights. It should, in this connexion, be remembered that, before the communal riots of May 1958 had aggravated the situation, the Tamil Federal Party had been willing to accept a scheme, which provided for certain concessions in the matter of language, later embodied in the Tamil Languages (Special Provisions) Act, No. 28 of 1958, and for Regional Councils with considerable powers of local self-government. It is to be hoped that Tamil leadership, in spite of recent occurrences, will not reject a fair scheme based on regional autonomy.

Apart from these constitutional devices, a genuine attempt should be made to remove the economic grievances that have partly contributed to the creation of this problem. No attempt has been made here to deal with this aspect of the question, as that is a matter for the economist and does not come within the province of the student of institutions or constitutional law. However, in passing it should be mentioned that an enlightened economic policy based on increased industrialisation, production and planned colonisation which is not harmful to minority interests, will help in removing

those grievances and, consequently, in lessening communal fears and suspicions. Such a policy coupled with a spread of education will promote the necessary atmosphere for a lessening of racial tension. Finally, one should remember that one can never settle minority differences completely by legislation, unless there is at the same time a real change of heart among the communities and that it is the duty of responsible leadership to endeavour to produce such a change. It is to be hoped that it will not be long before people in Ceylon will be saying with Mr. D. S. Senanayake, Ceylon's first Prime Minister, "that the interests of one community are the interests of all. We are one of another whatever our race or creed."[152]

CHAPTER X

CONCLUSION

Ceylon in 1948, when the country achieved full responsible government, offered an ideal atmosphere for the successful operation of Parliamentary democracy. The island had realised independence gradually and without bloodshed. Its leaders were familiar with parliamentary institutions, adult suffrage and the exercise of wide powers of internal self-government, through working the Donoughmore Constitution. Further, it had an advantage over many another Oriental democracy in that it had an efficient, impartial and incorruptible public service and an independent judiciary. Those advantages Ceylon still has, despite the trying period she has been recently experiencing, and it is the responsibility of Ceylonese leadership to preserve and continue those institutions and see that the Constitution is operated fairly and equitably in the interests of every community in the country.

One matter that may surprise the foreign observer is the reliance Ceylon still places in respect of certain matters on English standards and experience. The Standing Orders of the Ceylon House of Representatives are largely derived from the Standing Orders of the English House of Commons and one of those Orders declares that "In all cases for which those Orders do not provide resort shall be had to the usages and practices of the Commons House of Parliament . . . " and "in cases of doubt the Standing Orders of this House shall be interpreted in the light of the relevant practice of the Commons House of Parliament . . . " The Constitution likewise provides that the privileges, immunities and powers of the Ceylon Parliament and its members are not to exceed those for the time being held and enjoyed by the House of Commons. These are matters that have already been referred to earlier. But English principles are followed and applied also in the administration of the law. The Civil Law Ordinance specifies that the Law of England is to be observed in maritime and in certain commercial matters. Further, by section 6 of the Ceylon Criminal Procedure Code, matters of criminal procedure, for which no special provision has been made in that

Code or by any other law in operation, are to be governed by the law relating to criminal procedure for the time being in force in England. A similar provision appears in the Ceylon Evidence Ordinance and enables matters relating to evidence to be determined, in the case of absence of provision in the Ceylon law, by the English law. Furthermore, by section 58 of the Sale of Goods Ordinance, the rules of English Law, including the law merchant, unless such rules are inconsistent with the provisions of that Ordinance, are to apply to contracts for the sale of goods. Finally, her entire Constitution, as this survey would have shown, is permeated by British principles, usages and practices.

Throughout the period 1948-1958, the country's leaders, whether of the Government or the Opposition have frequently asserted again and again their faith in democratic institutions. In the case of the Government it has periodically reaffirmed its trust in such institutions in the throne speech with which the business of each new Parliament commences. In the case of Opposition leaders, particularly the leaders of Marxist parties who, according to popular estimation, are not believers in parliamentary institutions, they have consistently in Ceylon displayed a vigilance for democratic principles which the British Liberal Party in its heyday would have envied. Thus Mr. P. G. B. Keuneman, a member of the Ceylon House of Representatives and a leader of the Ceylon Communist Party, stated, in that House on December 6, 1951, in the course of a debate on a ruling of the Speaker disallowing the motion of a member, as follows :—

"We have always fought for the principle of the Sovereignty of Parliament, that is to say, for the right of Parliament not only to legislate on all questions but also to be able to express its opinion on all questions, no matter how absurd those questions may be. The absurdity or otherwise of a question is to be decided by this House, but there should be no limitation to any motion being brought before this House except those which are expressly excluded by the terms of the Standing Orders themselves ... As a member who is jealous of the rights of individual Members of this House, I feel that it is not possible for me to associate myself with such a position. I feel your ruling to be a limitation on the powers of this House."[153] Dr. N. M. Perera, the Leader of the Opposition in the House of Representatives in 1958, and a leader of a

Party which is considered Trotskyist in its outlook, in a debate in the House of Representatives on July 6, 1955, where a matter of parliamentary privilege was involved, stated as follows :—

"It is very important to understand that what is before us today concerns the future growth of this institution as a democratic body. I am not here interested about the guilt or otherwise of the two hon. Members concerned . . . But we, in the process of giving them a punishment if they are guilty, must see that the very foundations on which this institution is built are safeguarded. In the process of punishing these members we must not do anything that will jeopardize and undermine the fundamental rights which this House has a right to claim."[154]

Throughout this period there were frequent appeals in Parliament to British works on Parliamentary procedure like those by Erskine May and Gilbert Campion. Further, the various Governments in power furnished the Opposition with every opportunity to criticize their policies by moving votes of no-confidence on them.[155]

However, there are certain matters where a closer adherence to British practice may usefully be followed. Periodically, there has been feeling in the country that legislation has been amended with retrospective effect to suit particular cases or protect particular individuals. This has been specially so in the matter of elections and Opposition leaders have frequently inquired whether such steps would have been taken if members of their parties were involved. Thus, in the course of the debate on the Indemnification Bill of 1954, Mr. S. W. R. D. Bandaranaike, the present Prime Minister, then in the Opposition, stated as follows :—

"But here it is specifically for the purpose of this Kandy case alone that this step is being taken, creating the impression that when some Member on the Government side is concerned in a matter like this the Government is prepared to go any length in order to assist, let us say, that Member and his position. It creates the feeling that if some Member of the Opposition had been involved none of these steps would have been taken at all, . . . "[156]

Further, there has been a tendency among leaders in Ceylon to allow the immediate advantage to overshadow the national interest. The fulfilment of election pledges may be a democratic imperative, but such promises should be modified in the interests of the country as a whole. Furthermore, it is the duty of responsible leaders in infant democracies like Ceylon to be restrained in the undertakings they give to the electors. A semi-illiterate electorate may be imbued with horse-sense but such an electorate is also waiting to be led and real statesmanship consists in being able to lose the next election for the country's good.

To conclude, no plural society like Ceylon can advance, if the communities that comprise it do not realise their common characteristics and allow their differences to be submerged in the pursuit of common ideals and common hopes, aimed at freeing the people of the country from want, disease, ignorance and fear.

APPENDIX A

A list of some of the occasions when no questions were asked at all in the Senate :—

1. On 1-9-1948.
2. On 2-9-1948.
3. On 10-2-1949.
4. On 23-2-1949.
5. On 24-2-1949.
6. On 19-5-1949.
7. On 29-11-1949.
8. On 2-3-1950.
9. On 14-3-1950.
10. On 4-4-1950.
11. On 22-8-1950.
14. On 24-8-1950.
15. On 29-8-1950.
16. On 30-8-1950.
17. On 31-8-1950.
18. On 1-9-1950.
19. On 20-9-1950.
20. On 21-9-1950.
21. On 5-10-1950.
22. On 14-3-1951
23. On 15-3-1951.
24. On 10-7-1951.
25. On 20-12-1951.
26. On 11-2-1953.

APPENDIX B

Text of Section 39 of the Constitution.

Laws relating to Ceylon Government Stocks

39 (1) Any law which has been assented to by the Governor-General and which appears to His Majesty's Government in the United Kingdom—

(*a*) to alter, to the injury of the stock-holder, any of the provisions relating to any Ceylon Government stock specified in the Second Schedule to this Order ;

or (*b*) to involve a departure from the original contract in respect of any of the said stock

may be disallowed by His Majesty through a Secretary of State.

(2) The provisions of sub-section (1) of this section shall also apply in relation to any Ceylon Government stock issued after the date upon which this Part of this Order comes into operation which, at the request of the Government of the Island, has been included in the list kept by the Treasury of the United Kingdom in conformity with the provisions of Section 2 of the Colonial Stock Act, 1900, of securities in which a trustee may invest.

(3) Whenever any such law has been disallowed by His Majesty, the Governor-General shall cause notice of such disallowance to be published in the Government Gazette.

(4) Every law so disallowed shall cease to have effect as soon as notice of such disallowance shall be published as aforesaid; and thereupon any enactment repealed or amended by or in pursuance of the law disallowed shall have effect as if such law has not been made. Subject as aforesaid the provisions of section 6 of the Interpretation Ordinance shall apply.

. . . . . .

. . . . . .

Second Schedule

Ceylon Government 5 per cent Inscribed Stock (1960—70).

Ceylon Government 4½ per cent Inscribed Stock (1965).

Ceylon Government 3½ per cent Inscribed Stock (1954—59).

Ceylon Government 3¼ per cent Inscribed Stock (1959).

Ceylon Government 3 per cent Inscribed Stock (1959—64).

APPENDIX C

Part I

Offences to be punishable only by the Supreme Court

1. Assaulting, insulting or wilfully obstructing any member coming to or going from the House or on account of his conduct in the House or any committee, or endeavouring to compel any member by force, insult or menace to declare himself in favour of or against any proposition or matter depending or expected to be brought before the House or any committee.

2. Sending to a member any threatening letter or challenging a member to fight on account of his conduct in the House or committee.

3. Tampering with, deterring, threatening, beguiling or in any way unduly influencing any witness in regard to evidence to be given by him before the House or any committee.

4. Presenting to the House or to any committee any false, untrue, fabricated or falsified document with intent to deceive the House or any committee.

5. Wilfully publishing any false or perverted report of any debate or proceedings of the House or a committee or wilfully misrepresenting any speech made by a Member in the House or in committee.

6. Wilfully publishing any report of any debate or proceedings of the House or a committee the publication of which has been prohibited by the House or committee.

7. The publication of any defamatory statement reflecting on the proceedings and the character of the House.

8. The publication of any defamatory statement concerning any Member in respect of his conduct as a Member.

9. The offering to or acceptance by any member or officer of the House of a bribe to influence him in his conduct as such member or officer, or the offering to or acceptance by any member or officer of the House of any fee, compensation, gift or reward for or in respect of the promotion of or opposition to any Bill, resolution,

matter, rule or thing submitted to or intended to be submitted to the House or any committee.

10. The printing of a copy of any Act or Ordinance or of any report, paper, minutes or notes or proceedings of the House or any committee, which purports to have been printed by the Government Printer or by or under the authority of the House or any committee but which in fact has not been so printed or the tendering in evidence of any such copy as aforesaid.

11. The abetment of any act or omission specified in any of the preceding paragraphs.

Part II

Offences to be punishable either by the House or the Supreme Court

1. The wilful failure or refusal to obey any order or resolution of the House under this Act, or any order of the President or Speaker or any member which is duly made under this Act.

2. Wilful disobedience to any order for attendance or for production of papers, books, records, or documents made by the House or any committee duly authorised in that behalf unless such attendance or production is excused for certain exceptional reasons.

3. Refusing to be examined before or to answer any lawful and relevant question put by the House or any such committee, unless such refusal is excused for certain exceptional reasons.

4. Assaulting, insulting or wilfully obstructing any member in the House or in committee or in the precincts of the House.

5. Assaulting or resisting or wilfully interfering with an officer of the House in the Chamber or in committee or in the precincts of the House.

6. Creating or joining in any disturbance in the Chamber or in committee or in the vicinity of the House while the House or any committee is sitting, knowing or having reasonable grounds to believe that proceedings of the House or committee are or are likely to be interrupted.

7. Disrespectful conduct in the precincts of the House.

8. Prevarication or other misconduct as a witness before the House or in committee.

9. The publication of any proceedings in a committee of the House before they are reported to the House.

10. The abetment of any act or omission specified in any of the preceding paragraphs.

The reference in this Appendix to "House" is a reference to each Chamber of Parliament. The reference therein to "member" is a reference to a member of such Chamber.

APPENDIX D

Explanatory Notes

1. See post, pp. 27, 28.
2. Report of the Registrar-General of Ceylon on Vital Statistics for 1956, printed by the Government Press, Ceylon, 1957, p. 12. The figure mentioned is only an estimate, as the last census was held in 1953.
3. The Ceylon Year Book, 1957, printed at the Government Press, Ceylon, p. 30.
4. Report of the Registrar-General of Ceylon on Vital Statistics for 1956, printed by the Government Press, Ceylon, 1957, p. 12.
5. The aforesaid Ceylon Year Book, 1957, p. 28.
6. Ibid, p. 30. The 65.4% referred to is 65.4% of the population of the country, aged five years and over.
7. 444. House of Commons Debates, 5th Series, Col. 1478.
8. Sections 58 and 60 of the Constitution.
9. Section 52 of the Constitution.
10. The Ceylon Year Book, 1957, printed at the Government Press, Ceylon, p. 16.
11. Hansard for session 1948—49, Vol. 4, No. 12, Cols. 1806, 1814.

12. The Citizenship Act, No. 18 of 1948, (hereafter referred to as Act No. 18 of 1948), was amended by Acts No. 40 of 1950 and 13 of 1955 ; and the Indian and Pakistani Residents (Citizenship) Act, No. 3 of 1949, (hereafter referred to as Act, No. 3 of 1949), was amended by Acts No. 37 of 1950 and 45 of 1952. An admirable account of the legal implications of these two Acts appear in "Nationality and Citizenship laws of the Commonwealth and the Republic of Ireland" by Clive Parry, published by Stevens & Sons, Ltd., 1957.
13. The Constitution of Ceylon by Sir Ivor Jennings, p. 61.
14. Sections 9 and 10 of Act No. 18 of 1948.
15. Sections 13 and 17 (3) of Act No. 18 of 1948.
16. Sections 19 and 20 of Act No. 18 of 1948.
17. Section 22 (1) (g) of Act No. 18 of 1948.
18. Section 1 of the British Nationality Act, 1948.
19. Section 26 of Act No. 18 of 1948.
20. For the text of these documents, see Constitution of Ceylon, Ceylon Sessional Paper, 111 of 1948.
21. Article 4 of the Ceylon (Office of Governor-General) Letters Patent, 1947, hereafter referred to as the "Letters Patent", and section 2 of the Royal Executive Powers and Seals Act, No. 43 of 1954.
22. Article 6 of the Letters Patent.
23. Sir Oliver Ernest Goonetilleke, the Governor-General at the time of writing voluntarily reduced his salary by Rs. 12,000 a year, see Hansard for session 1955-56, Vol. 22, No. 1, Cols. 13 and 14.
24. Article 7 of the Letters Patent.
25. Hansard for session 1954-55, Vol. 18, No. 2, Col. 302.
26. Hansard session 1948-49, Vol. 3, No. 1, Cols. 3—9.
27. Hansard session 1954-55, Vol. 17, No. 1, Cols. 5 and 6.
28. Sections 15, 46 and 47 of the Constitution.
29. Sections 10, 11, 40, 50, 51 (1), 52, 58 and 70 of the Constitution. During the the period 1954-58, section 40 was not in operation, see the Ceylon Constitution (Special Provisions) Act, No. 35 of 1954.

30. The U.N.P. is the popular name by which one refers to the United National Party, the majority party in the country during the years 1948 to April 1956.

31. Modern Political Constitutions by C. F. Strong published by Sidgewick and Jackson Limited, 1952, pp. 224 and 236.

32. Sections, 46, 47, 48 and 49 of the Constitution.

33. New Zealand, the Development of its Laws and Constitution, by J. L. Robson and others, published by Stevens and Sons Limited, 1954, p. 15.

34. For Sir John Kotelawala's comments on the procedure observed in the first appointment as Prime Minister of Mr. Dudley Senanayake, see Chapter 9 of "An Asian Prime Minister's Story" by Sir John Kotelawala published by George G. Harrap & Co. Ltd., 1956.

35. Among the Parliamentary Secretaries chosen by Mr. D. S. Senanayake, there was one Ceylon Tamil, one Burgher and two Muslims. In Dudley Senanayake's second Cabinet, there was one Muslim, one Ceylon Tamil and one Burgher Parliamentary Secretary. In Sir John Kotelawala's Cabinet there were 3 Parliamentary Secretaries belonging to the minority communities of whom one was a Muslim and two Ceylon Tamils.

36. The letter containing this extract was read out in the Ceylon House of Representatives on December 14, 1948. See Hansard for session 1948-49, Vol. 5, No. 9, Col. 602.

37. Sections 8, 9, 10, 13 (2) 18, 31, 33 and 34 of the Constitution in addition to the provisions expressly mentioned in the text.

38. In arriving at the figures specified, the writer has used popular estimation as the test, as some persons can fall into more than one category, that is to say, a lawyer by education and training may have abandoned the law as a profession and taken to commerce and industry and is popularly considered as such. In that case he is regarded as a man with commercial and industrial interests and not as a lawyer.

39. This Bill was subsequently passed, after reintroduction and by the observance of the procedure set out in section 34 of the Constitution.

40. Debates of the Senate, 1948-1949 session, Vol. 2, No. 20, Cols. 1879—1900 ; and Debates of the Senate, 1950-51 session, Vol. 4, No. 34, Cols. 1768—75.

41. For proceedings on the Industrial Disputes Bill of 1950, in the Senate, see Debates of the Senate, 1950-51, Vol. 4, No. 19, Cols. 963—1016 ; for proceedings in the House of Representatives, see Hansard, 1950-51 session, Vol. 9, No. 11, Cols. 697—706.

42. See Debates of the Senate, 1958-59 session, Vol. 12, No. 2, Cols. 159—179, and No. 3, Cols. 181—213.

43. Section 74 of the Constitution.

44. The Donoughmore Commission was a Commission sent over to Ceylon by the British Government in 1927 to make recommendations in regard to the reform of the Constitution. The Constitution in operation in Ceylon between 1931 and September 1947 was based on those recommendations.

45. Ceylon Constitution (Special Provisions) Act, No. 35 of 1954.

46. The Constitution of Ceylon, by Sir Ivor Jennings, p. 53.

47. Hansard 1957-58 session, Vol. 30, No. 14, Cols. 1139—40.

48. The Acts that have amended the Ceylon (Parliamentary Elections) Order in Council, 1946, during the period 1948-58, were the Ceylon (Parliamentary Elections) Amendment Acts, Nos. 19 of 1948, 48 of 1949, 38 of 1950, 7 of 1952, 19 of 1953, 26 of 1953 and 16 of 1956.

49. See page 18 of this work.

50. For the 1947 and 1952 general election results, see Constitution of Ceylon, by Sir Ivor Jennings, p. 62. The Indian Tamil referred to by Sir Ivor in his table for 1952 was Mr. S. Natesan who is not generally regarded as an Indian and was a member elected for a constituency in the Northern Province. The figures for the 1956 elections were determined by the writer from a study of Hansard, Session 1956-1957, Vol. 24. The 1956 figures total up to 94, as one member, Mr. R. G. Senanayake represents two seats.

51. Journal of the Parliaments of the Commonwealth, October 1947, Vol. XXVIII, No. 3, p. 679.

52. Journal of the Parliaments of the Commonwealth, May 1952, Vol. XXXIII, No. 2, p. 383. The number of Independents specified in the table listed in the Journal is 9. This does not bring the total number of members to 95, the prescribed total under the Constitution. At the time of the elections in the Ceylon Daily Newspapers this number was specified as 12 including the Speaker and the writer uses this figure in the relevant list.

53. The Journal of the Parliaments of the Commonwealth, July 1956, Vol. XXXVII, No. 3, July 1956, p. 469.

54. Mr. M. S. Themis, one of the three members for the Colombo Central constituency, is a member of the working class.

55. In 1949, 1954 and 1958, there were three women in the House of Representatives and in 1954 there were also three female Senators.

56. Hansard, session 1947-48, Vol. 2, No. 7, Col. 3383.

57. The 1947 percentage was obtained from the Report of the First Parliamentary General Election, 1947, Ceylon Sessional Paper, VI of 1948, p. 51 ; the 1952 percentage was obtained from the Times of Ceylon of June 6, 1952.

58. Methods of Election in Single-Member Constituencies by J. F. S. Ross pp. 277-287 in Parliamentary Affairs, Vol. VI, No. 3, Summer 1953.

59. Section 81 of the Constitution. The first Standing Orders were made by the Governor, as Ceylon only secured full responsible Government within the Commonwealth on February 4, 1948, and these Standing Orders were made on September 13, 1947.

60. Hansard, 1954-55 session, Vol. 20, No. 6, Cols. 419—20.

61. Hansard, 1954-55 session, Vol. 20, No. 6, Col. 421.

62. Hansard, 1948-49 session, Vol. 3, No. 2, Cols. 15 and 16.

63. Hansard, 1952-53 session, Vol. 13 (1), No. 5, Col. 381.

64. Standing Order 35 of the Standing Orders of the Ceylon House of Representatives.

65. Standing Orders 34 (2), 35 and 36 of the Standing Orders of the Ceylon House of Representatives.

66. Standing Order 33 of the Standing Orders of the House of Representatives.

67. Hansard, 1948-49 session, Vol. 3, No. 21, Col. 1478.

68. Hansard, 1950-51 session, Vol. 9, No. 29, Col. 1751.

69. Hansard, 1952-53 session, Vol. 13 (2), No. 21, Col. 1880.

70. Hansard, 1947-48 session, Vol. 2, No. 7, Cols. 3400—3401.

71. The remarks in question were quoted in the Making of an Administrator, edited by A. Dunsire, published by the Manchester University Press, 1956, p. 55.

72. Standing Order 21 of the Ceylon House of Representatives.

73. Standing Orders 50 and 51 of the Ceylon House of Representatives.

74. Standing Order 52 of the Ceylon House of Representatives.

75. Hansard, 1954-55 session, Vol. 19, No. 12, Cols. 2210 and 2214.

76. Hansard, 1957-58 session, Vol. 30, No. 32, Cols. 3073 and 3086.

77. Standing Order 57 of the Standing Orders of the House of Representatives.

78. Standing Order 107 of the Standing Order of the House of Representatives.

79. Standing Order 112 of the Standing Orders of the House of Representatives.

80. Standing Order 115 of the Standing Orders of the House of Representatives.

81. The matters referred to in this paragraph relating to the Committee of Selection are specified in Standing Order 122 of the Standing Orders of the House of Representatives.

82. Standing Order 123 of the Ceylon House of Representatives.

83. Standing Order 124 of the Ceylon House of Representatives.

84. Section 17 of the Constitution.

85. Standing Orders 81 and 82 of the Standing Orders of the House of Representatives.

86. Hansard, 1954-55 session, Vol. 20, No. 35, Col. 4117.

87. Hansard, 1957-58 session, Vol. 30, No. 2, Cols. 80 and 89.

88. Standing Order 57 of the Standing Orders of the House of Representatives.

89. Standing Order 136 of the Standing Orders of the House of Representatives.

90. Standing Order 134 of the Standing Orders of the House of Representatives.

91. Standing Order 133 of the Standing Orders of the House of Representatives.

92. Section 29 of the Constitution.

93. Section 33 of the Constitution.

94. Section 34 of the Constitution.

95. Section 20 of the Constitution.

96. Section 28 of the Constitution.

97. Section 7 of the Parliamentary Staffs Act, No. 9 of 1953.

98. Standing Order 139 of the Standing Orders of the House of Representatives.

99. Sections 5, 52, 53, 58, 65, 66 and 70 of the Constitution.

100. Sections 66 and 68 of the Constitution.

101. Section 67 of the Constitution.

102. Financial Regulation 23 and Financial Regulations 50 to 54 of the Financial Regulations of the Government of Ceylon ; see the Regulation made under section 87 of the Ceylon (Constitution) Order in Council, 1946 and published in Gazette No. 9767 of September 20, 1947.

103. Financial Regulation 66 (*i*) of the said Financial Regulations.

104. Sections 70 and 71 of the Constitution.

105. Constitution of Ceylon by Sir Ivor Jennings pp. 237—238.

106. The House of Commons at Work by Eric Taylor, Pelican Book, 1951 edition, pp. 221 and 222.

107. Treasury Minutes on the First Report from the Public Accounts Committee on the accounts of the Government of Ceylon for the financial year 1953-54, the Appropriation Accounts for the financial year 1953-54 and the Auditor-General's reports thereon, Sessional Paper, VI of 1956 pp. 4 and 5.

108. Section 27 of the Constitution.

109. Apart from contraventions of the Parliament (Powers and Privileges) Act, the immunities and privileges conferred by this paragraph does not cover acts of insolvency under the Insolvency Ordinance (Chapter 82).

110. Please see pp. 113 & 114 of this work.

111. Section 23 of the Parliament (Powers and Privileges) Act, No. 21 of 1953 (hereafter referred to as Act No. 21 of 1953).

112. Section 28 of Act No. 21 of 1953.

113. Sections 23 to 26 of Act No. 21 of 1953.

114. Hansard 1954-55 session, Vol. 20, No. 35, Cols. 4117—4119 ; Hansard 1955-56 session, Vol. 21, No. 8, Cols. 643—767.

115. Attorney-General v Samarakody, 57 New Law Reports p. 412 et seq.

116. The Ceylon (Constitution) Order in Council, 1946, was amended by the following Orders in Council :—

(*a*) the Ceylon (Constitution) (Amendment) Order in Council, 1947 ;

(*b*) the Ceylon (Constitution) (Amendment No. 2) Order in Council ;

(*c*) the Ceylon (Constitution) (Amendment No. 3) Order in Council ; and

(*d*) the Ceylon Independence Order in Council, 1947.

117. Section 1 of the Ceylon Independence Act, 1947.

118. Section 6 (4) of the Indian Independence Act, 1947.

119. These limitations are specified in sections 29 and 39 of the Constitution.

120. For a fuller examination of the Ceylon Independence Act, 1947, see the author's "Legislatures of Ceylon" published by Faber and Faber Ltd., 1951, pp. 140—150.

121. Section 29 (2) of the Constitution was amended by Act No. 29 of 1954. A proviso was inserted therein to enable the election to the House of Representatives of the citizens of Ceylon of Indian origin. This proviso has not been reproduced as it has been recently decided that there is to be no such election.

122. For the provisions of section 39, see Appendix B.

123. 54 New Law Reports, p. 434 et seq.

124. Hansard, Session 1949-50, Vol. 7, No. 5, Col. 382.

125. Report of the Registrar-General of Ceylon on Vital Statistics for 1956, printed by the Government Press, Ceylon, 1957 p. 12.

126. See pages 52—54 of this work.

127. Ceylon Constitution (Special Provisions) Act, No. 35 of 1954.

128. The Soulbury Commission was a Commission sent by the United Kingdom Government to Ceylon in 1944 to make recommendations relating to the reform of the Ceylon Constitution. The present Constitution is substantially based on those recommendations.

129. Report of the Special Commission on the Constitution, 1928 (Donoughmore Report), Cmd. 3131, p. 39.

130. See Chapter VI of this work, p. 58 & 59.

131. See Chapter VI of this work, p. 54 & 55.

132. Administration Report of the Commission for the Registration of Indian and Pakistani Residents for 1956.

133. See pages 45 & 46 of this work.

134. See pages 88—91 of this work.

135. See pages 54 & 55 of this work.

136. See pages 89—91 of this work.

137. Minutes of the House of Representatives, 1948 session, No. 35 pp. 3 & 4.

138. Hansard, 1948-49 session, Vol. 5, No. 8, Cols. 591 and 592.

139. Hansard, 1950-51 session, Vol. 9, No. 27, Cols. 1695 and 1696.
140. Hansard, 1947-48 session, Vol. 2, No. 8, Cols. 3497 and 3498.
141. Hansard, 1955-1956, Vol. 23, No. 6, Cols. 651 and 652.
142. Hansard, 1956-57 session, Vol. 30, No. 16, Col. 1482
143. The expression used in the Act is "Minister," but as the Prime Minister is the Minister in charge of the administration of the Official Language Act, he is the authority to enable the continuance of languages hitherto used for specified official purposes.
144. Hansard, 1956-57 session, Vol. 24, No. 15, Cols. 1731 and 1735.
145. The M.E.P. is the popular English name for the Bandaranaike Government which is the Government that came into power after the 1956 General Election.
146. Hansard, 1956-57, session Vol. 24, No. 15, Cols. 1879, 1881, 1892 and 1893.
147. Mr. S. W. R. D. Bandaranaike, as head of the Government, entered into a Pact with the representatives of the Federal Party, the chief Ceylon Tamil Party at the time of writing, in July 1957 for the solution of the differences between the Sinhalese and the Tamils. It was abrogated in April 1958.
148. Hansard, 1956-57 session, Vol. 24, No. 4, Cols. 235—238.
149. See pages 94, 95 of this work.
150. Hansard, 1956-57 session, Vol. 24, No. 3, Col. 109.
151. The Employment of Women, Young Persons and Children Act, No. 47 of 1956, and the Prevention of Social Disabilities Act, No. 21 of 1957.
152. Debates of the Ceylon State Council, 1945, Col. 6922.
153. Hansard, 1951-1952 session, Vol. 11, No. 9, Cols. 827 and 828.
154. Hansard, 1955-56 session, Vol. 21, No. 8, Cols. 692 and 693.
155. Hansard, 1950-51 sesion, Vol. 8, No. 9, Col. 534, Hansard, 1954-55 session, Vol. 20, No. 37, Cols. 4308—4370, and Hansard, 1957-58 sessions, Vol. 30, No. 2, Col. 149.
156. Hansard, 1953-54, Vol. 16, No. 28, Col. 3133.

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