

227

# THE Ceylon Constitution (Sri Lanka) Ordinance

(together with the Mover's Speech at the First Reading and  
His Majesty's Government's Declaration of 1943)

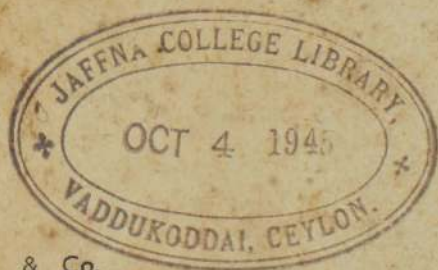
---

## PREFACE

BY

The Hon. Mr. S. W. R. D. Bandaranaike

Minister for Local Administration and  
Acting Leader of the State Council



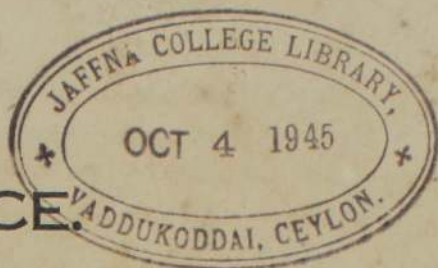
M. D. GUNASENA & Co.  
PUBLISHERS  
COLOMBO

342.5489  
BAN

342.5489  
BAN



ARCHIVES



## PREFACE.

---

Messrs. M. D. Gunasena & Co. have performed a valuable service in publishing in booklet form, easily accessible to the public, "The Ceylon (Constitution) Ordinance" (popularly known as the "Sri Lanka Bill"), which was passed by the State Council. This booklet also contains the speech made by me at the First Reading of the Bill, which explains the whole Constitutional position and the main provisions of the Bill, as well as the Declaration of His Majesty's Government of 1943.

The State Council, at the Committee stage of the Bill, made certain minor amendments *e.g.* the change of the name "Ceylon" to "Sri Lanka", but the Bill as finally passed did not differ substantially from the form in which it was introduced.

It will be remembered that the Bill was passed, while the Soulbury Commissioners were still in this country, by a very large majority. All the Ministers voted for the Bill, with the exception of Mr. Mahadeva, who declined to vote. Of the minority members all the Muslim members supported it, Messrs T. B. Jayah and A. R. A. Razik and Dr. M. C. M. Kaleel; it was also supported by the Tamil members, Messrs. Nalliah and Rajakulendran, and the Indian member, Mr. Vythilingam. On 17th July 1945, the Speaker of the State Council read a Message that the Bill had been disallowed by His Majesty's Government on the ground that it did not conform with the Declaration of 1943.

The Leader of the State Council, Mr. D. S. Senanayake, proceeded to England, on the invitation of the Secretary of State for the Colonies, to discuss with him matters relating to the Constitution. Soon after Mr. Senanayake's arrival in England, the announcement was made of the results of the British General Election. As all know, the Conservatives have been overwhelmingly defeated, and a Labour Government returned to power with an absolute majority over all other parties. What result, if any, this may have on our Constitutional problems it is not yet known.

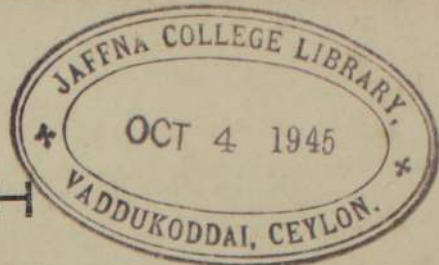
It is probable that the Soulbury Report will now be published without much delay, and the proposals of His Majesty's Government for Constitutional changes in Ceylon should be sent for discussion by the State Council (for that may be the course adopted) before long

This booklet, therefore, is likely to be of use to all those who are interested in the political development of our country and in our struggle for freedom.

S. W. R. D. BANDARANAIKE,  
*Minister for Local Administration and  
Acting Leader of the State Council.*

30-7-45.





# SPEECH

OF

**Hon. Mr. S. W. R. D. BANDARANAIKE**

*Minister for Local Administration*

*in moving the First Reading of the Bill in the State Council on 19-1-1945.*

---

I move that the Bill intituled "An Ordinance to provide a new Constitution for Ceylon", be now read the first time.

I would like to explain that this Bill is presented to the House as a result of a motion moved in the State Council by the hon. Member for Panadure and Deputy Speaker (Mr. Susanta de Fonseka) last November, to the effect that the Ministers be directed to introduce immediately a Bill conferring upon this country a Constitution of the recognized Dominion type for a Free Lanka. I believe those were the words used. The House will recall that that motion was passed by a very large majority. Only three Members opposed it, and of the Ministers four supported it, while three did not vote against it; they declined to vote.

In pursuance of that resolution this Bill is presented to this House. It is presented by me on behalf of the Ministers, and the House will notice from the Observations that the Ministers approve its introduction in this House, and the Board approve of the financial implications of the Bill. The Bill is therefore brought within the State Council Order in Council, within the particular Clause relating to measures and Bills which have financial implications. This Bill definitely has certain specific financial implications.

I must confess that I was in some difficulty, in moving this Bill, about the precise course to be adopted and about the exact scope of the remarks which I should make at the first reading.

At the outset, two courses occurred to me. One was merely to explain, as the Standing Orders require at the first reading of a Bill, the main provisions of the Bill and restrict my remarks to such explanation only, in view of the fact that when the motion of the hon. Member for Panadure was discussed last November, a fairly full debate took place, and many hon. Members expressed their views on the subject in great detail.

On the other hand, the consideration also occurred to me that such a course would be inappropriate in moving a Bill of this importance. I may say, without exaggeration, that, in some respects at least, this is the most important Bill that has ever been introduced into this House. It is a Bill which has implications of a very far-reaching nature, dealing with the Constitution of the country and thereby affecting the welfare and progress of the entire people of this country for many years to come. It is a Bill of great importance not merely to the people of this country, it is of importance to the British Government and conceivably of some importance to other countries within or without the Empire, which may be interested in the affairs of this country.

In moving a Bill of this nature, it is perhaps wise as well as more satisfactory than making a brief statement, to make a fairly full survey of the whole situation, which alone would enable the House as well as the public of this country, as also the British authorities, to understand the circumstances out of which this Bill has arisen, the need for the Constitutional status suggested in the Bill, and to understand in all its implications the proposals which are now before the House. Now, in making that survey I can assure the House that I shall restrict myself as far as possible, and as briefly as possible, to matters which do have a direct bearing on this Bill and its implications, without wandering too far afield, for which, of course, there is a very great temptation in dealing with a subject of this type.

I think I should at the outset and as a background to this Bill make a brief historical survey of the Reforms position, and I will summarize at the end of that preliminary part of my speech the precise inferences I draw from the survey which I shall have made.

The first point to which I would like to draw attention very shortly, Sir, is the Kandyan Convention of 1815, and I will explain why I do so. I am glad that in recent years greater attention has been paid to that important document, thanks to the activities and enthusiasm of our Kandyan friends, particularly—if I may mention his name—Mr. Albert Godamune of Kandy, who has made a very specialized study of the Convention and its implications. I think there is a greater interest taken in that document than has been the case in the recent past.



The only point I wish to make is this—I do not intend to go into a detailed discussion of that document and its implications; that task would take hours in itself—but I would like to make this point, that Ceylon is not a Colony in the ordinarily understood meaning of that expression; that there is definitely between the people, or at least a large section of the people of this country and the British Government a definite contractual relationship. This is not a country, Sir, that has been conquered as many of the other Colonies, or settled as certain other Colonies have been. There has been a definite contract entered into by the representative of the British Government on the one hand and certain officials of the Kandyan Provinces on behalf of the people of those Provinces on the other, which has resulted in the Kandyan Convention of 1815.

Therefore there is a contractual relationship where on the one side the people of this country accepted the King of England as their King, and the King's Representative on his behalf assured to the people of this country various rights and privileges—civil liberties, religious liberties and liberties of government. As I said, I do not want to enter into a detailed discussion of that document. It is still in force as far as we are aware, and we have to bear in mind, in considering our Constitutional position, the contractual relationship that apparently exists, that does exist between the people of this country and the British Government.

Sir, in 1833, the first Legislative Council was introduced, with ten Officials and six Unofficials. That was the beginning of representative government. In 1910 was the next move, when a Council was appointed consisting of eleven Officials and ten Unofficials, and for the first time the elective principle was recognized by four Members being elected.

At this point, I would just like to pause to refer to an interesting episode that took place in a discussion which a deputation from Ceylon had with the then Under-Secretary of State for the Colonies, Colonel Seeley. It is referred to in one of his speeches in this House by Mr. E. W. Perera in moving his resolutions in 1932. Colonel Seeley told Mr. H. J. C. Pereira, K. C., who led the deputation, that he noted that the request made then was not so much for responsible government as

a certain extension of representative government, and that full responsible government could only be considered if and when there was adult suffrage in this country. That was the remark made in 1909 to Mr. H. J. C. Pereira by Colonel Seeley.

Well, in 1910 we obtained that further measure of representation; and the next point, of course, was the riots which took place in this country which greatly accelerated the pace of Constitutional development and created among the people of this country a degree of unity as well as a desire for self-government which did not exist earlier. As a result of the various political agitations that took place subsequent to the riots of 1915, there was a further extension of representative government. The House will observe that I am still using the words "representative government" as opposed to "responsible government"—representative government, Sir, by the Order in Council of 1920.

The Order in Council of 1920, created a Council with a large majority of Unofficial Members and Elected Unofficial Members, but it possessed certain definite deficiencies which the Members of the Council at that time pointed out. As a result of that agitation, a further amendment was made by the Order in Council of 1923, and the Amending Order in Council of 1924.

It is interesting to note only this point regarding that matter, that in the course of that agitation between 1920 and 1923 there was a certain Message sent to the Legislative Council by the then Governor, Sir William Manning, in which, while adopting a conciliatory attitude towards the demand on the part of the Members of the Legislative Council for the amendment of the Order in Council of 1920, he stated that in his opinion the further amendments and changes he was proposing would really supply what amounted to a penultimate stage to full responsible government; in other words, the Order in Council of 1923 was contemplated by the then Governor as amounting in effect to a penultimate stage to full responsible government.

Then came the Donoughmore Constitution. The Donoughmore Commissioners, after a full inquiry in this country, made a report, and I am quoting this paragraph from their Report which is relevant to the point I am trying to make—I am quoting from page 46:

"Both the legislative and executive actions of the Council will require the assent of the Governor who will be specially charged by Royal Instructions to refuse or reserve assent to measures which infringe certain clearly defined principles—"



—these are the important words:

“But otherwise it will be seen that the elected representatives will be placed in a position to exercise complete control over the internal affairs of the Island.”

In other words, the Donoughmore Commissioners contemplated that by their Constitution they were devolving upon the people of this country complete control over the internal affairs of the Island, with those reservations alone that were mentioned in the first sentence in the extract which I quoted.

When the Council was inaugurated in 1931, the Secretary of State sent a Message to the Governor which was read by the Governor on the occasion of the inauguration, and this sentence occurred in that Message:

“The domestic interests of Ceylon will now be for all practical purposes in your keeping.”

Sir, it will be remembered that when the Donoughmore Report was being discussed in the country as well as in the Legislative Council, it became clear even to those who were willing to accept it, even at that early date it became clear that there were certain possible defects, but in all the circumstances of the case, they felt that the wisest course was to accept it and give it a trial, to accept it by way of a trial. And as a matter of fact, while the Report was being discussed in the Legislative Council, the Secretary of State sent a cable to the then Governor, Sir Herbert Stanley, where he asked the Legislative Council to agree to a trial of the scheme as a whole.

Well, this scheme was accepted, and the new Constitution was introduced. There was very great opposition, it will be remembered, to the acceptance of it; in fact, it was passed in the Legislative Council by the narrowest possible margin. As soon as the new Council began its work, one of the chief opponents of the Donoughmore Constitution moved a number of resolutions in this House—Mr. E. W. Perera, the then Member for Horana.

Let us bring our minds to bear upon what those motions were. They were motions asking for the exclusive control of the public purse; the exclusive right to legislate for the peace, order and good government of the country; the abolition of the Officers of State; the abolition of the Governor's powers of legislation, and the abrogation of all the Royal

Instructions with the sole exception of that Royal Instruction which referred to measures regarding communities and religions—with the sole exception of that single matter for reservation for the Secretary of State's decision, all the other matters mentioned in the Royal Instructions were to be abrogated.

The House will observe this. What did these motions amount to? They amounted to an amendment of the Donoughmore Constitution. Having what effect? Having the effect of the conferment on this country of Dominion Status as far back as 1931. That was the practical effect of those motions. Those motions were all passed in this House, with the exception of one motion referring to the Executive Committee-System of Government.

The Board of Ministers proceeded to prepare certain memoranda based on Mr. E. W. Perera's motions, and sent them to the Secretary of State; and the late Sir Baron Jayatilaka, the then Leader of the State Council, introduced a motion in 1933 in this House for the acceptance of the principles set out in the memoranda addressed by the Board of Ministers to the Secretary of State in April and July, 1933. The memoranda of April and July, 1933, addressed by the Board of Ministers to the Secretary of State, contained certain proposals based on Mr. E. W. Perera's motions which Sir Baron, later in the year, moved in this House. That motion was fully discussed. It had the blessing of Mr. E. W. Perera himself who felt that the substance of what he introduced in his motions had been accepted by the Ministers; and it was passed in this House.

The next stage was this. Meanwhile a new election was held and a new State Council was elected, and as a result of these representations the Secretary of State instructed the Governor to inquire into the working of the Constitution and make proposals to him as to any changes that were desirable and necessary. In consequence, Sir Andrew Caldecott held a fairly protracted inquiry. Various people submitted their views to him by way of memoranda and by way of oral evidence, and he sent up a Dispatch to the Secretary of State embodying his views.

In 1939 the then Legal Secretary, Sir John Howard, who is the present Chief Justice, moved in this House various recommendations



based upon the Governor's Dispatch, and they were debated at great length. The House will remember that it was the occasion on which the hon. Member for Point Pedro (Mr. Ponnambalam) delivered his record-making speech. I think that debate dragged on for many months. Finally various recommendations were voted upon, and various amendments to those recommendations were moved in this House and were passed. What was the effect of the various recommendations which this House adopted on the motion moved by the Legal Secretary? The effect was the conferment on this country of a status which could only be described as Dominion Status. That was in 1939.

Then the war broke out, and there was further delay. That delay was quite natural in the circumstances of the war, at least during the early stage of the war. At that stage certain things took place. The Atlantic Charter was framed by the Heads of the Governments of Great Britain and the United States of America.

**The Hon. Colonel J. L. Kotalawala (Minister of Communications and Works):** That is disputed now.

**The Hon. Mr. Bandaranaike :** That is not disputed. When some question was asked in the House of Commons from Mr. Churchill whether the recent statement made by President Roosevelt was in any way a denial of the application of the Atlantic Charter, Mr. Churchill specifically denied it. So that, the Atlantic Charter stands.

The Atlantic Charter sets out the aims and objects of the United Nations, very admirable objects, to one of which alone I wish to refer at this stage, namely, the freedom of every people to choose the form of Government under which they wish to live. Amongst the various aims enunciated in the Atlantic Charter, that was the most important.

It is true that there was a divergence of opinion between President Roosevelt and Mr. Churchill as to the scope of the application of the Atlantic Charter. President Roosevelt has always maintained that the Atlantic Charter applied to all the people in the world, whilst Mr. Churchill very quickly added the proviso that it did not apply to the Dependencies of Great Britain. Nevertheless Mr. Churchill seems to

have changed that opinion when he was last questioned on the matter in the House of Commons. He has apparently fallen into line with President Roosevelt, to the extent that the Charter applied to all but that it did not necessarily connote immediate application. That is what I gathered from the answer which Mr. Churchill gave on that occasion.

There is something much more important than that, to which I want to draw the attention of the House. I think hon. Members might have seen in the *Times of Ceylon* last evening the news that a discussion is taking place in the United States of America at a place which somewhat appropriately bears the name 'Hot Springs'. At Hot Springs in the United States a conference has been going on and a Pacific Charter has been agreed to by all the countries which were represented at that conference, including Great Britain. The terms of that Pacific Charter were in the papers yesterday. One of the most important points agreed to was to the effect that there has been a definite recognition of the equality of all Asiatic countries with the signatories to that Charter, a recognition of the equality of the signatories to that Charter with all the other nations of the world. Freedom and equality are enunciated in that Charter. That is a very interesting document to which the representative of Great Britain has apparently appended his signature.

**The Hon. Mr. H. J. Huxham (Financial Secretary):** Unofficial.

**The Hon. Mr. Bandaranaike:** Well, Sir, I know the peculiar sophistries and subtleties of language to which British Governments and British statesmen have always resorted in the past. We have been victims of that ourselves in this country. But what is the purpose of that interjection? That conference may be an unofficial one, but I think it is an unofficial conference of such great importance that its decision can reasonably be taken to reflect the views of the various countries that took part in that conference. It is just possible that when that Charter goes back to England and is discussed by the House of Commons or by Mr. Churchill's Government, it may not be accepted. I am only pointing out the great significance that must be attached to that Charter. A few days' ago a telegram from Reuters that appeared in the Press stated that the Imperial powers were at the discussions at Hot Springs in retreat regarding Asia; and that was followed by the news of the Pacific Charter that appeared in the Press yesterday.



In 1942 the hon. Member for Horana (Mr A. P. Jayasuriya) brought forward in this House a motion demanding the conferment of Dominion Status on this country after the war, and requesting the Secretary of State to give an immediate assurance on that point. That motion was passed in this House without a division.

**Mr. H. W. Amarasuriya (Galle):** Was there a discussion?

**The Hon. Mr. Bandaranaike:** There was a short discussion. There was no division called.

That motion was passed without a division. In the meanwhile, various parties and political associations, were passing resolutions asking for Dominion Status. Later, certain political associations, such as the Ceylon National Congress and others, passed resolutions going further and asking for complete independence. I shall deal with that later. At the moment, I am only concerned with the fact that though some asked for Dominion Status, some others asked for something more, for entire and complete freedom. The Ministers, with their full approval submitted to the Secretary of State for the Colonies the motion passed by this House demanding Dominion Status. At that stage there was again some delay. Correspondence went to and fro between the Ministers and the Secretary of State, when finally the Declaration of 1943 was sent to this country.

At this point I should like to pause to summarize the gist of my argument thus far. At the very outset, at the very beginning of our relationship with Britain it rested on a contractual basis. From 1833 downwards there has been continual progress in representative government and responsible government; and for some years at least this country has been making a claim for Dominion Status. The point I wish to make is this: this is not a new demand. There is nothing strange in the demand that is made in the Bill now before the House. This demand has not come before this House for the first time. It springs naturally from the whole course of our political history, from the beginning of our relationship with Great Britain to the present day. This demand is a natural and logical consequence of the past.

In passing, I should like to point out that India has been promised Dominion Status by the Cripps' offer, and that a similar promise has

been held out, I believe, even to Burma. I should also like to point out that the war that is still going on, and the views on international matters that have developed during this war, such as the Atlantic Charter and the Pacific Charter, seem to show that world opinion itself is moving in the direction of freedom for subject races.

Well, Sir, the Declaration of 1943 arrived. That Declaration did not confer Dominion Status on this country. What was offered by it fell far short of Dominion Status. On its own showing, it merely proposed to transfer to our hands the control of internal civil matters.

I should like to draw the attention of the House to the fact that it was a control which even the Donoughmore Commissioners contemplated fifteen years ago. They say so in their Report. It was so understood at the time. So that, from that point of view there is no fundamental advance in the Declaration of 1943 on the existing position. Certain subjects are reserved, such as, Defence and Foreign Affairs. Various other matters, like Shipping and Currency, that may affect Great Britain or parts of the British Empire, are reserved for the final approval of the Secretary of State.

That Declaration, interpreted in a narrow but perfectly legitimate way, may not mean any fundamental advance on the present position. It is possible that in certain essentials it may even mean something which is worse than the present position. It is one of the characteristics of the British Government and British statesmen to clothe their ideas in ambiguous phrases, phrases which, while being sufficient to lull the fears of the people concerned, can also be sufficiently elastic, when they actually come to be reduced to practical legislation, to create an entirely different situation.

In the second part of the Declaration, the procedure was set out that the Ministers should prepare a draft Constitution; that that draft should be examined by a Commission, and that if it conformed to the restrictions in the Declaration, it should be passed by a three-fourths majority of this Council. One part of that Declaration dealt with the powers to be conferred under the Constitution *vis-a-vis* the British Government; and the other part dealt with the actual procedure to be adopted.



I should like to draw the attention of hon. Members to this important point. As far as I am aware, no section of the public of this country, not even the State Council, has yet examined that Declaration in detail and expressed a definite opinion for its acceptance. With the sole exception of the Ministers, there is no party that I know of, no section of the public, the State Council or any other body—I shall come to the Ministers in a minute—which has yet examined that Declaration and expressed the view that it is satisfied with that Declaration. That is a point that should be borne in mind. I say that with the exception of the Ministers—

**The Hon. Mr. G. E. de Silva (Minister of Health):** What about the Congress?

**The Hon. Mr. Bandaranaike:** My hon. Friend mentions the Congress. I shall come to that shortly. I want to refer in particular to the National Congress.

The Ministers decided to accept the Declaration with a very important proviso. Subject to their interpretation, they accepted that Declaration. I do not want to go into the details of that interpretation. All that I can say is that that interpretation is of the widest, and most liberal nature so that it would be correct to use the word within inverted commas. It was an expansion in some respects rather than an interpretation. The Ministers said that they were prepared to accept that Declaration subject to their interpretation only.

The Ministers made a statement in this House to that effect. They proceeded to draft a Constitution under the procedure laid down by the Declaration. They sent it to the Secretary of State, and the Secretary of State on receipt of this Draft, showed at the very outset that he was not accepting the first and one of the most important interpretations of the Ministers, regarding the Commission and what they felt could be the only function of this Commission; he showed it by appointing a Commission to consult various interests, whereas the Ministers thought that the functions of the Commission would be restricted solely to a consideration of the Draft in so far as it fell within or without the restrictions mentioned in the Declaration of 1943.

The Ministers protested against this action. They stated that they were not co-operating with that Commission, and that they were withdrawing their Draft. I am not commenting. There is no point in making detailed comments on these actions; I am only stating facts, whatever may be the justification or otherwise for them. I am merely giving, at this stage, a brief survey of the facts. The Ministers withdrew their draft. But in spite of that, the Secretary of State has appointed a Commission, and the Commission is here.

There is another point that arises. I made the first point that people had not brought their minds to bear—let us say, with a few exceptions; Mr. George de Silva, the President of the Congress, tells me that the Congress, rejected the Draft; I was not aware of that fact; there may be certain exceptions like that—but I was speaking generally—that people had not brought their minds to bear on the Declaration with a view to their rejecting it or accepting it in view of the Ministers' action to accept it subject to their own wide interpretations.

The Commission has arrived. The point I want to make is this. What is the precise position and status of this Commission? I do not understand. Is it a Commission appointed in terms of the Declaration of 1943? The House will remember that by the Declaration of 1943 it was definitely contemplated that a Commission be appointed to investigate the Draft proposals put up by the Ministers. That was the sole, purpose of the Commission contemplated under the Declaration of 1943. Now, the Ministers have withdrawn their Draft proposals. As a body, the Ministers decided to non-co-operate with the Commission, and they have withdrawn their Draft proposals. Obviously then this Commission is not a Commission acting strictly within the terms of the Declaration of 1943. Indeed it is not, for the Commission has been now asked to investigate any and all proposals received that purport to be within the Declaration of 1943, and to report thereon.

What is the procedure that thereupon is contemplated? I would like to know. Let us say that this Commission is and, at the same time is not within the Declaration of 1943; that this Commission puts up some Report of its own. What is the procedure then to be adopted? The procedure of submitting some scheme for the approval of 75 per cent. of this House, all that procedure, has gone by the board, and we are not told what the new procedure is. Obviously all the procedure



contemplated under the Declaration of 1943, based on the assumption that the Ministers were submitting a Draft for investigation, and so on—all those steps have now gone by the board; and what is the present position? It is extraordinarily nebulous to my mind.

I do not know what the present position is, except that the Commission is here on Terms of Reference to investigate proposals under the Declaration of 1943. What is going to happen, we do not know; and is that a satisfactory state of affairs? If we are not being led up the garden path, I would like to know what the Council's position actually is. It is the duty of those people who are dealing with the problem of the future fate of this country to state what exactly is the position. It is not in the least bit clear to my mind.

Therefore, with regard to the Declaration, I would draw the attention of the House to these points, that it falls far short of the Status that for many years this State Council, the Ministers and the country generally had been demanding, that—

**Mr. H. W. Amarasuriya:** Why did the Ministers accept it?

**The Hon. Mr. Bandaranaike:** It was accepted subject to their interpretation. I said that I am not commenting but stating facts, that, a Commission has been appointed; that one does not know clearly what procedure is to be followed, except the one point that they are inquiring into proposals in conformity with the Declaration of 1943 alone. We do not know anything more than that.

What happened meanwhile? Meanwhile the situation in this country deteriorated to a very great extent. All sorts of demands began to be put forward, varying from 50:50 on the one side, put forward by the hon. Member for Point Pedro (Mr. Ponnambalam) and those who agree with him, to proposals for all sorts of Second Chambers, and various types of representation, which disclose the greatest possible measure of disunity in this country amongst ourselves. That is the situation that arose; I am making no bones about it.

There was the campaign carried on in a certain section of the Press. Every man to his own conscience. I presume that even the Press has some sort of conscience of its own.

**The Hon. Mr. G. E. de Silva:** It has no conscience.

**The Hon. Mr. Bandaranaike:** Whatever it is, a certain campaign was carried on. There were articles, editorials, and letters almost hysterical in tone. I am describing it in rather mild terms, that the campaign was almost hysterical in the exaggerations, in the misstatements, and so on, that were employed.

That was not all. I am not referring only to the agitation in the Press and the agitation of certain sections of the minorities which I call the so-called 50:50 demand. But there was another danger that arose, the scope of which has not been so clearly and openly understood.

All the reactionaries in this country were up in arms, reactionaries who were not bothered or concerned at all about self-government, freedom, Dominion Status, or anything else. The one thing they wanted was to safeguard their own vested interests, which they felt were in jeopardy, which they felt might, in any future Constitution with a still further measure of self-government, be further jeopardized. The Income Tax Payers' Association is one manifestation of that tendency. I say that people of that sort are more dangerous than others, for this reason, and I would ask the House to realize the position.

My Friend the hon. Member for Point Pedro (Mr. Ponnambalam) whatever he is, however much I may disagree with his views, is frank. One knows where one stands with him——

**The Hon. Mr. G. E. de Silva:** Do you?

**The Hon. Mr. Bandaranaike:**——in the sense that he puts forward his demand and goes about the country clamouring for it. One knows what the position is.

But what is one to say of certain capitalist elements amongst ourselves which give lip service to adult suffrage, which give lip-service to self-government but probably secretly are plotting against those very things? You can deal with the enemy outside, who is frothing and bellowing outside, but the so-called friend in your own house whose views you do not know precisely, I look upon as more subtle and dangerous. That is the situation that arose in this country; the House will understand how implicit in that situation were various dangers and retrograde possibilities.



In the first place, we ran the risk of having a Constitution saddled on us that *vis-a-vis* the British Government might, in certain essential, fundamental respects, be even worse than the present Constitution. On the other hand, we ran the risk of getting into a state of affairs where a grave, and in my opinion unjustified, hardship and wrong would have been caused to the majority community in this country if certain exaggerated, preposterous demands—this is my opinion—such as the 50:50 demand had by any chance been given effect to. Finally, we ran the risk of being saddled with a reactionary form of Government which would not even have enabled us to add greatly to the few trumpery fripperies which we now indulge in for the benefit of the vast majority of the poverty-stricken suffering masses of this country. These were all the implications of the situation that arose—I am stating them plainly and frankly.

What was to be done? Were we just to sit quiet? Were we just to sit still and to hope for the best and do nothing? Here was a Commission coming out in circumstances where, in my opinion, they might have put the narrowest conceivable interpretation on the Declaration of 1943 even when a more liberal interpretation was available. When that Commission was coming out, when we found that the Ministers' Draft had been withdrawn and this situation had arisen in the country generally, were we going to be absolutely paralysed and helpless?

I feel it would have been a very, very sorry thing if we all had to confess, "Oh, yes. We were so paralysed that we had nothing to say. Let us allow the Soulbury Commission to come out; let those who wish to give evidence before them either in the Town Hall or in some Dining Room of the Galle Face Hotel or Lunch Room or anywhere else do so" and just hoped for the best, trusted to luck, that out of the kindness of their hearts, that out of the milk of human kindness flowing from their hearts, they would go back and recommend a Constitution really acceptable to us.

I could not face that issue myself as one with some responsibility, as a Member of the State Council, as a Minister, as one who is connected with a political party. Surely if I felt that I had some course to suggest, it was my duty to do so or be condemned for all time in the eyes of the public as someone who, at a critical stage like this, rightly or wrongly—my view need not necessarily be right or the view of anybody

else—had remained silent, and had not expressed my view regarding the proper course to be followed. Could I expect to continue one single day in the public life of this country if I adopted an inert attitude, of doing nothing and merely hoping for the best? No, Sir.

There was one thing I thought had to be done even at the eleventh hour. Even at the last moment, to get together, if it was possible, to come to some reasonable and just agreement among ourselves and put up a united front in pressing for what we consider to be our just demands. Is there anyone who can say that that was not the only sensible, the right course, that could have occurred to anybody?

We tried it. We had an Unofficial Conference which was attended by a large number of Members of this House. I thank those Members again for the great patience, for their forbearance, and the real goodwill with which they tried to thrash out this problem. It was not possible, it was, under the actual circumstances, not possible to come to an agreement that was capable of satisfying all sections; it was simply not possible.

But that Unofficial Conference had a good effect. For the first time in recent years people met round a table and discussed this question. That has not happened for some time, not for at least twenty years or so, in this country where the members of the majority and the minority communities got together, sat round a table and even discussed this problem. That was an achievement in itself. All issues were very much narrowed down and clarified. The Conference was very useful, though a final agreement was not possible. We had to leave it at that.

The Conference failed. Were we then to keep quiet, again, and to adopt the attitude of just sitting still and letting things take their own course with ourselves bound hand and foot to the tender mercies of the Soulbury Commission with their extremely narrow Terms of Reference? There was yet another alternative. It was this: It was to bring back to the minds of the people once again the importance of this demand for freedom; to bring back peoples' thoughts from a pure scramble for a number of seats here or there—50:50 or what else—to the real and main issue that concerns us all.

Sir, the hon. Member for Panadure moved his motion in this House last November, as a result of which this Bill has been introduced; his motion was for the introduction of a Bill in this House for Dominion Status at the earliest opportunity. Well, that Bill is now before this House in terms of that motion.



Now, before considering the precise implications of this Bill, and what are going to be the next steps to be taken—I am going to consider all these matters quite fairly and frankly—I would like, at this moment, to say a word about Dominion Status which this Bill demands.

**The Hon. Mr. D. S. Senanayake (Leader of the State Council)** : Sir, perhaps this is an opportune moment for me to move that relevant Standing Orders be suspended to enable us to continue the sitting until 12.30 P.M. and resume again at 2.30 P.M.

Question put, and agreed to.

**The Hon. Mr. Bandaranaike** : I was pausing, at this stage, shortly to explain the position, as I understand it, regarding Dominion Status.

In 1907, the Colonial Conference held in that year defined a "Dominion" in these terms—as "British Dominions beyond the Seas which were self-governing." Remember that up to that time the word "Dominion" had really been used as included in the term "Colony." It had no particular connotation with regard to status, and this unsatisfactory definition was the only one adopted as late as 1907. After the last war, at two important Imperial Conferences, in 1926 and 1930, various principles were laid down as applying to countries possessing Dominion Status; and in pursuance of those two Conferences the Statute of Westminster was passed in 1931.

Sir, let us just consider some of the main provisions of the Statute of Westminster. The Statute of Westminster, at the time it was passed, applied to Canada, Australia, New Zealand, South Africa, the Irish Free State and Newfoundland. The Irish Free State, as it then was, has now exercised its right of secession under the Statute of Westminster and declared itself a Republic. It is of a status somewhat higher than that contemplated in the Statute of Westminster. And Newfoundland has ceased to be a Dominion.

The main provisions of the Statute of Westminster are these: the non-application of the Colonial Laws Validity Act to the Dominions; the non-application of certain provisions of the Merchant Shipping Act and the Colonial Courts of Admiralty Act; the provision that no law of a Dominion is invalid merely because it is repugnant to an Act of the British Parliament or English Law, and that no Act of the British

Parliament applies to a Dominion unless the Dominion agrees to it; Dominions have power to make laws having extra-territorial application. Those are the chief provisions of the Statute.

It is perfectly true, Sir, that the Statute of Westminster does not comprehensively describe the status of a Dominion. It has been pointed out that the status of a Dominion rests upon written laws, such as the Statute of Westminster, and any other laws applying, as well as upon unwritten laws in the shape of certain usages and customs. It is the whole body of that which constitutes what is known as Dominion Status.

There are three important ingredients of a Dominion to which I should like to draw attention. They are these: complete equality amongst themselves and with Great Britain in domestic and foreign affairs. That is the chief ingredient of Dominion Status to which I wish, at this point, to draw attention—complete equality as amongst themselves and the British Government in domestic as well as foreign affairs. There are other ingredients, such as the common acceptance of the King of England as sovereign; and a further ingredient is that of free association in a commonwealth. Those are the three main ingredients, of which the first which I mentioned is the chief.

Now, I wish at this stage to say something about the question of freedom. There are some Friends of mine who say, "No; we do not want Dominion Status or anything of that sort. What we want is complete severance from the British Commonwealth of Nations." No one, Sir, objects to freedom. But I do ask people to consider whether a status such as is now understood as Dominion Status does not contain the essence of it. Not only does it contain the essence of freedom, but it involves, implicitly, the power to secede from the Empire if and when the Dominion decides to do so. That is the offer made by Sir Stafford Cripps to India—the right to secede from this Commonwealth of Nations if that country decided to do so.

Well, there is this advantage in asking for Dominion Status, that we are asking for a status which, according to the whole history of this country, we are entitled reasonably to ask for, and it is a status which Britain can also reasonably give in view of all that has happened after the Atlantic Charter was framed; the conference at Hot Springs, and



the promises made to India and Burma. It is a status which can reasonably be given, and which we can ask and press for. We have a strong case for it; and at the same time it involves the essence of freedom. That is why this Bill has been introduced asking for Dominion Status.

The next point I wish to deal with is this: is this Dominion Status possible for Asiatic peoples like ourselves? Is it something that can successfully work only in the case of British Settlements such as Canada, Australia, New Zealand, and so on? Is it a status which is really impracticable for an alien people like ourselves or the Indians? Well, Sir, I do not see why it should be. South Ireland, which is alien, enjoyed Dominion Status though it subsequently decided to become a Republic. India has been promised Dominion Status.

And I think it is worth while our making a trial. Perhaps there is a certain amount of racial antagonism that exists; if this racial antagonism is insoluble, the matter ends there. If it is soluble, then Dominion Status can be worked on a footing of equality. Where we have things binding us to Britain, if I may say, so, such as political ideals, it may be that India or ourselves, when assured of a status of freedom which is sufficient for our needs, may of our own free accord, decide to continue that association. You can, of course, use the big stick—a greater Power can always do so against a weaker country—but never for an indefinite period. Sir, I think even Mahatma Gandhi contemplated the position of association with Britain, but on a footing of equality. I know he contemplated that position, at least at one time—that Great Britain and India should have equality in domestic as well as in foreign affairs.

These questions are sometimes raised in connexion with Defence. Sir, Ceylon is a small country, and it has been said that Britain is responsible for the defence of this country. It has been asked what we are going to do and how we are going to defend ourselves if we ourselves were responsible.

Do these people who talk in that way say that the little Republic of Switzerland has sufficiently vast Armies, an Air Force—of course it cannot have a Navy—to protect it against the powerful neighbours that surround it? Do they consider that Southern Ireland, a country smaller than this Island, is capable of having an enormous Navy.

Army or Air Force to protect it from Great Britain on the one side, the United States of America on the other, and France or any other country that may try to pounce upon it?

Surely, one of the main things contemplated after the war is the principle of collective security. Whatever else may happen or may not happen, that is certain—that the great United Nations will see that the peace of the world is maintained.

Surely in this circumstance, is it unreasonable for us to think that in a system of collective security in that way we can also get the security that every small nation looks for. To say that we will neither have the money nor the means to defend ourselves, is an argument which I do not think will arise in the post-war world at all.

I should like now to come to the last point, in dealing with Dominion Status. Why do we ask for this status? To some people a reform of the Constitution may be like choosing toys. One prefers a nice little bull and cart; another prefers a little car, or something of that kind. Why is it that we want this status? Why are we clamouring for these things? It is not merely that this is a nice toy that we would like to have, but there is something much more to it than that.

Sir, I have come to the conclusion, after working in this Constitution since 1931, after being a Minister during the whole life of the present State Council, that the main problem that faces us, of securing a reasonable standard of living for the people of our country, is not a task that we will ever be able to accomplish unless we have that degree of complete power necessary for the purpose.

Very often, words like "freedom" are used in a vague sense. It is some nebulous brightness in the sky, an aurora borealis or, like the Holy Grail, something purely visionary. I have often wondered whether the spirit of freedom is just a pursuit of the Holy Grail. But to my mind, freedom has a definite, practical, matter of fact connotation. I do know what I want to do with it. I do know why I cannot do it now. I have brought my mind to bear on that.

Sir, if the masses of this country mean anything to us, if we are really sincere in our desire to give our people a fair deal, to let them be self-respecting citizens of a self-respecting country, if



all the poverty is to be at least alleviated, education, health and so on, adequately attended to, there are certain things that we want which cannot be done without independence. Our work will continue to be a bit of eye-wash; it will continue to be a bit of hypocrisy. I will say this here and now that we may have in the goodness of our heart; schemes for free education for all; for health and sanitation for all; for reasonable houses for a good many of our people, or water schemes, agriculture and irrigation, or industries, or whatever else it may be, believe me, the stark facts of the case are that, we have already reached saturation point of what we can do in present circumstances. It is a false hope that is nourished in the bosoms of our leaders, it is a false hope that is held out to our people, if they think that some beautiful new world is to dawn after this war where all these things will be done. I say, they will not be done; they simply cannot be done in the present circumstances.

It is true, a little patch-work, a little cottage hospital here and there, a little water scheme or a well somewhere else, a few schools—that sort of patch-work we have been carrying on, but there is nothing beyond that. Something much more drastic is needed, something much more drastic which is not only calculated substantially to increase the wealth of the country, the income of the country, but also the control of that wealth in the interests of the people of the country.

Hon. Members will consider for themselves how far that is right or wrong, but that is the stark position. The status we are asking for will give us the power to do those things without which nothing valuable can be achieved.

Take this Declaration of 1943. As I said, fundamentally, it is no better than the present position. Any matter affecting the rights of non-residents in this country, property rights, shipping, currency, trade—matters that may affect the trade of the Empire or Great Britain—are to be under the control of Great Britain. Those are the very heart-strings of our real needs. Without that power, whether the three Officers of State are here, or disapper from the State Council, would you consider that to be a fundamental advance?

My good friend, the late Dr. W. A. de Silva, said, "We are getting seven-tenths' self-government under the Donoughmore Constitution, because there are seven Ministers". If he is alive today, he may say, "Remove the three Officers of State and we will have ten-tenths' self-government".

You may look at it in that way, but I do not think the removal of the three Officers of State is so fundamental as that; at least, they are here to be battered; they have now no reserved subjects at all; they are here to bring up their votes; they are here to answer questions; the Council has the right to deal with those matters, and to make any amendments that it wishes. The "reserved subjects" idea does not exist now. Executive Committees may disappear, and a Cabinet System may come with 10 Ministers and 10 Deputy Ministers, and we will have, not ten-tenths' self-government, but twenty-tenths' self-government or 200 per cent. of self-government, adding the Deputy Ministers also. Do we really think that this is the true position?

It may be that on a very wide and liberal interpretation of the Declaration of 1943, you may evolve something better than the present Constitution, as the Ministers did, but, as I said, on a narrow interpretation it is very doubtful to me whether that position would exist. That is why I say that this status of freedom is necessary, not merely because we prefer to play with some pretty thing, or prefer a thing because it is blue and red, or green and yellow, like a child with a toy, but because it is starkly necessary to enable us to do the things we want.

I come now to the Bill, the provisions of which I will refer to very briefly. The first question that arises is, why a Bill? There is an important point involved. I say a Bill, for this reason: this is not an expression of opinion—"That in the opinion of this House the following resolutions shall be given effect to"; this is the exercise of a legal right by this House. It is not an expression of opinion; it is the exercise of a right. It is perfectly true that the Governor may not assent to the Bill; that the Secretary of State may not obtain His Majesty's assent to it—that right of veto will always be there. But that is not the issue; the issue is, we are exercising our right to frame a Constitution.



Now, the Bill, it will be observed, follows the general lines of the Ministers' draft proposals with only those restrictions on what would amount normally to Dominion status removed from it. Why is that done? Because the Ministers' Draft was framed on lines of Dominion Constitutions. Almost every single section of that Bill is more or less in line with the sections of Dominion Acts, subject, of course, to those restrictions which the Ministers introduced in pursuance of the Declaration of 1943.

I come now to the provisions of the Bill itself. First of all, there is the general procedure. It will be observed that in Clause 1 of the Bill it is stated that the Ordinance may be cited as "The Ceylon (Constitution) Ordinance, 1945". The second part of the Clause says:

"The date notified for such purpose in the *Gazette* shall be 'the date of operation'".

The object is that if and when this Bill is passed, it should be notified in the *Gazette* what the date of operation is going to be. But that does not mean that the notification of "the date of operation" repeals the existing State Council Order in Council, for the simple reason that various steps have to be first taken. An Elections Ordinance will have to be introduced dealing with the procedure at elections, with the question of the franchise, and so on. Then a Delimitation Commission will have to be appointed to delimit the constituencies.

A General Election will have to be held after all those steps have been taken.

In Clause 3, there is a reference to the "appointed day". The day is appointed when the State Council Order in Council is repealed and superseded by this Ordinance, with the sole exception of certain financial provisions of the old Order in Council which are kept in effect until the end of the financial year. That is the general procedure contemplated in the Bill.

The next point to which I want to refer is the Second Chamber. It will be observed in Clause 6 that the question of the Second Chamber would be left to be decided by a bare majority vote of the new Council that comes into being.

I will say quite frankly here that the question of the Second Chamber is one that is very complicated and involved. The opinions of people may differ as to the constitution of a Second Chamber, and about its precise powers either by itself or in relation to the First Chamber. There are various complicated difficulties that are bound to arise.

It is perfectly true that there are a large number of countries which have Second Chambers which themselves are divided into two categories. For instance, in the federal countries, the Second Chamber serves a valuable federal purpose. Where there are federal units, a Second Chamber is more necessary than in a country where there is a unitary form of Government. For instance, a Second Chamber may consist of an equal number of Members from each different federal unit; and such a Second Chamber serves the purpose of levelling down barriers due to size and population of the different units. But in unitary countries a Second Chamber serves a different purpose, such as, delaying legislation, preventing hasty legislation, and that sort of thing.

There are certain authorities so eminent as Professor Laski who cannot imagine what particular benefits can be derived from Second Chambers, while there are others who think that Second Chambers are really necessary. It may be on this psychological principle; for instance, a man has two eyes. Why particularly two? If, like Polyphemus, he has one eye in his forehead, it might have served his purpose as well as two eyes. It is just one of those inexplicable provisions—to ensure that there is some sort of balance. Things go by twos, when perhaps one is quite enough!

That being so, I do not know whether in the matter of a Second Chamber, the Ministers, in their Draft, as accepted in this Bill, were not really wise in making this provision. Let us have in the new Constitution first one Chamber; let us see how it works. It is perfectly true that on the federal basis, a Second Chamber is desirable. I myself was in favour of a Second Chamber purely to solve the communal problem, but that itself was again a new idea which was bound to arouse great divergence of opinion.



I was certainly not in favour of a Second Chamber of a reactionary nature. That is a matter to be considered. With the degree of freedom we would have under Dominion Status, a Second Chamber would lose some at least of its disadvantages, but it would prove to be of great disadvantage when we are in a subject position. In such circumstances, a Second Chamber would be of a reactionary nature. In a country which is in a subject position, a Second Chamber would be bound, sooner or later, to be converted into purely an instrument of the Imperial Power. I have not the least doubt about that. Its only purpose would then be to thwart the exercise of even the limited powers we would have to do something for the people.

Take this House. Do Members think for a moment that the Land Development Bill of the Minister of Agriculture and Lands would have been passed if a Second Chamber had been in existence?

If the Second Chamber does not agree with the First, you would be providing the Secretary of State with a further handle to enable him to refuse assent to certain classes of Bills. He can turn round and say, "The two Chambers disagree; although the first Chamber has passed this Bill, the Second Chamber is against it". Even with one Chamber, the Secretary of State has refused to obtain His Majesty's assent to certain Bills, but if there is a Second Chamber it will strengthen his position and enables him to say that opinion in the country was divided on such Bills; and you may be sure that such Bills would not receive His Majesty's assent.

That is the position. I do not favour a two-Chamber Constitution, but the advantages and disadvantages will be considered in the Committee stage of this Bill.

Then comes the question of representation. Clause 13 provides for representation on a territorial basis, worked out according to the Ministers' Draft, whereby provision is made for at least one territorial seat for 75,000 of the population, and one seat added for 1,000 square miles of territory for area, calculated to the nearest 1000.

The hon. Member for Dedigama (Mr. Dudley Senanayake) pointed out in a memorandum placed before the Un-official Members' Conference that this worked out almost to about 60:38 between the majority and the minority communities; that is a larger number of minority

Members would have an opportunity of being elected, though this does not provide for certain minorities, especially the Muslims, having an adequate chance of being elected.

The Delimitation Commission that would be appointed is to take into account the transport facilities, the means of communications and the diversity of interests of the inhabitants of an area in making their recommendations.

I do not want to enter into a discussion on the question of communal representation. The views of Members will be heard at the second reading, or the Committee stage of this Bill, and it is not necessary to go into that question at the first reading.

All I would say is that this Bill does provide us again with an opportunity, if it is reasonably possible, to come to some agreement among ourselves. There is that chance of an agreement—if it is reasonably and justly possible—this Bill provides the last opportunity before the promulgation of the new Constitution. It is now or never, as far as the new Constitution is concerned. I hope that we can all bring our minds to bear, as I am myself willing to do, to see if it is possible. I do not say it is, but I sincerely trust that it might be possible.

In Clause 17, provision is made for certain nominations by the Governor for certain sections of the people of this country—Europeans and Burghers primarily—who cannot ordinarily obtain election. If they want election, it cannot be on a territorial basis, unless you have joint electorates; it must be communal electorates. That is a matter that the House will have to consider in due course.

With regard to the qualifications of Members, in Clause 19 it will be observed that a knowledge of English is not now made compulsory. People speaking some language of our own country will be perfectly entitled to be elected as Members of this House in future. The law regarding contracts has been defined more satisfactorily in terms of the English Election Law. Disqualification is provided for imprisonment for criminal offences for a period of three months or over, and disqualification for those Members who have been guilty of bribery in the Council itself. The period laid down is seven years.

There is another change of importance—a change-over from the Executive Committee System to the Cabinet System contained in Clauses 40 to 48 of the Bill. It is also provided in Clause 36 (1) that the conventions obtaining in the United Kingdom should be followed by the



Governor in dealing with these various matters in Ceylon if there is any doubt as to the action to be taken. That Clause is comprehensive.

Then, there are certain financial provisions. There is provision for the creation of a Consolidated Fund under Clause 54. That is the practice in the United Kingdom as well as the Dominions. There are certain comments on it made by the Financial Secretary in this Observations that might be considered very carefully by the House in the Committee stage.

Then, there is provision for an independent Public Services Commission under Clause 59; and in Clause 5 there is provision for a Judicial Commission. They are to be created by the Governor-General in his discretion. He may consult his Prime Minister or anybody else here, but it is left to the Governor-General's discretion to appoint persons who will function impartially in these important bodies—the Public Services Commission and the Judicial Commission.

Just a few words in conclusion. What next? Supposing this Bill is introduced here; supposing this Bill is passed in the not too distant future, what then? Well, Sir, what I have in mind is this, that this Bill be sent up to the Governor for his approval. The Governor will send it to the Secretary of State.

And what is likely to happen then? What is likely to happen at the worst? At the worst, the Secretary of State may just tear it up and throw it into the wastepaper basket. He may thereafter go through the Soulbury Commission recommendations, frame an Order in Council on his own, and impose it upon us. The authorities will then take steps to hold elections under the new Order in Council. That will be the position at the worst. It may be that the Secretary of State will not send his proposals for the consideration and acceptance of this House. That situation may not arise. At the worst, he may take the course that I have just outlined.

What would happen if the situation is reduced to that? At least we would have done our duty by making it clear to our people in the country, to all sections of the State Council, to the British Government, to the Secretary of State and to everybody else concerned with this subject what we actually demand. At present that is not clear. Everyone trooping before the Soulbury Commission is doing so on the implicit acceptance of the Declaration of 1943. Let it be clearly understood that everyone going before the Soulbury Commission does so on the implicit understanding that the Declaration of 1943 has been accepted. People

will go there with various demands for seats, and will proceed to give their views, on the assumption that they are satisfied with the Declaration. And they will be saddled with a Constitution framed in England.

We have made our position clear to the people, to this Council and to the British authorities, that if we are saddled with a Constitution of that nature we shall take certain steps. Those are not steps that we can decide definitely now. One of the those steps is a boycott, in the sense that we keep out of the elections.

This country is full of self-sacrificing people, people who are ready to render self-sacrificing services within the walls of this Chamber so that those who are in the cold, bleak desert of boycott will feel themselves very helpless. A boycott was even tried in India by that enormously powerful body the Indian National Congress. I venture to think that that boycott was not successful.

An alternative course would be for all of us who back this Bill, the majority community as well as the minority communities, to form a coalition and fight every single election that is held under the new Constitution. If that is done, I venture to think that 99 per cent. of us will be returned on that issue. We can then carry on the struggle from within and not from without. These are possibilities. We shall have to decide our course later.

On the other hand, at the best, the Secretary of State, faced with this Bill which may differ very widely from proposals which the Soulbury Commission may make, may feel that the wiser course to adopt is to carry on further negotiations in the matter. He may even summon a round-table conference. It may be that there may be a different Government and a different Secretary of State who may view this matter differently, particularly in the light of the Hot Springs decisions and the Atlantic Charter. All those are possibilities that I can conceive of.

Taken at the worst, this course is not so undesirable or unwise as just doing nothing but rushing before the Soulbury Commission; and taken at the best, it is very helpful.

I thank the House for the patience with which it has listened to me. I move that the Bill intituled "An Ordinance to provide a new Constitution for Ceylon" be now read the first time.



## No. of 1945.

**AN ORDINANCE TO PROVIDE A NEW CONSTITUTION FOR CEYLON.****PART I.—PRELIMINARY.**

WHEREAS the Dutch Government by an Act of the 15th February, 1796, surrendered that portion of Ceylon (including the ancient principalities of Jaffna and Cotta-Colombo) under the said Government to the forces of the British Sovereign reserving to the peoples of those territories all liberties and privileges as the subjects of His Majesty:

And whereas by a treaty dated the 2nd March, 1815, the Kandyan people in the exercise of their ancient rights declared and elected the British King to the Kingship of the Kandyan Kingdom:

And whereas these various principalities were in 1833 for the purposes of the British Administration consolidated into a unified Government as a Crown Colony.

And whereas it is now expedient that in accordance with the original intention and the rights reserved to His Majesty's subjects in Ceylon that the Government of Ceylon should become a member of the British Commonwealth of Nations with all the powers and privileges and status of other Dominion Governments:

Be it therefore enacted and declared and ordered by His Majesty by and with the advice of the State Council, as follows:

**1. Short title and date of operation.** This Ordinance may be cited as "The Ceylon (Constitution) Ordinance, No. of 1945".

The date notified for each purpose in the *Gazette* shall be "the date of operation".

**2. Change of name of the Island and application of Ordinance.**

(1) The Island of Ceylon shall be known as Sri Lanka

(2) Wherever in this Ordinance or in any other law there is a reference to the Island of Ceylon it shall be deemed to be a reference to Sri Lanka.

(3) Nothing in the Ordinance shall apply to the Maldivé Islands.

### 3. Revocation of Ceylon (State Council) Order in Council, 1931.

Subject to section 52 of this Ordinance, as from the appointed day the Ceylon (State Council) Order in Council, 1931, shall be revoked, but without prejudice to the validity of any act done before the appointed day, and without prejudice to the continuance of any legal proceeding that may have been begun before the appointed day.

4. Interpretation. (1) In this Ordinance, unless the context otherwise requires —

“Adjourn” means suspend the sitting ;

“Appointed day” means the day appointed by Proclamation for the purpose of section 3;

“Dissolution” means the act of bringing the life of a Council to an end; and “dissolve” has a corresponding meaning;

“Elector” means an elector within the meaning of any law for the time being in force relating to elections to the Council;

“Judicial Office” means any paid judicial office;

“Proclamation” means a Proclamation issued by the Governor-General and published in the *Gazette*;

“Prorogue” means bring the session to an end ;

“Public Office” means any office the holder of which is a public officer ;

“Public Officer” means any person who holds a paid office, other than a judicial office, under the Crown in respect of the Government of Ceylon;  
Provided that—

(a) A member of the Council of State shall not be deemed to a public officer by reason only that he receives an allowance as such member; and

(b) “Public officer” shall not include the Governor-General, the Speaker or other officer of the Council of State, the Clerk of the Council or any member of his Staff appointed under section 32, any Minister or Deputy Minister, the



Auditor-General, any member of the Ceylon Defence Force or of the Ceylon Royal Naval Volunteer Reserve who is not in full-time employment in that Force or Reserve, any Crown Advocate other than a Crown Counsel, or any Crown Proctor.

"Session" means the period between the summoning of a Council, whether on the first or a subsequent occasion, and the termination of the proceedings consequent upon that summons;

"Sitting" means the period during which the Council of State is sitting continuously without adjournment, and includes any period during which the Council of State is in Committee;

"United Kingdom" means the United Kingdom of Great Britain and Northern Ireland

(2) Any reference in the Ordinance to an Order in Council shall be construed as a reference to that Order in Council as amended by any subsequent Order in Council made before the appointed day.

(3) Any reference to the holder of a particular judicial or public office shall be deemed to include a reference to a person who is temporarily acting in that office.

(4) In the interpretation of this Ordinance the provisions of the Interpretation Ordinance shall apply subject to the express provisions of this Ordinance, and notwithstanding any provisions to the contrary in such Ordinance.

## PART II.—THE PARLIAMENT OF CEYLON.

**5. Constitution of Parliament of Ceylon.** (1) There shall be a parliament of Ceylon which shall consist of the King and the Council of State; but if Parliament provides by law for the establishment of a Senate, Parliament shall consist, so long as such law is in operation, of the King, the Senate and the Council of State.

(2) In this Ordinance, unless the context otherwise requires, "Parliament" means the Parliament of Ceylon and "the Council" means the Council of State.

**6. Power to establish Senate.** (1) Parliament may make laws for the establishment of a Senate, its composition, powers, procedure or privileges, or the emoluments of its members.

(2) Notwithstanding anything in section 10, any Act of Parliament under this section may amend this Ordinance in so far as such amendment may be necessary to give effect to this section or to enable Ministers or Deputy Ministers to sit or vote in the Senate.

**7. Power to make laws.** Parliament may make laws for the peace, order and good government of Ceylon.

**8. Restriction on legislative power.** In the exercise of its power under section 7 Parliament shall not make any law—

- (a) to prohibit or restrict the free exercise of any religion; or
- (b) to make persons of any community or religion liable to disabilities or restrictions to which persons or other communities or religions are not made liable; or
- (c) to alter the constitution of any religious body except with the approval of the governing authority of that religious body.

**9. Enactment of Acts of Parliament.** An Act of Parliament shall be expressed to be enacted by the King and the Council of State of Ceylon.

**10. Amendment or repeal of this Ordinance or of Orders in Council.** (1) Parliament may repeal or amend any provision of any Order in Council in force in the Island immediately before the date of operation.

(2) Parliament may repeal or amend this Ordinance :

Provided that except where this Ordinance otherwise provides, or where a provision is made “until Parliament otherwise provides”—

- (a) This Ordinance shall not be deemed to be amended except by express words to that effect; and
- (b) No Bill for the amendment of this Ordinance shall be presented for the Royal Assent unless it has been assented to in the Council by not less than two-thirds of the whole number of the members thereof, excluding the Speaker or other presiding officer.

**11. Power to enact extra-territorial legislation.** Parliament may make laws having extra-territorial operation, but unless the contrary intention appears an Act of Parliament shall be deemed to extend only to the Island and its territorial waters.



## PART III.—THE COUNCIL OF STATE.

**12. Appointment of Delimitation Commission.** As soon as may be after the date of operation the Governor-General shall appoint a Delimitation Commission consisting of three persons who shall not be members of the State Council.

**13. Duties of Delimitation Commission.** (1) The Delimitation Commission appointed under section 12 shall divide each Province of the Island into a number of electoral districts ascertained as provided in sub-section (2) of this section.

(2) The total number of persons who according to the census of 1931 were resident in the Province shall be ascertained to the nearest 75,000. In respect of each 75,000 of this number the Delimitation Commission shall allot one electoral district to the Province and shall add a further number of electoral districts (based on the number of square miles in the Province at the rate of one additional electoral district for each 1,000 square miles of area calculated to the nearest 1,000) as follows:—

Western Province	...	...	1
Central Province	...	...	2
Southern Province	...	...	2
Northern Province	...	...	4
Eastern Province	...	...	4
North-Western Province	...	...	3
North-Central Province	...	...	4
Province of Uva	...	...	3
Province of Sabaragamuwa	...	...	2

(3) In dividing a Province into electoral districts the Delimitation Commission shall provide that each electoral district in the Province shall have as nearly as may be an equal number of persons, but shall also take into account the transport facilities of the Province, its physical features, and the community or diversity of interest of its inhabitants.

(4) The decisions of the Delimitation Commission shall be embodied in Regulations to be issued by the Governor-General and to take effect as if incorporated in this Ordinance.

**14. New Delimitation Commission to be appointed after every Census.** (1) Within one year after the completion of every census the Governor-General shall appoint a Delimitation Commission consisting of three persons who shall not be members of the Council.

(2) In making appointments under this section the Governor-General shall act in his discretion.

**15. Application of section 13 to Commission appointed under section 14.** Section 13 of this Ordinance shall apply to a Delimitation Commission appointed under Section 14, subject to the modification that for the purposes of sub-section (2) thereof the total number of persons shall be ascertained not according to the census of 1931 but according to the last preceding census for the time being.

**16. Composition of Council of State.** (1) Subject to section 17, the Council shall consist of members elected by the electors of the several electoral districts constituted in accordance with this Ordinance.

(2) There shall be one member for each electoral district who shall be elected in accordance with the provisions of this Ordinance and of any other law for the time being in force relating to elections to the Council.

**17. Power of Governor-General to appoint members of the Council.** (1) Where after any general election it appears to the Governor-General that any important interest in the Island is inadequately represented he may appoint to the Council such number of members, not exceeding six, as he may think fit.

(2) When the seat of any member appointed under this section falls vacant, the Governor-General may appoint a person to fill the casual vacancy.

(3) In the exercise of his functions under this section the Governor-General shall act in his discretion.

**18. Qualification for membership of Council.** Any person who is qualified to be an elector shall, unless he is disqualified under section 19, be qualified to be elected or appointed to the Council.

**19. Disqualification for membership.** No person shall be capable of being elected or appointed a member of the Council or of sitting or voting in the Council who—



- (a) is a public officer or a judicial officer or Auditor-General; or
- (b) directly or indirectly, by himself or by any person on his behalf or for his use or benefit, holds or enjoys any right or benefit under a contract made by or on behalf of the Crown in respect of the Government of Ceylon for the furnishing or providing of money to be remitted abroad or of goods or services to be used or employed in the service of the Crown in the Island, or receives or is a member of any incorporated or unincorporated body of less than 25 persons which receives, any grant from the public funds of the Island of such a nature that the award or amount of the grant is within the discretion of the Crown or of a public officer: Provided that this disqualification shall not be applied in respect of—
  - (i.) any contract for subscription to a loan issued to the public on advertised terms; or
  - (ii.) any pension, gratuity or other benefit payable under the general law; or
  - (iii.) any grant to a municipal council, urban council, or other public authority established by written law; or
  - (iv.) any grant to a body whose purposes are mainly religious, charitable or educational; or
- (c) is an uncertificated or undischarged bankrupt; or
- (d) has been convicted by any Court in Ceylon of any offence made punishable with imprisonment of either description for a period of not less than one year by the Penal Code (other than an offence under Chapter VI thereof or the offence of abetting or conspiring to commit any such offence) and has been sentenced to a term of imprisonment of three months or longer in respect of that offence: Provided that, if seven years or more have elapsed since the termination of the imprisonment the person convicted shall not be incapable by reason only of such conviction of being elected or appointed a member of the Council or of sitting or voting in the Council; or
- (e) is by order of Court restrained of his liberty of movement or deprived of the management of his property by reason of mental disease; or

(f) is incapable of being registered as an elector or of being elected as a member by reason of his conviction of a corrupt or illegal practice or by reason of the report of an election judge in accordance with the law for the time being in force relating to the election of members of the Council; or

(g) would by reason of his conviction for a corrupt or illegal practice have been incapable of being elected as a member of the Legislative Council or of the State Council if the laws relating to election to those bodies had remained in operation; or

(h) would by reason of the adjudication by a competent Court or by a Commission appointed with the approval of the State Council or of the Council of State or by a Select Committee of the State Council or of the Council of State to have accepted a bribe or gratification offered with a view to influencing his judgment as a member of the State Council or of the Council of State be incapable of being elected a member of the State Council (if the law relating to elections to that body remained in operation) or of the Council of State.

**20. Oath of Allegiance.** Except for the purpose of electing the Speaker of the Council, no member of the Council shall sit or vote therein until he shall have taken and subscribed before the Council the oath of allegiance in the form given in the Schedule, or shall have made and subscribed before the Council an affirmation in the corresponding form.

**21. Penalty for sitting or voting in Council while disqualified.**

(1) A person shall be liable to a penalty of five hundred rupees for every day on which he shall sit or vote in the Council knowing or having reasonable grounds for knowing that he is disqualified by this Ordinance from so sitting or voting or that his seat has become vacant.

(2) The penalty imposed by this section shall be recoverable by action in the District Court of Colombo instituted by any person who shall sue for it:

Provided that—

(a) no such action may be instituted unless the leave of the District Judge of the Court shall first have been obtained;



- (b) if no steps in pursuit of the action have been taken by the person instituting the action for any period of three months after the action has been instituted, the action shall be dismissed with costs.

**22. Vacation of Seats.** The seat of a member of the Council shall become vacant—

- (a) upon his death; or
- (b) if by writing under his hand addressed to the Speaker he shall resign his seat; or
- (c) if he shall become incapable of sitting or voting as a member by reason of any provision of this Ordinance; or
- (d) if he shall become the citizen or subject of any foreign State or Power or shall make any declaration or acknowledgment of allegiance to any foreign State or Power; or
- (e) if his election shall be vacated or made void by reason of the commission of any corrupt or illegal practice or by reason of the declaration, certificate or report of an election judge; or
- (f) if without the leave of the Council first obtained, he shall be absent from the sittings of the Council for a continuous period of three months; or
- (g) upon the dissolution of the Council of State.

**23. Payment of members of the Council.** Members of the Council may be paid such allowances as may be authorised by law, and the receipt of any such allowances shall not disqualify a member from sitting or voting in the Council.

**24. Dissolution of State Council and summoning of Council of State.**

- (1) As soon as may be after the making of Regulations under sub-section (4) of section 13, the Governor-General shall by Proclamation dissolve the State Council and summon a Council of State in accordance with this Ordinance.

(2) After the dissolution of the State Council under this section, and until the appointed day, Article 71 of the Ceylon (State Council) Order in Council, 1931, shall apply as if the dissolution were a dissolution under that Article and the appointed day were the next succeeding election of Executive Committees and appointment of Ministers.

**25. Prorogation and dissolution of Council.** (1) A Council shall remain in session until it is prorogued or dissolved by the Governor-General by Proclamation, and there shall be at least one session in every year.

(2) A Proclamation proroguing a Council shall fix a date for the next session, not being more than four months after the date of the Proclamation :

Provided that at any time while a Council stands prorogued the Governor-General may by Proclamation fix an earlier date for the next session or dissolve the Council.

**26. Summoning of new Council.** (1) A Proclamation dissolving the Council shall summon a new Council to meet at a date not later than four months from the date of the Proclamation, and shall fix a date or dates for the election of members of the Council :

Provided that, if in the opinion of the Governor-General there arises after the dissolution of a Council an emergency of such a nature that an earlier meeting of the Council is necessary, the Governor-General may by Proclamation summon the Council which has been dissolved and such Council may be kept in session until the meeting of the new Council.

(2) If a Council is not sooner dissolved by Proclamation, it shall be deemed to be dissolved at the expiry of five years from the date of the last dissolution of the Council and the Governor-General shall forthwith issue a Proclamation summoning a new Council.

**27. Power of Council to adjourn.** The Council may adjourn from time to time, as it may determine by resolution or Standing Order, until the Council is prorogued or dissolved :

Provided that during any adjournment for a period exceeding one month, the Speaker may convene a meeting of the Council for the transaction of any urgent business of public importance, in such circumstances as may be prescribed by Standing Orders.

**28. Quorum.** The Council may transact business notwithstanding that there is any vacancy among the members or that any member is absent, but if the attention of the speaker or presiding officer be drawn to the fact that there are fewer than twenty-five members present he shall, subject to any Standing Order of the Council, adjourn the sitting without question put.



**29. Regulation of business, &c., of Council.** (1) Subject to the provisions of this Ordinance, the Council may by resolution or Standing Order provide for the regulation of its business, the preservation of order at its sittings, the terms on which any remuneration or allowance authorised by law may be paid to members, and any other matter for which provision is made by this Ordinance.

(2) Until the Council otherwise provides, the practice and procedure of the Council shall be the same as the practice and procedure of the State Council, sitting in legislative session, in accordance with the Standing Orders in operation at the date of operation.

(3) So long as Government business is under discussion, no motion for the suspension of Standing Orders may be moved except with the consent of the Prime Minister or other representative of the Cabinet.

**30. Privileges, &c., of members.** (1) The privileges, immunities and powers of the Council and of its members may be determined and regulated by Act of Parliament but no such privileges, immunities or powers shall exceed those for the time being held or enjoyed by the Commons House of the Parliament of the United Kingdom or of its members.

(2) Until Parliament otherwise provides, the privileges of the Council shall be the same as those of the State Council at the date of operation.

**31. Speaker, Deputy Speaker, and Deputy Chairman of Committees.** (1) The first business of the Council after a general election shall be the election of members to be respectively Speaker, Deputy Speaker and Chairman of Committees (hereinafter called the Deputy Speaker), and Deputy Chairman of Committees. Each member so elected shall hold office until the next dissolution of the Council unless in the meantime he resigns his office or ceases to be a member of the Council. Whenever a vacancy occurs in the office of Speaker, Deputy Speaker or Deputy Chairman of Committees, the first business at the first sitting of the Council after the occurrence of the vacancy shall be the election of a member to fill the vacancy.

(2) The Speaker or in his absence the Deputy Speaker, or in the absence of both of them the Deputy Chairman of Committees, shall

preside at sittings of the Council. If none of them is present the Council shall elect a member to preside.

(3) There may be paid to the Speaker, the Deputy Speaker and the Deputy Chairman of Committees such emoluments as Parliament may decide, and the receipt of such emoluments shall not disqualify them from sitting or voting in the Council.

**32. Clerk of the Council.** (1) The Clerk of the Council shall be appointed by the Governor-General on the recommendation of the Speaker for the time being, and the members of his staff shall be appointed by the Speaker for the time being.

(2) The Clerk of the Council and the members of his staff shall be incapable of being elected or appointed to or of sitting or voting in the Council.

(3) The Clerk of the State Council shall be the first Clerk of the Council and the members of the staff of the State Council shall be transferred to the service of the Council.

(4) The first Clerk of the Council and the members of his staff transferred under sub-section (3) shall, until the Council otherwise provides, hold their appointments on as nearly as may be the same terms as those on which they were employed under the State Council.

#### PART IV.—THE GOVERNOR-GENERAL.

**33. Appointment of Governor-General.** A Governor-General appointed by the King shall be His Majesty's representative in the Island, and shall have and may exercise in the Island during the King's pleasure, but subject to this Ordinance such powers and functions of the King as His Majesty may be pleased to assign to him:

Provided, however, that until His Majesty shall appoint a Governor-General the functions of the Governor-General under this Ordinance shall be exercised by the Governor.

**34. Power to Appoint Governor-General's Deputy.** The provisions of this Ordinance relating to the Governor-General shall extend and apply to the Governor-General for the time being or such person as his Majesty may appoint to administer the Government of the Island. His Majesty may authorise the Governor-General to appoint any person to be his deputy within the Island for any period during which the Governor-General may be unable to exercise any of the functions of his office, and in that capacity to exercise for and on behalf of the Governor-General all such powers and authorities vested in the Governor-General as the Governor-General may assign to him.



**35 Salary of Governor-General.** There shall be charged upon the Consolidated Fund, as salary for the Governor-General, an annual sum of £8,000 sterling.

**36. Functions of Governor-General.** (1) Except as provided in this Ordinance the Governor-General shall after the appointed day exercise every function under this Ordinance in accordance with the constitutional conventions applicable to the exercise of a similar function in the United Kingdom by His Majesty.

(2) Where by or under this Ordinance the Governor-General is directed to exercise a function on the recommendation of a person, he shall not exercise that function except on such a recommendation, but may accept the recommendation or refer it back to that person for further consideration.

(3) Where by or under this Ordinance the Governor-General is directed to act in his discretion he shall refer the matter to the Prime Minister for advice but shall not be bound to accept such advice and may decide the matter in his discretion

**37. Power to assent to or disallow laws.** The Governor-General may assent in the King's name, or refuse such assent, to Bills passed in accordance with this Ordinance, and no Bill shall become law until it has received the Royal Assent.

**38. Protection of Governor-General.** An act of the Governor-General shall not be called in question in any Court on the ground only that he did or did not exercise it in accordance with sub-section (1) of section 36, or on the recommendation of any person, or in his discretion.

#### PART V.—THE EXECUTIVE GOVERNMENT.

**39. Executive authority.** The executive power of Ceylon is vested in His Majesty and is exercisable by the Governor-General acting in accordance with this Ordinance.

**40 Appointment of Ministers.** Until Parliament otherwise provides, there shall be ten Ministers, of whom one shall be Prime Minister, appointed by the Governor-General and responsible to the Council. The Ministers other than the Prime Minister shall be appointed on the recommendation of the Prime Minister.

**41. Functions of Ministers.** The functions to be assigned to each Minister, shall be determined from time to time by the Prime Minister and published in the *Gazette*.

**42. Appointment of Deputy Ministers.** (1) The Governor-General on the recommendation of the Prime Minister may appoint Deputy Ministers to assist the Ministers in the exercise of their departmental and parliamentary duties.

(2) The number of Deputy Ministers shall not at any time exceed the number of Ministers appointed under section 40.

**43. Ministers and Deputy Ministers to hold office during pleasure.** A Minister or a Deputy Minister shall hold office during pleasure but may resign by notice to the Governor-General in writing under his hand.

**44. Appointment of persons to act as Ministers or Deputy Ministers.** Whenever a Minister or a Deputy Minister is from any cause whatever unable to perform any of the functions of his office, the Governor-General may appoint a person, whether or not he has already been appointed a Minister or a Deputy Minister, to act in the said Minister's stead, either generally or in the performance of any particular function. For the purpose of this Ordinance the person so appointed shall be deemed to be a Minister or a Deputy Minister, as the case may be.

**45. Term of office of Ministers and Deputy Ministers who are not members of the Council.** A Minister or Deputy Minister shall not hold office for a longer period than three months unless he is or becomes a member of the Council.

**46. Salaries of Ministers and Deputy Ministers.** Ministers and Deputy Ministers shall be paid such salaries as may be determined by Parliament. The acceptance of such salary shall not disqualify any Minister or Deputy Minister from being a member of or sitting or voting in the Council.

**47. Oath of Office.** A person appointed to be a Minister or a Deputy Minister shall, before entering on the duties of his office, take and subscribe before the Governor-General an oath in the following form, or shall make and subscribe before the Governor-General an affirmation in the corresponding form:

*Form of Oath.*

1, ———, do swear, that I will well and truly serve His Majesty  
 ——— in the office of Prime Minister/Minister (Deputy Minister) of  
 ———



**48. The Cabinet.** The Ministers appointed under section 40 shall constitute the Cabinet, and the Cabinet shall be charged with the general direction and control of the Government of Ceylon and shall be collectively responsible to the Council.

**49. Secretary to the Cabinet.** There shall be a Cabinet Office in charge of the Secretary to the Cabinet, who shall be appointed by the Governor-General on the recommendation of the Prime Minister. The Secretary to the Cabinet shall be responsible in accordance with instructions from the Prime Minister for summoning meetings of the Cabinet, arranging the business for such meetings, keeping the minutes, and conveying the decisions of the Cabinet to the appropriate persons or authorities.

**50. Exercise of functions of Officers of State and Executive Committees on and after appointed day and appointment of Permanent Secretaries to Ministers.** (1) On and after the appointed day the general direction and control of any Department of Government which was, immediately before the appointed day, under the general direction and control of an Officer of State or of an Executive Committee shall be exercised by a Minister designated by the Prime Minister.

(2) As soon as may be after the appointed day, the Governor-General on the recommendation of the Prime Minister shall designate an officer to act temporarily as Permanent Secretary to each of the Ministers. The Permanent Secretary shall, subject to the general direction and control of his Minister, exercise supervision over the Departments of Government in the charge of his Minister.

(3) As soon as may be after the appointed day, the Governor-General shall by Regulation reorganise the Departments of Government in such manner that in respect of each Ministry there shall be a Permanent Secretary.

(4) For the purpose of this section, the Department of the Auditor-General, the Office of the Clerk of the Council and the Cabinet Office, shall be deemed not to be Departments of Government.

**51. Constructions of references to Officers of State, Ministers and Executive Committees in other written law.** (1) Any reference in any law to the Chief Secretary, the Legal Secretary or the Financial Secretary shall after the appointed day be construed as a reference to the Minister to whom the function has been assigned under section 41:

Provided that the Governor-General on the recommendation of the Prime Minister may direct that any function which is by such law to be exercised by the Chief Secretary, the Legal Secretary or the Financial Secretary shall be exercised by a Permanent Secretary or other Public Officer.

(2) Any reference in any law to an Executive Committee shall after the appointed day be construed as a reference to the appropriate Minister.

(3) Any reference in any law to a Minister appointed under the Ceylon (State Council) Order in Council, 1931, shall be construed as a reference to the appropriate Minister under this Ordinance.

#### PART VI.—FINANCIAL PROVISIONS.

**52. Operation of certain Articles of Ceylon (State Council) Order in Council, 1931.** (1) Notwithstanding the revocation on the appointed day of the Ceylon (State Council) Order in Council, 1931, Articles 56 to 67 and Articles 70 and 71 of that Order shall remain in force until the 30th September next after the appointed day, but subject to the following amendments:

- (a) The functions of the State Council shall be exercised by the Council of State.
- (b) The functions of the Governor shall be exercised by the Governor-General in accordance with section 36 of this Ordinance.
- (c) The functions of the Board of Ministers shall be exercised by the Cabinet.
- (d) The functions of the Financial Secretary shall be exercised by the Minister of Finance.
- (e) Any function of an Officer of State or of an Executive Committee shall be exercised by the Minister to whom the function has been assigned under section 41.

(2) The next following sections of the part of this Ordinance shall come into operation on the 1st October next after the appointed day, but without prejudice to the power of the Governor-General, the Public Services Commission or a Minister to take such action as may be necessary to bring this Part of this Ordinance into operation.

(3) Any Appropriation Ordinance passed by the State Council for the financial year next after the appointed day shall be deemed



to be an Appropriation Act within the meaning of this Part of this Ordinance.

**53. Appointment and salary of Auditor-General.** (1) There shall be an Auditor-General who shall be appointed by the Governor-General and shall hold office during good behaviour.

(2) The Salary of the Auditor-General shall be fixed by law. shall not be altered during his term of office, and shall be charged on the Consolidated Fund.

(3) The office of Auditor-General shall become vacant—

(a) by his death; or

(b) by his attaining the age of fifty-five years or such higher age as the Governor-General on the recommendation of the Public Services Commission may determine; or

(c) by his resignation in writing addressed to the Governor-General; or

(d) by his removal by the Governor-General on account of ill-health or physical or mental infirmity in the like circumstances and subject to the same conditions as a public officer in receipt of similar pensionable emoluments; or

(e) by his removal by the Governor-General upon an address praying for his removal presented by the Council.

**54. The Consolidated Fund.** The funds of the Island not allocated by law to specific purposes shall form a single Consolidated Fund into which shall be paid the produce of taxes, imposts, rates and duties and all other revenues of the Island: Provided that where under any existing or future law a fund is created for specific purposes the income from that fund may be credited to that fund.

**55. Charges on, and withdrawal of moneys from, the Consolidated Fund.** (1) The interest on the public debt and the costs, charges and expenses incidental to the collection, management and receipt of the Consolidated Fund shall be charged on the Consolidated Fund.

(2) No sum shall be withdrawn from the Consolidated Fund or any other Fund except by warrant from the Governor-General addressed to the Minister of Finance and countersigned by the Auditor-General.

(3) No warrant shall be countersigned by the Auditor-General unless he has satisfied himself, in the case of a sum to be withdrawn from the

Consolidated Fund, that the sum has been charged upon the Consolidated Fund or has been appropriated by the Appropriation Act or a Supplementary Appropriation Act for the financial year during which the withdrawal is to take place, or, in the case of a sum to be withdrawn from any other Fund, that the withdrawal is authorised in accordance with the law applying to that Fund.

**56. Responsibility of Cabinet for Money Bills, &c.** (1) No Bill, motion, resolution or vote for the disposal of, or for the imposition of charges upon, any part of the public revenue or other funds of the Island, or for the Authorisation of any prior disposal of any part of such revenue or funds, or for the imposition or augmentation of any tax or for the repeal or reduction of any tax for the time being in force, shall be introduced in the Council except by a Minister, nor unless such Bill, motion resolution or vote shall have received the prior approval of the Cabinet.

(2) In this section "tax" does not include any tax raised by any local authority or body for a local purpose.

**57. Dissolution of Council before passing of Appropriation Bill.** Where the Governor-General dissolves the Council before the Appropriation Bill for the financial year has received the Royal Assent he may authorise the issue from the Consolidated Fund and the expenditure of such sums as he may deem necessary for the public services until the expiry of three months after the meeting of the new Council.

**58. Audit of accounts.** (1) The accounts of the office of the Clerk of the Council, of the Public Services Commission and of every Department of Government shall be audited by the Auditor-General as soon as may be after the end of every financial year.

(2) The Auditor-General shall annually report to the Council on the exercise of his functions under this Ordinance.

#### PART VII.—THE PUBLIC SERVICES.

**59. Constitution of Public Services Commission and term of office and remuneration of Commissioners.** (1) There shall be a Public Services Commission consisting of three Commissioners (of whom one shall be designated Chairman) appointed by the Governor-General acting in his discretion.

(2) No person shall be or be appointed a Commissioner under this section if he is a member of the Council, or is a candidate for election to the Council or is a public officer, and not more than one of the Commissioners may be a person holding a pension under the Minutes on Pensions or under any law relating to the pensions of public officers.



(3) The term of office of a Commissioner shall be five years but any Commissioner may be re-appointed: provided that where a person is appointed to fill a casual vacancy in the Commission he shall hold office for the remainder of the period of five years, but may be re-appointed.

(4) A Commissioner may resign his office by notice in writing addressed to the Governor-General and may be removed by the Governor-General, acting in his discretion, for cause assigned.

(5) A Commissioner may be paid such remuneration as may be determined by Parliament but such remuneration shall not be diminished during his term of office and shall be charged on the Consolidated Fund.

**60 Secretary to Public Services Commission.** There shall be a Secretary to the Public Services Commission appointed by the Governor-General on the recommendation of the Commission and such other staff to be appointed by the Commission as may be authorised by Parliament.

**61. Appointments to public office.** (1) Every new appointment to a public office not otherwise provided for in this Ordinance and carrying an initial salary of not less than Rs. 3,600 a year shall be made by the Governor-General on the recommendation of the Public Services Commission.

(2) The Public Services Commission may direct that any new appointment to a public office to which sub-section (1) of this section does not apply or any class of such appointments, shall be made by the Governor-General on the recommendation of the Public Services Commission and the appointment or class of appointment shall thereafter be so made until the Public Services Commission otherwise directs.

(3) Any new appointment to a public office to which sub-section (1) or sub-section (2) of this section does not apply shall be made by the Head of the Department in which the public office is held but shall be reported to the Public Services Commission and may be revoked by the Governor-General on the recommendation of the Commission.

**62. Attempts to influence decisions of Public Services Commission.**

(1) Any person who conspires or attempts to influence, or who influences any decision of the Public Services Commission or of any member thereof by means of any gift, promise or other inducement, or by any threat,

shall be guilty of an offence punishable with a fine not exceeding one thousand rupees or with rigorous imprisonment for a term not exceeding one year or with both such fine and such imprisonment.

(2) For the purposes of Chapter IX of the Penal Code a member of the Public Services Commission shall be deemed to be a public servant.

**63. Term of office, promotion, transfer, dismissal, &c., of public officers.** (1) Subject to this Ordinance every person holding office under the Crown in respect of the Government of Ceylon shall hold office at the pleasure of the Governor-General and the promotion, transfer, dismissal and disciplinary control of persons in the public services shall be vested in the Governor-General.

(2) Subject to this Ordinance the Governor-General may delegate to any Minister or public officer, but subject to such conditions as he may prescribe, any power relating to the promotion, transfer, dismissal and disciplinary control of any class of persons in the public services.

**64. Retirement, pensions and gratuities of public officers.** (1) The Governor-General may, before the appointed day, make special regulations for the grant of pension or gratuity to any person or class of persons in the public service holding office on the appointed day and resigning within one year after the appointed day.

(2) All pensions and gratuities which have been granted to persons who have retired from the public services before the appointed day, or to the dependants of persons who have died before the appointed day shall be governed by the law and regulations under which they were granted.

(3) All pensions and gratuities granted or regulated under this section shall be charged on the Consolidated Fund.

#### PART VIII.—THE JUDICIAL AUTHORITIES.

**65. Constitution of Judicial Commission and term of office of Commissioners** (1) There shall be a Judicial Commission consisting of the Chief Justice as Chairman, the Attorney-General and one other person to be appointed by the Governor-General acting in his discretion, but subject to this section.

(2) No person shall be appointed under sub-section (1) of this section if he is a member of the Council or a candidate for election to the Council, or a public officer: Provided that for the purposes of this sub-section "public officer" shall not include the Solicitor-General.



(3) The term of office of the person appointed under sub-section (1) of this section shall be five years, but he may be reappointed, may resign by notice under his hand to the Governor-General, and may be dismissed by the Governor-General, acting in his discretion, for cause assigned.

**66 Appointment of Judges of the Supreme Court and other judicial officers.** (1) The Chief Justice and the Puisne Judges of the Supreme Court shall be appointed by the Governor-General acting in his discretion.

(2) The Chief Justice and the Puisne Judges of the Supreme Court shall hold office during good behavior and shall not be removed except by the Governor-General on an address from the Council: Provided that Parliament may provide by law an age of compulsory retirement.

(3) An appointment to a judicial office not otherwise provided for by this section shall be made by the Governor-General on the recommendation of the Judicial Commission.

(4) For the purposes of this section "appointment" includes an acting or a temporary appointment or a transfer from one judicial office to another and "appointed" has a corresponding meaning.

**67 Resignation of judicial Officers.** Any judicial officer may resign by notice in writing addressed to the Governor-General.

**68. Salaries of Judges of the Supreme Court** The salaries of the Chief Justice and the Puisne Judges of the Supreme Court shall be determined by law and charged on the Consolidated Fund, and the salary of any such Chief Justice or Judge shall not be diminished during his term of office.

*Schedule.*

Form of Oath. (Section 20).

I, ..... do swear that I will be faithful and bear true allegiance to His Majesty ....., His Heirs and Successors according to law.

Passed in Council the Twenty-second day of March, One thousand Nine hundred and Forty-five.

Clerk of the Council.

Assented to by His Excellency the Governor the.....  
.....day of..... One thousand Nine hundred and Forty-five.

Acting Secretary to the Governor.

## Declaration by His Majesty's Government (of 1943)

In 1941 the following assurance was given to the Board of Ministers in Ceylon:—

"His Majesty's Government have had under further consideration the question of constitutional reform in Ceylon. The urgency and importance of reform of the Constitution are fully recognized by His Majesty's Government; but before making decisions upon present proposals for reform, concerning which there has been so little unanimity but which are of such importance to the well-being of Ceylon His Majesty's Government would desire that the position should be further examined and made the subject of further consultation by means of a Commission or Conference. This cannot be arranged under war conditions, but the matter will be taken up with the least possible delay after the war."

After further consideration His Majesty's Government have decided that it is in the general interest to give greater precision to the foregoing statement with the object of removing any doubts regarding His Majesty's Government's intentions. Accordingly His Majesty's Government have asked the Governor to convey to the Board of Ministers the following message:—

- (1) The post-war re-examination of the reform of Ceylon's constitution, to which His Majesty's Government stands pledged, will be directed towards the grant to Ceylon by Order of His Majesty in Council of full responsible government under the Crown in all matters of internal civil administration.
- (2) His Majesty's Government will retain control of the provision, construction, maintenance, security, staffing, manning, and use of such defences, equipment, establishments and communications as His Majesty's Government may from time to time deem necessary for the naval, military and air security of the Commonwealth including that of the Island, the cost thereof being shared between the two Governments in agreed proportions.
- (3) Ceylon's relations with foreign countries and with other parts of the British Commonwealth of Nations will be subject to the control and direction of His Majesty's Government.
- (4) The Governor will be vested with such powers as will enable him if necessary to enact any direction of His Majesty's Government in regard to matters within the scope of paragraphs (2) and (3) of this declaration; and his assent to local measures upon these matters will be subject to reference to His Majesty's Government.
- (5) The present classes of reserved bills in the Royal Instructions will be largely reduced under a new Constitution. Apart from measures affecting Defence and External Relations it is intended that these shall be restricted to classes of bills which—
  - (a) relate to the Royal Prerogative, the rights and property of His Majesty's subjects not residing in the Island, and the trade and shipping of any part of the Commonwealth;
  - (b) have evoked serious opposition by any racial or religious community and in the Governor's opinion are likely to involve oppression or unfairness to any community;
  - (c) relate to currency.
- (6) The limitation contained in the preceding paragraphs will not be deemed to prevent the Governor from assenting in the King's name to any measures relating to, and conforming with, any trade agreements concluded with the approval of His Majesty's Government by Ceylon with other parts of the



Commonwealth. It is the desire of His Majesty's Government that the Island's commercial relations should be settled by the conclusion of agreements, and His Majesty's Government will be pleased to assist in any negotiations with this object.

- (7) The framing of a Constitution in accordance with the terms of this declaration will require such examination of detail and such precision of definition as cannot be brought to bear so long as the whole energies of the Service and other departments of His Majesty's Government must remain focussed on the successful prosecution of the war. His Majesty's Government will however, once victory is achieved, proceed to the examination by a suitable commission or conference of such detailed proposals as the Ministers may in the meantime have been able to formulate in the way of a complete constitutional scheme; subject to the clear understanding that acceptance by His Majesty's Government of any proposals will depend, firstly, upon His Majesty's Government being satisfied that they are in full compliance with the preceding portions of this statement and, secondly, upon their subsequent approval by three quarters of all the members of the State Council of Ceylon excluding the Officers of State and the Speaker or other Presiding Officer.
  - (8) In their consideration of this problem His Majesty's Government have very fully appreciated and valued the contribution which Ceylon has made and is making to the war effort of the British Commonwealth and the United Nations, and the co-operation which under the leadership of the Board of Ministers and the State Council has made this contribution effective.
-

ARCHIVES

