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The Constitution of India

(with an Exhaustive, Critical and Analytical Commentary, Notifications, Rules, Orders etc.)

By

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To

All Our Fellow Citizens

of

The Republic of India

with the Authors' best felicitations

and most sincere wishes

for the happiness and prosperity

of our country under the

new Constitution.

PREFACE

In the words of our illustrious leader Dr. Rajendra Prasad, "After emergence from century-old fetters of slavery and bondage, the country is just breathing the healthy and pleasant air of freedom. Its representatives have unanimously prepared a constitution for a democratic Republic which extends from Kashmir to Cape Comorin, from Kathiawar to Coconada and from Cuttack to Kamrup .....Neither during the Hindu period, nor during the Muslim period, nor even in the British period had the whole of India been united under one single administration. Under the Constitution that has been framed, all the big and small States have been merged and their administration would be carried on at a par with other provinces. This is an event which will go down in history as a wonder achieved".

With the coming into force of the Constitution of India on the 26th January, 1950, and declaration of India as a Sovereign Democratic Republic, a new era has dawned on us. This is the great day for which our countrymen made tremendous sacrifices and cheerfully courted imprisonment and sufferings. In this struggle of independence several of them had to embrace the gallows also. True interests of a country and its people cannot, however, be served simply by framing a constitution. Constitution is only a sort of a rule and it can be effective only when persons responsible for its operation prove to be real servants of the nation. Each one of us has a duty to perform to maintain the freedom of our country and knowledge of the provisions of the new Constitution is absolutely essential for this purpose. The constitution aims to secure to all its citizens, JUSTICE, social, economic and political; LIBERTY of thought, expression, belief, faith and worship; EQUALITY of status and of opportunity, and to promote among them all FRATERNITY assuring the dignity of the individual and the unity of the Nation. It is therefore necessary for us to know our rights under the new framework of Government and also the responsibilities which we are to bear. It is with this object that an attempt has been made in the present book not only to give the text of the Constitution of India but also to explain its contents by parallel references to the Government of India

Act, 1935, and the Constitutions of America, Ireland, Australia and other countries from which most of the matter for framing our Constitution has been derived. A number of decisions of various Courts, both Indian and foreign, have been quoted in extenso, to explain the text.

Notifications, Rules and Orders issued from time to time under an enactment of constant reference like the Constitution of India, must form an essential part of the book. Part II of the book contains all the notifications, rules and orders issued up to date under the Constitution. To keep the value of the book unimpaired at all times, arrangement has also been made to issue supplements to the book at a nominal price as occasion will demand. It is hoped that this unique feature of the book will prove of immense benefit to our worthy readers.

We are thankful to the Publishers for the fine printing and nice get-up of the book. It is gratifying to note that inspite of heavy cost of production the book has been priced very moderately.

O. P. AGGARAWALA.
S. K. AIYAR.

New Delhi.

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PART I

The Constitution of India

(with Commentary)

THE CONSTITUTION OF INDIA

INTRODUCTORY

Constitution.

A constitution may be defined as that fundamental law of a state which contains the principles on which government is founded, regulates the division of sovereign powers, and directs to what persons each of these powers is to be entrusted and the manner of its exercise. Viewed from the standpoint of substance and contents, it was formerly conceived that the chief function of a constitution was to prescribe the frame or form of government, but the scope of modern constitution is much broader than this, and includes not only the frame of government and a bill of rights, but also numerous administrative provisions. Viewed from the standpoint of legal character, a constitution in the American sense of the term is the fundamental or basic law to which all others must conform. In other words, the ultimate distinction between other forms of law and the constitution is not the character of the latter's provisions, nor yet their binding force, but the formal mode by which they may be changed.

"A constitution is in fact a fundamental law or basis of government, and falls strictly within the definitiou of law as given by Mr. Justice Blackstone. It is a rule of action prescribed by the supreme power in a state, regulating the rights and duties of the whole community." *1 Story Const.*

"The very term 'constitution' implies an instrument of a permanent and abiding nature, and the provisions contained therein for its revision indicate the will of the people that the underlying principles upon which it rests, as well as the substantial entirety of the instrument, shall be of a like permanent and abiding nature." *Livermore* v. *Waite*, 102 Cal. 113, 118.

"A constitution is but a law ; it emanates from the people, the depository, and the only one, of all political power ; it is, therefore, the supreme law. It organises and defines the different parts of the government, confers on each department the powers and duties allotted to each, and limits the powers of every department. It has this further quality : having distributed the different powers to the different departments, it leaves those powers to be exercised by those departments and leaves to the sovereign people themselves no other power than that of choosing their own officers or representatives. The people can do no act, except make a new constitution or make a revolution," *Com*, v. *Collins*, 8 Watts (Pa.) 331, 349,

Interpretation of the Constitution.

Generally the principles governing the construction of statutes apply also to construction of constitutions. It must not be forgotten, however, that the function of a constitution is to establish the framework and general principles of government and merely technical rules of construction are not to be applied so as to defeat the principles of the government or the objects of its construction. As Chief Justice Sharkey said in *Brien* v. *Williamson*[1] : "A constitution is to be construed as a frame of government or fundamental law ... If constitutions were to be construed in all things as mere statutes, many of them would present great ambiguity." The discretion of the courts is more restricted in the application of the rules of construction to a plan of government embodied in a written constitution, than it is in the construction of statutes, which in many cases are hastily and unskilfully drawn and require construction in order to determine their meaning. But not so with constitutions, the most solemn and deliberate of human writings, already carefully drawn and calculated for permanent endurance[2].

As a great American authority[3] on Constitution has pointed out, the Constitution "is not a set of clear-cut rules which inexorably control political authorities and citizens in the discharge of their duties as the rules of arithmetic control every book-keeper, everywhere ; it is a printed document explained by official decisions, proceedings, and practice and illuminated by understanding and aspiration. In short, the real Constitution is a body of general prescriptions carried into effect by living persons. Since the bare words of the Constitution, even when concrete, are not always self-explanatory, it becomes necessary very often to interpret the language of the constitution by a reference to the outside sources. Some of these sources are older than the Constitution itself. Thus, historical knowledge very often helps to clear up a simple phrase. Thus, when it is mentioned that a writ of habeas corpus can be granted, it is taken for granted that the reader knows what such a writ is and we naturally remember the history of such a writ and a search for an understanding leads us far back in the history of English law. Another useful guide is the decision of the Supreme Court on interpretation of the words used in other Constitutions which correspond to the language employed in our Constitution Act. Another source of interpretation is the intention of the makers of the Constitution itself. As Chief Justice Marshall said in the famous case of *Marbury* v. *Madison*[4] : "The people have an original right to establish, for their future Government, such principles as, in their opinion, shall most conduce to their own happiness." This, he says, is the basis on which the whole American fabric has been erected. "This original and supreme will organises the Government and assigns the different departments their respective powers." Then, in dealing with the issue at hand, the authority conferred upon the judiciary, the Chief Justice asks about "the intention of those who gave this power". Although he speaks in another connection of what "the framers" of the constitution contemplated, the underlying theory

(1) 7 How. (Miss) 14, at p. 24.
(2) Wolcott v. Wigton, 7 Ind. 44.
(3) *American Govt. and Politics* by Charles A. Board, page 45.
(4) 1 Cr. 137.

of his argument is that it is the "original and supreme will" of the people which is to be discovered and given effect in interpreting the Constitution. But in many cases the intention of the framers is not so easy to find out. Again, over the meaning of some expressions used in the Constitution, the very framers, might have sometime differed. Nevertheless, we often hear in the judgments of the courts, reference to "the intention of the framers." It is not uncommon to find speeches, letters, and papers being cited to prove one interpretation or another, even though their constructions are frequently opposite in upshot.

"We must never forget", declared Chief Justice Marshall in a leading American case, "that it is a Constitution which we are expounding, a Constitution intended to endure for ages, and, consequently to be adapted to the various crises of human affairs." From this it is evident that the framers of the Constitution certainly had in mind some degree of permanence. The Constitution is to endure for ages and to be regarded as adaptable to the various crises of human affairs, for adaptability is a necessary requirement of permanence.

The word "construction" as applied to a written constitution, means the determination from its known elements, of its true meaning, or the intent of its framers and the people who adopted it, in the application of its provisions to cases or emergencies arising and not specifically provided for in the text of the instrument, by drawing conclusions beyond the direct expressions used in the text. (Bouvier Law Dictionary). Strictly, the term 'construction' signifies determining the meaning and proper effect of language by a consideration of the subject-matter and attendant circumstances in connection with the words employed. In other words, it does not stop with interpretation, but applies the language as interpreted to both the subject-matter and the attendant circumstances.

Interpretation as applied to a written constitution, means the determination of the true sense of the words used in the text. In practice construction includes interpretation, and in American constitutional law both terms are frequently used synonymously.

In the main, the general principles governing construction also apply to the construction of constitutions. It must not be forgotten, however, that the function of a constitution is to establish the framework and general principles of government to merely technical rules of construction are not to be applied so as to defeat the principles of the government or the objects of its establishment.

Constitution as a means.

The idea of adaptability involves the assumption that the Constitution is not an end in itself. It was in fact designed to serve the ends of the makers and the generations that followed them, the supreme ends of Indian Society. As Lincoln once put it very aptly, a limb is often sacrificed to save a life, but a life is never given to save a limb. "I felt," he said, "that measures, otherwise unconstitutional, might become lawful by becoming indispensable to the preservation of the Constitution through the preservation of the nation ... I could not feel that, to the best of my ability, I had even tried to

preserve the Constitution, if, to preserve slavery, or any minor matter, I should permit the wreck of government, country, and Constitution altogether."

The Constitution conceived as permanent.

"We must never forget", declared Chief Justice Marshall speaking about the U. S. Constitution, "that it is a constitution which we are expounding, a constitution intended to endure for ages, and consequently, to be adapted to the various crises of human affairs. The framers of the document certainly had in mind some degree of permanence. It was not their idea that it should last for only a few years and be quickly superseded by a new instrument framed to meet changed conditions. The provision in amendments precludes the thought. Nor did they imagine that it was to be so strictly interpreted that amendments and radical revisions would be constantly required to keep government functioning smoothly. The constitution is to endure for ages and to be regarded as adaptable to the various crises of human affairs, for adaptability is a necessary requirement of permanence.

A leading constitutional writer enumerates an important axiom, which, according to him, should serve as a guide or point of reference in reaching conclusions respecting the meaning of the constitution. When Parliament has passed an Act, the measure shall be presumed to be valid unless the violation of the constitution is so manifest as to leave no room for reasonable doubt. As the Supreme Court of the United States once said : "It is by their decent respect, due to the wisdom, the integrity, and the patriotism of the legislative body, by which the law is passed and presumed in favour of its validity, unless its violation of the constitution is proved beyond all reasonable doubt."[1]

Constitutional convention.

Conventions may be defined as those binding rules of a non-legal character which determine important matters relating to the structure and function of Government.[2] It is difficult to over-estimate the far-reaching character of these conventions under the English Constitution, where they regulate various important matters pertaining to Government. The close connection between the laws and the conventions of the English Constitution is noteworthy. A great authority on English Constitutional Laws[3] is of the opinion that in the case of the conventions of the English Constitutions, scrupulous regard for them is to be explained in terms of habits of thought and of action associated with the traditional ruling class in England. But it should not be supposed that such conventions are peculiar only to the English Constitution. In France and the United States, for example, many matters of Government are regulated by fixed custom of the same sort.

Though these conventions are, unlike laws, without legally defined

1. Ogden V. Saunders, 12 Wheaton 213, 270.

2. The most common example of this kind of rule is the English convention which requires that the Cabinet must possess the confidence of a majority of the House of Commons.

3. President Lowell on the Government of England, Vol. I, pp. 11, *et seq.*

sanctions they are binding; and moreover they are never violated and so no question of the consequences of their violation can arise.[1]

Since the time of George III, by the process of constitutional development, then in its infancy, there has grown up in England by the side of the written law an unwritten and conventional Constitution. As distinct from the positive law of the British Constitution, there are conventions of the constitutional morality consisting of maxims and practices which, though they regulate the ordinary conduct of the Crown and its Ministers, and every detail, in short, of the practical working of Government, are not laws in the true sense of the word, for if any or all of them were broken no Court would take notice of their violation, although their breach would almost immediately bring the offender into conflict with the law of the land. Professor Dicey, having given some instances of the rules which belong to the conventions as distinct from the laws of the Constitution, hazarded the conjecture, writing thirty years ago, that under a new or written Constitution some of them would take the form of actual laws. The framers of the Constitution of the Indian Union have fulfilled Professor Dicey's anticipation by the conversion of many of the principal conventions of the British Constitution into the positive law of the Indian Union, while in many instances they, like the framers of the American Constitution, have improved on the British Constitution as they found it.

The Constitution of the Indian Union incorporates so many of the conventions of the British Constitution* and variations of these conventions, indicative in themselves of the trend of opinion in the direction of reform of governing institutions, as to present a subject for fruitful contemplation to the student of constitutional development and of the ethics of comparative jurisprudence.

1. According to Prof. Dicey the conventions of the Constitution, though technically without sanction, possess indirectly a sanction connected with law, in the sense that Law & Convention are very intimately associated and, as a consequence, violation of convention would inevitably lead to violation of law.

**e.g.*, The convention of the British constitution whereby Parliament meets at least once a year is due to the need of the appropriation of supply, and of the Army Act, which makes it legally necessary for Parliament to sit once a year. This convention is embodied in our constituion as pointed out in Art. 85 providing for at least two sittings of Parliament every year. Again, collective responsibility of the Cabinet is under the British system but a mere convention and Art. 75 (3) of our constituion has made specific provision necessary for it. Instances of this kind where mere constitutional conventions have been embodied as specific provisions in our constitution can be easily multiplied.

THE CONSTITUTION OF INDIA

Preamble.

WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN DEMOCRATIC REPUBLIC and to secure to all its citizens :

JUSTICE, social, economic and political ;

LIBERTY of thought, expression, belief, faith and worship ;

EQUALITY of status and of opportunity ;
and to promote among them all

FRATERNITY assuring the dignity of the individual and the unity of the Nation ;

IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.

NOTES

Preamble.

The preamble does not form an integral part of a constitution, but is merely an introduction, without legal significance. The preamble is a statement of purposes, not a grant of jurisdiction. As was pointed in the leading case of *Jacobson* v. *Mass.* (1905) 197 U. S. 11, the preamble is not a part of the constitution but "walks before it." By itself alone it can afford no basis for a claim either of governmental power or of private right. Where the enacting part is clear and unambiguous, the preamble cannot be resorted to control, cut down or restrict it. When the enacting part is ambiguous, the preamble can be resorted to explain it. *Per* Lord Alverstone, C. J. in *Hill* v. *Pannifer*, (1904) 1 K. B. 811, at pp. 815,816.

The preamble serves, nevertheless, two very important ends : *first*, it indicates the source from which the constitution comes, from which it derives its claim to obedience, namely, the people of India ; *secondly*, it states the great objects which the constitution and the government established by it are expected to promote : justice, liberty, equality and fraternity.

"We the people of India."

The constitutional significance of the insertion of these words in the preamble need hardly be emphasised. It emphasises the sovereignty of

the people and the fact that all powers of Government flow from the people. A similar provision is to be found in Art. II of the Irish Constitution the preamble to which contains a formal declaration that "all powers of Government and all authority, legislative, executive and judicial in Ireland are derived from the people of Ireland." A pronouncement of such theoretical character and revolutionary antecedents could clearly have found no place in the constituent Acts of the British Dominion, under which all legal authority in the latter is derived from the Sovereign fount of the Parliament of Westminster. There can be little doubt that under the modern British constitution the people is in fact sovereign. However restricted the effective scope for the exercise of such sovereignty may be, in law, however, sovereignty now as ever, rests with the "King in Parliament."

"We the people of India", mean in other words, "we the citizens of India," whether voters or non-voters. The terms "people of India" and "citizens" are synonymous terms. They both describe the political body who form the sovereignty and who hold the power and conduct the Government through their representatives ; they are what we familiarly call the "sovereign people" and every citizen is one of this people and a constituent member of this sovereignty. [cf. remarks of Taney C. J. in *Dred Scott* v; *Sanford* (1857) 19 How. p. 404.]

"Sovereign Democratic Republic"—These words were inserted in the constitution pursuant to the Objectives Resolution adopted by the Constituent Assembly of India in January, 1947 declaring that India is to be a sovereign independent republic. The Drafting Committee adopted the sovereign democratic republic , because independence is usually implied in the word "sovereign", so that there was hardly anything to be gained by adding the word "independent." The Drafting Committee has added a clause about "fraternity" in the preamble, although it did not occur in the Objectives Resolution. The Committee felt that the need for fraternal concord and goodwill in India was never greater than now and that this particular aim of the new constitution should be emphasised by special mention in the preamble.

So long as a State continues to maintain any reasonable approach to a Government which derives its powers from the body of the people, it is deemed to be republican in form. Nevertheless, there has been a good deal of litigation in the American courts as to what is republican. All sorts of things have been alleged to be unrepublican. For instance, the making of state laws by means of the initiative and referendum, the recall of state officers, the use of proportional representation, and even woman suffrage have been assailed in the courts as departures from the republican form of government.

Sovereignty is an abstract term meaning the supreme will of the State which finds expression in legally binding commands. It implies the conception of the State as a volitional entity or political person, and designates that faculty which this political person possesses of determining by its government what are to be the legal rights and legal duties which it will recognize and, if need be, enforced ; what persons it will consider subject to its authority ; and over what territory it will claim exclusive jurisdiction.

The word "Republic" is derived from *Res publica* meaning public

property or commonwealth. The term 'Republican' is not defined in the Act. But Montesquieu has given the following definition of the term: "A republican Government is that in which the body, or only a part of the people, is possessed of the supreme power." (*Montesquieu's Spirit of Laws*). Cooley writing about the meaning of the term in the U.S. Constitution hints that it is used in contradistinction to monarchical forms on the one side and those of pure democracy on the other, the Government by chosen representatives being the main point of distinction. (*Constitutional Limitations by Cooley*, p. 213)

Section 4 of the Fourth Article of the U. S. Constitution enacts that the "United States shall guarantee to every state in the union a republican form of Government.....". There is not here a direct prohibition of any other than a republican form of government in the States, but clearly the provision that the United States shall guarantee such a form of government is in effect a prohibition of any other.

In case of insurrection or revolution within the State the federal government is also empowered to determine which of two governments, which may have been set up, is in fact the true government, since it has authority upon application to protect each State against "domestic violence." The Supreme Court of the United States has declared that "the determination whether a State has a republican form of government is not a judicial question, but one solely for Parliament to decide." [cf. *Pacific Telephone Co.* v. *Oregon* (1912) 223 U. S. 118 ; *Mountain Timber Co.* v. *Washington* (1916) 243 U. S. 219.] This it normally does by admitting Representatives and Senators to its membership. It might refuse to do this on the ground that the States by which they were sent did not have republican form of government, although it has never taken such a course. Undoubtedly it might further take affirmative action to oust a government which it considered unrepublican.

Also, it is primarily for State to determine which of the two contending governments in a State is the real government, when application is made by one or the other for aid, but State may delegate this power to the President as it has in fact done. The court will not review such a determination. [*Luther* v. *Borden* (1849) 7 Howard 1].

At the last Dominion Ministers' Conference held in London a historical agreement was arrived at whereby India can be Sovereign Democratic Republic while remaining a full member of the British Commonwealth. Recently, the British Parliament passed a measure called the India (Consequential Provision) Act,1949 which is designed to preserve for India after she became a republic on Jan. 26, 1950, the rights and privileges at present enjoyed under British law.

"Do hereby adopt, enact" etc:—These words have been borrowed from the last line of the preamble to the Irish Constitution. It is to be noted that the words used are "Do hereby adopt", etc., not *did* adopt, etc. The effect of this is that though as a document the Constitution took effect on the twenty-sixth day of November, 1949, yet as a *law* it is intended not only for the present generation of Indian citizens but for all future generations, and hence should be interpreted in the light of conditions and with a view to meeting problems arising at any time.

The reason for mentioning the "dignity of the individual" before "unity of the Nation" was that unless the dignity of the individual was assured, the nation cannot be united. In the preamble to the Irish constitution the words "dignity of the individual" come before the words "the unity of our country".

PART I

THE UNION AND ITS TERRITORY

1. (1) India, that is Bharat, shall be a Union of States.

Name and territory of the Union.

(2) The States and the territories thereof shall be the States and their territories specified in Parts A, B and C of the First Schedule.

(3) The territory of India shall comprise–

(*a*) the territories of the States ;

(*b*) the territories specified in Part D of the First Schedule ; and

(*c*) such other territories as may be acquired.

NOTES

"Union of States".

Following the language of the preamble to British North America Act, 1867, the framers of the Indian Constitution thought that there will be nothing inappropriate in describing India as a Union although the Constitution may be federal in structure. For uniformity it was thought desirable to describe the units of the Union in the new Constitution as "States", whether they are known as Governors' Provinces , or Chief Commissioners' Provinces or Indian States. Some difference between the units will undoubtedly be recognised even under the new constitution ; and with this end in view, the States have been divided into three classes : those enumerated in Part A of the First Schedule, those enumerated in Part B, and those enumerated in Part C. These correspond respectively to the old Governors' Provinces, the Indian States, and the Chief Commissioners' Provinces.

"Such other territories as may be acquired"—Provision is made for acquisition of new territories which may be by agreement or voluntary cession, even if conquest is out of the question.

"The territory of India".

Clause 3 of this Article provides that the territory of India shall, *inter alia*, comprise the territories of the States. A provision of this nature is not to be found in most of the federal constitutions of the world. For example, under U. S. Constitution there exists a well-defined distinction between the territories of the Union and the territories

of the States. A similar distinction is observed also under the Constitution Act of the Australian Commonwealth. For instance, under S. 123 of that Act, "the Parliament may make laws for the governance of any territory surrendered by any State to and accepted by the Commonwealth," Under this provision the Northern Territory was surrendered by South Australia to the Commonwealth and thus became a "territory of the Commonwealth" (*per* Isaacs, J. in *Buchanan* v. *The Commonwealth*, 16 C. L. R. at pp. 334, 335). Similarly, the Constitution of the U. S. S. R. speaks of the territory of a Union Republic and not of the territory of the Union (cf. Article 18).

Admission or establishment of new States.

2. Parliament may by law admit into the Union, or establish, new States on such terms and conditions as it thinks fit.

NOTES

Art. 2 applies to the case of admission into the Union, or the establishment of new states. It is based on S. 121 of the Commonwealth of Australia Constitution Act, and S. 3 (1) of Art. IV of the U. S. Constitution (1787).

Art. IV, S. 3 (1) of U. S. Constitution reads : "New states may be admitted by the Congress into the Union ; but no new state shall be formed or erected within the jurisdiction of any other state ; nor any state be formed by the junction of two or more states or parts of states, without the consent of the legislatures of the states concerned as well as of the Congress". The theory which the U. S. Supreme Court has adopted in the interpretation of the opening clause of the said Article is that the new states are admitted upon a basis of equality with the previous members of the Union, since "the Union" is a Union of equal states. (cf. *Coyle* v. *Okla*, (1911) 221 U. S. 559 ; *Stearns* v. *Minn* (1900) 179 U. S. 223.

New territories may be acquired by agreement or voluntary cession, even if conquest is out of the question, and no legislation by the Parliament is necessary for such acquisition. Indeed, until an area becomes part of the territory of India, Parliament has no authority to legislate for it (cf. Art. 245, *post*). As soon as any territory is acquired, it will fall under sub-clause (c) of clause (3) of Article I, and the provisions of Part IX of the Constitution Act will apply to the administration of such territory.

Formation of new States and alteration of areas, boundaries or names of existing States.

3. Parliament may by law—

(*a*) form a new State by separation of territory from any State or by uniting two or more States or parts of States or more States or by uniting any territory to a part of any State ;

(*b*) increase the area of any State ;

(*c*) diminish the area of any State ;

(*d*) alter the boundaries of any State ;

(*e*) alter the name of any State :

Provided that no Bill for the purpose shall be introduced in either House of Parliament except on the recommendation of the President and unless, where the proposal contained in the Bill affects the boundaries of any State or States specified in Part A or Part B of the First Schedule or the name or names of any such State or States, the views of the Legislature of the State or, as the case may be, of each of the States both with respect to the proposal to introduce the Bill and with respect to the provisions thereof have been ascertained by the President.

Laws made under articles 2 and 3 to provide for the amendment of the First and the Fourth Schedules and supplemental, incidental, and consequential matters.

4. (1) Any law referred to in article 2 or article 3 shall contain such provisions for the amendment of the first Schedule and the Fourth Schedule as may be necessary to give effect to the provisions of the law and may also contain such supplemental, incidental and consequential provisions (including provisions as to representation in Parliament and in the Legislature or Legislatures of the State or States affected by such law) as Parliament may deem necessary.

(2) No such law as aforesaid shall be deemed to be an amendment of this Constitution for the purposes of article 368.

NOTES

Under S. 290 of the Government of India Act, 1935, which contained similar provisions, the revision of boundaries of any Province might have been effected by an order of the Governor General. Under Sections 123 and 124 of the Commonwealth of Australia Constitution Act such revision of boundaries of States may be made by the Parliament of the Commonwealth by law passed in the ordinary manner and not in accordance with the procedure laid down for the amendment of the Constitution. Accordingly, an amendment which sought to restrict the application of the procedure laid down in this Article to ten years from the commencement of the constitution so that after the expiry of the said period of ten years any amendment of the first schedule to the constitution will have to be made by the procedure laid down in Art. 368 for the amendment of the constitution was not accepted by the Constituent Assembly.

PART II

CITIZENSHIP

General rules for determining citizenship:—Two general principles are generally employed in modern constitutions for the determination of citizenship (1) *jus soli* and (2) *jus sanguinis*. Where the first is followed, citizenship is determined by place of birth ; where the second is employed it is the nationality of one's parents and ancestors that determines citizenship. There is very often conflict between the two, in which case a person is said to possess dual or multiple nationality. Thus, one born in England of Italian parents is English by *jus soli* and Italian by *jus sanguinis*. Controversies arising out of conflicting claims are commonly settled by treaty, but in the absence of treaty the effective law is that of the country in which the person may be located. In actual practice, constitutions seldom adhere to one principle but employ both. Such is the case with the constitution of the United States of America.

Citizenship in the U. S. A :—The Fourteenth Amendment to the U. S. Constitution defines citizenship : "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State in which they reside". From this definition it is clear that (1) two methods of acquiring citizenship were recognised ; by birth and naturalization ; (2) Only those who are subject to the jurisdiction of the United State at the time of birth or naturalization are citizens ; (3) Children born any where in the United States and subject to the jurisdiction of the Federal government are citizens regardless of the law of any particular State ; and (4) American citizens are also citizens of the State in which they reside.

The Indian constitution is a dual polity like the U. S. A. constitution but there is only one citizenship for the whole of India namely Indian citizenship ; whereas in the U. S. A. this dual polity is followed by a dual citizenship. "In the U. S. A. there is a citizenship of the U.S.A. But there is also a citizenship of the State. No doubt the rigours of this double citizenship are much assuaged by the fourteenth amendment to the Constitution of the United States which prohibits the States from taking away the rights, privileges and immunities of the citizen of the United States. At the same time, as pointed out by Mr. William Anderson, in certain political matters, including the right to vote and to hold public offices, States may and do discriminate in favour of their own citizens. This favouritism goes even further in many cases. Thus to obtain employment in the service of a State or local Government one is in most places required to be a local resident or citizen. Similarly in the licensing of persons for the practice of such public professions as law and medicine, residence or citizenship in the State is frequently required ; and in business where public regulation must necessarily be strict, as in the sale of liquor, and of stocks and bonds, similar requirements have been upheld.

Each State has also certain rights in its own domain that it holds for the special advantage of its own citizens. Thus wild game and fish

in a sense belong to the State, and it is customary for the States to charge higher hunting and fishing license fees to non-residents than to its own citizens. The States also charge non-residents higher tuition in State Colleges and Universities and permit only residents to be admitted to their hospitals and asylums except in emergencies.

In short, there are a number of rights that a State can grant to its own citizens or residents that it may and does legally deny to non-residents, or grant to non-residents only on more difficult terms than those imposed on residents. These advantages given to the citizen in his own State, constitute the special rights of State citizenship. Taken all together, they amount to a considerable difference in rights between citizens and non-citizens of the State. The transient, and temporary sojourner, is everywhere under some special handicaps." (*From the speech of Dr Ambedkar, Chairman of the Drafting Committee on the floor of the Legislative Assembly*).

Citizenship under the Indian Constitution:—Under our constitution Articles 5 to 11 deal with citizenship. Article 5 specifies who shall be citizen of the Indian Union at the commencement of the constitution. The law regarding the acquisition and termination of citizenship and all other matters relating to citizenship is to be enacted by the Union Parliament [cf Art. 11, post] in accordance with the accepted principles of Private International law. This follows the constitution of the Irish Free State. Then Article 6 provides for the rights of citizenship of certain persons who have migrated to India from Pakistan. Article 7 denies the rights of Indian citizenship to certain persons who have migrated to Pakistan after 1st March 1947 from India. The Proviso to the Article is designed to confer citizenship on certain persons who after migration to Pakistan as aforesaid have returned to India under a permit for re-settlement or permanent return.

Article 8 is designed to confer rights of citizenship on certain persons of Indian origin who happen to be outside India in places like Malay States, Ceylon, etc.

Article 9 lays down that persons who have voluntarily acquired citizenship of a foreign state cannot be, at the same time citizens of India as well. Article 10 provides for the continuance of the rights of citizenship, and Article 11 confers on Union Parliament the power of enacting suitable laws regarding citizenship.

Citizenship at the commencement of the Constitution.

5. At the commencement of this Constitution, every person who has his domicile in the territory of India and—

(*a*) who was born in the territory of India ; or

(*b*) either of whose parents was born in the territory of India ; or

(*c*) who has been ordinarily resident in the territory of India for not less than five years

immediately preceding such commencement, shall be a citizen of India.

NOTES

Citizenship.

Citizenship imports a personal relationship. In constitutional law the citizens of a State are those persons wherever they may be, and whatever their nationality, over whom authority has been asserted by those departments of its government which are authorised to express its will. The terms "citizens" and "subjects" are synonymous, although frequently the former is used with reference to those states whose governments are more or less popularly founded, and the latter with reference to those whose governments are of a monarchical or autocratic character.

Citizenship in the United States.

The U. S. Constitution, besides laying down basic doctrines of Government, prescribes a number of fundamental principles governing citizenship and the rights of persons including under the latter terms aliens resident in the United States. In international law, the word citizenship now means membership in a nation and allegiance to its government; but when the American Republic was established, it had not very definite connotation in law or practice. The constitution itself refers to the citizens of the United States and citizens of the States. And States once had the power to nautralise aliens by a strict usage of the term would require us to speak of the citizens of the United States and residents or inhabitants of the States. The state now has no power to bestow or withhold citizenship although it may confer many civil or political rights on foreigners. Citizenship is guaranteed under the 14th Amendment to all persons born on the soil of the United States with certain exceptions. Furthermore, the exclusive right to admit aliens to citizenship is given to the national gavernment by the clause authorising Congress to make uniform rules of naturalization.

Citizenship in the Irish Free State.

In the Irish Free State citizenship is conferred by the constitution, on all persons resident in the area on 6th December 1922, born in Ireland or either of whose parents was born in Ireland, or who have been ordinarily resident in the Irish Free State for seven years. Political privileges are accorded only to citizens, thus marking them off from them the rest of the category of British subjects, and exception has been taken in the United Kingdom to a differentiation, which is not practised against Irish Free State citizens who come in large numbers to settle in England or Scotland.* (cf. Art. 3 of the Constitution of the Irish Free State, 1922.)

Citizenship of the Indian Union.

The framers of the Act thought it necessary that, in order to

* Article 5 is based on Art. 3 of the Constitution of the Irish Free State (1922).

be a citizen of the Union at its inception, a person must have some kind of territorial connection with the Union whether by birth, or descent, or domicile. They felt that it would be unwise to admit as citizens those who, without any such connection with the territory of India, may be prepared to swear allegiance to the Union ; for if other states were to copy such a provision, we might have within the Union a large number of persons who, though born and permanently resident therein, would owe allegiance to a foreign state. Article 6 as it stands has, however, kept in view the requirement of a large number of displaced persons who have had to migrate to India within recent months, and has provided for them a specially easy mode of acquiring domicile and, thereby, citizenship.

'Domicile'—The word 'domicile which is in clause (*b*) of Article 5 the governing term, makes it of interest to consider what constitutes domicile. "If", says Lord Chancellor Cranworth, "the intention of permanently residing in a place exists, a residence in pursuance of that intention, however short will establish a domicile. On the other hand, mere length of residence will not of itself constitute domicile. There must be not only the physical fact of residence but the mental fact of purpose or intention to reside (*animus morandi*). International law recognises two kinds of domicile : (1) domicile of origin, such as children acquire by an absolute rule or fiction of law at the time of birth by reason of the domicile at that time of the person on whom they are dependent—usually the father or mother ; (2) domicile of choice, such as every dependent person may acquire through the proper continuation of the fact of residence with the intention of a permanent or indefinite prolongation of it. Every man's domicile of origin must be presumed to continue until he has acquired another sole domicile by actual residence with the intention of abandoning his domicile of origin. This change must be *animo et facto*, and the burden of proof unquestionably lies in the party who asserts the change. As Lort Westbury has expressed it, domicile of choice is a conclusion or inference which the law derives from the fact of a man fixing voluntarily his sole or chief residence in a particular place with an intention of continuing to reside there for an unlimtied time." (cf. *Harris Taylor's Treatise on International Public Law pp, 249-250.*)

Under the Indian Succession Act, 1925, every person has a "domicile of origin", which prevails until he acquires a new domicile. Briefly, his domicile of origin is in the country in which at the time of his birth his father was domiciled, and he can acquire a new domicile by taking up his fixed habitation in another country. There is also a provision in the Act enabling any person to acquire a domicile in British India by making and depositing in some office in British India, appointed in this behalf by the Provincial Government, a declaration in writing of his desire to acquire such domicile : provided that he has been resident in British India for one year preceding the date of the declaration. Generally speaking, a wife's domicile during her marriage follows the domicile of her husband.

In this connection the opinion expressed by the learned Editors of the Calcutta Weekly Notes in the passage quoted below may be of interest;

Discussing the provisions of this article when they were in the draft stgae, they observed : "It is not possible to define exhaustively the conditions of nationality whether by birth or naturalisation, by the Constitution. If certain conditions are laid down by the Constitution, difficulties may arise regarding the interpretation of future legislation which may appear to be contrary to or to depart in any way from them. For example, the draft of the nationality clause placed before the Constituent Assembly lays down that any person born in the Union would be a citizen of the Union. But what about a woman citizen of the Union marrying an alien national or about an alien woman marrying a Union national ? Would the Union Legislature have power to legislate in the first case that the woman would lose her Union nationality or in the second case that she would acquire Union nationality (such being the law of most of the countries) ? These are intriguing questions, but all these things have to be pondered before a rigid clause is inserted in the Constitution itself. It would, in our opinion, therefore, be better to specify who would be citizens of the Indian Union at the date when the Constitution comes into force as in the Constitution of the Irish Free State and leave the law regarding nationality to be provided for by legislation by the Indian Union in accordance with the accepted principles of Private International Law."[1]

Art. 5 specifies who would be the citizen of the Indian Union at the date when the Constitution comes into force as in the Constitution of the Irish Free State and leaves the law regarding nationality to be provided for by legislation by the Union Parliament (cf. Art. 11, *post*) in accordance with the accepted principles of Private International Law.

"Ordinarily resident"—These words also occur under the Income Tax Acts and have been the subject of judicial interpretation in several cases.

In *Lysaght* v. *Commissioners of Inland Revenue*, 13 T. C. 511, Viscount Sumner, said :—

".....My Lords, the word 'ordinarily' may be taken first. The Act, on the one hand, does not say 'usually' or 'most of the time' or 'exclusively' or 'principally,' nor does it say, on the other hand, 'occasionally' or 'exceptionally' or 'now and then', though in various sections it applies to the word 'resident', with a full sense of choice, adverbs like 'temporarily' and 'actually'. I think the converse to 'ordinarily' is 'extra-ordinarily', and that part of the regular order of a man's life, adopted voluntarily and for settled purposes, is not 'extra-ordinarily'. Having regard to the times and duration, the objects and the obligations of Mr. Lysaght's visits to England, there was in my opinion evidence to support, and no rule of law to prevent, a finding that he was ordinarily resident, if he was resident in the United Kingdom at all. No authority was cited which requires special consideration on this head.

"Grammatically the word 'resident' indicates a quality of the person charged and is not descriptive of his property, real or personal. To ask where he has his residence is often a convenient form of enquiry,

(1.) Calcutta Weekly Notes, Vol. LI, No. 27, May 26, 1947.

but only as leading to the question : 'Then where is the resident himself ?' I think this distinction, though often pointed out, has too often been overlooked on the arguments in the reported cases."

In the same case Lord Buckmaster said :—

".....A man might well be compelled to reside here completely against his will ; the exigencies of business often forbid the choice of residence and though a man may make his home elsewhere and stay in this country only because business compels him, yet nonetheless, if the periods for which and the conditions under which he stays are such that they may be regarded as constituting residence, it is open to the Commissioners to find that in fact he does so reside, and, if residence be once established, 'ordinarily resident' means in my opinion no more than that the residence is not casual and uncertain, but that the person held to reside does so in the ordinary course of his life."

In *Reid* v. *Commissioners of Inland Revenue*, [1926] Sc. L. T. 365, Clyde, L. J., observed :

".....The expression "resident in the United Kingdom" and the qualification of that expression implied in the word 'ordinarily' so resident are just about as wide and general and difficult to define with positive precision as any that could have been used. The result is to make the question of law become (as it were) so attenuated, and the field occupied by the question of fact becomes so enlarged, as to make it difficult to say that a decision arrived at by the Commissioners with respect to a particular set of facts held proved by them, is wrong....."

" It was contended on her behalf that, even if these facts are consistent with her being held to 'reside' in the United Kingdom, they are inconsistent with the view that she 'ordinarily' so resides. And here again the argument was that the meaning of the word 'ordinarily' is governed—wholly or mainly—by the test of time or duration. I think it is a test, and an important one ; but I think, it is only one among many. From the point of view of time, 'ordinarily' would stand in contrast to 'casually'. But the appellant is not a 'casual' visitor to her home country; on the contrary, she regularly returns to it, and 'resides' in it for a part—albeit the smaller part—of every year. I hesitate to give the word 'ordinarily' any more precise interpretation than : ' in the customary course of events', and anyhow I cannot think that the element of time so predominates in its meaning that unless the appellant 'resided' in the United Kingdom for at least six months and a day, she could not be said 'ordinarily' to reside there..."

On this point see also the following cases : *Byrne* v. *Hedges*, (1918) 87 L.J.K.B. 831 ; *Pannifax* v. *Brown*, (1917) J.C. 26 ; *Gout.* v. *Cimitian*, (1922) 1 A.C. 105 ; *Donne* v, *Lells*, (1918) 119 L.T. 376 ; *Reid* v. *Commissioners of Inland Revenue*, 10 T.C. 673 ; *Peel* v. *Commissioners of Inland Revenue*, 13 T. C. 443 ; *Levene* v. *Commissioners of Inland Revenue*, 13 T.C. 486 (where there is a full discussion of the meaning of the term).

Rights of citizenship of certain persons who have migrated to India from Pakistan.

6. Notwithstanding anything in article 5, a person who has migrated to the territory of India from the territory now included in Pakistan shall be deemed to be a citizen of India at the commencement of this Constitution if—

(*a*) he or either of his parents or any of his grandparents was born in India as defined in the Government of India Act, 1935 (as originally enacted) ; and

(*b*) (*i*) in the case where such person has so migrated before the nineteenth day of July, 1948, he has been ordinarily resident in the territory of India since the date of his migration, or

(*ii*) in the case where such person has so migrated on or after the nineteenth day of July, 1948, he has been registered as a citizen of India by an officer appointed in that behalf by the Government of the Dominion of India on an application made by him therefor to such officer before the commencement of this Constitution in the form and manner prescribed by that Government :

Provided that no person shall be so registered unless he has been resident in the territory of India for at least six months immediately preceding the date of his application.

NOTES

Art. 6 provides for the rights of citizenship of certain persons who have migrated to India from Pakistan.

Rights of citizenship of certain migrants to Pakistan.

7. Notwithstanding anything in articles 5 and 6, a person who has after the first day of March, 1947, migrated from the territory of India to the territory now included in Pakistan shall not be deemed to be a citizen of India :

Provided that nothing in this article shall apply to a person who, after having so migrated to the territory now included in Pakistan, has returned to the territory of India under a permit for resettlement or permanent return issued by or under the authority of any law and every such person

shall for the purposes of clause (*b*) of article 6 be deemed to have migrated to the territory of India after the nineteenth day of July, 1948.

NOTES

Article 7 denies the rights of Indian citizenship to certain persons who have migrated to Pakistan after 1st March, 1947, from India. The proviso to the Article is designed to confer citizenship on certain persons who, after migration to Pakistan as aforesaid have, returned to India under a permit for re-settlement or permanent return.

Rights of citizenship of certain persons of Indian origin residing outside India.

8. Notwithstanding anything in article 5, any person who or either of whose parents or any of whose grand-parents was born in India as defined in the Government of India Act, 1935 (as originally enacted), and who is ordinarily residing in any country outside India as so defined shall be deemed to be a citizen of India if he has been registered as a citizen of India by the diplomatic or consular representative of India in the country where he is for the time being residing on an application made by him therefor to such diplomatic or consular representative, whether before or after the commencement of this Constitution, in the form and manner prescribed by the Government of the Dominion of India or the Government of India.

Persons voluntarily acquiring citizenship of a foreign State not to be citizens.

9. No person shall be a citizen of India by virtue of article 5, or be deemed to be a citizen of Indian by virtue of article 6 or article 8, if he has voluntarily acquired the citizenship of any foreign State.

NOTES

Art. 9 lays down that persons who have voluntarily acquired citizenship of a foreign State cannot be at the same time citizens of India as well.

"Voluntarily acquired"

The word "acquired" in the original draft was changed into "voluntarily acquired" for avoiding doubt (See the language of S. 13 of the British Nationality and Status of Aliens Act, 1914. (4 and 5 Geo. 5, C. 17). By that section a British subject who, when in any foreign state and not under a disability obtains a certificate of naturalization, or by any other voluntary means becomes naturalised in that state, thereupon loses his British Nationality. See also the following cases : *Re. Trufort, Trafford* v. *Blanc* (1887) 36 Ch. D. 600 ; *R.* v. *Lynch* (1903) 1 K. B. 444 ;

R. v. Middlesex Regiment, etc. (1917) 2 K. B. 129 (C.A.) ; *Vecht* v. *Taylor* (1917) 116 L.T. 446.

Continuance of the rights of citizenship.

10. Every person who is or is deemed to be a citizen of India under any of the foregoing provisions of this part shall, subject to the provisions of any law that may be made by Parliament, continue to be such citizen.

Parliament to regulate the right of citizenship by law.

11. Nothing in the foregoing provisions of this Part shall derogate from the power of Parliament to make any provision with respect to the acquisition and termination of citizenship and all other matters relating to citizenship.

NOTES

This Article empowers the Union Parliament to make suitable laws regarding the acquisition and termination of citizenship and all other matters relating to citizenship.

PART III

FUNDAMENTAL RIGHTS

General

This part which deals with the Indian Declaration of Fundamental Rights is framed on the elaborate model of the Irish, U. S. and the recent continental constitutions particularly from those wherein the conditions are more or less analogous to those existing in India. It enshrines not only the classic guarantees of individual liberty of the American and French declarations, but also a general statement of the political fundamentals of the State. Special mention must be made of guarantees of civil liberty in the constitution which serve to protect the individual from oppressive public authority. Freedom of speech and of the Press and the right to freely profess, practise and propagate religion as one pleases; the right to know the charges if one is accused of crime, to secure the assistance of Counsel; to be protected in one's own home and effects against unreasonable searches and seizures and from twice being put in danger of life and limb for the same offence; the right not to be deprived of life, personal liberty except according to procedure established by law; the right not to be deprived of property save by authority of law, are among the individual rights guaranteed in the constitution. They reflect the long struggle for individual liberty which extends back in English history at least to 1215 A. D. when King John put his mark to Magna Charta. Broadly speaking, the rights declared in this Part relate to equality before the law, freedom of speech, freedom of the press, freedom of religion, freedom of assembly, freedom of association, security of person and security of property.

The inclusion of a Declaration of Fundamental Rights in the Indian constitution was indeed of more than formal import. It marks a radical break with the pivotal conception of the modern British Constitution, the doctrine of sovereignty of Parliament It invests the basic principles of public law enunciated in the Declaration with the legal sanction of a higher order. It was by design that these declarations were inserted prior to the functional provisions of the constitution. Such priority was to emphasise that these fundamentals were, at least in principle, meant to be subject to interference by the Legislature, the simultaneous introduction of the power of judicial review providing the constitutional sanction for the enforcement of such non-interference.

If the fundamental framework of the State, if the personal liberty of its citizens were to be adequately safeguarded, it seemed essential that the danger of their modification by ephemerial parliamentary majorities should be effectively precluded. Inclusion in the constitution offered that guarantee, for it ensured that—in accordance with the general provisions, governing the amendment of the constitution—no modification

of these rules could be enacted unless it had been approved by the electorate.

Following the plan of the Irish constitution, the Indian constitution deals first in Part III with "fundamental rights" strictly so-called and then in Part IV with "Directive Principles of State policy", the latter being excluded from the purview of the courts and therefore not justiciable. The important thing to note about "fundamental rights" is that they are justiciable, that is to say, they are meant to be enforced by legal action.

"There are very few countries which have fully adopted the system of judicial review enabling courts to act in that capacity in the matter of the fundamental rights of the individual guaranteed by the constitution. In the United States, by long-established practice—though not in pursuance of any express provision of the Constitution—the Supreme Court has exercised that power since its decision in the historic case of *Marbury v. Madison*.[1] This is also the position, by virtue of an express constitutional provision, in Brazil, Venezuela, and some other Latin-American countries, in Czechoslovakia, Rumania, and the Irish Free State. In a number of countries—such as Australia, Canada, and Germany (in the constitution of 1919)—judicial review is limited largely to questions relating to the respective legislative competence of the Federation and of the Member States.

"On the other hand, in many States the constitution specifically excludes the interpretation of laws—and *a fortiori* any declaration of their invalidity—from the purview of the judiciary. Judicial review of legislation is contrary to the constitutional doctrine of France, and above all, of Great Britain, where the supremacy of Parliament is absolute. Although the Constitution of Soviet Russia of 1923 gave (in Article VII, sec. 43) the Supreme Court of the Union the power to render decisions, at the request of the Central Executive Committee of the Union, on the constitutionality of any regulations made by the Republics of the Union, no such powers have been conferred upon it by the Constitution of 1936. .....

"The doctrine of judicial review has been defended with fervent approval by great lawyers in the United States and elsewhere. Daniel Webster and Francis Lieber praised it as a bulwark of liberty. Lord Bryce was of the view that 'there is no part of the American system which reflects more credit on its authors or has worked better in practice.' Dicey was a strong believer in the doctrine of the supremacy of Parliament in England. But he was emphatic that it was "the glory of the founders of the United States"—in fact the doctrine of judicial review was adopted a quarter of a century after the foundation of the Republic—to have established a system of protection of the Constitution essential to a federal system (actually, the exercise of the power of judicial review by the Supreme Court has borne little relation to the fact of the federal structure of the United States). Tocqueville praised it as most favourable to liberty and to public order. After one hundred and forty years of operation it has the unqualified support of a large—perhaps predominant—section of

1. (1803) 1 Cranch. 137.

American legal opinion as a bulwark of liberty of the people against the rashness and the tyranny of short-lived legislative majorities.

"On the other hand, the doctrine of judicial review has found from its very inception violent opponents and detractors in the country of its origin. Jefferson and Madison denounced it. Great teachers of constitutional law, such as J. B. Thayer, have drawn attention to the dangers of attempting to find in the Supreme Court—instead of in the lesson of experience—a safeguard against the mistakes of the representatives of the people. The criticism has grown in the last fifty years to the point of bitter denunciation as the result of the exercise of the power of judicial review in a manner which, in the view of many, has made the Supreme Court a defender of vested rights and social statics. S me French jurists, who were attempting to find a remedy for the absence of an effective guarantee of fundamental rights in their own constitution have come to regard the experience of judicial review in the United States as a sufficient deterrent against introducing judicial review in France. In countries other than the United States, in which judicial review of legislation is recognized, it has been exercised only in rare cases for the protection of the rights of the individual." [Lauterpacht, *An International Bill of the Rights of Man*, (1945) pp. 189–190].

"In England there is nothing like a code of fundamental rights, kept beyond the reach of the legislative processes of Parliament, which the citizen can invoke for protecting the basic rights. In that country the liberties of the subject rest on the principle that a person may do or say anything so long as what he does or says does not violate any rule of law, whether derived from a statute or recognized as forming a part of the common law. So that, the ambit of personal liberty in England must be expressed in terms of what remains after making due allowance for restrictions imposed by law. To use the language of Lord Wright in *Liversidge* v. *Sir John Anderson*[1] the liberty of a subject in England is 'a liberty confined and controlled by law, whether common law or statute.'

"Nothing is more characteristic of English Jurisprudence than the notion that the English Parliament is supreme. It follows as a corollary from this principle that the judiciary can only apply the law as formulated by Parliament and cannot challenge its validity on the ground of its being arbitrary or unreasonable."[2]

12. In this Part, unless the context otherwise requires, "the State" includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.

Definition.

. . .

1. (1942) A. C. 206, p. 260.

2. Mr. M. Ramaswamy, *Fundamental Rights*, pp. 1, 2.

Laws inconsistent with or in derogation of the fundamental rights.

13. (1) All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void.

(2) The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void.

(3) In this article, unless the context otherwise requires,—

(*a*) "law" includes any Ordinance, order, byelaw, rule, regulation, notification, custom or usage having in the territory of India the force of law ;

(*b*) "laws in force" includes laws passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas.

NOTES

"Laws in force"—In the original draft of this Article the term "laws in force" was not defined. Subsequently the Hon. Dr. Ambedkar moved an amendment which was ultimately accepted by the Constituent Assembly and which is now incorporated in this Article as sub-clause (3). The reasons for inserting this sub-clause were explained by the Hon. Dr. Ambedkar on the floor of the Assembly as follows : "In the original draft as submitted to this House, all that was done was to give the definition of the term 'law' in sub-clause (3). The term 'laws in force' was not defined. This amendment seeks to make good that lacuna" Constituent Assembly Debates, vol VII, p. 640.

Right to Equality

Equality before law.

14. The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

NOTES

"Equal protection of the laws"

This article providing for equal protection of the laws is based

on the fourteenth Amendment to the Constitution of the United States. The object of this provision was to make the whole system of law rest upon the fundamental principle of equality of application of the law. The guarantee was aimed at undue favour and individual or class privilege, on the one hand, and at hostile discrimination or the oppression of inequality on the other."[1]

By this Article the State is forbidden to deny to any person equality before the law or the equal protection of the laws within the territory of India. By equal protection of the laws is meant security under them to everyone, under similar terms, in his life, his liberty, his property, and the pursuit of happiness. It implies not only the right of each to resort, on the same terms with others, to the Courts of the country for the security of his person and property, the prevention and redress of wrongs, and the enforcement of contracts but also his exemption from any greater burdens and charges than such as are equally imposed upon all others under similar circumstances.[2] In the words of the learned judges of the U. S. Supreme Court : "The clause protects the farmer ; it protects the millionaire in his palace. It stretches out its beneficent hand of equal right under the law to each and all alike within the bounds of the nation. It says 'Equal rights to all, special privileges to none."

But it ought not to be imagined that this Article requires that all persons be treated alike. It has been held that the Article does not preclude legislative classification provided it is reasonable. In *Truax* v. *Corrigan* (1921) 257 U. S. 312 at pp. 337. 338 Taft, C. J. observed :

"In adjusting legislation to the need of the people of a State, the legislature has a wide discretion and it may be fully conceded that perfect uniformity of treatment of all persons is neither practical nor desirable, that classification of persons is constantly necessary and that questions of proper classification are not free from difficulty. But we venture to think that not in any of the cases in this court has classification of persons of sound mind and full responsibility, having no special relation to each other, in respect of remedial procedure for an admitted tort been sustained. Classification must be reasonable. As was said in *Gulf, Colorado and Santa Fe Ry. Co.* v. *Ellis*, 165 U. S, 155, classification 'must always rest upon some difference which bears a reasonable and just relation to the act in respect to which the classification is proposed, and can never be made arbitrarily and without such basis.'.....Classification is the most inveterate of our reasoning processes. We can scarcely think or speak without consciously or unconsciously exercising it. It must therefore obtain in and determine legislation ; but it must regard real resemblances and real differences between things, and persons, and class them in accordance with their pertinence to the purpose in hand."

Thus "tariffs on uncut diamonds may be lower than on polished : races may be segregated by requiring them to attend separate schools

1. Per Taft C. J., in Truax v. Corrigan (1921) 257 U. S. 312.

2. The American Constitution by Magruder and Claire, citing, *In re Grice* (1898) 169 U. S. 284.

or ride in separate cars ; minimum wage laws may be enacted for women without also including men or children ; maximum hours may be established for men in hazardous employments without also including non-hazardous industries ; aliens may be forbidden to practice medicine, law, or other professions ; taxes may be imposed upon retailers of certain products, like liquors, and not others ; chain stores may be taxed more heavily than independents ; the rich may be taxed at higher rates than the poor, etc. In cases like these, people, objects, or businesses are classified. The test is whether the classification is reasonable and appropriate. If it is, then everyone within each group must be treated alike."[1]

Perhaps the best exposition of the scope and object of the provision for the equal protection of the laws is that of Justice Field in *Barbier* v. *Connolly*[2] in which delivering the judgment of the U. S. Supreme Court, he said : " The Fourteenth Amendment in declaring that no State 'shall deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws,' undoubtedly intended, not only that there should be no arbitrary deprivation of life or liberty or arbitrary spoilation of property but that equal protection and security should be given to all under like circumstances in the enjoyment of their personal and civil rights; that all persons should be equally entitled to pursue their happiness and acquire and enjoy property; that they should have like access to the courts of the country for the protection of their persons and property, the prevention and redress of wrongs, and the enforcement of contracts; that no impediment should be interposed to the persuits by anyone except as applied to the same persuits by others under like circumstances; that no greater burdens should be laid upon one than are laid upon others in the same calling and condition, and that in the administration of criminal justice no different or higher punishment should be imposed upon one than such as is prescribed to all for like offences. But neither the Amendment, broad and comprehensive as it is, nor any other amendment was designed to interfere with the power of the State, sometimes termed its 'police power,' to prescribe regulations to promote the health, peace, morals, education and good order of the people, and to legislate so as to increase the industries of the State, develop its resources and add to its wealth and prosperity. From the very necessities of society legislation of a special character, having these objects in view, must often be had in certain districts, such as for draining marshes and irrigating arid plains. Special burdens are often necessary for general benefits, for supplying water, preventing fires, lighting districts, cleaning streets, opening parks, and many other objects. Regulations for these purposes may press with more or less weight upon one than upon another, but they are designed, not to impose unequal or unnecessary restrictions upon anyone, but to promote, with as little individual inconvenience as possible, the general good. Though, in many respects, necessarily special in their character, they do not furnish just ground of complaint if they operate alike upon all persons and property under the same circumstances and conditions. Class legislation, discriminating against some and favouring others, is prohibited : but legisla-

1. The American Federal Government by Ferguson and McHenry (1947), p. 86.

2. 113 U. S. 27.

tion which, in carrying out a public purpose, is limited in its application, if within the sphere of its operation it effects alike all persons similarly situated, is not within the Amendment. In the execution of admitted powers unnecessary proceedings are often required, which are cumbersome, dilatory and expensive, yet, if no discrimination against anyone be made and no substantial right be impaired by them, they are not obnoxious to any constitutional objection. The inconveniences arising in the administration of the laws from this cause are matters entirely for the consideration of the State; they can be remedied only by the State. In the case before us, the provisions requiring certificates from the health officer and the board of fire wardens may, in some instances, be necessary, and the changes to be made to meet the conditions prescribed may be burdensome, but as we have said, this is a matter for the determination of the municipality in the execution of its police powers, and not a violation of any substantial right of the individual."

The general doctrine was stated in *Henderson* v. *Mayor* (92 U. S. 259) as follows. "Though the law be fair on its face, and impartial in its appearance, yet, if it is applied and administered by public authority with an evil eye and unequal hands so as practically to make unjust and illegal discriminations, material to their rights, the denial of equal justice is still within the prohibition of the constitution."

Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.

15. (1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, restriction or condition with regard to—

(*a*) access to shops, public restaurants, hotels and places of public entertainment ; or

(*b*) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.

(3) Nothing in this article shall prevent the State from making any special provision for women and children.

NOTES

Sub-clause (*1*) of this Article aims at prohibiting discrimination of any kind by the state between citizen and citizen on grounds only of religion, race, caste, sex, place of birth or any of them. *Sub-clause* (2) is intended to provide that all citizens irrespective of their religion, race, caste, sex, place of birth or any of them should, in the matter of access to shops, public restaurants, hotels and places of public entertainment or

in the matter of enjoyment of facilities of wells, tanks, bathing ghats, roads and places of public resort, be equal. This Article is designed to prevent discriminatory treatment between one citizen and another based on his religion, race, caste, sex or place of birth. But this Article will not preclude the enactment of a suitable legislation by the State regulating the enjoyment of facilities offered, so long as such legislation does not discriminate in the manner aforesaid. *Sub-clause* (3) of the Article arms the State with the power of making any special provision for women and children.

"State funds" :—In explaining the reason for substituting the words "State funds" for the words "the revenues of the state" which occurred in the original draft, the Hon. Dr. Ambedker said : "In the administrative parlance which has been in vogue in India for a considerably long time, we are accustomed to speak of revenues of a Provincial Government or revenues of the Central Government. When we come to speak of local boards or district boards, we generally use the phrase local funds and not revenues. That is the terminology which has been in operation throughout India in all the Provinces. ...We are using the word 'State' in this Part to include not only the Central Government and the Provincial Governments and Indian States, but also local authorities, such as district local boards or *taluqa* local boards or the Port Trust authorities. So far as they are concerned, the proper word is 'Fund'. It is therefore desirable in view of the fact that we are making these Fundamental Rights obligatory not merely upon the Central Government and the Provincial Governments, but also upon the district local boards and *taluqa* local boards to use a wider phraseology which would be applicable not only to the Central Government, but also to the local boards which are included in the definition of the word 'State' " (Constituent Assembly Debates—Vol. VII., p. 654).

"Shops"—The word "shops" is not used here in the limited sense of permitting entry. It is used in the larger sense of requiring the services if the terms of service are agreed to.

"Places of public resort" would obviously include burial grounds.

Equality of opportunity in matters of public employment.

16. (1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.

(3) Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office under any State specified in the First Schedule or any local or other authority within its territory, any requirement as to

residence within that State prior to such employment or appointment.

(4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.

(5) Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination.

NOTES

States and the Services—Equality of opportunity.

This Article relates to equality of opportunity for the citizens of the Union in matters of public employment and doubtless asserts equality of opportunity for the citizens in general. The principle of communal representation in the services will not be recognised by the constitution. The article raises another principle also. Past experience has shown that the rule of equality of opportunity is very often given the go-by after a person is appointed to an office by the others being allowed to supersede him on communal grounds and not on grounds of seniority or merit. There has been discrimination in the past not only on grounds of caste and community but also on those of domicile and residence. In regard to those, the amendment recognising the principle of opportunity to a limited extent has been accepted by the Constituent Assembly and it forms sub-clause (3) of this Article. This clause is meant to reconcile the rights of the Indian citizen wherever he may be in the Dominion to appointments in service of any of the States of the Union with the need to ensure that the administration of the States is not adversely affected by the swamping of their services by the citizens who are merely or are more or less birds of passage in the State without any abiding interest therein. This provision is meant to do away with unreasonable and needless inter-provincial jealousies and conflicts and to allay the apprehensions of the States that their services will be monopolised by people of other States in the matter of qualifications necessary for the service.

The Article as it now stands thus subserves the interests of the generality of the citizens without endangering those of the people of the States, of backward classes and of others to a fair share in employment in the States. Some difficulty may be experienced in defining the term "backward classes" and in determining the residential qualifications. But if all the citizens approach this problem in the light of the higher interests of the nation as a whole, there should be little difficulty

for the States in laying down their definitions. Indeed some of the Provinces have already framed such definitions. If they should be found to be unduly unfair to others the Supreme Court may be expected to interpret the constitution rightly and give effect to the objectives underlying this Article.

"Requirement as to residence within that state"

Sub-clause (3) of this Article was added by an amendment moved by Shri Alladi Krishnaswamy Ayyar on the floor of the Constituent Asssembly. In doing so he said :

"The object of the amendment is clear from the terms and the wording of it. In the first part of the article, the general rule is laid down that there shall be equal opportunity for all citizens in matters of employment under the State and thereby the universality of Indian citizenship is postulated. In paragraph 2 of article 10, it is expressed in the negative, namely that no citizen shall be ineligible for any office under the State by reason of race, caste, sex, descent, place of birth and so on. The next two clauses are in the nature of exceptions to the fundamental and the general rule that is laid down in the first part of the article. Now what the present amendment provides for is this that in case of appointments under the State for particular reasons, it may be necessary to provide that residence within the State is a necessary qualification for appointment by and within the State. That is the object of this amendment and instead of leaving it to individual states to make any rule they like in regard to residence, it was felt that it would be much better if the Parliament lays down a general rule applicable to all states alike, especially having regard to the fact that in any matter concerning fundamental rights, it must be the parliament alone that has the power to legislate and not the different units in India" *Constituent Assembly Debates, Vol.* VII, *pp.* 677-8)

Abolition of Untouchability.

17. "Untouchability" is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of "Untouchability" shall be an offence punishable in accordance with law.

Abolition of titles.

18. (1) No title, not being a military or academic distinction, shall be conferred by the State.

(2) No citizen of India shall accept any title from any foreign State.

(3) No person who is not a citizen of India shall, while he holds any office of profit or trust under the State, accept without the consent of the President any title from any foreign State.

(4) No person holding any office of profit or trust

under the State shall, without the consent of the President, accept any present, emolument, or office of any kind from or under any foreign State.

NOTES

This Article is based on Art. 1. S. 9 (8) of the U. S. Constitution. The Framers of our Constitution, like the Framers of the Constitution of the U. S. A., endeavoured to eliminate from the constitution the conferring of honours by the State which had been a pernicious influence in the working of the British Constitution.

Sub-clause (1) is based on Article 4 of the Constitution of Czechoslovakia;[1] Art 40 (2) of the Irish constitution and Art I, S. 9 (8) of the U. S. Constitution (1787).

Right to Freedom

19. (1) All citizens shall have the right—

Protection of certain rights regarding freedom of speech, etc.

(*a*) to freedom of speech and expression;

(*b*) to assemble peaceably and without arms;

(*c*) to form associations or unions;

(*d*) to move freely throughout the territory of India;

(*e*) to reside and settle in any part of the territory of India;

(*f*) to acquire, hold and dispose of property; and

(*g*) to practise any profession, or to carry on any occupation, trade or business.

(2) Nothing in sub-clause (*a*) of clause (1) shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to, libel, slander, defamation, contempt of court or any matter which offends against decency or morality or which undermines the security of, or tends to overthrow, the State.

(3) Nothing in sub-clause (*b*) of the said clause shall affect the operation of any existing law in so far as it

(1) It reads thus: "Nobility, titles, or other privileges of birth shall not be recognised".

imposes, or prevent the State from making any law imposing, in the interests of public order, reasonable restrictions on the exercise of the right conferred by the said sub clause.

(4) Nothing in sub-clause (*c*) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of public order or morality, reasonable restrictions on the exercise of the right conferred by the said sub-clause.

(5) Nothing in sub-clauses (*d*), (*e*) and (*f*) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said sub-clauses either in the interests of the general public or for the protection of the interests of any Scheduled Tribe.

(6) Nothing in sub-clause (*g*) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause, and, in particular, nothing in the said sub-clause shall affect the operation of any existing law in so far as it prescribes or empowers any authority to prescribe, or prevent the State from making any law prescribing or empowering any authority to prescribe, the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business.

NOTES

Freedom of expression, association, etc.

The constitutional guarantee of the rights of free expression of opinion, of peaceable assembly, of freedom of associations and unions, of freedom of movement within the Union territory, and the other rights specified in this Article extends the principle of toleration from the metaphysical to the political sphere. Personal liberty in the sense of the unrestricted freedom of movement and action may become dangerous to society only in the case of the criminal ; in the matter of freedom of political expression society always lives dangerously. In passing from the sphere of personal, domestic and spiritual liberty to that of public expression and combined action, we enter the armoury of political change. Inasmuch as the organised expression of the political will may vitally

affect the maintenance of the public peace, the State is entitled to interpose its regulating authority in the exercise of these liberties, but such interference must clearly be directed to the sole objects of all such regulations: to preclude the resort to physical force, to prevent the infringement of the identical rights of others, and to assure equal opportunity of expression to all. If its objective authority is to be maintained, the intervention of the State may not overstep the bounds of technical organisation and control.

The provisions of this Article would seem to embody this fundamental delimitation. The rights of free expression of opinion, of assembly, of freedom of movement, of freedom to deal with any property, and of freedom to practice any profession or carry on any occupation, trade or business guaranteed in principle.

The claim of the State to regulate the exercise of these rights is implicitly acknowledged, but the purely technical character of such regulation is indicated by the restriction that the rules governing that exercise shall be "subject to the other provisions of this Article". Two important limitations however are imposed on the substance of these liberties. Freedom of Assembly is guaranteed on condition that it is exercised peaceably and without arms. [Cf. Cl. I(b) to Art. 19]. The test is that those who assemble be peaceable in their conduct : an assembly does not cease to be peaceable because others feel impelled to attack it. To maintain that view is to put a premium on intimidation.[2] A more stringent restriction is imposed both on the freedom of expression and on the liberty of assembly and association by the further proviso that their exercise, if it is to enjoy the protection of the Constitution, must not "affect the operation of any existing law, or prevent the State from making any law, imposing in the interests of public order restrictions on the exercise of the right conferred by said sub-clause."[3]

Freedom of speech and expression is limited by the qualification that it shall not affect the operation of any existing law, or prevent the State from making any law relating to libel, defamation, sedition or any other matter which offends against decency or morals or undermines the authority or foundation of the State. In American Constitution there is unqualified prohibition against abridgement of the freedom of speech, or of the press, or any deprivation of liberty without due process of law, and there are no limitations. Although it is true that the Constitution of the U. S. A. has not expressly imposed any limitations on free speech, the courts of the U. S. A. have done so in interpreting the Constitution. The Courts have developed the doctrine of what is known as the police power of the State and in a leading case of 1925,

1. Constitution of the Irish Free State by Leo Kohn, pp. 166-167

2. Cf. Z. Chafee : *Freedom of Speech* (New York) 1920, p. 172. "The breach of the peace theory is peculiarly liable to abuse. It makes a man a criminal simply because his neighbours have no self-control and cannot refrain from violence. The *reductio ad absurdum* of this theory was the imprisonment of Joseph Palmer, one of Bronson Alcott's fellow-settlers at 'Fruitlands,' not because he was a Communist, but because he persisted in wearing such a long beard that people kept mobbing him, until law and order were maintained by shutting him up",

3. Art. 13 (3).

the Supreme Court has observed, "The Freedom of speech and of the Press which is secured by the Constitution does not confer an absolute right to speak or publish, without responsiblity, whatever one may choose..... That a State in the exercise of its police power may punish those who abuse this freedom by utterances inimical to the public welfare, tending to corrupt public morals, incite to crime, or disturb the public peace, is not open to question. And, for yet more imperative reasons, a State may punish utterances endangering the foundations of organised government and threatening its overthrow by unlawful means." Thus the limitations put on free speech in the Constitution of India are no more than a paraphrase of those contained in this judgment. But the reason why without leaving it to the Courts to impose any necessary limitations the Constitution Act has embodied them in the Constitution itself. The explanation is that, unlike the American Constitution, the Draft Constitution of India contains an article which in terms states that any law inconsistent with the fundamental rights conferred by the Constitution shall be void; unless, therefore, the Constitution itself lays down precisely the qualifications subject to which the rights are conferred, the Courts may be powerless in the matter. Of course, if any particular qualification has been expressed too broadly, there would be room for amendment.

The "clear and present danger" test.

The U.S. Supreme Court took the position that while the expression of opinion must be entirely free from prior censorship, the government might punish the advocacy of ideas where there was a "clear and present danger" that such advocacy would ripen into illegal action. The decisions on this principle were unanimous. Justice Holmes said in the course of his opinion in the leading case of *Schenck* v. *United States :*

The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent. It is a question of proximity and degree. When a nation is at war many things that might be said in time of peace are such a hindrance to its effort that their utterance will not be endured so long as men fight, and that no court could regard them as protected by any constitutional right."

Freedom of speech and of the Press.

In Gitlow v. *Newyork*, (1925) 268 U. S. 652, Sandford J. observed : "It is a fundamental principle, long established, that the freedom of speech and of the press, which is secured by the Constitution, does not confer an absolute right to speak or publish, without responsibility, whatever one may choose, or an unrestricted licence that gives immunity for every possible use of language and prevents the punishment of those who abuse this freedom. (Reasonably limited,.....this freedom is an inestimable privilege in a free government; without such limitation, it might become the scourge of the republic.) That a State, in the exercise of its police power, may punish those who abuse this freedom by utterances inimical to the public welfare, tending to corrupt public morals, incite to crime, or disturb the public peace is not open to question. And, for

yet more imperative reasons, a State may punish utterances endangering the foundations of organized government and threatening its overthrow by unlawful means. These imperil its own existence as a constitutional State. Freedom of speech and press,.....does not protect disturbances of the public peace or the attempt to subvert the government. It does not protect publications prompting the overthrow of government by force; the punishment of those who publish articles which tend to destroy organized society being essential to the security of freedom and the stability of the State. By enacting the present statute the State has determined, through its legislative body, that utterances advocating the overthrow of organized government by force, violence and unlawful means, are so inimical to the general welfare and involve such danger of substantive evil, that they may be penalized in the exercise of its police power. We cannot hold that the present statute is an arbitrary or unreasonable exercise of the power of a State unwarrantably infringing the freedom of speech or press; and we must and do sustain its constitutionality."

The precise legal position of the press in England has been admirably described by Professor Dicey as follows:

"The present position of the English Press is marked by two features. First, "The liberty of the press" says Lord Mansfield, 'consists in printing without any previous licence, subject to the consequences of law.' *Rex* v. *Dean of St. Asaph*, 3 T. R. 431 (note). 'The law of England,' says Lord Ellonborough, 'is a law of liberty, and consistently with this liberty we have not what is called an *imprimatur*; there is no such preliminary licence necessary; but if a man publishes a paper, he is exposed to the penal consequences, as he is in every other act, if it be illegal'.....Hence, with one exception *i. e.*, the licensing of plays (See the Theatres Act, 1843, 6 and 7 Vict. c. 68), which is a quaint survival from a different system, no such thing is known with us as a licenc to print, or a censorship either of the press or political newspapers. Secondly, Press offences, in so far as the term can be used with reference to English law, are tried and punished only by the ordinary Courts of the Country, that is by a judge and jury."[1]

In *Herndon* v. *Lowry* (1937) 301 U. S. 242, Roberts, J said :

"The power of a State to abridge freedom of speech and of assembly is the exception rather than the rule and the penalizing even of utterances of a defined character must find its justification in a reasonable apprehension of dager to organized government. The judgment of the legislature is not unfettered. The limitation upon individual liberty must have appropriate relation to the safety of the State. Legislation which goes beyond this need violates the principle of the Constitution."

"Contempt of Court."

In *Bridges* v. *California* (1941) 314 U. S. 252, Mr. Justice Black delivering judgment on behalf of the majority of the judges observed :

1. Law of the Constitution by Prof. A. V. Dicey (8th ed.) pp 243-246.

"Yet, it would follow as a practical result of the decisions below that anyone, who might wish to give public expression to his views on a pending case involving no matter what problem of public interest, just at the time his audience would be most receptive, would be as effectively discouraged as if a deliberate statutory scheme of censorship had been adopted. Indeed, perhaps more so, because under a legislative specification of the particular kinds of expressions prohibited and the circumstances under which the prohibitions are to operate, the speaker or publisher might at, least have an authoritative guide to the permissible scope of comment, instead of being compelled to act at the peril that judges might find in the utterance a reasonable tendency to obstruct justice in a pending case. This unfocussed threat is, to be sure, limited in time, terminating as it does upon final disposition of the case. But this does not change its censorial quality. An endless series of moratoria on public discussion even if each were very short, could hardly be dismissed as an insignificant abridgement of freedom of expression. And to assume that each would be short is to overlook the fact that the 'pendency' of a case is frequently a matter of months or even years rather than days or weeks. For these reasons we are convinced that the judgments below result in a curtailment of expsression that cannot be dismissed as insignificant. If they can be justified at all, it must be in terms of some serious substantive evil which they are designed to avert. The substantive evil here sought to be averted has been variously described below. It appears to be double disrespect for the judiciary ; and disorderly and unfair administration of justice. The assumption that respect for the judiciary can be won by shielding judges from published criticism wrongly appraises the character of American public opinion. For it is a prized American privilege to speak one's mind, although not always with perfect good taste, on all public institutions. And an enforced silence, however limited, solely in the name of preserving the dignity of the bench, would probably engender resentment, suspicion, and contempt much more than it would enhance respect. The other evil feared, disorderly and unfair administration of justice, is more plausibly associated with restricting publications which touch upon pending litigation. The very word 'trial' connotes decisions on the evidence and arguments properly advanced in open court. Legal trials are not like elections, to be won through the use of the meeting-hall, the radio, and the newspaper. But we cannot start with the assumption that publications of the kind here involved actually do threaten to change the nature of legal trials, and that to preserve judicial impartiality, it is necessary for judges to have a contempt power by which they can close all channels of public expression to all matters which touch upon pending cases. We must therefore turn to the particular utterances here in question and the circumstances of their publication to determine to what extent the substantive evil of unfair administration of justice was a likely consequence, and whether the degree of likelihood was sufficient to justify summary punishment."

"To assemble peaceably and without arms."

The right to assemble peaceably and without arms, which is also guaranteed by this Article subject to laws regulating that right, is not recognised as a specific right in the English Constitution. "No better instance," writes Professor Dicey, "can indeed be found of the way in which in England the Constitution is built upon individual rights than

our rules as to public assemblies. The right of assembling is nothing more than a result of the view taken by the courts as to individual liberty of person and individual liberty of speech. There is now special law allowing A. B. and C. to meet together, either in the open air or elsewhere, for a lawful purpose, but the right of A. to go where he pleases so that he does not commit a trespass, and to say what he likes, so that his talk is not libellous or seditious ; the right of B. to do the like with regard to A., and the existence of the same rights of C. D. E. and F. and so on *ad infinitum*, leads to the consequence that A. B. C. D. and a thousand or ten thousand other persons may, as a general rule, meet together in any place where otherwise they each have a right to be for a lawful purpose and in a lawful manner..... Here then you have in substance that right of public meeting for political and other purposes which is constantly treated in foreign countries as a special privilege to be exercised only subject to careful restrictions."[1] The proviso that the right to assemble must be exercised peaceably and without arms seems designed to prevent the meeting from being an unlawful assembly. "A public meeting which from the conduct of those engaged in it, as for example from their marching together in arms, threatens a breach of the peace on the part of those holding the meeting, and therefore, fills peaceable citizens with reasonable fear, is an unlawful assembly." (Dicey's *Law of the Constitution*, p. 287.)

The Bill of Rights Committee of the American Bar Association meeting under the chairmanship of Mr. Grenville Clark of New York asked for special leave to intervene in the important case of *Hague* v. *Committee for Industrial Organisation*[2] and filed an excellent brief supporting vigorously the maintenance unimpaired of the freedom of Assembly. In the course of that brief they said :

"Freedom of Assembly is an essential element of the American democratic system. At the root of this case lies the question of the value in American life of the citizen's right to meet face to face with others for the discussion of their ideas and problems—religious, political, economic or social. Public debate and discussion take many forms including the spoken and the printed word, the radio and the screen. But assemblies face to face perfom a function of vital significance in the American system, and are no less important at the present time for the education of the public and the formation of opinion than they have been in our past history. The right of assembly lies at the foundation of our system of government. The corner-stone of that system is that government—all government, whether Federal, or State or local—shall be based on the consent of the governed. But 'the consent of the governed' implies not only that the consent shall be uncoerced but also that it shall be grounded on adequate information and discussion. Otherwise the consent would be illusory and a sham. No truth has been more strongly enforced by the history of recent years than that the suppression of discussion leads directly to tyranny and the loss of all other civil rights. On the other hand experience proves the necessity of a *constant process of open debate* if a free and democratic government is to function affectively. Satis-

1. Prof. Dicey, *Law of the Constitution*, pp. 285–286,

2. (1939) 307 U. S. 496.

factory public opinion in a crisis is impossible unless both sides can present their contention in meetings and through the press. Only in this way can public opinion take shape in legislation that will command the general support which will make it law in a real sense. Only so, also, can government on its administrative side be kept reasonably free from abuses. Only through free discussion, in short, can democracy function at all. These are old truths but they need constantly to be remembered and applied. There is a special aspect of free expression here present. The effort in this case was to suppress only *some* communications and *some* meetings. It is plain that the suppression was on the basis that the speakers and their probable utterances would be unpopular. And it is this very feature that gives a special importance to this case. What may be popular today may be unpopular tomorrow; and no principle could be more destructive of American free speech than to judge the permissibility of a public meeting by any standard of its popularity. The right to express unpopular opinions and to hold unpopular meetings is of the essence of American liberty. This is not only for reasons of principle but for practical reasons of government. If criticism, however severe and unpopular, of majority beliefs were suppressed, nothing is more certain than that the American system could not long survive. When all is said the preservation of free speech and assembly depends on ascribing a high *relative value* to these rights.[1]

In the leading American case of *Hague* v. *Committee for Industrial Organization*[2] Mr. Justice Roberts said :

"Citizenship of the United States would be little better than a name if it did not carry with it the right to discuss national legislation and the benefits, advantages and opportunities to accrue to citizens therefrom. All of the respondents' proscribed activities had this single end and aim... Wherever the title of streets and parks may rest, they have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussion of public questions. Such use of the streets and public places has, from ancient times, been a part of the privileges, immunities, rights and liberties of citizens. The privilege of a citizen of the United States to use the streets and parks for communication of views on national questions may be regulated in the interest of all ; it is not absolute, but relative, and must be exercised in subordination to the general comfort and convenience, and in consonance with peace and good order; but it must not, in the guise of regulation be bridged or denied. We think the court below was right in holding the ordinance quoted in Note 1 void upon its face. It does not make comfort or convenience in the use of streets or parks the standard of official action. It enables the Director of Safety to refuse a permit on his mere opinion that such refusal will prevent 'riots, disturbances or disorderly assemblage'. It can thus, as the record discloses, be made the instrument of arbitrary suppression of free expression of views on national affairs for the prohibition of all speaking will undoubtedly 'prevent' such eventualities. But uncontrolled official suppression of the privilege cannot be made a

1. This passage appears in Professor Zechariah Chafee's book, *Free Speech in the United State*, (1942), pp. 414-15.

2. (1939) 307 N. S. 496, at pp. 513-516.

susbstitute for the duty to maintain order in connexion with the exercise of the right."

"To form associations and unions."

Associations and unions, the right to whose formation is guaranteed, are distinguished from associations opposed to public morality. The character of the clubs and societies which are unlawful combinations and confederacies is set forth in Stephen's *Digest of the Criminal Law.* Article 86, p. 51.

Right to acquire, hold and dispose of property.

The right of private property secured by guarantees in the constitution includes the right to acquire, possess, protect, enjoy and dispose of such property. Any statute or ordinance, therefore, which constitutes an infringement of any of these is unconstitutional. But the enjoyment of the right of property like the enjoyment of other rights protected by constitutional guarantees is limited by the police power of the State to enact laws for the promotion of the health, safety, morals and general welfare of the people. The idea of absolutism in the use and enjoyment of our property has long since been accepted and the now well-recognised doctrine is that the use and enjoyment of our property guarantted by the constitution means such use and enjoyment as will not unnecessarily endanger or destroy the property of others. As observed in an American case[1] "The *jus disponendi* has but little place in modern jurisprudence. The advance of civilisation and the consequent extension of governmental activities along lines having their objective in better living conditions, sane social conditions, and a higher standard of human character has resulted on a gradual lessening of the domination of the individual over private property and a corresponding strengthening of this regulative power of the State in respect thereof, so that all private property is held subject to the unchallenged right and power of the State to impose upon the use and enjoyment thereof such reasonable regulations as are deemed expedient for the public welfares. Thus the right of property is subject to regulations in the interest of public health, such as statutes and ordinances requiring the removal or destruction of property or the isolation of infected persons to prevent the spread of disease [1]. Also property owners are bound so to use their property as not to interfere with the reasonable use and enjoyment by others of their property and any unreasonable use of private property to the injury of others may be forbidden. Thus statutes have been sustained which forbid a landowner of certain weeds to grow on his land or erect on his land a 'spite fence'.[2] And, notwithstanding the constitutional guarantees of property, the legislature may regulate the rate of interest and prescribe penalties for usury, may authorise the destruction as nuisances of properties infested with pests, injurious to fruits and plants[3]; may prohibit the employmeut of minors for more than eight hours; may

1. *Harris* v. *Louis Ville* 177, S. W. 472.
2. Kirk v. Aiken Board of Health, 83, S. C. 372.
3. Horan v. Byrnee, 101 Am. S. R. 670
4. Los Angeles County v. Spency, 77 Am. S R. 217.

authorise a municipal corporation to forbid the conduct of an objectionable business in a residential section of a city ; may require the payment of an occupation tax in the form of a licence fee as the condition of the right to engage in a particular business ; may impose a tax on the transfer of property passing by will or descent ; may make it unlawful to receive or accept delivery of, or to possess, intoxicating liquors of more than a specified quantity[1]

Protection in respect of conviction for offences.

20. (1) No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.

(2) No person shall be prosecuted and punished for the same offence more than once.

(3) No person accused of any offence shall be compelled to be a witness against himself.

NOTES

This is called the self-incrimination clause under the U. S. Constitution The source of this clause was the maxim that "no man is bound to accuse himself (*nemo tenetur prodere—or accusare—seipsum,*" which was brought forward in England late in the sixteenth century in protest against the inquisitorial methods of the ecclesiastical courts. At that time the common law itself permitted accused defendants to be questioned. What the advocates of the maxim meant was merely that a person ought to be put on trial and compelled to answer questions to his detriment unless he had first been properly accused, *i. e.*, by the grand jury. But the idea once set going gained headway rapidly, especially after 1660, when it came to have attached to it most of its present-day corollaries.[2]

Protection of life and personal liberty.

21. No person shall be deprived of his life or personal liberty except according to procedure established by law.

1. Southern Expre s Co. v. Whittle, 124 Ala. 406.

2. cf. Amendment V of the U. S. Constitution. Amendment IV of the U. S. Constitution and Amendment V should be read together. Amendment IV deals with unreasonable searches and seizures. In *Boyd* v. *United States*, (1886) 116 U.S. 616 the Supreme Court held that Amendment IV should be read with the self-incrimination clause of Amendment V so that when any seizure of papers or things is 'unreasonable' in the sense of the Fourth Amendment, such papers and things may not, under the Fifth Amendment, be received by any Federal Court in evidence against the person from whom they were seized.

NOTES

This article enacts that 'no person shall be deprived of his life,* or personal liberty except according to procedure established by law. The Drafting Committee was of the opinion that the word "liberty" should be qualified by the insertion of the word 'personal' before it for otherwise it might be construed very widely so as to include even the freedom already dealt with in Article 13. The Committee has also substituted the expression "according to procedure established by law" for the words 'without due process of law' as in its opinion the former is more specific[1]. Originally, "due process of law" meant simply the modes of procedure which were due at the common law, especially in connection with the accusation and trial of supposed offenders. It meant, in short, the kind of procedure which is described in detail in the more definite provisions of the constitution regarding fundamental rights[2]. To-day "due process of law" means "reasonable" law[3] or "reasonable" procedure, that is to say, what a majority of the Supreme Court find to be reasonable in some or other sense of that extremely elastic term. In other words, it means, in effect, the approval of the Supreme Court.

The words "due process of law" have been omitted from this article. But the words "nor shall be deprived of life, liberty or property" without "due process of law" occurred in the Fifth Amendment to the U. S. Constitution. What is "due process of law" ? The Courts of the United States have attempted repeatedly during the past one hundred years and more to find out the exact meaning of these four words but even to-day they have not succeeded in giving a precise definition. No other phrase in the constitution has proved elusive, but in a general way the requirement of "due process" means that there must be, in all actions to deprive a man of his life, liberty or property, an observance of those judicial forms and usages which by general consent have become the essentials of a fair judicial proceeding.

Due process of law is synonym for fair play. It means the sort of process which hears before it condemns ; which proceeds by inquiry, and renders judgment only after ascertaining the facts.

Among the various definitions which have been given of due process of law, the most widely accepted is probably that of Judge Cooley, as follows :

"Due process of law in each particular case means such an exertion of the powers of government as the settled maxims of law permit and

1. Cf. Art. XXXI of the Japanese Constitution (1946).

2. See the article entitled "due process of law before the civil war" by Edward S. Corwin, Harward Law Review, 366. Murray's Lessee v. Hoboken Land & Imp. Co. 1856, 18 How. 272 Hurtado v. Calif. (1884) 110 U. S. 516.

3. This clause also goes to the substantive content of legislation, or in other words requires that the Government exercises its powers "reasonably", that is to say, reasonably in the judgment of the Court.

* The corresponding provision in the Irish Constitution reads : "No citizen shall be deprived of his personal liberty save in accordance with law".

sanction, and under such safeguards for the protection of individual rights as those maxims prescribe for the class of cases to which the one in question belongs."[1]

Meaning of "liberty" as used in this article.

"Liberty" meant at the common law little more than the right not to be physically restrained except for good cause. Whether the cause was good or not would be inquired into by a court, in connection with an appliction for a writ of *habeas corpus*, or in connection with an action for damages for false imprisonment.[2]

Protection against arrest and detention in certain cases.

22. (1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by a legal practitioner of his choice.

(2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.

(3) Nothing in clauses (1) and (2) shall apply—

(*a*) to any person who for the time being is an enemy alien ; or

(*b*) to any person who is arrested or detained under any law providing for preventive detention.

(4) No law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless—

(*a*) an Advisory Board consisting of persons who are, or have been, or are qualified to be appointed as, Judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention :

1. Cooley Const. Lim. Section 356 ; Chicago. etc., R. C. v. Chicago, 166 U. S. 226, 240.

2. C. E. Shattuck, "The True Meaning of the Term 'Liberty', "4 Harvard Law Review, 365-392 (1891).

Provided that nothing in this sub-clause shall authorise the detention of any person beyond the maximum period prescribed by any law made by Parliament under sub-clause (*b*) of clause (7) ; or

(*b*) such person is detained in accordance with the provisions of any law made by Parliament under sub-clauses (*a*) and (*b*) of clause (7).

(5) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order.

(6) Nothing in clause (5) shall require the authority making any such order as is referred to in that clause to disclose facts which such authority considers to be against the public interest to disclose.

(7) Parliament may by law prescribe—

(*a*) the circumstances under which, and the class or classes of cases in which, a person may be detained for a period longer than three months under any law providing for preventive detention without obtaining the opinion of an Advisory Board in accordance with the provisions of sub-clause (*a*) of clause (4) ;

(*b*) the maximum period for which any person may in any class or classes of cases be detained under any law providing for preventive detention ; and

(*c*) the procedure to be followed by an Advisory Board in an inquiry under sub-clause (*a*) of clause (4).

Prohibition of traffic in human beings and forced labour.

23. (1) Traffic in human beings and *begar* and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

(2) Nothing in this article shall prevent the State

from imposing compulsory service for public purposes, and in imposing such service the state shall not make any discrimination on grounds only of religion, race, caste or class or any of them.

Prohibition of employment of children in factories etc.

24. No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment.

Right to Freedom of Religion

Freedom of conscience and free profession, practice and propagation of religion.

25. (1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.

(2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law—

(*a*) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice ;

(*b*) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

Explanation I.—The wearing and carrying of *kirpans* shall be deemed to be included in the profession of the Sikh religion.

Explanation II.—In sub-clause (*b*) of clause (2), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly.

NOTES

Genesis of religious liberty,—Referring to the genesis of the concept of "religious liberty" in western Europe, a learned writer says' :

"The freedom of conscience and of religious profession represents in

the metaphysical order the primary sphere of individual liberty, though it was not in the order of time the first to obtain legal protection. The right of the freedom from arrest and of the inviolability of the dwelling were secured by the mediaeval freeman at a time when his spiritual life was not yet in need of protection by the law. It was only when the Reformation in destroying the uniformity had destroyed the unity of Christendom that the temporal power of the State had to be invoked to extend external protection where the internal security of the spiritual order had ceased to prevail. When every effort of force and conciliation had failed to heal the schism, the principle of religious toleration became the basis of the spiritual readjustment of the secular state. It invested the mediaeval conception of civil rights and privileges with a new metaphysical inspiration. The inherited rights of the citizen became the inborn rights of men."[1]

Right to Freedom of Religion.

Justice Frankfurter in a recent case before the U. S. Supreme Court observed :

"The essence of the religious freedom guaranteed by our constitution is therefore this : no religion shall either receive the State's support or incur its hostility. Religion is outside the sphere of political government. This does not mean that all matters on which religious organizations or beliefs may pronounce are outside the sphere of government. Were this so, instead of the separation of church and state, there would be the subordination of the State on any matter deemed within the sovereignty of the religious conscience.....The validity of secular laws cannot be measured by their conformity to religious doctrines. It is only in a theocratic State that ecclesiastical doctrines measure legal right or wrong."

In *United States* v. *Ballard* (1944) 322 U. S. 78, Douglas, J., said :

"But on whichever basis the court rested its action, religious doctrines or beliefs should have been submitted to the jury. Whatever this particular indictment might require, the First Amendment precludes such a course, as the United States seems to concede, The law knows no heresy, and is committed to the support of no dogma, the establishment of no sect.' *Watson* v. *Jones*, 13 Wall. 679, 728. The first Amendment has a dual aspect. It not only forestalls compulsion by law of the acceptance of any creed or the practice of any form of worship' but also 'safeguards the free exercise of the chosen form of religion. *Cantwell* v. *Connecticut*, 310 U. S. 296, 303. Thus the Amendment embraces two concepts,—freedom to believe and freedom to act. The first is absolute but, in the nature of things, the seconed cannot be.' *Ibid.*, pp. 303, 304. Freedom of thought, which includes freedom of religious belief, is basic in a society of free men. *Board of Education* v. *Barnette*, 319 U. S. 624. It embraces the right to maintain theories of life and of death and of the hereafter which are rank heresy to followers of the orthodox faiths. Heresy trials are foreign to our constitution. Men may believe what they cannot prove. They may not be put to the proof of their religious doctrines or beliefs. Religious experiences which are as real as life to some may be incomprehensible to others. Yet the fact that they may be

1. The Constitution of the Irish Free State, by Leo Kohn, pp. 162-3.

beyond the ken of mortals does not mean that they can be made suspect before the law. Many take their gospel from the New Testament. But it would hardly be supposed that they could be tried before a jury charged with the duty of determining whether those teachings contained false representations. The miracles of the New Testament, the Divinity of Christ, life after death, the power of prayer are deep in the religious convictions of many. If one could be sent to jail because a jury in a hostile environment found those teachings false, little indeed would be left of religious freedom. The Fathers of the Constitution were not unware of the varied and extreme views of religious sects, of the violence of disagreement among them, and of the lack of any one religious creed on which all men would agree. They fashioned a charter of government which envisaged the widest possible toleration of conflicting views. Man's relations to his God was made no concern of the State. He was granted the right to worship as he pleased and to answer to no man for the verity of his religious views. The religious views espoused by respondents might seem incredible, if not preposterous, to most people. But if those doctrines are subject to trial before a jury charged with finding their truth or falsity, then the same can be done with the religious beliefs of any sects. When the triers of fact undertake that task, they enter a forbidden domain. The First Amendment does not select any group or any one type of religion for preferred treatment. It puts them all in that position."

But the right to freedom of religion does not mean tbat the state will allow its citizens to do what all they please in the name of religion. That this like the other freedoms, is subject to certain restrictions is clear from the judgment of Justices Black and Douglas in *Board of Education* v. *Barnette* (1943) 319 U. S. 624, at pp. 643, 644 wherein they observed as follows :—

"No well-ordered society can leave to the individuals an absolute right to make final decisions, unassailable by the State, as to everything they will or will not do. The First Amendment does not go so far. Religious faiths, honestly held, do not free individuals from responsibility to conduct themselvses obediently to laws which are either imperatively necessary to protect society as a whole from grave and pressingly imminent dangers or which, without any general prohibition, merely regulate time, place or manner of religious activity."

This Article is based on Article 44 (2) 1° of the Irish Constitution (1937) which reads as follows : "Freedom of conscience and the free profession and practice of religion are, subject to public order and morality guaranteed to every citizen.

The legislature can make no law at all respecting an establishment of religion nor yet prohibit the free exercise of religious belief and right of assembly and petition."

The religious freedom here envisaged has two aspects ; It forestalls compulsion by law of the acceptance of any creed or the practice of any form of worship. And conversely it safeguards the free exercise of the chosen form of religion. But the right freely to profess practice and propagate religion does not embrace actions which are in violation of social duties or subversive of good order.

Articles 25 to 28 are provisions in the constitution which deal with fundamental rights of every citizen regarding religion. These provisions effectually guarantee the religious liberty of the individual against infringement by the government. Every citizen has a full and free right to entertain any religious belief, to practice any religious principle and to teach any religious doctrine which does not violate laws of morality and property and which does not infringe personal rights, is conceded to all.

Freedom to manage religious affairs.

26. Subject to public order, morality and health, every religious denomination or any section thereof shall have the right—

(*a*) to establish and maintain institutions for religious and charitable purposes ;

(*b*) to manage its own affairs in matters of religion ;

(*c*) to own and acquire movable and immovable property ; and

(*d*) to administer such property in accordance with law.

NOTES

This Article is based on Article 44 (2) 5° of the Irish Constitution (1937) which runs as follows :

"Every religious denomination shall have the right to manage its own affairs, own, acquire and administer property, movable and immovable and maintain institutions for religious or charitable purposes."

Freedom as to payment of taxes for promotion of any particular religion.

27. No person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination.

NOTES

This Article is based on the last para to Art. 49 of the Swiss Constitution which runs as follows.

"No person may be compelled to pay taxes the proceeds of which are specifically appropriated in payment of the purely religious expenses of any religious community of which he is not a member. The application of this principle will be determined by Federal legislation."

Freedom as to attendance at religious instruction or religious worship in certain educational institutions.

28. (1) No religious instruction shall be provided in any educational institution wholly maintained out of State funds.

(2) Nothing in clause (1) shall apply to an educational institution which is administered by the State but has been established under any endowment or trust which requires that religious instruction shall be imparted in such institution.

(3) No person attending any educational institution recognised by the State or receiving aid out of State funds shall be required to take part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution or in any premises attached thereto unless such person or, if such person is a minor, his guardian has given his consent thereto.

NOTES

This Article is based upon on Article 44 (2) 4° of the Irish Constitution (1937) which runs as follows :

"Legislation providing State aid for schools shall not discriminate between schools under the management of different religious denominations, nor be such as to affect prejudicially the right of any child to attend a school receiving public money without attending religious instruction at that school."

Cultural and Educational Rights

Protection of interests of minorities.

29. (1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.

(2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

Right of minorities to establish and administer educational institutions.

30. (1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.

(2) The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.

Right to Property

31. (1) No person shall be deprived of his property save by authority of law.

Compulsory acquisition of property.

(2) No property, movable or immovable, including any interest in, or in any company owning, any commercial or industrial undertaking, shall be taken possession of or acquired for public purposes under any law authorising the taking of such possession or such acquisition, unless the law provides for compensation for the property taken possession of or acquired and either fixes the amount of compensation, or specifies the principles on which, and the manner in which, the compensation is to be determined and given.

(3) No such law as is referred to in clause (2) made by the Legislature of a State shall have effect unless such law, having been reserved for the consideration of the President, has received his assent.

(4) If any Bill pending at the commencement of this Constitution in the Legislature of a State has, after it has been passed by such Legislature, been reserved for the consideration of the President and has received his assent, then, notwithstanding anything in this Constitution, the law so assented to shall not be called in question in any court on the ground that it contravenes the provisions of clause (2).

(5) Nothing in clause (2) shall affect—

(*a*) the provisions of any existing law other than a law to which the provisions of clause (6) apply, or

(*b*) the provisions of any law which the State may hereafter make—

(*i*) for the purpose of imposing or levying any tax or penalty, or

(*ii*) for the promotion of public health or the prevention of danger to life or property, or

(*iii*) in pursuance of any agreement entered into between the Government of the Dominion of India or the Government of India and the Government of any other country, or otherwise, with respect to property declared by law to be evacuee property.

(6) Any law of the State enacted not more than eighteen months before the commencement of this Constitution may within three months from such commencement be submitted to the President for his certification ; and thereupon, if the President by public notification so certifies, it shall not be called in question in any court on the ground thaf it contravenes the provision of clause (2) of this article or has contravened the provisions of sub-section (2) of section 299 of the Government of India Act, 1935.

NOTES

Policy underlying the Article :—This Article based on S. 299 of the Government of India Act, 1935, was the result of considerable negotiation and incorporates what was popularly known as the Munshi-Iyengar formula which was agreed to as a compromise between two sets of views. This Article evoked keen controversy in the Constituent Assembly and outside.

This Article limits the rights of eminent domain. In general, the right of a nation or State to take private property for public use is eminent or paramount. It is a right that transcends private ownership. It is inherent in the nature of sovereignty 'that a government shall have the right[1] to acquire private property for an essential public use even when the owner of the property objects to giving it up. Otherwise, a Government could not perform its functions, because private property is needed from time to time for fortifications, navy-yards, post-offices, customs houses, school houses, parks, highways, and so on.'

"Property"—meaning of :—At the common law 'property' signified ownership, which was exercised in its primary and fullest sense over physical objects only, and more especially over land.[1] To-day in Constitution Law it covers each and all of the valuable elements of ownership,

1. In Early England, it was the custom for the Crown to take private property for its use without giving the owner any compensation at all. The King was supposed to have what was called the right of "purveyance" and this right of the King extended to the taking of lan l, buildings, cattle, grain and in fact anything the King wanted.

and moreover has tended at times to merge with the more indefinite rights of 'liberty;' as defined above.[1]

Sub-cl. (2) : "Public Purposes" :—When the legislature enacts certain purposes as public or clothes the Executive with authority so to notify, the courts cannot question the enactment. Cf. *Wijiasekara* v. *Festing*, (1919) A. C. 646.

"Compensation" :—It is clear on the language of this Article that a legislation cannot be impugned as not providing a just compensation. The question what is a just compensation is a matter for the legislature and so long as some compensation is provided for, the legislation cannot be attacked as invalid.

Right to Constitutional Remedies

Remedies for enforcement of rights conferred by this Part.

32. (1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.

(2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari*, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.

(3) Without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2).

(4) The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution.

NOTES

Writ of Habeas Corpus :—

The writ of Habeas Corpus "is a prerogative process for securing the liberty of the subject by affording an effective means of immediate release from unlawful or unjustifiable detention, whether in prison or private custody." (Halsbury's Laws of England, Hailsham edn. Vol. IX, p. 701). The writ is applicable as a remedy in all cases of wrongful

1. T. E. Holland, Elements of Jurisprudence, 211 (13th ed) ; 2 Black Com. ch. 1.

2. See *Truax* v. *Raich*, (1913) 239 U. S. 33 ; *Truax* v. *Corrigan*, (1921) 257 U.S. 312 ; *Duplex Printing* Co. v. *Deering*, (1921) 254 U. S. 443 ; Baldwin, *American Judiciary* 91-92.

deprivation of personal liberty. It is available against the Executive. In any matter involving the liberty of the subject the action of the Government or its ministers or officials is subject to the supervision and control of the judges on the *habeas corpus*. It has been held in England that if the court is satisfied that an act is done by the Executive with the intention of misusing its powers, it has jurisdiction to deal with the matter on an application for a writ of *habeas corpus*, although the custody of the applicant may be technically legal and the point is not strictly before the court having regard to the form in which the application is made. *R.* v. *Brixton Prison* (*Governor*), *Ex parte Sarno* (1916) 2 K. B. 742.

The writ of *habeas corpus* is the most important single safeguard of personal liberty known to Anglo-American law. Often traced to Magna Carta itself, it dates from, at latest, the seventeenth century, and it is interesting to note that the Constitution simply assumes that, of course, it will be a part of the law of the land. The importance of the writ is that it enables anybody who has been put under personal restraint to secure immediate inquiry by a court into the cause of his detention, and if he is not detained for good cause, his liberty.[1] In *Home Secretary* v. O' *Brien* (1923) A. C. 603., Lord Chancellor Birkenhead said : "We are dealing with a writ antecedent to statute, and throwing its roots deep into the genius of our common law. The writ with which we are concerned to-day was more fully known as *habeas corpus ad subjiciendum*. This writ, however, was one of many. Thus there was a writ *ad respondendum*, and *satisfaciendum* and *prosequendum*, *ad testificandum*, and *ad deliberandum*. All these writs exhibited many features in common : but the most characteristic element of all was their peremptoriness. Today the substitution of more modern remedies has left the writ *ad subjiciendum*, more shortly known as the writ of *habeas corpus*, in almost exclusive possession of the field. It is perhaps the most important writ known to the constitutional law of England, affording as it does a swift and imperative remedy in all cases of illegal restraint or confinement. It is of immemorial antiquity, an instance of its use occurring in the thirty-third year of Edward I. It has through the ages been jealously maintained by the Courts of law as a check upon the illegal usurpation of power by the executive at the cost of the liege.

In the course of time certain rules and principles have been evolved ; and many of these have been declared so frequently and by such authority as to become elementary. Perhaps the most important for our present purpose is that which lays it down that if the writ is once directed to issue and discharge is ordered by a competent Court, no appeal lies to any superior Court.

Correlative with this rule, and markedly indicative in itself of the spirit of our law, is that other which establishes that he who applies unsuccessfully for the issue of the writ may apeal from Court to Court until he reaches the highest tribunal in the land." (*Ibid*)

1. Edward Jenks' Short History of English Law, 333-335 (Boston, 1913) : David Hutchinson, *Foundation of the Constitution*, 137-139 (New York, 1928).

The entrusting to the judges of the means of enforcing and securing the liberty of the citizen of the Indian Union determines the whole relation of the Judicial to Executive Authority. "The authority," writes Professor Dicey, "to enforce obedience to the writ is nothing less than the power to release from imprisonment any person who, in the opinion of the court, is unlawfully deprived of his liberty, and hence an effort to put an end to or to prevent any punishment which the Crown or its servants may attempt to inflict in opposition to the rules of law as interpreted by the judges." The judges, therefore, are in truth, though not in name, invested with the means of hampering and supervising the whole administrative action of the Government, and of at once putting a veto upon any proceeding not authorised by the letter of the law. The writ of *habeas corpus* has been rightly acclaimed as the prerogative writ of the highest constitutional significance, it being a remedy available to the meanest subject against the most powerful. During the First Great War of 1914—18, the writ was frequently used in England to test the legality of the detention under emergency legislation of the British subjects. (cf. *R.* v. *Halliday* (1917) A. C. 260; *Ex parte Howsin* (1917) 33 T. L. R. 527 (C. A.) ; *Ex parte Sarno*, (1916) 2 K. B. 74 ; *R.* v. *Maidstone Prison (Governor)*, *Ex parte Magime* (1925) 2 K. B. 205.

For a detailed study of the nature and scope of the writ, the reader is referred to pages 701 to 744 of Halsbury's Laws of England, Hailsham edn, Vol. IX.

Writ of Mandamus :—

This is a high prerogative writ of a most extensive remedial nature, and is, in form, a command issuing from the High Court of Justice, directed to any person, corporation, or inferior Court, requiring him or them to do some particular thing therein specified which appertains to his or their office, and is in the nature of a public duty. Its purpose is to supply objects of justice ; and accordingly it will issue, to the end that justice may be done, in all cases where there is specific legal right and no specific legal remedy for enforing such right ; and it may issue in cases where, although there is an alternative legal remedy, yet such mode of redress is less covenient, beneficial and effectual (Halsbury's laws of England, Hailsham edn., vol. IX, p. 144).

The grant of the writ of mandamus is in the discretion of Court. It is not a writ of right and it is not issued as a matter of course.

But it is the duty of the Court to take a liberal view in determining whether or not the writ shall issue, not scrupulously weighing the degree of public importance attained by the matter which may be in question, but applying this remedy in all cases where, upon a reasonable construction it can be shown to be relevant (*Rochester corporation* v. *R* (1858) E. B. and E. 1024, Ex. ch. *per* Martin, B., at p. 1033)

Thus, the writ will lie to compel the restoration of a person to an office, or franchise and in particular to restore, admit, or elect to an

1. Dicey's, *Law of the Constitution*, p. 207.

office of a public nature ; for the delivery up, production and inspection of public documents ; to enforce statutory rights and duties ; to require public officials and public bodies to carry out their duties ; and to command inferior tribunals to exercise jurisdiction.

For a general discussion of the scope and extent of the exercise of the writ of Mandamus, *see* Halsbury's laws of England, Hailsham edn. vol. IX, pp. 744-804.

Quo Warranto :

"An information in the nature of a *quo warranto* is the modern form of the obsolete of a *quo warranto* which lay against a person who claimed or usurped an office, franchise, or liberty, to inquire by what authority he supported his claim, in order that the right of the office or franchise might be determined" (Halsbury's Laws of England, Hailsham edn, Vol. IX, p. 804,.

An information in the nature of a *quo warranto* will only be under the English Law in respect of any particular office when that office satisfies the following conditions :—

(1) The office must be held under the crown or have been created by the crown, either by charter or by statute[1] (2) The duties of the office must be of a public nature. (3) The office must be of a substantive character. * (4) The court must be satisfied that the person proceeded against has been in actual possession and user of the particular office in question.

Writ of Prohibition :

This writ is a prerogative writ directed to an inferior court which forbids such court to continue proceedings there in excess of its Jurisdiction or in contravention of the laws of the land.

The writ of prohibition has been described as "a judicial writ, issuing out of a Court of superior jurisdiction and directed to an inferior Court for the purpose of preventing the inferior Court from usurping a jurisdiction with which it is not legally vested, or, in other words, to compel Courts entrusted with judicial duties to keep within the limits of their jurisdiction" (*see* Short and Mellor, *Practice of the Crown Office* (2nd ed.), p. 252.

The writs of prohibition and *certiorari* are of great antiquity, forming part of the process by which the King's Courts in England restrained Courts of inferior jurisdiction from exceeding their powers. Prohibition restrains the tribunal from proceeding further in excess of jurisdiction; *certiorari* requires the record or the order of the Court to be sent up to the King's Bench Division, to have its legality inquired into and, if necessary, to have the order quashed. It is to be noted that

1. *Rex* v. *Electricity Commissioners ; Ex parte, London Electricity Joint Committee* (1920) Ltd. (1924), 93 L. J. K. B. 390, [1924] 1 K. B. 171 (C. A.), *per* Atkin L. J.

both writs deal with questions of excessive jurisdiction, and doubtless in their origin dealt almost exclusively with the jurisdiction of what is understood in ordinary parlance as a Court of Justice. But the operation of the writs has extended to control the proceedings of bodies which do not claim to be, and would not be recognized as, Courts of Justice. Whenever any body of persons having legal authority to determine questions affecting the rights of subjects, and having the duty to act judicially, act in excess of their legal authority, they are subject to the controlling of the King's Bench Division, excercised in these writs. Thus *certiorari* lies to justices of the peace of a country in respect of a statutory duty to fix a rate for the repair of a country bridge *Rex* v. *Glamorganshire* (*Inhabitants*), In *Rex* v. *Glamorganshire* (*Inhabitants*), (1700)1 Ld. Raym. 454, it was observed :

I can see no difference in principle between certiorari and prohibition, except that the latter may be invoked at an earlier stage. If the proceedings establish that the body complained of is exceeding its jurisdiction by entertaining matter which would result in its final decision being subject to being brought up and quashed on certiorari, I think that prohibition will lie to restrain it from so exceeding its Jurisdiction.

In *Re, Clifford and O'Sullivan*, (1921) 2 A. C. 570, an attempt was made to prohibit the proceedings of so-called military Courts of the army in Ireland acting under proclamations which had placed certain Irish districts in a time of armed disturbance under martial law. Prohibition, it was held in the House of Lords, would not lie because the so-called Courts were not claiming any legal authority other than the right to put down force by force, and because the so-called Courts were *functus officio.*"

Writ of Certiorari :—

This writ "issues of a superior court and is directed to the Judge or other officer of an inferior court of record. It requires that the record of the proceedings in some cause or matter depending before such inferior court shall be transmitted into the superior court to be there dealt with, in order to insure that the applicant to the writ may have the more sure and speedy Justice." (Halsbury's Laws of England, Hailsham edn, Vol IX, pp. 838—839).

Prohibition, Certiorari & Mandamus :—

Certiorari was granted against local authorities in the *King* v. *London County Council. Ex p. Extertainments Protection*, (1931) 2 K. B. 215; 100 L. J. K. B. 760, and The *King* v. *Hendon Rural District Council, Ex p. Chorley*, (1933) 2 K. B. 696; 102 L. J. K. B. 658, and against the General Medical Council in *General Medical Council* v. *Spackman*, (1943) A. C. 627.

[*Rex* v. *Electricity Commissioners ; Ex parte, London Electricity Joint Committee* (1920) Ltd. (1924), 93 L. J. K. B. 390, [1924] 1 K. B. 171 (C. A.) *per* Atkin L. J.]

Power to Parliament to modify the rights conferred by this Part in their application to Forces.

33. Parliament may by law determine to what extent any of the rights conferred by this Part shall, in their application to the members of the Armed Forces or the Forces charged with the maintenance of public order, be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline among them.

Restriction on rights conferred by this Part while martial law is in force in any area.

34. Notwithstanding any thing in the foregoing provisions of this Part, Parliament may by law indemnify any person in the service of the Union or of a State or any other person in respect of any act done by him in connection with the maintenance or restoration of order in any area within the territory of India where martial law was in force or validate any sentence passed, punishment inflicted, forfeiture ordered or other act done under martial law in such area.

35. Notwithstanding anything in this Constitution,—

Legislation to give effect to the provisions of this Part.

(*a*) Parliament shall have, and the Legislature of a State shall not have, power to make laws—

(*i*) with respect to any of the matters which under clause (3) of article 16, clause (3) of article 32, article 33 and article 34 may be provided for by law made by Parliament ; and

(*ii*) for prescribing punishment for those acts which are declared to be offences under this Part ;

and parliament shall, as soon as may be after the commencement of this Constitution, make laws for prescribing punishment for the acts referred to in sub-clause (*ii*) ;

(*b*) any law in force immediately before the commencement of this Constitution in the territory of India with respect to any of the matters referred to in sub-clause (*i*) of clause (*a*) or providing for punishment for any act referred to in sub-clause (*ii*) of that clause

shall, subject to the terms thereof and to any adaptations and modifications that may be made therein under article 372, continue in force until altered or repealed or amended by Parliament.

Explanation.—In this article, the expression "law in force" has the same meaning as in article 372.

PART IV

DIRECTIVE PRINCIPLES OF STATE POLICY

This Part embodies a series of general injunctions styled "Directive Principles of State Policy" which are intended to give an indication of the policy which the Union and the State ought to follow. They are directions to the state to meet those social, economic and cultural reforms which the framers of the Constitution looked upon as the ideals of the new order, but to which they did not feel able to give legal effect in the frame work of the organic law itself.

They can be used for the purpose of private and political criticism, but they confer no legal rights and create no legal remedies. They are not to be enforceable by any Court. But it is a fact that many modern Constitutions do contain moral precepts of this kind; nor can it be denied that they may have an educative value.

They are really in the nature of Instructions which under the Government of India Act, 1935 used to issue from the Sovereign to the Governor-General and the Governors and these instruments used to contain injunctions which though unenforceable in the Courts, served a useful purpose. For example, one of them especially charged and required the Governor "to take care that due provision shall be made for the advancement and social welfare of those classes who on account of the smallness of their number or their lack of educational or material advantages or any other cause specially rely on our protection." This may be compared with Article 46 of the Constitution which requires that the State shall promote with special care the educational and economic interests of the weaker sections of the people. The former was an instruction from the legal Sovereign to the Governors appointed by him; the latter may be deemed to be a similar instruction from the ultimate Sovereign, namely, the people of India, speaking through their representatives in the Constituent Assembly, to the authorities set up by or under the Constitution of India.

These Directive Principles cover a wide range of subjects. The general duty of the State is defined in Article 38 to secure and protect the social order in which justice, social, economic and political, shall inform all the institutions of national life. This is worked out in Article 39. Article 40 directs the state to organise village panchayats. Article 41 provides that the State shall, within the limitations of its economic capacity and development, make effective provisions for the right to work, of education and of public assistance in case of unemployment, old age, sickness, disablement and other cases of undeserved want. Just and humane conditions of work, maternity relief, a living wage, decent standards of life, full enjoyment of leisure, a uniform civil code, free primary education, raising of the standard of living, improvement of public health, the preservation of National Monuments and International

peace and security are among the other provisions dealt with in the other Articles of this Part.

✓The following extract from the speech of the Hon: Dr Ambedkar will serve to explain the scope and object of including these "Directive Principles of State Policy" in the Constitution of India : "In the Draft Constitution the Fundamental Rights are followed by what are called "Directive Principles". It is a novel feature in a Constitution framed for Parliamentary Democracy. The only other constitution framed for Parliamentary Democracy which embodies such principles is that of the Irish Free State. The Directive Principles have also come up for criticism. It is said that they are only pious declarations. They have no binding force. This criticism is of course superfluous. The Constitution itself says so in so many words.

✓ If it is said that the Directive Principles have no legal force behind them, I am prepared to admit it. But I am not prepared to admit that they have no sort of binding force at all. Nor am I prepared to concede that they are useless because they have no binding force in law.

The Directive Principles are like the Instrument of Instructions which were issued to the Governors of the Colonies and to those of India by the British Government under the 1935 Act .....What are called Directive Principles is merely another name for Instrument of Instructions. The only difference is that they are instructions to the legislature and the executive. Such a thing is to be welcomed. Wherever there is a grant of power in general terms for peace, order and good government, it is necessary that it should be accompanied by instructions regulating its exercise.

The inclusion of such instructions in a Constitution such as is proposed in the Draft becomes justifiable for another reason. The Draft Constitution as framed only provides a machinery for the government of the country. It is not a contrivance to install any particular party in power as has been done in some countries. Who should be in power is left to be determined by the people, as it may be, if the system is to satisfy the tests of democracy. But whoever captures power will not be free to do what he likes with it. In the exercise of it, he will have to respect these instruments of instructions which are called Directive Principles. He cannot ignore them. He may not have to answer for their breach in a Court of Law. But he will certainly have to answer for them before the electorate at election time. What great value these directive principles possess will be realized better when the forces of right contrive to capture power.

✓That it has no binding force is no argument against their inclusion in the Constitution. There may be a difference of opinion as to the exact place they should be given in the Constitution. I agree that it is somewhat odd that provisions which do not carry positive obligations should be placed in the midst of provisions which do carry positive obligations. In my judgement their proper place is in Schedule IIIA

and IV[1] which contain Instrument of Instructions to the President and the Governors. For, as I have said, they are really Instruments of Instructions to the Executive and the Legislature as to how they should exercise their powers. But that is only a matter of arrangement." (Speech of the Hon: Dr. Ambedkar on the 4th November 1948 on the floor of the Constituent Assembly in support of the motion for consideration of the Draft Constitution.)

Definition.

36. In this Part, unless the context otherwise requires, "the State" has the same meaning as in Part III.

Application of the principles contained in this Part.

37. The provisions contained in this Part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.

State to secure a social order for the promotion of welfare of the people.

38. The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.

NOTES

This Article is based upon on Article 45 (1) of the Irish Constitution (1937) which reads as follows : "The State shall strive to promote the welfare of the whole people by securing and protecting as effectively as it may a social order in which justice and charity shall inform all institutions of the national life."

Certain principles of policy to be followed by the state.

39. The State shall, in particular, direct its policy towards securing—

(*a*) that the citizens, men and women equally, have the right to an adequate means of livelihood ;

(*b*) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good ;

(*c*) that the operation of the economic system does not result in the concentration of wealth and means of production to the common deteriment;

1. The reference is to the Constitution as it stood in the Draft stage—Ed.

(*d*) that there is equal pay for equal work for both men and women ;

(*e*) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength ;

(*f*) that childhood and youth are protected against exploitation and against moral and material abandonment.

NOTES

This Article is based upon on Articles 45 (2) and 45 (4) 2° of the Irish Constitution (1937). Article 45 (2) reads as follows :—

" (2) The State shall, in particular, direct its policy towards securing—

(*i*) that the citizens, men and women equally have the right to an adequate means of livelihood ;

(*ii*) that the ownership and control of the material resources of the community may be distributed (amongst private individuals and the various classes) as best to subserve the common good ;

(*iii*) that, especially, the operation of free competition shall not be allowed so to develop as to result in the concentration of the ownership or control of essential commodities in a few individuals to the common detriment ;

(*iv*) that in what pertains to the control of credit the constant and predominant aim shall be the welfare of the people as a whole ;

(*v*) that there may be established on the land in economic security as many families as in the circumstances shall be practicable."

Art. 45 (4) 2° reads as follows :

" 2° The State shall endeavour to ensure that the strength and health of the workers, men and women, and the tender age of children shall not be abused and that citizens shall not be forced by economic necessity to enter avocations unsuited to their sex, age or strength."

Organisation of village panchayats.

40. The State shall take steps to organise village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government.

Right to work, to education and to public assistance in certain cases.

41. The state shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.

Provision for just and humane conditions of work and maternity relief.

42. The State shall make provision for securing just and humane conditions of work and for maternity relief.

Living wage, etc, for workers.

43. The State shall endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the State shall endeavour to promote cottage industries on an individual or co-operative basis in rural areas.

Uniform civil code for the citizens.

44 The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India.

Provision for free and compulsory education for children.

45. The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution for free and compulsory education for all children until they complete the age of fourteen years.

Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections

46. The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.

Duty of the State to raise the level of nutrition and the standard of living and to improve public health.

47. The State shall regard the raising of the level of nutrition and the standard of living of its people and the imorovement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.

Organisation of agriculture and animal husbandry.

48. The State shall endeavour to organise agriculture and animal husbandry on modern and scientific lines and shall, in particular, take steps for preserving and improving the breeds, and prohibiting the slaughter, of cows and calves and other milch and draught cattle.

Protection of monuments and places and objects of national importance.

49. It shall be the obligation of the State to protect every monument or place or object of artistic or historic interest, declared by Parliament by law to be of national importance, from spoliation, disfigurement, destruction, removal, disposal or export, as the case may be.

Separation of judiciary from executive.

50. The State shall take steps to separate the judiciary from the executive in the public services of the State.

Promotion of international peace and security.

51. The State shall endevour to—

(*a*) promote international peace and security ;

(*b*) maintain justand honourable relations between nations ;

(*c*) foster respect for international law and treaty obligations in the dealings of organised peoples with one another ; and

(*d*) encourage settlement of international disputes by arbitaration.

NOTES

This Article is based upon on the Declaration of Havana, 1939.

PART V

THE UNION

CHAPTER I.—THE EXECUTIVE

The President and Vice-President

Under the Constitution there is placed at the head of the Indian Union a functionary who is known as the President of the Union. He is the Supreme Executive Authority of the Union. A perusal of the provisions of the constitution will show that the object of the framers of the Constitution was to steer a middle course between reducing the President to a mere figurehead and giving him powers similar to those of the President of the United States of America which may prove to be an invitation to dictatorship.

Position of the President:

In the constitution of India "there is placed at the head of the Indian Union a functionary who is called the President of the Union. The title of this functionary reminds one of the President of the United States. But beyond identity of names there is nothing common between the form of Government prevalent in America and the form of Government proposed under the Draft Constitution. The American form of Government is called the Presidential system of Government. What the Draft Constitution proposes is the Parliamentary system of Government. The two are fundamentally different. Under the Presidential system of America, the President is the Chief head of the Executive. The administration is vested in him. Under the Draft Constitution the President occupies the same position as the King under the English Constitution. *He is the head of the State but not of the Executive. He represents the Nation but does not rule the Nation. He is the symbol of the nation. His place in the administration is that of a ceremonial device on the seal by which the nation's decisions are made known.*[1] Under the American Constitution the President has under him Secretaries in charge of different Departments. In like manner the President of the Indian Union will have under him Ministers in charge of different Departments of administration. Here again there is a fundamental difference between the two. The President of the United States is not bound to accept any advice tendered to him by any of his Secretaries. The President of the Indian Union. will be generally bound by the advice of his Ministers. He can do nothing contrary to their advice nor can he do anything without their advice. The President of the United States can dismiss any Secretary at any time. Tne President of the Union has no power to do so so long as his Ministers command a majority in Parliament.

1. The italics are ours.—Ed.

The Presidential system of America is based upon the separation of the Executive and the Legislature. So that the President and his Secretaries cannot be members of the Congress, The Draft Constitution does not recognise this doctrine. The Ministers under the Indian Union are members of Parliament. Only members of Parliament can become Ministers. Ministers have the same rights as other members of Parliament, namely, that they can sit in Parliament, take part in debates and vote. Both systems of Government are of course democratic and the choice between the two is not very easy. A democratic executive must satisfy two conditions (1) It must be a stable executive and (2) It must be a responsible executive. Unfortunately it has not been possible to devise a system which can ensure both in equal degree. You can have a system which can give you more stabilty but less responsibility or you can have a system which gives you more responsibility and less stability. The American and the Swiss systems give more stability but less responsibility. The British system gives you more responsibility but less stability. The reason for this is obvious. The American Executive is a non-Parliamentary Executive which means that it is not dependent for its existence upon a majority in the Congress, while the British system is a Parliamentary Executive, which means that it is dependent upon a majority in Parliament. Being a non-Parliamentary Executive, the Congress of the United States cannot dismis the Executive. A Parliamentary Executive must resign the moment it loses the confidence of a majority of the members of Parliament. Looking at it from the point of view of responsibility, a non-Parliamentary Executive being independent of Parliament tends to be less responsible to the Legislature, while a Parliamentary Executive being more dependent upon a majority in Parliament becomes more responsible. The Parliamentary system differs from a non-Parliamentary system in as much as the former is more responsible than the latter but they also differ as to the time and agency for assessment of their responsibility. Under the non-Parliamentary system, such as the one that exists in the U. S. A., the assessment of the responsibility of Executive is periodic. *It takes place in the U. S. A. once in two years. It is done by the Electorate. In England, where the Parliamentary system prevails, the assessment of responsibility of the Executive is both daily and poriodic. The daily assessment is done by members of Parliament, through questions, Resolutions, No-confidence motions, Adjournment motions and Debates on Addresses. Periodic assessment is done by the Electorate at the time of the election which may take place every five years or earlier.* The daily assessment of responsibility is not available under the American system which is far more effective than the periodic assessment and far more necessary in a country like India. The Draft Constitution in recommending the Parliamentary system of Executive has preferred more responsibility to mere stability." (Speech of the Hon'ble Dr. Ambedkar on the floor of the constituent Assembly of India on the 4th of November 1948.)

In the United Kingdom, the executive authority is legally vested in the King and is exercised in his name. The exercise of the executive powers vested in the Sovereign is, in practice, delegated to the various political officers who compose the Ministry or Government, certain of whom are the heads of the principal Government offices or departments of State, and to Government offices having no political heads, and whose staff is composed of permanent members of the Civil Service.

But every official act of the King is done on the responsibility of a Minister. On this is based the well-known doctrine that the "King can do no wrong" for there is some Minister responsible for every act done by him. The powers of the Crown are at present derived from custom and statute. "The general policy of the executive Government in matters such as declarations of peace and war, treaties, the government of the colonies and dependencies, and all important questions, as also the general scope and character of the legislation to be initiated by the party in power, is determined by the smaller group of ministers known as the cabinet, whose functions as a body are purely consultative and advisory, and whose advice in executive matters the sovereign, must, generally, accept." (Halsbury's Laws of England, Hailsham E.d. Vol. VI, p. 590).

The position of the King of England *vis-a-vis* the executive is further described in Halsbury's Laws of England[1], as follows: "The personal functions of the Sovereign in the actual administration of the executive are now restricted principally to attaching his signatures to the various executive documents, the nature and general policy of which have been previously determined by individual minister or the cabinet. Nominally he may dismiss the ministry, dissolve or prorogue Parliament, or withhold his assent to Bills, when he pleases, but in practice the occasions upon which these prerogatives may be exercised in a constitutional manner are sufficiently clearly defined, since these powers form the constitutional cheeks by which conformability in executive and legislative matters to the wishes of the House of Commons, and ultimately of the electorate, is ensured. In the impartial exercise of these prerogatives, as also in his position as permanent head of the executive, in whom the various threads of the administration are centred, and as the representative of the national power and dignity, independent of and above the changes and intrigues of party government, the true significance and importance of the Sovereign as a constitutional monarch are to be found."

The powers of the British Crown are derived from custom and from statute. The functions of the King may be dealt with briefly under three heads: (*i*) non-political; (*ii*) political; and (*iii*) formal. A Monarchy calls forth feelings which no Republic can evoke. It appeals to the sentiments of the people more than any other form of Government. It provides an 'intelligible headpiece' and is valuable in excluding competition for the leadership of the society. Above all, the Crown acts as the guardian of the "invisible" Constitution. It acts "as a disguise," for, "it enables the real rulers to change without heedless people knowing it."

The political functions of the Crown are equally important. A good deal depends upon the personality of the Monarch. The regime of Queen Victoria serves to show how an exceptionally capable Sovereign, strong of will and greatly devoted to duty, backed up by the experience gained during a long reign, left a profound impression upon the government of the day. In the words of Gladstone, "The acts, the wishes, the example of the Sovereign in this country are a real power. An

1. Vol, VI, at pp. 592-593,

immense reverence and tender affection await upon the person of the one permanent and ever faithful guardian of the fundamental conditions of the Constitution."

Of the formal prerogatives of the Crown the following are the more important, namely, (*i*) the right of dissolution, *i. e.*, the right to appeal from the Parliament to the people ; (*ii*) the right to refuse a dissolution, *i. e.*, the right to appeal from the Ministry to the Parliament ; (*iii*) the right to select his Chief Adviser, that is, the Prime Minister. These rights are, no doubt, circumscribed by many considerations, but no one can deny that these rights exist.

In the United States of America the head of the state is called the President. According to the U. S. Coustitution, the exective power shall be vested in the President and he shall hold office during the term of four yeares. The U. S. President provides a perfect illustration of a non-parliamentary or fixed executive. In the words of Prof. Laski "there is no foreign Constitution with which in any basic sense, it can be compared, because basically there is no comparable foreign institution. The President of the United States is both more or less than a king; he is, also, both more or less than a Prime Minister (*American Presidency*, 1943, p. 23).

The U. S. President is the Head of a Cabinet of members whose duty it is to aid and advise but he cannot shift his responsibilities to that body or any officer in it. Under the american system the Cabinet is merely the kind of organisation which the President wishes to make of it. It is his own Council in a very peculiar sense. It is not subject to the control of the Congress. This is clear from the following observations of President Jackson who, when the Senate requested the transmission of paper supposed to have been read by him to the Head of the Executive Departments, replied as follows:—"I have yet to learn under what constitutional authority that Branch of the Legislature has a right to require of me an account of any communication, either verbally or in writing, made to the Heads ofDepartments acting as Cabinet Council."

Under the U. S. Constitution, there is vested in the President most, but not all, of the executive power. Power to confirm appointments and to ratify treaties is reserved for the U. S. Senate. The President is given important legislative and some judicial authority. Sections 2 and 3 of Article II of the U. S. Constitution are. devoted to an enumeration of the powers of the President. The President is the Commander-in-chief of the Army and Navy, is given power to appoint, to enter into treaties, to receive ambassadors and ministers, to grant reprieves and pardons,to enforce laws, and to perform certain duties in connection with the Congress. It has also to be noted that the authority of the U. S. President accrues to him by virtues of factors beyond the formal powers. His prestige as chief representative of the American people, and as leader of his political party, plays a notable part in making him a strong leader if he chooses the role and has the personal qualities to fill it.

In the U. S. A. the President has a Cabinet of ten to assist him in the administration appointed by him subject to the consent of the Senate. Any member of the Cabinet may be removed by the President.

None of these Ministers can sit or vote in the Congress. They are not responsible to any one except the President. The Ministers' acts are legally the acts of the President. The Cabinet does not work as a whole. There is no collective responsibility as in the British Cabinet. The President is personally responsible for his acts to the people by whom he is chosen but not to the Congress. An adverse vote of the Congress does not affect his position and he is not bound to resign. The President can be sent out of his office only by a successful impeachment.

Under the U. S. Constitution "the President exercises many discretionary powers without any hindrance or the control by judiciary. For example, he is exempt from such court writs as mandamus, injunction, and habeaus corpus when using his discretion in connection with such 'political' questions as the following : fixing the date when foreign jurisdiction over acquired territory ceases, whether or not a state constitution has been ratified, whether or not military authority has been established, how long military occupation of territory shall be necessary, whether or not a treaty exists, the recognition of foreign states, determination of a correct boundary between the United States and a foreign nation, and the regulation of admission of foreigners. Thus the President, in so far as his power is derived from the constitution, is beyond the reach of any other department of the Government, with the single exception provided by the constitution for his impeachment." The constitution by Magruder and Claire pp. 149-150 citing *Quackenbush* v. *United States* (1900) 177 U. S. 25.

The President of India.

52. There shall be a President of India.

NOTES

At the head of the Indian Union there is a functionary called the President. "The Constitution does give the President wide discretion and great power, and it ought to do so. It calls from him activity and energy to see that within his proper sphere he does what his great responsibilities and opportunities require."[1]

Executive power of the Union.

53. (1) The executive power of the Union shall be vested in the President and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution.

(2) Without prejudice to the generality of the foregoing provision, the supreme command of the Defence Forces of the Union shall be vested in the President and the exercise thereof shall be regulated by law.

1. These words were spoken of the U. S. President but they may well be used with reference to the President of the Indian Union. See William H. Taft, *The Presidency*, (1916), p. 141.

(3) Nothing in this article shall—

(*a*) be deemed to transfer to the President any functions conferred by any existing law on the Government of any State or other authority; or

(*b*) prevent Parliament from conferring by law functions on authorities other than the President.

NOTES

President as the Supreme Commander of the Defence Forces.

Article 53 (2) enacts that the Supreme Command of the Defence Forces of the Union shall be vested in the President and the exercise thereof shall be regulated by law. This provision is based on the Irish Constitution (1937) Articles 13 (4) and (5). Art. 13 (4) reads: "The Supreme Command of the Defence Forces is hereby vested in the President." Art. 13 (5) reads: "The exercise of the Supreme Command of the defence forces shall be regulated by law."

Art. 53 (2) must, however, be read in conjunction with Art. 53 (3) which is intended to preserve the existing law under which the government of any state or other authority exercises certain functions in regard to the Defence forces and also to give to Parliament an overriding power to confer on authorities other than the President functions in relation to the Supreme Command of the Defence Forces of the Union.

In the U. S. A., the President as Commander-in-Chief of the Defence Forces has extensive powers over both military and foreign policy of the country and more so in times of war. By his actions the President virtually may force congress to appropriate money, as when Theodore Roosevelt ordered the fleet around the world despite the disapproval of Congress. Likewise, the American President by belligerent use of the armed forces may involve the country in a state of war, leaving Congress with no alternative but to declare it."[1]

Sub-Clause 3: This sub-clause is necessary, for otherwise clause (1) of the Article mao be held to have the effect of transferring to the President all functions conferred by any existing law on any authority other than the Fresident where such functions relate to the exercise of the executive power of the Union. Instances of such existing laws are those dealing with subjects falling in ihe Union list which under S. 124 (2) of the Government of India Act, 1935, have conferred functions on Provincial governments and Provincial officers. By this sub-clause it will be seen that Parliament has been given power to confer by law functions on authorities other than the President.

1. For a descriptive account of the war powers of the U. S. President prior to the Second World War, the reader is referred the excellent treatise of E. Pendleton Herring, *Presidential Leadership, the Political relations of Congress and the Chie Executive*, (1940).

54. The President shall be elected by the members of an electoral college consisting of—

Election of President.

(*a*) the elected members of both Houses of Parliament ; and

(*b*) the elected members of the Legislative Assemblies of the States.

NOTES

This article is based on the decision taken by the Constituent Assembly as to the election of the President.

Election Procedure under U. S. Constitution.

The methods of election both of the President and the Vice-President are provided for by the U.S. Constitution with great precision. "This process of election," wrote Hamilton, "affords a moral certainty that the office of the President will seldom fall to the lot of any man who is not in an eminent degree endowed with the requisite qualifications."

The Constitution contemplates that the election should be indirect. It provides first for an electoral college, the members of which are chosen in each State to a number equal to the number of representatives from the State to the two Houses of the Congress. The actual method of choosing these electors is left to the discretion of each State Legislature. All the State Legislatures have directed that the Presidential electors shall be chosen at the polls by the qualified voters of the State. The electors meet in each State to nominate and cast votes for the Presidential and Vice-Presidential candidates. The votes are sent to the President of the Senate and are counted in the Houses of the Congress sitting in a joint session.

The Constitution intended to confer a wide discretion on the presidential electors in the choice of a President ; but in practice, an elector dare not cast his vote for any other than the official nominee of his party. "As a matter of practice, the presidential electors in each State are nominated by the political parties, one slate of presidential electors by each party organisation. This is done at state party conventions, or at primaries. Then at the November election in each presidential year, the qualified voters mark their ballots for the one or the other of these party slates. The ballots are usually arranged so that by marking a single cross the voter can indicate his preference for the whole column of Republican or Democratic presidential electors as the case may be. Thus in New York a single cross indicates the voter's choice for the entire forty-eight presidential electors of the Republican party or the Democratic Party. Strictly speaking, therefore, the President and Vice-President are not elected in November. Only the presidential electors are elected at that time. The official election of President and Vice-President takes place at the hands of these electors who meet in their respective states and vote ... ..." (The Constitution of the United States by W. B. Munro, (1944), p. 74.)

Manner of election of President.

55. (1) As far as practicable, there shall be uniformity in the scale of representation of the different States at the election of the President.

(2) For the purpose of securing such uniformity among the States *inter se* as well as parity between the States as a whole and the Union, the number of votes which each elected member of Parliament and of the Legislative Assembly of each State is entitled to cast at such election shall be determined in the following manner :—

(*a*) every elected member of the Legislative Assemly of a State shall have as many votes as there are multiples of one thousand in the quotient obtained by dividing the population of the State by the total number of the elected members of the Assembly;

(*b*) if, after taking the said multiples of one thousand, the remainder is not less than five hundred, then the vote of each member referred to in sub-clause (*a*) shall be further increased by one;

(*c*) each elected member of either House of Parliament shall have such number of votes as may be obtained by dividing the total number of votes assiged to the members of the Legislative Assemblies of the States under sub-clauses (*a*) and (*b*) by the total number of the elected members of both Houses of Parliament, fractions exceeding one-half being counted as one and other fractions being disregarded.

(3) The election of the President shall be held in accordance with the system of proportional representation by means of the single transferable vote and the voting at such election shall be by secret ballot.

Explanation.—In this article, the expression "population" means the population as ascertained at the last preceding census of which the relevant figures have been published.

NOTES

The object of this Article is to ensure uniformity in the scale of

representation. If the scale were uniform in all the States, there would have been no need for this article and it might have been provided that each member, whether of the Central Legislature or of the Legislature of the States, shall have one vote.

The object of Article 55 (2) (*c*) is to obtain the average number of votes which a member of the legislature of a State is entitled to cast and to give to each elected member of either House of Parliament a number of votes equal to the aforesaid average.

Term of office of President.

56. (1) The President shall hold office for a term of five years from the date on which he enters upon his office:

Provided that—

(*a*) the President may, by writing under his hand addressed to the Vice-President, resign his office;

(*b*) the President may, for violation of the Constitution, be removed from office by impeachment in the manner provided in article 61;

(*c*) the President shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office.

(2) Any resignation addressed to the Vice-President under clause (*a*) of the proviso to clause (*i*) shall forthwith be communicated by him to the Speaker of the House of the People.

NOTES

Resignation of the office of President may be made by writing under his hand addressed to the Vice-President, who in turn shall forthwith communicate it to the Speaker of the House of the People.

Removal from office may take place by an impeachment in accordance with the procedure outlined in Article 61 for violation of the Constitution.

Presidential Term of Office:—The term of office of the President of the Indian Union is five years. The term of the President of the United States of America is four years. In the U. S. A., the President enters his office on January twentieth following his election and serves until the twentieth of January four years later.

Eligibility for re-election.

57. A person who holds or who has held, office as President shall subject to the other provisions of this Constitution, be eligible for re-election to that office.

NOTES

This Article provides for the re-election of a person who holds, or who has held, office as President. Under the U. S. Constitution also "there is no legal limit to the number of terms a President may serve, though in practice no President has been elected more than twice. Washington established the tradition for only two terms by refusing to consider a third nomination, and Jefferson strengthened it by taking the same course and by expressing himself very strongly against a tenure of office longer than eight years." (*The Constitution* by Magruder and Claire). After Washington declined to serve as President of the United States for a third term, there grew up a tradition that the limit of two terms should apply to all who served as President. Those who oppose the third term on principle fear that a man who serves so long in the presidency may build up a machine that will dominate the Government and control the people. According to them popular control through elections is one of the checks to the rise of dictatorship in the country.

58. (1) No person shall be eligible for election as President unless he—

Qualifications for election as President.

(*a*) is citizen of India,

(*b*) has completed the age of thirty-five years, and

(*c*) is qualified for election as a member of the House of the People.

(3) A person shall not be eligible for election as President if he holds any office of profit under the Government of India or the Government of any State or under any local or other authority subject to the control of any of the said Governments.

Explanation.—For the purposes of this article, a person shall not be deemed to hold any office of profit by reason only that he is the President or Vice-President of the Union or the Governor or Rajpramukh or Uparajpramukh of any State or is a Minister either for the Union or for any State.

NOTES

This Article is based on Article 12 (4) 1° of the Irish Constitution (1937).

"Office of Profit": The expression "office of profit" occurs in this as well as several other Articles of our Constitution. Its precise meaning

has been the subject of discussion in several decisions under the Income-Tax Acts. An office of profit is one to which remuneration is in one way or another attached ; but an office or employment does not cease to be one of profit merely by reason of the fact that in a particular year no remuneration is paid in respect of it. *Henry* v. *Galloway*, 17 T. C. 470, 476, *per* Finlay, J. As general rule, the voluntary renunciation of a salary due to the holder of an office or employment is merely an application of the income, and the office or employment must be regarded as one of profit. Where, however, as it occasionally happens, although the holder of an office is entitled to a salary under a contract, there was *ab initio*, no intention that remuneration should ever be paid, and none is paid, the office or employment cannot be regarded as one of profit (*Reade* v. *Brearley*, 17 T. C. 687, See also *Herbert* v. *McQuade*, 4 T. C. 489 ; *Re Strong*, 1 T. C. 207 ; *Dewhurst* v. *Hunter*, 16 T. C. 605). The payment made to the former holder of an office or employment for the reason that he is no longer in the office or employment is not a profit of the office or employment. *Duncan's Executors* v. *Farmer*, 5 T. C. 417 ; *Cowan* v. *Seymour*, 7 T. C. 372 C. A. ; *Stedeford* v. *Beloe*, 16 T. C. 505.

In *Henry* v. *Galloway*, 17 T. C. 470, Finlay, J., said :—

"Now 'office of profit' is not a thing particularly easy to define ; everybody, I think, has a good idea of what it means, but certainly it is not easy of exact definition. I was referred to a case, and some assistance is to be got from it, of *Delane* v. *Hillcoat*, which is reported in 9 Barnewall & Cresswell, p. 310, but it is, I think, true to say that the exact definition is by no means easy. It is, of course, and must be an office and, no doubt, it must be an office to which remuneration is in some way or other attached. You cannot have an office of profit unless you have got the remuneration attached to it. That does not, of course, mean that in any particular year there must necessarily be any remuneration. It is, I should think, clear beyond any controversy—indeed it was not controverted—that if you take the case, the perfectly possible case, of a holder of an office remunerated by share of profits and, by reason of the fact that in difficult times there are no profits so that there is no remuneration, it is not questioned, I think, and could not be questioned, that that would, nonetheless, be an office of profit and would continue to be an office of profit even though for one year, or for more than one year, no remuneration accrued."

See also *Herbert* v. *McQuade*, (1902) 2 K. B. 631 ; *Poynting* v. *Faulkner*, (1905) 93 L. T. 367 : 5 T. C. 145, C. A.

It is immaterial that the payments are made voluntarily. There are several callings in which the income is derived from such payments. The test in such cases will be what was the character in which the recipient received it ? Was it received by virtue of his office ? *Cooper* v. *Blackiston*, 5 T. C. 347.

In *Mudd* v. *Collins*, 9 T. C. 297 an accountant who was the secretary and director of a company negotiated the sale of a branch and was granted by the company £1000 as commission for his services. He was assessed in respect of the payment. It was held that the payment was assessable to income-tax being part of the profits of his office. Rowlatt, J., observed at pp. 300, 301 as follows :

"It seems to me that if an officer is willing to do something outside the duties of his office, to do more than he is called upon to do by the terms of his bond, and his employer gives him something in that respect, that is a profit, it becomes a profit of his office which is enlarged a little so as to receive it...but where a man does a business operation...which he could not be called upon to do but it is a business operation and would have to be paid for handsomely if done by somebody else and it is said "one of our directors did it for us and he ought to have something besides his fees as director because of this, that seems to me to be paying him for his services."

See also *Shipwvy* v. *Skidmore*, 16 T. C. 748.

Another test laid down by the Court of Appeal in *Cowan* v. *Seymour*, 7 T. C. 52, is to see by whom the payment was made – by the employees or by persons who must be regarded as outsiders. Where the shareholders of a limited company voted that a portion of the balance left in the hands of the company, after discharging all the liabilities on its liquidation, was to be paid to the secretary who was working without remuneration till the company went into liquidation, *held*, that this sum was not assessable as it did not accrue in respect of an office or employment of profit because the payment cannot be a profit of the office after the office has terminated. "The fact that the office is at an end is a fact of very great weight and when you add to it that the payment is made not by the employer because it was not made and could not be made by the company which was the employer but by other persons —in this case it was the shareholders individually—the facts still more point to its not being a payment for services or a profit accruing by reason of the office." See also *Duncan's Trustees* v. *Farmer*, 5 T. C. 447.

Conditions of President's office.

59. (1) The President shall not be a member of either House of Parliament or of a House of the Legislature of any State, and if a member of either House of Parliament or of a House of the Legislature of any State be elected President, he shall be deemed to have vacated his seat in that House on the date on which he enters upon his office as President.

(2) The President shall not hold any other office of profit.

(3) The President shall be entitled without payment of rent to the use of his official residences and shall be also entitled to such emoluments, allowances and privileges as may be determined by Parliament by law and, until provision in that behalf is so made, such emoluments, allowances and privileges as are specified in the Second Schedule.

(4) The emoluments and allowances of the President shall not be diminished during his term of office.

NOTES

This article provides that the President shall not be a member of either House of Parliament. It is based on Articles 12 (6) and 12 (11) of the Irish Constitution (1937).

Sub-cl. (3) :—The President's emoluments, etc., determined by Parliament. Sub-clause (3) of this Article enacts that the question of the emoluments, allowances and privileges should be determined by legislation to be made by Parliament. But until Parliament chooses to make such legislation the President will be entitled to such emoluments, allowances and privileges as are specified in the Second Schedule.

Sub-cl. (4) :—President's salary shall not be diminished during his term of office: Sub-clause (4) provides that the President's salary shall not be diminished his term of office. This is based on Art. 12 (11) 3° of the Irish Constitution (1937).

Under the U. S. Constitution (Art. II, S. 1, cl. 7) it is provided that the emoluments, etc. of the President "shall neither be increased nor diminished during the period for which he shall have been elected." The purpose of this provision has been stated to be the prevention of the U S. Congress from influencing the President by manipulating his salary.

In the year 1869 the question arose in U. S. A. whether or not Congress can place a tax on the salary of the President. The then Attorney-General observed that "a specific tax by the United States upon the salary of an officer, to be deducted from the amount which otherwise would by law be payable as such salary, is a diminuition of the compensation to be paid to him, which, in the case of the President would be prohibited by the Constitution of the United States, if the act of Congress levying the tax were passed during the official term of the President."

Oath or affirmation by the President.

60. Every President and every person acting as President or discharging the functions of the President shall, before entering upon his office, make and subscribe in the presence of the Chief Justice of India or, in his absence, the senior-most Judge of the Supreme Court available, an oath or affirmation in the following form, that is to say—

"I, A. B., do swear in the name of God / solemnly affirm

that I will faithfully execute the office of President (or discharge the functions of the President) of India and will to the best of my ability preserve, protect and defend the constitution and the law and that I will devote

myself to the service and well-being of the people of India."

NOTES

This Article is based on Article 12(8) of the Irish Constitution (1937).

Object of the Oath :—The oath or affirmation is designed to serve as a moral obligation to preserve, protect and defend the Constitution and the Law, every part of it, whether or not he considers it wise. Here again the American Constitution is replete with precedents. Thus President Jackson felt in honour bound to defend the Constitution against nullification and President Lincoln against secession.

Procedure for impeachment of the President-

61. (1) When a President is to be impeached for violation of the Constitution, the charge shall be preferred by either House of Parliament.

(2) No such charge shall be preferred unless—

(*a*) the proposal to prefer such charge is contained in a resolution which has been moved after at least fourteen days' notice in writing signed by not less than one-fourth of the total number of members of the House has been given of their intention to move the resolution, and

(*b*) such resolution has been passed by a majority of not less than two-thirds of the total membership of the House.

(3) When a charge has been so preferred by either House of Parliament, the other House shall investigate the charge or cause the charge to be investigated and the President shall have the right to appear and to be represented at such investigation.

(4) If as a result of the investigation a resolution is passed by a majority of not less than two-thirds of the total membership of the House by which the charge was investigated or caused to be investigated, declaring that the charge preferred against the President has been sustained, such resolution shall have the effect of removing the President from his office as from the date on which the resolution is so passed.

NOTES

Impeachment :—Procedure for impeachment of the President is

prescribed by thisArticle. This Article is based on Article 12 (10) of theIrish Constitution (1937) which details the procedure to be followed in Ireland.

The expression "cause the charge to be investigated" in Art. 61 (3) is sufficiently wide to authorise the appointment of an investigating authority. This will be clear from perusal of the first Proviso to Art. 361, *post*.

Time of holding election to fill vacancy in the office of President and the term of office of person elected to fill casual vacancy.

62. (1) An election to fill a vacancy caused by the expiration of the term of office of President shall be completed before the expiration of the term.

(2) An election to fill a vacancy in the office of President occurring by reason of his death, resignation or removal, or otherwise shall be held as soon as possible after, and in no case later than six months from, the date of occurrence of the vacancy; and the person elected to fill the vacancy shall, subject to the provisions of article 56, be entitled to hold office for the full term of five years from the date on which he enters upon his office.

NOTES

This Artice is based on Article 13 (3) 3° of the Irish Constitution (1937).

The Vice-President of India.

63. There shall be a Vice-President of India.

The Vice-President to be *ex-officio* Chairman of the Council of States.

64. The Vice-President shall be *ex-officio* Chairman of the Council of States and shall not hold any other office of profit:

Provided that during any period when the Vice-President acts as President or discharges the functions of the President under article 65, he shall not perform the duties of the office of Chairman of the Council of States and shall not be entitled to any salary or allowance payable to the Chairman of the Council of States under article 97.

NOTES

Vice-President.

"Vice-Presidents are the forgotten men in American historye The office is one of very great importance, and yet it is the butt o. endless jokes. Almost the only Vice-Presidents remembered from onf

generation to another are those who succeded to the presidency." The Vice-President presides over the Council of States. and he becomes President when the office falls vacant.[1]

The Vice-President to act as President or to discharge his functions during casual vacancies in the office, or during the absence, of President.

65. (1) In the event of the occurrence of any vacancy in the office of the President by reason of his death, resignation or removal, or otherwise, the Vice-President shall act as President until the date on which a new President elected in accordance with the provisions of this Chapter to fill such vacancy enters upon his office.

(2) When the President is unable to discharge his functions owing to absence, illness or any other cause, the Vice-President shall discharge his functions until the date on which the President resumes his duties.

(3) The Vice-President shall, during, and in respect of, the period while he is so acting as, or discharging the functions of, President, have all the powers and immunities of the President and be entitled to such emoluments, allowances and privileges as may be determined by Parliament by law and, until provision in that behalf is so made, such emoluments, allowances and privileges as are specified in the Second Schedule.

NOTES

Succession to the Presidency : – This article provides that in the event of any vacancy in the office of the President by reason of his death, resignation or removal, or otherwise, his duties shall devolve on the Vice-President until the date on which a new President is elected.

Sub-clause (2) of this Article makes provision for the discharge of the President's functions when he owing to absence, illness or any other cause, is unable to act as President. The Vice-President will then act for the President till he resumes his duties. Under the constitution of the U. S. A. there is no such provision and consequently it is doubtful as to who should act when the President because of illness or absence abroad or otherwise is unable to discharge the powers and duties of his office. The question actually arose during the illness of President Wilson towards the end of his second term.

Election of Vice-President.

66. (1) The Vice-President shall be elected by the members of both Houses of Parliament assembled at a joint meeting in accordance with the system of proportional

1. Ferguson & McHenry, *The American Federal Government*, p. 285.

representation by means of the single transferable vote and the voting at such election shall be by secret ballot.

(2) The Vice-President shall not be a member of either House of Parliament or of a House of the Legislature of any State, and if a member of either House of Parliament or of a House of the Legislature of any State be elected Vice-President, he shall be deemed to have vacated his seat in that House on the date on which he enters upon his office as Vice-President.

(3) No person shall be eligible for election as Vice-President unless he—

(*a*) is a citizen of India;

(*b*) has completed the age of thirty-five years; and

(*c*) is qualified for election as a member of the Council of States.

(4) A person shall not be eligible for election as Vice-President if he holds any office of profit under the Government of India or the Government of any State or under any local or other authority subject to the control of any of the said Governments.

Explanation.—For the purposes of this article, a person shall not be deemed to hold any office of profit by reason only that he is the President or Vice-President of the Union or the Governor or Rajpramukh or Uparajpramukh of any State or is a Minister either for the Union or for any State.

NOTES

Sub Cl. (3): Qualifications for the Vice-President:—The qualifications for the Vice-President are, it will be seen, the same as for the President except for the fact that whereas the President should be one who is qualified for election as a member of the House of the people, the Vice-President should be one who is qualified for election as a member of the Council of States. This follows as a necessary implication from the qualifications for the presidency. He could not succeed to the presidency without such qualifications. Under the U. S. constitution a specific provision has been enacted at the end of the Twelfth Amendment that "no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States."

Term of office of Vice-President.

67. The Vice-President shall hold office for a term of five years from the date on which he enters upon his office :

Provided that—

(*a*) a Vice-President may, by writing under his hand addressed to the President, resign his office;

(*b*) a Vice-President may be removed from his office by a resolution of the Council of States passed by a majority of all the then members of the Council and agreed to by the House of the People; but no resolution for the purpose of this clause shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution;

(*c*) a Vice-President shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office.

Time of holding election to fill vacancy in the office of Vice-President and the term of office of person elected to fill casual vacancy.

68. (1) An election to fill a vacancy caused by the expiration of the term of office of Vice-President shall be completed before the expiration of the term.

(2) An election to fill a vacancy in the office of Vice-President occurring by reason of his death, resignation or removal, or otherwise shall be held as soon as possible after the occurrence of the vacancy, and the person elected to fill the vacancy shall, subject to the provisions of article 67, be entitled to hold office for the full term of five years from the date on which he enters upon his office.

Oath or affirmation by the Vice-President.

69. Every Vice-President shall, before entering upon his office, make and subscribe before the President, or some person appointed in that behalf by him, an oath or affirmation in the following form, that is to say—

"I, A.B., do swear in the name of God / solemnly affirm that I will bear true faith and allegiance to

the Constitution of India as by law established and that I will faithfully discharge the duty upon which I am about to enter."

Discharge of President's functions in other contingencies.

70. Parliament may make such provision as it thinks fit for the discharge of the functions of the President in any contingency not provided for in this Chapter.

Matters relating to or connected with the election of a President or Vice-President.

71. (1) All doubts and disputes arising out of or in connection with the election of a President or Vice-President shall be inquired into and decided by the Supreme Court whose decision shall be final.

(2) If the election of a person as President or Vice-President is declared void by the Supreme Court, acts done by him in the exercise and performance of the powers and duties of the office of President or Vice-President, as the case may be, on or before the date of the decision of the Supreme Court shall not be invalidated by reason of that declaration.

(3) Subject to the provisions of this Constitution, Parliament may by law regulate any matter relating to or connected with the election of a President or Vice-President.

NOTES

This Article is based on Act 12(5) of the Irish constitution (1937).

Power of President to grant pardons etc., and to suspend, remit or commute sentences in certain cases.

72. (1) The President shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence—

(*a*) in all cases where the punishment or sentence is by a Court Martial ;

(*b*) in all cases where the punishment or sentence is for an offence against any law relating to a matter to which the executive power of the Union extends ;

(*c*) in all cases where the sentence is a sentence of death.

(2) Nothing in sub-clause (*a*) of clause (1) shall affect the power conferred by law on any officer of the Armed Forces of the Union to suspend, remit or commute a sentence passed by a Court Martial.

(3) Nothing in sub-clause (*c*) of clause (1) shall affect the power to suspend, remit or commute a sentence of death exercisable by the Governor or Rajpramukh of a State under any law for the time being in force.

Reprieves and Pardons :—"A *reprieve* is a postponement in the execution of a sentence. An example of its proper use is when new evidence comes to light and the President orders postponement in the execution of a death sentence until the new evidence can properly be presented. Or if a woman condemned to death is pregnant she may receive a reprieve until the birth of the baby."[1]

A *pardon* may be defined as "an act of grace by which an offender is released from the consequences of his offence. It releases the offender and restores to him all civil rights. But it does not make amends for the past. It affords no relief for what has been suffered by his imprisonment, forced labour, or otherwise ; nor does it give compensation for what has been done or suffered; nor impose upon the government any obligation to give it."[2]

"A *pardon* may be absolute, limited or conditional. An absolute pardon restores the offender to the legal condition in which he would have been had the crime not been committed. A limited pardon relieves the offender of some but not all the consequences of guilt. A conditional pardon, if accepted, relieves the offender from punishment on his compliance with the condition. The condition may be such as leaving the country, abstinence from alcoholic liquors, conducting one's self in a law-abiding manner, or refusing to capitalize one's notoriety by posing for moving pictures or appearing on the vaudeville stage."[3]

It has been held that the *right to commute* sentences is included in the constitutional power of the President to pardon. Commuting a sentence means changing it to a milder punishment, *e. g.*, to commute a death sentence to life imprisonment. It has been held in America that the President may exercise his right to commute a sentence even without the consent of the prisoner.

The effect of a pardon was described in *Ex parte Garland* (1866) 4 Wall 333, at p. 380 as follows :—"A pardon reaches both the punishment prescribed for the offence and the guilt of the offender.....It releases the punishment and blots out of existence the guilt, so that in the eye of the law the offender is as innocent as if he had never committed the offence.... It makes him, as it were, a new man and gives him new credit and capacity."

1 The constitution by Magruder and Claire, pp. 159, 160.
2. *Knote* v. *United States* (1877) 95 U. S. 153.
3. Magruder and Claire, *The Constitution*, p. 160.

A pardon may, in general, be granted either before or after conviction.[1] The right of pardon is, moreover, confined to offences of a public nature where the government is prosecutor and has some vested interest either in fact or by implication[2]; and where any right or benefit is vested in a subject by statute or otherwise, the Government, by a pardon, cannot affect it or take it away.[3]

Pardons and Amnesties distinguished :—

In *Burdick* v. *United States*,[4] the U. S. Supreme Court observed :

"It is a little service to assert or deny an analogy between amnesty and pardon. Mr. Justice Field in *Knote* v. *United States*[5] said that 'the distinction between them is one rather of philological interest than of legal importance'. This is so as to their ultimate effect, but there are incidental differences of importance. They are of different character and have different purposes. The one overlooks offence ; the other remits punishment. The first is usually addressed to crimes against the sovereignty of the State, to political offences, forgiveness being deemed more expedient for the public welfare than prosecution and punishment. The second condones infractions of the peace of the State. Amnesty is usually general, addressed to classes or even communities,——a legislative act, or under legislation, constitutional or statutory——the act of the supreme magistrate. There may or may not be distinct acts of acceptance. If other rights are dependent upon and are asserted, there is affirmative evidence of acceptance. The examples are afforded in *United States* v. *Klein*, 13 Wall 128, *Armstrongs' Foundry*, 6 Wall. 766, *Carlisle* v. *United* States, 16 Wall. 147."

See also *Knote* v. *United States*, supra. If there be no other rights, its only purpose is to stay the movement of the law. Its function is exercised when it overlooks the offence and the offender, leaving both in oblivion."

Extent of executive power of the Union.

73. (1) Subject to the provisions of this Constitution, the executive power of the Union shall extend—

(*a*) to the matters with respect to which Parliament has power to make laws ; and

(*b*) to the exercise of such rights, authority and jurisdiction as are exercisable by the Govern-

1. 3 Co. Inst. 233 ; *R.* v. *Boyes* (1861) 1 B and S 311. If granted before conviction it must be specifically pleaded (*ibid*).

2. 3 Co. Inst. 235—240.

3. *Biggin's Case* (1599) 5 Co. Rep. 50 *a*, *b*. The maxim of law applicable to such cases being *Non potest rex gratiam facere cum injuria et damno aliorum* (Co. Inst. 236).

4. 236 U. S. 79.

5. 95 U S. 149.

ment of India by virtue of any treaty or agreement :

Provided that the executive power referred to in Sub-clause (*a*) shall not, save as expressly provided in this Constitution or in any law made by Parliament, extend in any State specified in Part A or Part B of the First Schedule to matters with respect to which the Legislature of the State has also power to make laws.

(2) Until otherwise provided by Parliament, a State and any officer or authority of a State may, notwithstanding anything in this article, continue to exercise in matters with respect to which Parliament has power to make laws for that State such executive power or functions as the State or officer or authority thereof could exercise immediately before the commencement of this Constitution.

NOTES

This Article is based on S. 8 of the Government of India Act, 1935.

Scope of Executive Power :—*Sub-cl,* (1) (*a*) enacts that the executive power of the Union shall extend to the matters with respect to which Parliament has power to make laws. In *Bonanza Creek Gold Mining Co.* v. *Rex.* (1916) I A. C. 566, at p. 580, Lord Haldane speaking about the Canadian Constitution observed : "Executive power is, in many situations that arise under the statutory constitution of Canada, confined by implication in the grant of legislative power."

Proviso :—*Union Executive power in the States specified in Part A or Part B of First Schedule* ;—For instance, *see* Art. 250, *post,* empowering Parliament to legislate on any matter in the State list in an emergency ; Art. 252, *post,* empowering Parliament to legislate by consent ; Art. 253, empowering Parliament to legislate for giving effect to international agreements.

Council of Ministers

74. (1) There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President in the exercise of his functions.

Council of Ministers to aid and advise President.

(2) The question whether any, and if so what, advice was tendered by Ministers to the President shall not be inquired into in any court.

NOTES

Sub-cl. (1) of this Article is based upon S. 9 of the Government

of India Act, 1935. Sub. cl. (2) is based on S. 10 (4) of the Government of India Act, 1935.

"Council of Ministers". The smaller body of ministers who form the advisory council of the President with the Prime Minister at its head and by whom the general policy of the executive, as also of the more important legislative measures introduded by the Government in Parliament, is decided, is known as the Council of Ministers whose duty is to aid and to advise the President in the exercise of his functions. This corresponds to the British Cabinet.

The Indian Constitution has in this respect adopted the British cabinet system, and so in the conduct of Government business, though the matter will be regulated by rules to be made by the President in pursuance of the authority conferred on him by Article 77 (3), *post*, the British cabinet system may serve as a helpful guide. The main features of the system in so far as they may be relevant are given below.

British Cabinet System.

Its General Features :—In England, the conduct of general executive business as well as the superintendence and control of the executive branches of the Government and of the various departments of public administration is vested in the Cabinet, which is drawn from the party commanding a majority in the House of Commons. The composition of the House therefore determines the nature of the Government. The Prime Minister is chosen by the King. Upon the dismissal or resignation of an existing ministry under the recognised constitutional practice the King summons to his presence the person whom he may consider most fitted for the purpose, and requests him to undertake the task of forming the new ministry. "Though nominally the sovereign is unfettered in the choice of his ministers, and may summon whom he pleases to fill the office of the Prime Minister, yet, owing to the dependence of the executive upon the House of Commons, the choice of the sovereign except in unusual cases, is, in practice, restricted to one or other of the persons recognised by Parliament as the leaders of the party which commands a majority in the House of Commons.[1] The other members of the Government are chosen by the Prime Minister. This does not mean that the King has no voice in the choice of Ministers. But as against the King the Prime Minister has the last word in choosing his team which he submits for approval to the King. Though the right of choice of his colleagues rests with the Prime Minister, yet as he has to secure a composite cabinet, consultations with other members of his party are inevitable. All the members of the Government are not members of the cabinet. While choosing his colleagues the Prime Minister decides who shall be in the cabinet. Whatever the number of persons composing the cabinet, the cabinet as a whole is collectively, that is jointly and severally, responsible to the Parliament. A minister

1, There have been cases in British Parliamentary history, where the person to be selected is not obvious, as where there are two or more leading members of the same party, one of whom would not work under the other, (*e. g.*, Lord Palmerston and Lord John Russel in 1859, when Lord Granville was selected, though on his failure to form a ministry the post of premier was eventually filled by Lord Palmerston.

who is not prepared to defend a cabinet decision is bound to resign. Sometimes questions are left as "open questions" and on such questions a minister may vote or speak as he pleases. The King is excluded from cabinet meetings. When the retiring Prime Minister goes out of office the whole cabinet is dissolved. But even where it is clear that the Ministry do not command the confidence of the House of Commons, it is customary for the latter to extend such support by granting supplies, or otherwise, as may be necessary, to enable the executive Government of the country to be carried on till the verdict of the electorate can be taken upon a dissolution or until a new Ministry can be formed which commands the requisite majority. When the Government is in a minority, dissolution or resignation is the recognised procedure, but in the case of dissolution the House of Commons must make itself a party to the transaction by accelerating proceedings and concurring in temporary measures, so as not to render that course inconvenient. The rules which regulate the formation of the cabinet, and its relation when formed, with the Crown, Parliament, and the Prime Minister, depend upon the conventional usages which have sprung into existence since 1688, and which have now for the most part become settled constitutional principles.

Adverting to the need for modifying the cabinet system in times of war or financial crisis, Dr. Jennings writes :—

"The experience of the war teaches several lessons. First, the ordinary Cabinet system provides insufficient control where day-to-day decisions of outstanding importance have to be taken. The Cabinet system assumes that the main lines of departmental policy can be laid down well in advance, so that the departments can take consequential decisions without constant reference to the Cabinet. Where the pace of national activity has to be speeded up, as in war or in time of financial crisis, the Cabinet system has to be modified. Secondly, the experience of the War Cabinet shows that, normally, the Cabinet must contain the chief departmental ministers. The conduct of war implies the subordination of governmental activity to the attainment of a single objective. As soon as the demands of war became less insistent and the demands of peace became obvious, there arose complaints that departmental ministers were deprived of an effective voice in the determination of questions that effected their departments. Evidence to this effect was given before the Machinery of Government Committee in 1918. Also, the matter for determination became wider in their variety and hardly less wide in their scope. Conflicts between the Prime Minister and the Foreign Secretary (who was not in the War Cabinet) became common. A cabinet of departmental ministers was necessary to control the whole." {Dr. W. Ivor Jennings, *Cabinet Government*, (1947) p. 239.}

The following remarks of Dr. Jennings about the British Cabinet will be found instructive :—

"The Cabinet is the core of the British constitutional system. It is the supreme directing authority. It integrates what would otherwise be a heterogeneous collection of authorities exercising a vast variety of functions. It provides unity to the British system of government. If, therefore, a Constituent Assembly were to set out in a written document the present British Constitution, as it is actually operated, the Cabinet

would be provided for in a prominent place. In the Cabinet, and still more, out of it, the most important person is the Prime Minister. It is he who is primarily concerned with the formation of a Cabinet, with the subjects which the Cabinet discusses, with the relations between the King and the Cabinet and between the Cabinet and the Parliament, and with the co-ordination of the machinery of the government subject to the control of the Cabinet. He, too, would be given a prominent place in a written Coustitution." {Dr. W. Ivor Jennings, *Cabinet Government*, (1947) p.1}

(1) **Functions of the Cabinet** :—"In all ordinary matters of administration departmental ministers take full responsibility, subject to the control of the Treasury in matters of expenditure. Questions of policy raising important principles or involving ministerial differences, and questions which are likely to evoke serious debate in Parliament are, in practice, submitted either to the Cabinet or to the Prime Minister ; and the Prime Minister may make any subject a matter for discussion by the Cabinet.

(2) **Proceedings at meetings** :—The deliberations of the Cabinet take place only in the presence of members of the Cabinet and of the Secretary, except where other ministers are summoned to assist during the discussion of questions with which they are concerned.

At meetings of the Cabinet members are on an equal footing, though the views of the Prime Minister are entitled to the greatest weight. Votes are very rare.

In case of an irreconcilable difference of opinion, the Prime Minister may require the resignation of any of his colleagues, or, by himself resigning, cause a general dissolution of the ministry.

(3) **Cabinet Secretariat** :—The Cabinet is served by a secretariat under the secretary to the Cabinet. (The present secretary to the Cabinet also holds the offices of clerk of the Privy Council and secretary to the Committee of Imperial Defence.) The deputy-secretary acts for the secretary in the latter's absence, and is in addition secretary to many committees of the Cabinet. The only other administrative officer whose duties are devoted exclusively to the work of the Cabinet is a Treasury principal, who acts as liaison officer with the Treasury and assists the deputy-secretary with Cabinet Committees. The expenses of the secretariat are borne upon the vote for the Treasury and subordinate departments.

Subject to the authority of the Prime Minister, it is the duty of the Cabinet secretariat to receive and circulate memoranda and other documents prepared for the Cabinet and its committees, and to record and circulate the conclusions reached at meetings of those bodies. As the personnel of the secretariat consists of permanent Civil Servants, and is not changed on a change of Government, full continuity of practice is secured.

(4) **Preparation of business** :—It is understood that the procedure

regarding the summoning of Cabinet meetings and the preparation of business is as follows :—

The Prime Minister instructs the secretary regarding the subjects to be placed on the agenda paper for the Cabinet. Ministers are given as long notice as possible of the subjects likely to be discussed and the secretary issues to members of the Cabinet a weekly list of questions awaiting consideration. Departments which have memoranda for consideration by the Cabinet must send them to the secretariat for circulation at least five days before the meeting of the Cabinet at which they are to be considered, but this rule may be waived in cases of special urgency with the Prime Minister's sanction.

(5) **Financial issues** :—In order to assist in maintaining Treasury control in financial matters, each successive Government on taking office has agreed that—save in very exceptional circumstances, and then only with the express consent of the Prime Minister—no question raising financial issues may be placed on the agenda for the Cabinet and no memorandum or other document involving financial considerations may be circulated to the Cabinet, or to a Cabinet committee, without the prior approval of the Chancellor of the Exchequer.

The agenda paper specifies the subjects to be discussed and the memoranda issued in connection with each subject. It is, as a rule, circulated to every Cabinet minister two or three days before the Cabinet meeting to which it relates, together with a summons to the meeting in the form of an announcement that a meeting of His Majesty's servants will be held, at which the minister addressed is desired to attend.

All Cabinet ministers are expected to attend every meeting and to supply the Prime Minister with their reasons in the event of their being unable to attend. No public announcement is made in advance when a meeting is to be held.

(6) **Minutes of Cabinet meetings** :—The secretary, or, in his absence, the deputy-secretary, attends meetings of the Cabinet for the purpose of recording the conclusions.

It is an instruction to the secretary, in drafting Cabinet minutes, to avoid any reference to opinions expressed by any individual minister, and to limit the minutes as narrowly as possible to the actual decision reached.

It is understood that the draft minutes of the Cabinet, after approval by the Prime Minister, are transmitted to His Majesty and to all Cabinet ministers. Subject to the authority of the Prime Minister, extracts from minutes are also sent to any ministers concerned who are not members of the Cabinet.

At this point the responsibility of the Cabinet secretariat in regard to Cabinet conclusions ceases. It is the duty of individual ministers to make such communication as they may deem necessary to their respective departments in regard to the conclusions of the Cabinet.

Complete sets of Cabinet documents are preserved by the secretariat for purposes of record. The documents of an administration are treated by the Cabinet secretariat as the special property of that administration, and the rule is strictly observed that the Cabinet minutes of one Government are not made available for the inspection or use of a subsequent Government.

(7) **Committees of the Cabinet :**—The Cabinet is assisted by both standing and *ad hoc* committees. The composition and terms of reference of the latter are settled by the Cabinet, and the Cabinet secretariat provides the secretary, the procedure and arrangements being closely modelled on those of the Cabinet itself. No particulars respecting such committees are ever published.

(*a*) **Home Affairs Committee :**--The Home Affairs Committee is primarily concerned with the examination from the legal point of view of draft Government Bills.

The Committee of Imperial Defence and the Economic Advisory Council, though they are not, strictly speaking, Cabinet committees, form part of the general Cabinet organisation.

(*b*) **Committee of Imperial Defence :** –The Committee of Imperial Defence is an advisory and consultative body concerned with the co-ordination of defence policy and matters related thereto. It has no executive powers. The Prime Minister is chairman of the Committee and summons other ministers, officials and expert advisers, having regard to the nature of the subjects to be discussed.

In practice the following are usually invited to attend its meetings :-

The Lord President of the Council, the Chancellor of the Exchequer, the Secretary of State for Foreign Affairs, the Secretary of State for Dominion Affairs, the Secretary of State for the Colonies, the Secretary of State for India, the First Lord of the Admiralty, the Secretary of State for War, the Secretary of State for Air, the First Sea Lord and Chief of Naval Staff, the Chief of the Imperial General Staff, the Chief of the Air Staff, the Permanent Secretary to the Treasury as Head of the Civil Service, and the Permanent Under-Secretary of State for Foreign Affairs.

The facilities of the Committee are also available to the Dominions and India.

The Committee does not interfere with administration. Thus it does not deal with the details of estimates, which remain in the hands of the ministers in charge of departments and of the Chancellor of the Exchequer.

The Committee is assisted by a permanent staff, including a secretary, and four assistant secretaries, who are officers of the Army, Navy, Air Force and Indian Army respectively. A record is kept of its proceedings.

The Committee works largely by sub-committees.

(c) **Economic Advisory Council** :—The Economic Advisory Council likewise has no executive or administrative powers, but exists to advise the Government in economic matters, and to make continuous study of developments in trade and industry and in the use of national and imperial resources, of the effect of legislation and fiscal policy at home and abroad, and of all aspects of national, imperial and international economy with a bearing on the prosperity of the country. The Council was constituted in January, 1930, and took over and expanded the functions of the Committee of Civil Research, a Standing Committee of the Cabinet which had been established in 1925. The Council, like its predecessor, reports to the Cabinet.

The members of the Council are the Prime Minister (chairman), the Chancellor of the Exchequer, the President of the Board of Trade, the Minister of Agriculture and Fisheries, such other ministers as the Prime Minister may from time to time summon, and such other persons as may be chosen by the Prime Minister in virtue of their special knowledge and experience in industry and economics.

The Council has two joint secretaries and several assistants, some of whom are economists. The Council works largely by committees. (Halsbury's Laws of England, Hailsham edn. Vol. VI, pp. 630-635).

"Aid and Advice" :—The Council of Ministers are to aid and advise the President. The advice tendered to the President by the cabinet ought to be unanimous. In fact unanimity of advice and collective responsibility on the part of the cabinet are correlative.[1] As this provision is closely modelled on the British Parliamentary system, the following remarks about the advice tendered to the Crown by the British Cabinet may be found instructive. "The advice tendered to the Crown by the cabinet ought to be unanimous[2], and it is unconstitutional for the Sovereign to inquire into the lines of division amongst members of the Government. If the Crown refuses to accept the advice so given, it is recognised that the Ministry must either revise their decision or resign.

"But until the resignation or dismissal of an existing ministry and the formation of a new one, it is clearly unconstitutional for the Crown to seek advice elsewhere. Nor is it in general constitutional for the Sovereign to express his political views to any persons except his ministers, though he may listen to the views of others without commenting thereon, or act as a mediator in heated political quarrels.

1. per Lord North, Parliamentary History (1784), Vol. XXIV, p. 201.

2. There is one exception in recent British Parliamentary history to the above mentioned rule in favour of unanimity. Thus, in January and February, 1932, Viscount Snowden, Sir Herbert Samuel, Sir Archibald Sinclair, and Sir Donald Maclean, together with other ministers who were not members of the Cabinet, spoke and voted in Parliament against the Tariff Bill introduced by the Government of which they were members and yet retained their offices. It was, however, understood at the time of their appointment and during the preceding election that they were opposed in principal to protection. The procedure adopted, though it may appear irregular, was obviously more convenient than the unexceptionable alternative of two successive reconstructions of the Government; and it serves as a reminder that all the conventions which regulate cabinet responsibility are based on convenience and must therefore give way where a still greater convenience requires it. (*The Times* for Jan., 1932).

"The Prime Minister acts as the medium of communication between the cabinet and the Crown. Individual ministers have, however, the right of access to the Sovereign at all times on matters connected with their own departments ; but important communications or correspondences should, it is said, be submitted to the Prime Minister, either beforehand or immediately afterwards.

"The ministry have a constitutional right at all times to tender such advice to the Sovereign as they may think fit, and any attempt on the part of the latter to limit the scope or character of that advice, or to exact pledges as to future conduct, either on the formation of a ministry or by threats of dismissal, is clearly recognised by the House of Commons as unconstitutional. And in the case of the refusal by a ministry to comply with demands of this nature on the part of the Crown, and consequent dismissal or resignation, the new ministry would, it is apprehended, be held responsible by the Parliament for the circumstances which led to the dissolution of the previous ministry." (Halsbury's *Laws of England*, Hailsham ed., Vol. VI, pp. 636-637).

Sub Clause (2). This is based on S. 10 (4) of the Government of India Act, 1935. According sub-cl. (1), the duty of the Council of Ministers is to "aid and advise" the President and as the validity of anything done by the President shall not be impeached in any court on the ground that it was done otherwise than in accordance with the constitution, it necessarily follows that the advice tendered by a minister cannot be inquired into in any court.

Other provisions as to Ministers.

75. (1) The Prime Minister shall be appointed by the President and the other Ministers shall be appointed by the President on the advice of the Prime Minister.

(2) The Ministers shall hold office during the pleasure of the President.

(3) The Council of Ministers shall be collectively responsible to the House of the People.

(4) Before a Minister enters upon his office, the President shall administer to him the oaths of office and of secrecy according to the forms set out for the purpose in the Third Schedule.

(5) A Minister who for any period of six consecutive months is not a member of either House of Parliament shall at the expiration of that period cease to be a Minister.

(6) The salaries and allowances of Ministers shall be such as Parliament may from time to time by law determine

and, until Parliament so determines, shall be as specified in the Second Schedule.

NOTES

This Article is based on S. 10 of the Government of India Act, 1935 and Article 28(1) of the Irish Constitution (1937).

Sub-cl. (2) : Tenure of office of Ministers:-All members of the ministry hold their offices at the pleasure of the President, and are liable for dismissal without assigning reasons. Under the recognised usage in Great Britain, the whole ministry retires from office collectively with the cabinet upon a change of Government, when the various offices are placed at the disposal of the new Prime Minister (Todd., *Parliamentary Government*, Vol II., p. 164.) It is also customary for all the offices to be placed at the disposal of the Prime Minister after an election in which the Government are successful, in order to facilitate a reconstruction of the Ministry.

"**Dissolution of the Ministry**": -Under the British Parliamentary practice, it is open to the Sovereign to "dissolve the ministry at any time by dismissal ; but the exercise of this power in order to assert the personal wishes of the Sovereign in opposition to the wishes of Parliament, and ultimately of the electorate, is clearly recognised as unconstitutional ; though in cases where the ministry still retains the confidence of the House of Commons, but the Crown has reason to believe that the latter no longer represents the sense of the electorate, the dismissal of the ministry, or the dissolution of Parliament, would be constitutional ; and cases of emergency might conceivably arise where, through the unfitness or incapacity of the ministry, the exercise of the power of dismissal would be constitutional, justifiable and proper, in order to prevent the adoption of some course of action ruinous to the nation.

"It is, however, a clearly recognised constitutional principle. that, though in dismissing his councillors the King may seem to be acting independently and without advice, there is no act of the Crown relating to public government for which some person is not responsible to Parliament, and that in all cases the incoming ministry are constructively responsible for the dismissal of their predecessors.

"Under the modern usage, though nominally dismissble by the Crown, the ministry are in reality dependent upon the goodwill of the House of Commons for their continuance in office, and the exercise of the power of dismissal is rarely required. An adverse vote in the House of Commons on a question of confidence may be said to be invariably followed by resignation of the ministry or an appeal to the electorate by dissolution.

"The continuance of the ministry in office is also dependent ultimately upon the goodwill of the electorate, and where upon a dissolution the latter declares itself against the government by returning a majority opposed to its policy, it is usual for the ministry either to resign

immediately or to await an adverse vote in the new Parliament. In some instances, however, the resignation has been deferred until Parliament has met and a vote of want of confidence been passed." (Halsbury's *Laws of England*, Hailsham ed, Vol. VI, pp. 640—641).

Sub-Cl. (3) : Collective responsibility :—This means that the members of the Ministry are jointly and severally responsible to the House of the people for every legislative and executive act of the government, as also for every legislative measure introduced in Parliament with the authority of Government. The responsibility of the ministry individually and collectively is secured by the fact that the ministers are in effect dismissible at the pleasure of the House of the People through their inability to carry on the Government without its support. There is precedent for this in British Parliamentary history. Thus, in the reign of Queen Anne the ministry did not stand and fall together. The first instance of resignation by the Premier in consequence of an adverse vote in Parliament was that of Walpole in 1742, but he was not accompanied by the whole of his colleagues[1]. In 1782 the whole ministry retired with Lord North except Lord Thurlow[2]. Since then except in a few cases where individual ministers have remained in office through several administrations, the ministry has retired collectively.

The principle of collective responsibility is derived from the British Constitution. The peculiar contribution of the British Constitution to political service is not so much representative government which is an obvious solution, as responsible government. Added to representative government it means that government is carried on by persons who are responsible to their representatives in the Legislature, the House of Commons. ("The responsibility of ministers to the House of Commons is no fiction, though it is not so simple as it sounds. All decisions of any consequence are taken by Ministers, either as such or as members of the Cabinet. All decisions taken by civil servants are taken on behalf of ministers and under their control.) If the Minister chooses, as in the large departments inevitably he must, to leave decision to civil servants, then he must take the political consequences of any defect of administration, any injustice to an individual, or any policy disapproved by the House of Commons. He cannot defend himself by blaming the civil servant. If the civil servant could be criticised he would require the means for defending himself. If the Minister could blame the civil servant, then the civil servant would require the power to blame the Minister. In other words, the civil servant would become a politician. The fundamental principle of our system of administration is, however, that the civil service should be impartial and, as far as may be possible, anonymous. Complications arise from the fact that all decisions of real political importance are taken not by Ministers as such but by the Cabinet. In normal times, the Cabinet contains all the heads of important Departments. The Minister at the head of the Department is, so to speak, the representative of the Cabinet in relation to matters within the jurisdiction of his Department. Consequently, it is never very clear whether the Minister is speaking as

1. Mahon, *History of England*, Vol. III, pp. 101, 112.
2. Knight, *History of England*, Vol. VI, p. 453.

head of the Department or as the spokesman of the Cabinet. The House is not informed of the distribution of responsibility between the Minister and the Cabinet. Often the question is one which in practice is decided by the House of Commons itself. The importance of a question is in large degree a parliamentary matter. If unemployment insurance is refused to Mr. Smith of Rotherburn, it is reasonably certain that Minister of Labour knows nothing about it. If, however, the Honourable Minister for Rotherburn takes up the matter, it is at once raised to Ministerial rank and the Minister has to work into the matter. If the whole opposition takes up the question because it appears to be a gross example of Ministerial neglect or political discrimination, then it is almost certain that the Cabinet will have to discuss the matter."

Adverting to collective responsibility, Mr. Gladstone observed: "The nicest of all adjustments involved in the working of the British Government is that which determines without formally defining the internal relations of the Cabinet. On the one hand, while each Minister is an adviser of the Crown the Cabinet is a unity, and none of its members can advise as an individual without or in opposition, actual or presumed, to his colleagues. On the other hand, the business of the State is a hundred-fold too great in volume to allow of the actual passing of the whole under the view of the collected Ministry. It is, therefore, a prime office of discretion for each Minister to settle what are the departmental acts in which he can presume the concurrence of his colleagues, and in what more delicate or weighty or peculiar cases he must positively ascertain it."

Irish Constitution:—The Convention of Collective Responsibility, which is the essence of parliamentary government, becomes, under the Irish Constitution, positive law by the following provision: "The Executive Council shall be collectively responsible for all matters concering the Departments of State administered by members of the Executive Council." (cf. Irish Constitution (1937) Art. 54.) The framers of the Irish Constitution, realising that Ministers under that constitution are actually chosen by Dail Eirean and that such Ministers are the servants and not the opponents of Dail Eirean, of which they must be members, have wisely provided that the appointment of a member of Dail Eirean, to be a Minister shall not entail on him any obligation to resign his seat or to submit himself for re-election. (*Ibid*, Art. 58). This provision is of the utmost importance as an object-lesson of the attainment of the ideal of Cabinet Government, an Executive which is part and parcel of the Legislature in sympathy and in spirit and not estranged therefrom. The framres of the Irish Constitution have improved in this respect on the British Constitution and have further provided that Ministers should be members of Dail Eirean, whereas under the British Constitution members of the House of Peers are freely eligible for appointments as Ministers of the Crown. This provision in the Irish Constitution is, as Mr. MacNeill has pointed out, a very wise one. It has two advantages. First, it puts a check on the President and secondly, it puts a further check upon the Government and upon the individual Ministers in that they assume political responsibility for anything done in their name. In the Irish Constitution the principle of responsibility of the Executive Council to Dail Eirean is

twice expressly affirmed (cf. Articles 51 and 54). The framers of theIrish Constitution endeavoured to break away from the traditional conventions of the British system, their object being to strengthen the authority of the legislature as against that of the executive. This is clearly seen in the system of selection of what is known as "Extern Ministers" which was definitely vested by the Constitution in a committee of all parties. But in actual practice, these Ministers become the nominees of the President and the decision as to which Ministers are to be included in the Executive Council and which are to hold merely "extern" rank is expressly vested in the President by the terms of the Minister and Secretaries Act. (S. 3). So under the Irish Constitution the President becomes, as it were, the embodiment of the collective responsibility of he Cabi net. Only when he ceases to retain the support of a majority in the Dail that the Cabinet as a whole is required to resign (Art. 53). On the contrary, he has not, under the terms of the constitution, the power to advise a dissolution on his sole authority, which the modern practice of the British Constitution attributes to the Prime Minister.

Thus the Executive Council are the real rulers of the State and they are collectively responsible to the House of the People. They have their own discussions in private, but when these discussions end and a decision is taken they become responsible for the decision as a single unit.

Ministerial responsibility in effect means only that a politician must be able to answer in the House of the people for every act of administration. Emphasis on this aspect is necessary because as Mr. Jennings has pointed out, "ministerial responsibility has bacome a slogan which is regarded as being a reason in itself and the reason behind it has been forgotten. (Jennings on the British Constitution, p. 148.)

"For all that passes in Cabinet (said Lord Salisbury in 1878) each member of it who does not resign is absolutely and irretrievably responsible, and has no right afterwards to say that he agreed in one case to a compromise, while in another he was persuaded by his colleagues... It is only on the principle that absolute responsibility is undertaken by every member of the Cabinet who, after a decision is arrived at, remains a member of it, that the joint responsibility of Ministers to Parliament can be upheld, and one of the most essential principles of parliamentary responsibility established.) A minister who is not prepared to defend a Cabinet decision must, therefore, resign. Of such resignations there are many examples. Lord Palmerston resigned in 1853 because he could not agree to Lord John Russell's Reform Bill, though he afterwards withdrew his resignation. Lord John Russell resigned in 1855 because he agreed with Roebuck's motion and was not prepared to join with the Cabinet in resisting it. Mr. Gladstone and other Peelites resigned in the same year because they would not accept Roebuck's adjourned motion. General Peel and three others resigned in 1867 because they could not support Disrael's Reform Bill. Sir Herbert Samuel and other Liberals, and Viscount Snowden, resigned in 1932 because they could not support the Ottawa Agreements." (Dr. Jennings, *Cabinet Government*, (1947) p. 217).

Sub-cl. (5) :—*See* S, 64 of the Constitution of Commonwealth of

Australia and S. 14 of the South Africa Constitution which contain similar provisions; though they prescribe a period of three months instead of six which is mentioned in the present Article.

Attorney-General for India.

76. (1) The President shall appoint a person who is qualified to be appointed a Judge of the Supreme Court to be Attorney-General for India.

(2) It shall be the duty of the Attorney-General to give advice to the Government of India upon such legal matters, and to perform such other duties of a legal character, as may from time to time be referred or assigned to him by the President, and to discharge the functions conferred on him by or under this Constitution or any other law for the time being in force.

(3) In the performance of his duties the Attorney-General shall have right of audience in all courts in the territory of India.

(4) The Attorney-General shall hold office during the pleasure of the President, and shall receive such remuneration as the President may determine.

NOTES

This Article is based on S. 16 of the Government of India Act, 1935.

Attorney-General for India :—The qualifications of the Attorney-General which are the same as those of a Judge of the Supreme Court are mentioned in Art. 124 (3), which reads as follows :—

"A person shall not be qualified for the appointment as a Judge of the Supreme Court unless he is a citizen of India and—

(*a*) has been for at least five years a Judge of a High Court or two or more such courts in succession ; or

(*b*) has been for at least ten years an advocate of a High Court or of two or more such courts in succession ; or

(*c*) is, in the opinion of the President, a distinguished jurist.

Explanation I.—In this clause "High Court" means a High Court which exercises, or which at any time before the commencement of the Constitution exercised, jurisdiction in any part of the territory of India.

Explanation II.—In computing for the purpose of this clause the period during which a person has been an advocate, any period during

which a person has held judicial office not inferior to that of a district Judge after he became an advocate shall be included."

The President is represented by his attorney who bears the title of Attorney-General. The Attorney-General is primarily an officer of the Government of India, and in that sense only an officer of the public.[1] In view of his close resemblance to ths Attorney-General of England we may now briefly notice the status and powers of the Attorney-General of England.

In England, the "Attorney-General is the head of the Bar, and has precedence over all King's counsel. Generally speaking, however, he has no greater legal rights than other members of the Bar, in so far that he or any person appointed to act for him must conform to the rules of the court in which the proceedings in which he is engaged takes place, the courts exercising over him the same authority which they exercise over every other suitor or his advocate[1]. He would not be permitted to prosecute any proceeding which was merely vexatious, or which had no legal object[2]; and where the representatives of the Crown claim to be on a different footing from the subject as regards procedure they must clearly establish their claim[3]. The opinion of the Attorney-General is, in the eyes of the Court entitled to no more authority than any other member of the Bar[4]. No general right of reply on the part of the Attorney-General is recognised by the Courts.

"Admissions by the Attorney-General bind the Crown as to matters of fact, but not as to matters of law.

"It appears that the Court has no power to compel the Attorney-General to be examined as a witness.[1]

"The Attorney-General represents the Crown in the courts in all matters in which rights of a public character come into question, and is, therefore, the representative and legal adviser of all public departments which have capacity to sue and be sued, as well as of departments which have no such capacity. He is a necessary party to the assertion of public rights even where the moving party is a private individual; though it is otherwise, it seems where a public body (such as the London County Council) are intrusted by statute into the control and management of matters relating to the public welfare. The Attorney-General as representing the Crown, can be sued in equity for a declaration of right." (Halsbury's Laws of England, Hailsham Edn., Vol. VI, pp. 666-668).

Sub-cl. (2) of this Article provides that it is the duty of the Attorney-General for India to tender advice to the Government of India

1. *Attorney-General* v. *Brown* (1818) 1 Swan 265, 294.
2. *e. g* the Attorney-General has no right to usurp the functions of the Judge in directing the Jury as to the law.
3. *R.* v. *Prosser* (1848) 11 Beav. 306.
4. *Attorney-General* v. *Crossman* (1866) L. R. Exch, 381, 386.
5. *R* v. *Hunt*, (1820) 1 State Tr. (N. S.) 171, 315.
6. *R* v. *Horne* (1778) 20 State Tr. 651, and p. 740.

upon "such legal matters, and to perform such other duties of a legal character, as may from time to time be referred or assigned to him by the President, and to discharge the functions conferred on him by or under this constitution or any other law for the time being in force." Moreover, he has a right of audience in all courts in the territory of India. He is also entitled to speak and otherwise participate in the proceedings of either House of Parliament, any joint sitting of the Houses, and any committee of Parliament of which he may be named a member, but he cannot vote.

Conduct of Government Business

Conduct of business of the Government of India.

77. (1) All executive action of the Government of India shall be expressed to be taken in the name of the President.

(2) Orders and other instruments made and executed in the name of the President shall be authenticated in such manner as may be specified in rules to be made by the President, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the President.

(3) The President shall make rules for the more convenient transaction of the business of the Government of India, and for the allocation among Ministers of the said business.

NOTES

This Article is based on S. 17 of the Government of India Act, 1935.

Conduct of business of the Government of India.—This is a corollary to Art. 53, *ante*, which vests the executive power of the Union in the President.

Sub cl. (2) :—This sub-clause in effect reproduces S. 17 (2) of the Government of India Act, 1935.

Where an order or notification is authenticated in accordance with this sub-clause, it cannot be called in question on the ground that it is not an order or notification issued by the President. (*See* the following cases decided under the corresponding provision of the old Government of India Act :—*Md. Raza* v. *Sadasiva Rao*, 49 Mad. 49 ; *Corporation of Madras* v. *Ekambara*, 53 M. L. J. 603 ; *Anant Kumar Chakrawarti* v. *Emperor*, 62 Cal. 1041.

Sub cl. (3) :—This sub-clause is based on S. 17 (3) of the Government of India Act, 1935.

78. It shall be the duty of the Prime Minister—

Duties of Prime Minister as respects the furnishing of information to the President, etc.

(*a*) to communicate to the President all decisions of the Council of Ministers relating to the administration of the affairs of the Union and proposals for legislation;

(*b*) to furnish such information relating to the administration of the affairs of the Union and proposals for legislation as the President may call for; and

(*c*) if the President so requires, to submit for the consideration of the Council of Ministers any matter on which a decision has been taken by a Minister but which has not been considered by the Council.

CHAPTER II.—PARLIAMENT

General

79. There shall be a Parliament for the Union which shall consist of the Parliament and two Houses to be known respectively as the Council of States and the House of the People.

Constitution of Parliament.

NOTES

This Article is based on S. 1 of Chapter I of the Australian Constitution Act.

80. (1) The Council of States shall consist of—

Composition of the Council of States.

(*a*) twelve members to be nominated by the President in accordance with the provisions of clause (3); and

(*b*) not more than two hundred and thirty-eight representatives of the States.

(2) The allocation of seats in the Council of States to be filled by representatives of the States shall be in accordance with the provisions in that behalf contained in the Fourth Schedule.

(3) The members to be nominated by the President

under sub-clause (*a*) of clause (1) shall consist of persons having special knowledge or practical experience in respect of such matters as the following, namely:—

Literature, science, art and social service.

(4) The representatives of each State specified in Part A or Part B of the First Schedule in the Council of States shall be elected by the elected members of the Legislative Assembly of the State in accordance with the system of proportional representation by means of the single transferable vote.

(5) The representatives of the States specified in Part C of the First Schedule in the Council of States shall be chosen in such manner as Parliament may by law prescribe.

Composition of the House of the People.

81. (1) (*a*) Subject to the provisions of clause (2) and of articles 82 and 331, the House of the People shall consist of not more than five hundred members directly elected by the voters in the States.

(*b*) For the purpose of sub-clause (*a*), the States shall be divided, grouped or formed into territorial constituencies and the number of members to be allotted to each such constituency shall be so determined as to ensure that there shall be not less than one member for every 750,000 of the population and not more than one member for every 500,000 of the population.

(*c*) The ratio between the number of members allotted to each territorial constituency and the population of that constituency as ascertained at the last preceding census of which the relevant figures have been published shall, so far as practicable, be the same throughout the territory of India.

(2) The representation in the House of the People of the territories comprised within the territory of India but not included within any State shall be such as Parliament may by law provide.

(3) Upon the completion of each census, the representation of the several territorial constituencies in the House of the People shall be readjusted by such authority, in such manner and with effect from such date as Parliament may by law determine :

Provided that such readjustment shall not affect representation in the House of the People until the dissolution of the then existing House.

Special provision as to representation of States in Part C and territories other than States.

82. Notwithstanding anything in clause (1) of article 81, Parliament may by law provide for the representation in the House of the People of any State specified in Part C of the First Schedule or of any territories comprised within the territory of India but not included within any State on a basis or in a manner other than that provided in that clause.

Duration of Houses of Parliament.

83. (1) The Council of States shall not be subject to dissolution, but as nearly as possible one-third of the members thereof shall retire as soon as may be on the expiration of every second year in accordance with the provisions made in that behalf by Parliament by law.

(2) The House of the People, unless sooner dissolved, shall continue for five years from the date appointed for its first meeting and no longer and the expiration of the said period of five years shall operate as a dissolution of the House :

Provided that the said period may, while a Proclamation of Emergency is in operation, be extended by Parliament by law for a period not exceeding one year at a time and not extending in any case beyond a period of six months after the Proclamation has ceased to operate.

NOTES

Duration of House of the People.—The Drafting Committee inserted "five years" intstead of "four years" as the life of the House of the People as it considered that under the Parliamentary system of Government the first year of a minister's term of office would generally be taken up in gaining knowledge of the work of administration and the last year would be taken up in preparing for the next general election, and there would thus be only two years left for effective work which would be too short a period for planned administration.

Retirement of members of Council of States.—It will be noted that this Article leaves the details about the manner of retirement of the members of the Council of States to be provided by Parliament by law. The framers of the Constitution did not think it proper to burden the Constitution with these details.

Extension of the duration of the House of the People.—The proviso to sub-clause (2) of this Article provides for the extension of the duration of the House of the People beyond five years while a proclamation of Emergency is in operation. This can only be done by law enacted by Parliament.

In England, under the Parliament Act, 1911, the duration of Parliament is five years. Extension of the term even in war-time requires an Act of Parliament passed in the ordinary way.

84. A person shall not be qualified to be chosen to fill a seat in Parliament unless he—

Qualification for membership of Parliament.

(*a*) is a citizen of India;

(*b*) is, in the case of a seat in the Council of States, not less than thirty years of age and, in the case of a seat in the House of the People, not less than twenty-five years of age; and

(*c*) possesses such other qualifications as may be prescribed in that behalf by or under any law made by Parliament.

NOTES

Qualifications for membership of Parliament. This Article prescribes the citizenship of India as one of the qualifications. The second qualification relates to the age of the candidate and it is prescribed that a candidate for the House of the People should be not less than twenty-five yeare of age and that a candidate for the Council of States should be not less than thirty years of age.

There was a move to include a provision in the Constitution itself prescribing, or permitting the prescription of, educational and other qualifications for membersbip both of Parliament and of State Legislatures. If any standard of qualifications is to be laid down for candidates for membership it must be so precise that an election tribunal will be able to say, in a given case whether the candidate satisfied it or not. In view of the fact that the formulation of precise and adequate standards of this kind will take time, and in view further of the fact that if any such qualifications are laid down in the Constitution itself, it would be difficult to alter them if circumstances made it necessary, the framers of the Constitution thought it proper to insert an enabling provision in the Constitution and leave it to the appropriate Legislature to define the necessary standards later. Cf. Art. 173, *post*.

Sessions of Parliament, prorogation and dissolution.

85. (1) The Houses of Parliament shall be summoned to meet twice at least in every year, and six months shall not intervene between their last sitting in one session and the date appointed for their first sitting in the next session.

(2) Subject to the provisions of clause (1), the President may from time to time—

(*a*) summon the Houses or either House to meet at such time and place as he thinks fit;

(*b*) prorogue the Houses;

(*c*) dissolve the House of the People.

NOTES

Sessions of Parliament, Prorogation and Dissolution :—This Article is based on S. 19 of the Government of India Act, 1935, which, following the British Parliamentary practice, provided that the Legislature should be summoned to meet once at least in every year. In England this was based on convention. But whereas in England the requirement is that Parliament should meet once at least in every year, this Article provides that the Indian Parliament should be summoned to meet twice at least in every year. The provision is mandatory but it cannot be enforced by the ordinary processes of the law.

"Year" means the calendar year and "month" means the calendar month. (Interpretation Act, 1889, S. 3)

Sub cl. (2) :—This clause is based on S. 5 of the Australian Constitution Act. It is subject to the provisions of cl. (1).

It is for the President to summon, prorogue or dissolve the Parliament. See also notes to Art. 174, *post.*

Right of President to address and send messages to Houses.

86. (1) The President may address either House of Parliament or both Houses assembled together, and for that purpose require the attendance of members.

(2) The President may send messages to either House of Parliament, whether with respect to a Bill then pending in Parliament or otherwise, and a House to which any message is so sent shall with all convenient despatch consider any matter required by the message to be taken into consideration.

Special address by the President at the commencement of every session.

87. (1) At the commencement of every session the President shall address both Houses of Parliament assembled together and inform Parliament of the causes of its summons.

(2) Provision shall be made by the rules regulating the procedure of either House for the allotment of time for discussion of the matters referred to in such address and for the precedence of such discussion over other business of the House.

NOTES

Sub-cl. (1) : "Causes of its summons" : —This sub-clause follows the language adopted in Campion's book on the rules of the British House of Commons. The words "shall address and inform Parliament of the causes of its summons" are wide enough; and the President in his address need not confine himself to the immediate causes for which the House was summoned, that is, the immediate necessities of the day; these words are comprehensive enough to enable the President to review the general state of affairs and to indicate the broad lines of proposed legislation and policy.

Rights of Ministers and Attorney-General as respects Houses.

88. Every Minister and the Attorney-General of India shall have the right to speak in, and otherwise to take part in the proceedings of, either House, any joint sitting of the Houses, and any committee of Parliament of which he may be named a member, but shall not by virtue of this article be entitled to vote.

NOTES

This Article is based on S. 21 of the Government of India Act, 1935.

Minister :—A minister has to be a member of either House of Parliament. A Minister who for any period of six consecutive months is not a member of either House of Parliament shall at the expiration of that period cease to be a Minister. [cf. Art. 75 (5), *ante*]. So this Article provides that every minister shall have the right to speak in, and otherwise to take part in the proceedings of the House of which he is not a member.

Attorney-General :—The Attorney-General though not a member of either House of the Parliament shall have a right to speak in and otherwise participate in the proceedings of the Parliament.

Officers of Parliament

The Chairman and Deputy Chairman of the Council of States.

89. (1) The Vice-President of India shall be *ex-officio* Chairman of the Council of States.

(2) The Council of States shall, as soon as may be, choose a member of the Council to be Deputy Chairman thereof and, so often as the office of Deputy Chairman becomes vacant, the Council shall choose another member to be Deputy Chairman thereof.

NOTES

This Article is based upon S. 22 of the Govt. of India Act, 1935, and S. 3 (4) of Art. 1 of the U. S. Constitution. (Cf. S. 35 of the Constitution of the Commonwealth of Australia and S. 44 of the British North America Act).

Vacation and resignation of, and removal from, the office of Deputy Chairman.

90. A member holding office as Deputy Chairman of the Council of States—

(*a*) shall vacate his office if he ceases to be a member of the Council;

(*b*) may at any time, by writing under his hand addressed to the Chairman, resign his office; and

(*c*) may be removed from his office by a resolution of the Council passed by a majority of all the then members of the Council :

Provided that no resolution for the purpose of clause (*c*) shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution.

Power of the Deputy Chairman or other person to perform the duties of the office of, or to act as, Chairman.

91. (1) While the office of Chairman is vacant, or during any period when the Vice-President is acting as, or discharging the functions of, President, the duties of the office shall be performed by the Deputy Chairman, or, if the office of Deputy Chairman is also vacant, by such member of the Council of States as the President may appoint for the purpose :

(2) During the absence of the Chairman from any sitting of the Council of States the Deputy Chairman, or, if he is also absent, such person as may be determined by the rules of procedure of the Council, or, if no such person is present, such other person as may be determined by the Council, shall act as Chairman.

The Chairman or the Deputy Chairman not to preside while a resolution for his removal from office is under consideration.

92. (1) At any sitting of the Council of States, while any resolution for the removal of the Vice-President from his office is under consideration, the Chairman, or while any resolution for the removal of the Deputy Chairman from his office is under consideration, the Deputy Chairman, shall not, though he is present, preside, and the provisions of clause (2) of article 91 shall apply in relation to every such sitting as they apply in relation to a sitting from which the Chairman, or as the case may be, the Deputy Chairman, is absent.

(2) The Chairman shall have the right to speak in, and otherwise to take part in the proceedings of, the Council of States while any resolution for the removal of the Vice-President from his office is under consideration in the Council, but, notwithstanding anything in article 100, shall not be entitled to vote at all on such resolution or any other matter during such proceedings.

NOTES

The reason for this Article is that in the event of proceedings being taken against the Chairman or the Deputy Chairman for their removal, the Chairman or the Deputy Chairman might be present in the House to answer the charges against him; and if he is present, unless it is expressly stated that he will not preside, the Chairman, or when he is absent, the Deputy Chairman will have to preside. This Article is calculated to obviate this particlar difficulty.

The Speaker and Deputy Speaker of the House of the People.

93. The House of the People shall, as soon as may be, choose two members of the House to be respectively Speaker and Deputy Speaker thereof and, so often as the ofice of Speaker or Deputy Speaker becomes vacant, the House shall choose another member to be Speaker or Deputy Speaker, as the case may be.

Vacation and resignation of, and removal from, the offices of Speaker and Deputy Speaker.

94. A member holding office as Speaker or Deputy Speaker of the House of the People—

(*a*) shall vacate his office if he ceases to be a member of the House of the People ,

(*b*) may at any time, by writing under his hand addressed, if such member is the Speaker, to the Deputy Speaker, and if such member is

the Deputy Speaker, to the Speaker, resign his office; and

(*c*) may be removed from his office by a resolution of the House of the People passed by a majority of all the then members of the House :

Provided that no resolution for the purpose of clause (*c*) shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution :

Provided further that, whenever the House of the People is dissolved, the Speaker shall not vacate his office until immediately before the first meeting of the House of the People after the dissolution.

Power of the Deputy Speaker or other person to perform the duties of the office of, or to act as Speaker.

95. (1) While the office of Speaker is vacant, the duties of the office shall be performed by the Deputy Speaker or, if the office of Deputy Speaker is also vacant, by such membes of the House of the people as the President may appoint for the purpose.

(2) During the absence of the Speaker from any sitting of the House of the People the Deputy Speaker or, if he is also absent, such person as may be determined by the rules of procedure of the House, or, if no such person is present, such other person as may be determined by the House, shall act as Speaker.

The Speaker or the Deputy Speaker not to preside while a resolution for his removal from office is under consideration.

96. (1) At any sitting of the House of the People, while any resolution for the removal of the Speaker from his office is under consideration, the Speaker or while any resolution for the removal of the Deputy Speaker from his office is under consideration, the Deputy Speaker, shall not, though he is present, preside, and the provisions of clause (2) of article 95 shall apply in relation to a sitting from which the Speaker, or, as the case may be, the Deputy Speaker, is absent.

(2) The Speaker shall have the right to speak in, and otherwise to take part in the proceedings of, the House of the People while any resolution for his removal from office is under consideration in the House and shall, notwithstanding anything in article 100, be entitled to vote only in the

first instance on such resolution or on any other matter during such proceedings but not in the case of an equality of votes.

Salaries and allowances of the Chairman and Deputy Chairman and the Speaker and Deputy Speaker.

97. There shall be paid to the Chairman and the Deputy Chairman of the Council of States, and to the Speaker and the Deputy Speaker of the House of the People, such salaries and allowances as may be respectively fixed by parliament by law and, until provision in that behalf is so made, such salaries and allowances as are specified in the Second Schedule.

Secretariat of Parliament.

98. (I) Each House of Parliament shall have a separate secretarial staff:

Provided that nothing in this clause shall be construed as preventing the creation of posts common to both Houses of Parliament.

(2) Parliament may by law regulate the recruitment, and the conditions of service of persons appointed, to the secretarial staff of either House of Parliament.

(3) Until provision is made by Parliament under clause (2), the President may, after consultation with the Speaker of the House of the People or the Chairman of the Council of States, as the case may be, make rules regulating the recruitment, and the conditions of service of persons appointed, to the secretarial staff of the House of the People or the Council of States, and any rules so made shall have effect subject to the provisions of any law made under the said clause.

Conduct of Business

Oath or affirmation by members.

99. Every member of either House of Parliament shall, before taking his seat, make and subscribe before the President, or some person appointed in that behalf by him, an oath or affirmation according to the form set out for the purpose in the Third Schedule.

NOTES

This Article is based upon S. 23 of the Govt. of India Act, 1935.

See also S. 42 of the Australian Constitution. The forms of oaths to be taken are set out in the Third Schedule.

Voting in Houses, power of Houses to act notwithstanding vacancies and quorum.

100. (1) Save as otherwise provided in this Constitution, all questions at any sitting of either House or joint sitting of the Houses shall be determined by a majority of votes of the members present and voting, other than the Speaker or person acting as Chairman or Speaker.

The Chairman or Speaker, or person acting as such, shall not vote in the first instance, but shall have and exercise a casting vote in the case of an equality of votes.

(2) Either House of Parliament shall have power to act notwithstanding any vacancy in the membership thereof, and any proceedings in Parliament shall be valid notwithstanding that it is discovered subsequently that some person who was not entitled so to do sat or voted or otherwise took part in the proceedings.

(3) Until Parliament by law otherwise provides, the quorum to constitute a meeting of either House of Parliament shall be one-tenth of the total number of members of the House.

(4) If at any time during a meeting of a House there is no quorum, it shall be the duty of the Chairman or Speaker, or person acting as such, either to adjourn the House or to suspend the meeting until there is a quorum.

NOTES

This Article is based upon S. 23 of the Govt. of India Act, 1935.

Sub cl. (1).—Voting : The saving is in regard to a resolution for removal of the President by impeachment for violation of the Constitution which requires a majority of not less than two-thirds of the total membership of the House before which the President is impeached. [Cf. Art. 61 (2) *(b)*, *ante*].

Casting Vote :—This sub-clause further provides that the Chairman or Speaker, or person acting as such, shall not vote in the first instance, but shall have and exercise a casting vote in the case of an equality of votes, but under the Constitutions of Australia and Canada, the Speaker of the Senate exercises his vote in the first instance and has no casting vote. A resolution is declared lost if there is an equality of votes for and against it (cf. S. 23 of the Australian Constitution and S 36 of the

British North America Act) though the practice followed by the Speakers of the Lower Houses is identical with the present Article.

Sub cl. (2) : Vacancy :—This sub-clause provides for the power of either House of Parliament to act notwithstanding a vacancy in the membership thereof. On this sub-clause, see *Strickland* v. *Crima* (1930) A. C. 285.

Sub-cl. 3 : Quorum :—This sub-clause fixes the quorum for the meetings of either House of Parliament, but this provision can be varied by any law which may be enacted by Parliament in this regard. In the British House of Parliament, the quorum is twenty in a House of one hundred and eighty-one ; in the Australian Parliament the quorum is one-third of the House ; and in Canada the quorum for the Senate is fifteen out of a total membership of seventy-eight.

Sub-cl. (4).—From this sub-clause read with Art. 122, it would follow that the absence of a quorum would not invalidate the proceedings of any House of Parliament. The clause merely casts a duty on the Chairman or Speaker as the case may be of the House in question not to begin or continue the proceedings till there is a quorum.

Disqualifications of members

Vacation of seats.

101. (1) No person shall be a member of both Houses of Parliament and provision shall be made by Parliament by law for the vacation by a person who is chosen a member of both Houses of his seat in one House or the other.

(2) No person shall be a member both of Parliament and of a House of the Legislature of a State specified in Part A or Part B of the First Schedule, and if a person is chosen a member both of Parliament and of a House of the Legislature of such a State, then, at the expiration of such period as may be specified in rules made by the President, that persons's seat in Parliament shall become vacant, unless he has previously resigned his seat in the Legislature of the State.

(3) If a member of either House of Parliament—

(*a*) becomes subject to any of the disqualifications mentioned in clause (1) of article 102, or

(*b*) resigns his seat by writing under his hand addressed to the Chairman or the Speaker, as the case may be,

his seat shall thereupon become vacant.

(4) If for a period of sixty days a member of either House of Parliament is without permission of the House absent from all meetings thereof, the House may declare his seat vacant:

Provided that in computing the said period of sixty days no account shall be taken of any period during which the House is prorogued or is adjourned for more than four consecutive days.

NOTES

Vacation of seats. This Article is based upon S. 25 of the Govt. of India Act, 1935. Under this Article a person's seat in Parliament is not automatically vacated by his absence for the prescribed period, but a resolution of the House of which he is a member is further needed to render the seat vacant so that until such a resolution is passed by the House concerned, the member can continue to attend and participate in the proceedings of the House. The President is empowered to make rules in this connection.

Disqualifications for membership.

102. (1) A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament—

(*a*) if he holds any office of profit under the Government of India or the Government of any State, other than an office declared by Parliament by law not to disqualify its holder;

(*b*) if he is of unsound mind and stands so declared by a competent court;

(*c*) if he is an undischarged insolvent;

(*d*) if he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgment of allegiance or adherence to a foreign State;

(*e*) if he is so disqualified by or under any law made by Parliament.

(2) For the purposes of this article a person shall not be deemed to hold an office of profit under the Government of India or the Government of any State by reason only that he is a Minister either for the Union or for such State.

NOTES

This Article is based upon S. 26 of the Government of India Act, 1935. It is to be noted that the disqualifications mentioned in this Article are disqualifications of a candidate for election and also serve to discontinue the membership of a person who has been elected as a member of either House of Parliament but who will have to discontinue his membership if any of these disqualifications supervene.

Office of Profit :—Regarding the meaning of this expression, *see* notes under Art. 58, *ante*. An office of profit does not require that its incumbent must actually make a profit from it. Where it might reasonably be expected that a man would make a profit out of it, it might be considered an office of profit. (Cf. Bayley, J., in *Delane* v. *Hillcoat*, 109 E. R. 115.) An office of profit is a right to exercise a public or private employment and to take the office and emoluments there-unto belonging (*Black Com.*).

Conviction and Imprisonment :—Under S. 26 of the Government of India Act, 1935, it was provided that a candidate shall be disqualified if at any time he has been convicted of any crime, but this provision has been omitted from this Article.

Sub-cl. (1) (d) :—Under Art. 84, *ante*, citizenship of India is a necessary qualification for the membrship of Parliament. In the case of persons who have migrated from Pakistan to India and become citizens of India within the meaning of Art. 6, it will be unfair to disqualify them from becoming members of Parliament. Hence the provision in this sub-clause.

Decision on questions as to disqualifications of members.

103. (1) If any question arises as to whether a member of either House of Parliament has become subject to any of the disqualifications mentioned in clause (1) of article 102, the question shall be referred for the decision of the President and his decision shall be final.

(2) Before giving any decision on any such question, the President shall obtain the opinion of the Election Commission and shall act according to such opinion.

As to Election Commission, *see* Art. 324, *post*.

Penalty for sitting and voting before making oath or affirmation under article 99 or when not qualified or when disqualified.

104. If a person sits or votes as a member of either House of Parliament before he has complied with the requirements of article 99, or when he knows that he is not qualified or that he is disqualified for membership thereof, or that he is prohibited from so doing by the provisions of any law made by Parliament, he shall be liable in respect of each day on which he so sits or

votes to a penalty of five hundred rupees to be recovered as a debt due to the Union.

NOTES

This Article is based upon S. 27 of the Government of India Act, 1935.

When not qualified and when disqualified :—This Article read in conjunction with Art. 99, *ante*, deals with two types of cases—

(i) persons who are not qualified, and

(ii) persons who are disqualified.

The first type would include cases of strangers, those who have resigned their membership, and those who, by reason of their continuous absence, have been removed by the House, and members who have not taken the oath in accordance with Art. 99, *ante*.

The second type would include those who come within the disqualifications specified in sub-cl. (1) of Art. 102, *ante*, but who notwithstanding that under Art. 101 (3) (a), *ante*, their membership ceases, still continue to sit and vote as members.

Powers, Privileges and Immunities of Parliament and its Members

Powers, privileges, etc., of the Houses of Parliament and of the members and committees thereof.

105. (1) Subject to the provisions of this Constitution and to the rules and standing orders regulating the procedure of Parliament, there shall be freedom of speech in Parliament.

(2) No member of Parliament shall be liable to any proceedings in any court in respect of anything said or any vote given by him in Parliament or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings.

(3) In other respects, the powers, privileges and immunities of each House of Parliament, and of the members and the committees of each House, shall be such as may from time to time be defined by Parliament by law, and, until so defined, shall be those of the House of Commons of the Parliament of the United Kingdom, and of its members and committees, at the commencement of this Constitution.

(4) The provisions of clauses (1), (2) and (3) shall

apply in relation to persons who by virtue of this Constitution have the right to speak in, and otherwise to take part in the proceedings of, a House of Parliament or any committee thereof as they apply in relation to members of Parliament.

NOTES

This Article is based upon S. 28 of the Government of India Act, 1935.

Sub-cl. (1) : Freedom of Speech in Parliament :—The rules and standing orders of Parliament generally contain a provision that "every speech must be relevant to the matter before the House" and members are generally prohibited to making personal charges against other members and using defamatory, seditious or treasonable words.

Rules of Procedure :—By this sub-clause read in conjunction with Art. 118, *post*, it follows that Parliament can make rules for regulating, subject to the provisions of this constitution, its own procedure. *See also* Art. 118 (2), by which the rules and standing orders of the Legislature of the Dominion of India in force immediately before the commencement of this constitution are made applicable.

Sub-cl. (2) : "Any proceedings in any court" :—This expression would obviously include both civil and criminal proceedings.

Each House of Parliament will treat it as a breach of its privileges if legal proceedings are commenced or other action is taken against any person upon account of anything which he may have said, or evidence which he may have given, in the course of any proceedings in the House itself or before one of its Committees.[1].

"Publication by or under the authority of either House" :—By this sub cl. publications by or under the authority of either House of Parliament of any report, paper, votes or proceedings are protected, but the protection so conferred does not extend to publications not authorised by the House. It has been held that the privilege of the House does not include a right to publish a libellous part from the official reports : *R.* v. *Lord Abingdon*, 170 E.R. 337, and *Wason* v. *Walter* (1868) L. R. 4. Q.B. 73

Sub-cl. (3) : Powers, privileges and immunities of members :—Parliament is empowered by law to define the powers, privileges and immunities of each House of Parliament and the members and committees of each House, but until such law is enacted by Parliament, the procedure obtaining in the House of Commons of the Parliament of the U. K. and of its members and Committees at the commencement of the Constitution shall be followed.

The Houses of Parliament claim for their members, both collectively and individually, certain rights and privileges without which it would be impossible for either House to maintain its independence of action

1. *See* Journals of the House of Commons 1818, Vol, LXXIII., p. 389.

or the dignity of its position. British Parliamentary history is replete with instances where both Houses of Parliament have insisted upon privileges which they have now ceased to claim or of which they have been deprived by Act of Parliament, and each House has frequently asserted its privileges in a manner which has led to disputes with the other House. The action of the House of Commons in asserting its privileges has also constantly brought that House into conflict with the courts of law.

Each House of the Parliament is the guardian of its own privileges, and claims (*a*) to be the sole judge of any matter that may arise which in any way infringes upon them[1]; and (*b*) if it deems it advisable, to punish either by imprisonment or reprimand, any person whom it considers to be guilty of contempt.

"The privileges of the British Parliament are based partly upon custom and precedents which are to be fouud in the Rolls of the Parliament, and the Journals of the two Houses and partly upon certain statutes which have been passed from time to time for the purpose of making clear particular matters wherein the privileges claimed by either House of Parliament have come in contact either with the prerogatives of the Crown or with the rights of individuals." (Halsbury's Laws of England, Hailsham edn., Vol. XXIV, p. 335-346).

Although the scope and extent of parliamentary privilege is difficult to define and its application must depend upon each case as it arises, the result of past cases which have arisen in the working of the British Parliamentary system may be summed up as establishing the following general principles, namely :—(1) that neither House of Parliament, in order to assert its privileges, has the right to do anything or cause anything to be done which is in contravention of the law of the land. (See judgement of the House of Lords on a writ of error in *Ashby* v. *White* (1704), Journals of the House of Lords, 1704, Vol. XVII, p. 369, also reported 1 Bro. Parl. Cas. 62 ; see also *Stockdale* v. *Hansard* (1839) 9 Ad. & El. 1 ; (2) that the courts of law will not interfere in the interpretation of a statute by either House of Parliament so far as the regulation of its own proceedings within its own walls is concerned (see *Bradlaugh* v. *Gossett* (1884) 12 Q. B. D. 271, 281) ; and (3) that the courts of law will not admit any person to bail or inquire into the reasons for which he has been adjudged guilty of contempt and committed by either House, when the order or warrant upon which he has been arrested does not state the causes of his arrest; for in any such case, it is presumed that the order or warrant has been duly issued, unless

1. It is impossible to give a complete catalogue of offences which would be considered by each House of Parliament to constitute breaches of its privileges, but such offences may be grouped under the following heads :—(1) Any act of disrespect to the House itself on the part of one of its members or by some person who is not a member ; (2) an act of disrespect to, or assault upon, an individual member of the House, or a reflection upon his character ; (3) any interference with the procedure of the House or in one of its committees ; (4) any interference with an officer of the House, or other person employed by the House, in the performance of his duties ; (5) a refusal to obey an order of the House or of one of its committees ; or (6) an attempt to induce or procure another person to commit any such act. (*Halsbury's Laws of England, Hailsham edn., Vol. XXIV, p. 345*).

the contrary appears on the face of it. (See *Burdett* v. *Abbot* (1811) 14 East. 1, 150) (Halsbury's Laws of England, Hailsham Edn., Vol. XXIV, p. 345).

Power of expulsion: The House of Commons has the sole right to decide upon the qualifications of any of its members to sit and vote in Parliament. Where, therefore, the House is of the opinion that "a member has conducted himself in a manner which renders him unfit to serve as a member of the Parliament, he may be expelled from the House[1]; but, unless the cause of his expulsion by the House constitutes in itself a disqualification to sit and vote in the House of Commons, it is open to his constituency to re-elect him."

"The expulsion of a member from the House of Commons is effected by means of a resolution, submitted to the House by means of a motion upon which the question is proposed from the chair in the usual way." (Halsbury's Laws of England, Hailsham edn., Vol. XXIV, p. 355).

Freedom from arrest: When Parliament is sitting, and the time within which the privilege of Parliament extends, no member of the House may be imprisoned or restrained without the order or sentence of the House of Commons, unless it be for treason or felony, or for refusing to give security for the peace.[2] The House of Commons has not claimed freedom from arrest of ony of its members who is charged with a criminal offence. "Witnesses who appear to give evidence before either House of Parliament, or before any Parliamentary Committee, and also counsel, solicitors, agents, and others who are engaged upon the business of Parliament are protected from arrest or from any other form of molestation by the House upon whose business they are engaged." (Halsbury's Laws of England, Hailsham edn., Vol. XXIV, pp. 348-349).

See further as to the powers, privileges and immunities of the British House of Commons, May's Parliamentary Practice, 13th edn., pp, 50–148; Halsbury's Laws of England, Hailsham edn., Vol. XXIV, pp. 346—353 and pp. 354—359.

Contempt of Parliament:—As to power to punish for Contempt of Parliament, *see* May's Parliamentary Practice, 13th edn., pp. 340-341. In *Keilley* v. *Carser*, 4 Moo. P. C. C. 63, the Privy Council ruled that colonial legislatures have no authority, apart from statute to punish for contempt. But in an earlier case, *Beaumont* v. *Barret*, 1 Moo. P. C. C. 59, it was held that the power of punishing for contempt was inherent in every Assembly possessing supreme legislative authority. Having

1. Members have been expelled from the House of Commons upon various grounds, *e, g,,* as being rebels, or as having been guilty of forgery, of prejury, of misappropriation of public money, of corruption in the administration of justice or in public offices, or in the execution of their duties as members of the House, or of contempts and other offences against the House itself (see May's Parliamentary Practice, 13th edn., pp. 68, 69).

2. In 1697, the British House of Commons agreed to a resolution—"That no member of this House has any privilege in case of breach of the peace, or forcible entries, or forcible retainers" (cf. Journals of the House of Commons, 1697, Vol. XI, p. 784), In 1763, both Houses of Parliament agreed to a resolution—"That privilege of Parliament does not extend to the case of writing and publishing seditious libels, nor ought to be allowed to obstruct the ordinary course of laws....."

regard to the present status of the Indian Parliament, it would appear that it has such power. There is, however, a distinction "between a power to punish for a contempt which is a judicial power and a power to remove any obstruction offered to the deliberations or proper action of a legislative body during its sitting which last power is necessary for self-preservation. If a member of a Colonial House of Assembly is guilty of disorderly conduct in the House whilst sitting, he may be removed or excluded for a time and even expelled, but there is a great difference between such powers and the judicial power of inflicting a penal sentence for the offence. The right to remove for self-security is one thing, the right to inflict punishment is another". (*Doyle* v. *Falconer*, L. R. 1 P. C. 328)

Procedure for enforcement of the Privilege : The procedure in the House of Commons to enforce a due observance of its privileges and punish any breach of them is as follows : "An order is made by the House for the offender to attend at the bar of the house to answer the charge of contempt. If he refuses to obey, a further order is made empowering the Speaker to issue a warrant to the Serjeant-at-Arms giving authority to him to bring the offender in custody to a bar.[1] When the offender appears at the bar, he is examined by the Speaker and is dealt with as the House may direct. He may be either sent to prison or discharged after receiving a reprimand or admonition from the Speaker." (Halsbury's Laws of England, Hailsham edn., Vol. XXIV, pp. 358-359).

Sub-cl. (4). Persons who are not members of the House have a right to speak in, and otherwise to take part in the proceedings (cf. Art. 88, *ante*).

Salaries and allowances of members.

106. Members of either House of Parliament shall be entitled to receive such salaries and allowances as may from time to time be determined by Parliament by law and, until provision in that respect is so made, allowances at such rates and upon such conditions as were immediately before the commencement of this Constitution applicable in the case of members of the Constituent Assembly of the Dominion of India.

NOTES

Salaries and allowances of members. This Article is based on S. 29 of the Govt. of India Act, 1935.

1. Under the Speaker's warrant a house may be broken open in order to effect an arrest [*Burdett* v. *Abbot* (1817) 5 Dow. 165 H. L], but the officers of the House acting upon such warrant have no right to remain in a house after they have searched it [*Howard* v. *Gossett* (1842) Car and M. 380]. Any resistance to the Sergeant-at-Arms in the execution of his duties is treated by the House as a breach of its privileges and the person who resists may be punished.

Legislative Procedure

Provisions as to introduction and passing of Bills.

107. (1) Subject to the provisions of articles 109 and 117 with respect to Money Bills and other financial Bills, a Bill may originate in either House of Parliament.

(2) Subject to the provisions of articles 108 and 109, a Bill shall not be deemed to have been passed by the Houses of Parliament unless it has been agreed to by both Houses, either without amendment or with such amendments only as are agreed to by both Houses.

(3) A Bill pending in Parliament shall not lapse by reason of the prorogation of the Houses.

(4) A Bill pending in the Council of States which has not been passed by the House of the people shall not lapse on a dissolution of the House of the people.

(5) A Bill which is pending in the House of the People, or which having been passed by the House of the People is pending in the Council of States, shall, subject to the provisions of article 108, lapse on a dissolution of the House of the People.

NOTES

This Article is based upon S. 30 of the Government of India Act, 1935.

Sub-cl. (1). Equal Powers of the two Houses :—This clause enacts the rule that the two Houses should enjoy equal powers in regard to legislation. The only inequality is that financial Bills cannot be introduced in the Council of States [Cf. Art. 109 (1), *post*]. As to the definition of "Money Bills", see Art. 110, *post*. But even in the case of such Bills, after they have been passed by the House of the People, they should be transmitted to the Council of States for its recommendations [Cf. Art. 109 (2), *post*]. The constitutional practice in Canada, the Commonwealth of Australia and the Union of South Africa is the same.

Sub-cl. (2) :—This sub-clause again recognises that the two Houses of Parliament are co-equal with regard to their powers because it states that a Bill shall not be deemed to have been passed by the House of Parliament unless it has been agreed to by both Houses.

Sub-cl. (3) :—This reproduces the rule under the Govt. of India Act, 1935, under which a Bill pending in Parliament lapsed only by reason of the dissolution of the House, and not by reason merely of the prorogation of the House.

A Bill is deemed to be pending when it has actually been introduced or when it has had a first reading (*see* British Parliamentary Debates, Vol. 299, columns 309-310.)

Sub-cl. (4) :—A Bill which was introduced in the Council of States and is still pending there, does not lapse by the dissolution of the House of the People.

Sub-cl. (5) :—This clause enacts the rule that pending Bills lapse on dissolution. A Bill may be pending in the House of the People itself or, having been passed by the House of the People, may be pending in the Council of States. In either case, subject to the provisions of sub-cl. (5) of Art. 108, a Bill lapses on a dissolution of the House of the People.

In England the effect of a dissolution of Parliament – and even a prorogation—on pending Bills is that they lapse altogether. This Article relaxes this rule so far as India is concerned. Sub-cl. (3) saves Bills pending at the time of prorogation and sub-cl. (5) saves certain Bills pending at the time of dissolution.

In the case of a Bill which, having originated in and been passed by the House of the People, is transmitted to the Council of States and is pending there at the time of dissolution, such a Bill lapses altogether as a result of the dissolution. It is also to be noted that a Bill which has been passed by both Houses and is awaiting the President's assent at the time of dissolution does not lapse by virtue of anything contained in the Constitution.

Joint sitting of both Houses in certain cases.

108. (1) If after a Bill has been passed by one House and transmitted to other House—

(*a*) the Bill is rejected by the other House ; or

(*b*) the Houses have finally disagreed as to the amendments to be made in the Bill ; or

(*c*) more than six months elapse from the date of the reception of the Bill by the other House without the Bill being passed by it,

the President may, unless the Bill has lapsed by reason of a dissolution of the House of the People, notify to the Houses by message if they are sitting or by public notification if they are not sitting, his intention to summon them to meet in a joint sitting for the purpose of deliberating and voting on the Bill:

Provided that nothing in this clause shall apply to a Money Bill.

(2) In reckoning any such period of six months as is referred to in clause (1), no account shall be taken of any period during which the House referred to in sub-clause (c) of that clause is prorogued or adjourned for more than four consecutive days.

(3) Where the President has under clause (1) notified his intention of summoning the Houses to meet in a joint sitting, neither House shall proceed further with the Bill, but the President may at any time after the date of his notification summon the Houses to meet in a joint sitting for the purpose specified in the notification and, if he does so, the Houses shall meet accordingly.

(4) If at the joint sitting of the two Houses the Bill, with such amendments, if any, as are agreed to in joint sitting, is passed by a majority of the total number of members of both Houses present and voting, it shall be deemed for the purposes of this Constitution to have been passed by both Houses:

Provided that at a joint sitting—

(*a*) if the Bill, having been passed by one House, has not been passed by the other House with amendments and returned to the House in which it originated, no amendment shall be proposed to the Bill other than such amendments (if any) as are made necessary by the delay in the passage of the Bill;

(*b*) if the Bill has been so passed and returned, only such amendments as aforesaid shall be proposed to the Bill and such other amendments as are relevant to the matters with respect to which the Houses have not agreed;

and the decision of the person presiding as to the amend ments which are admissible under this clause shall be final.

(5) A joint sitting may be held under this article and a Bill passed thereat, notwithstanding that a dissolution of the House of the People has intervened since the President notified his intention to summon the House to meet therein.

NOTES

This Article is based upon S. 31 of the Government of India Act, 1935.

Principle underlying the Article :—This Article is designed to resolve any deadlocks that may arise as a result of the creation of two Houses with co-equal powers. Under S. 57 of the Australian Constitution, there is a similar provision for the convening of a joint session of both the Houses.

Sub-cl. (1) :—Any one of the three circumstances mentioned in this sub-clause must exist before the President can convene a joint session and submit the Bill to it, but this rule is subject to the proviso regarding Money Bills. Art. 107 specifies the cases where a Bill would lapse by reason of the dissolution of the House of the People. A lapsed Bill cannot be referred to a joint session, but if prior to the dissolution of the House of the People, the President notifies his intention to submit the Bill before a joint sitting, the Bill does not lapse by reason of the dissolution of the House of the People.

Sub-cl. (4) :—"Majority of the total number of members of both Houses present and voting" : This sub-clause indicates that at the joint sitting, a majority of the total number of members of both Houses present and voting will be necessary. Under S. 57 of the Australian Constitution, an absolute majority of the two Houses must concur in a proposition before it is carried at a joint sitting. The proviso to this sub-clause reproduces S. 63 of the Constitution of the Union of South Africa (1909).

Sub-cl. (5) :—It is provided by this sub-clause that where a joint sitting has been summoned prior to the dissolution of the House of the People, the Bill in respect of which the sitting was convened does not lapse on the dissolution of the House of the People [Cf. Art, 107 (5)].

According to established procedure, a Bill after it is passed by one House is transmitted to the other House with a message from the originating House. The word "reception" used in sub-clause (1) (c) refers to a Bill, which, having been passed by one House and transmitted to the other House, has not been passed by the other House within a period of six months from the date of the reception of the Bill by it.

The proviso to sub-clause (4) limits the amendment which can be moved to a Bill during its consideration at a joint sitting of the two Houses. The object is to ensure that the proceedings at the joint sitting may not be unnecessarily delayed.

Special procedure in respect of Money Bills.

109. (1) A Money Bill shall not be introduced in the Council of States.

(2) After a Money Bill has been passed by the House of the People it shall be transmitted to the Council of States for its recommendations and the

Council of States shall within a period of fourteen days from the date of its receipt of the Bill return the Bill to the House of the People with its recommendations and the House of the People may thereupon either accept or reject all or any of the recommendations of the Council of States.

(3) If the House of the People accepts any of the recommendations of the Council of States, the Money Bill shall be deemed to have been passed by both Houses with the amendments recommended by the Council of States and accepted by the House of the People.

(4) If the House of the People does not accept any of the recommendations of the Council of States, the Money Bill shall be deemed to have been passed by both Houses in the form in which it was passed by the House of the People without any of the amendments recommended by the Council of States.

(5) If a Money Bill passed by the House of the People and transmitted to the Council of States for its recommendations is not returned to the House of the People within the said period of fourteen days, it shall be deemed to have been passed by both Houses at the expiration of the said period in the form in which it was passed by the House of the People.

NOTES

This Article is based upon Art. 21 of the Irish Constitution (1937).

Under the Parliament Act, 1911, a "Money Bill" which has been passed by the House of Commons and sent up to the House of Lords, but is not passed by the House of Lords without amendment within one month after it is so sent up, is, unless the House of Commons directs to the contrary, to be presented to His Majesty's Government and becomes an Act of Parliament on the Royal Assent being signified to it. Under Act. 21 (2) of the Irish Constititution, the Money Bill is required to be returned by the Upper House to the Lower House within twenty-one days. A period of fourteen days is prescribed in Art. 109 of the Indian Constitution and the reason for this was explained by the Hon. Dr. Ambedkar as follows :—

"If the House will permit me to make such an amendment I shall like to move that the period of twenty-one days as mentioned in the amendment be further reduced to fourteen days. I shall give my reasons for this change. In th e British Parliament the House of Lords merely concurs in the financial provisions passed by the House of Common ; it

has completely abrogated itself so far as finance is concerned. We are here making a departure from that position and are allowing the upper chamber to have some voice in the formulation of the taxation and financial proposals which have been initiated by the Lower House. As I said, we are conferring a privilege which ordinarily the upper chamber does not possess. At the same time we must bear in mind that the budget is a very urgent matter. Even now, as Members know, we do not give the Lower House more than six or eight days for the Finance Bill. It seems to me that to allow such a long period of thirty or even twenty-one days would result in hanging up such an important matter far a considerable length of time. If the Upper House wants to express an opinion fourteen days is a more than enough period." (*Constituent Assembly Debates*, Vol. VIII, p. 185.)

110. (1) For the purposes of this Chapter, a Bill shall be deemed to be a Money Bill if it contains only provisions dealing with all or any of the following matters, namely—

Definition of "Money Bills".

(*a*) the imposition, abolition, remission, alteration or regulation of any tax ;

(*b*) the regulation of the borrowing of money or the giving of any guarantee by the Government of India, or the amendment of the law with respect to any financial obligations undertaken or to be undertaken by the Government of India ;

(*c*) the custody of the Consolidated Fund or the Contingency Fund of India, the payment of moneys into or the withdrawal of moneys from any such Fund ;

(*d*) the appropriation of moneys out of the Consolidated Fund of India ;

(*e*) the declaring of any expenditure to be expenditure charged on the Consolidated Fund of India or the increasing of the amount of any such expenditure ;

(*f*) the receipt of money on account of the Consolidated Fund of India or the public account of India or the custody or issue of such money or the audit of the accounts of the Union or of a State ; or

(*g*) any matter incidental to any of the matters specified in sub-clauses (*a*) to (*f*).

(2) A Bill shall not be deemed to be a Money Bill by reason only that it provides for the imposition of fines or other pecuniary penalties, or for the demand or payment of fees for licences or fees for services rendered, or by reason that it provides for the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes.

(3) If any question arises whether a Bill is a Money Bill or not, the decision of the Speaker of the House of the People thereon shall be final.

(4) There shall be endorsement on every Money Bill when it is transmitted to the Council of States under article 109, and when it is presented to the President for assent under article 111, the certificate of the Speaker of the House of the People signed by him that it is a Money Bill.

NOTES

This Article is based upon S. 37 of the Government of India Act, 1935; Chaper I, S. 54 of the Australian Constitution; Arts 22 (1) 1° and 2° of the Irish Constitution.

Assent to Bills.

111. When a Bill has been passed by the Houses of Parliament, it shall be presented to the President, and the President shall declare either that he assents to the Bill, or that he withholds assent therefrom :

Provided that the President may, as soon as possible after the presentation to him of a Bill for assent, return the Bill if it is not a Money Bill to the Houses with a message requesting that they will reconsider the Bill or any specified provisions thereof and, in particular, will consider the desirability of introducing any such amendments as he may recommend in his message, and when a Bill is so returned, the Houses shall reconsider the Bill accordingly, and if the Bill is passed again by the Houses with or without amendment and presented to the President for assent, the President shall not withhold assent therefrom.

NOTES

This Article is based upon S. 32 of the Government of India Act, 1935.

Proviso :—In the original draft of this proviso, there was a time limit of six weeks fixed for the President to return a Bill for reconsideration by the House of Parliament. In the proviso as it now stands, this time limit has been dropped. It was thought that the best course would be to leave it to the President to return the Bill as soon as possible without fixing any time limit so that Parliament, if not in session, may consider the Bill immediately upon re-assembling. The latter portion of this proviso is to provide for a case where, after a Bill has been returned by the President for reconsideration, the Bill is passed again by the House with or without amendment and presented to the President for assent. In such a case, the President should not withhold assent therefrom. This brings the proviso into line with the proviso to Art. 200, *post*.

Procedure in financial matters

112. (1) The President shall in respect of every financial year cause to be laid before both the Houses of Parliament a statement of the estimated receipts and expenditure of the Government of India for that year in this Part referred to as the "annual financial statement."

Annual financial statement.

(2) The estimate of expenditure embodied in the annual financial statement shall show separately—

(*a*) the sums required to meet expenditure described by this Constitution as expenditure charged upon the Consolidated Fund of India; and

(*b*) the sums required to meet other expenditure proposed to be made from the Consolidated Fund of India,

and shall distinguish expenditure on revenue account from other expenditure.

(3) The following expenditure shall be expenditure charged on the Consolidated Fund of India—

(*a*) the emoluments and allowances of the President and other expenditure relating to his office ;

(*b*) the salaries and allowances of the Chairman and the Deputy Chairman of the Council of States and the Speaker and the Deputy Speaker of the House of the People ;

(*c*) debt charges for which the Government of

India is liable including interest, sinking fund charges and redemption charges, and other expenditure relating to the raising of loans and the service and redemption of debt ;

(*d*) (*i*) the salaries, allowances and pensions payable to or in respect of Judges of the Supreme Court ;

(*ii*) the pensions payable to or in respect of Judges of the Federal Court ;

(*iii*) the pensions payable to or in respect of Judges of any High Court which exercises jurisdiction in relation to any area included in the territory of India or which at any time before the commencement of the Constitution exercised jurisdiction in relation to any area included in a Province corresponding to a State specified in Part A of the First Schedule ;

(*e*) the salary, allowances and pension payable to or in respect of the Comptroller and Auditor-General of India ;

(*f*) any sums required to satisfy any judgment, decree or award of any court or arbitral tribunal ;

(*g*) any other expenditure declared by this Constitution or by Parliament by law to be so charged.

NOTES

This Article is based upon S. 33 of the Government of India Act, 1935.

Sub-cl. (3): "charge on the Consolidated Fund of India":— Expenditure charged upon the Consolidated Fund of India shall not be submitted to the vote of Parliament [Cf. Art. 113 (1), *post.*] It will be seen that this clause comprises items which in England would fall under the Consolidated Fund.

Salaries of High Court Judges :—It will be noted that whereas the pensions payable to the Judges of the High Court and of the Federal Court are charged on the Consolidated Fund of India, their salaries and allowances are not so charged. But in the case of Supreme Court Judges, the matter is different; their pensions as well as salaries and allowances are charged on the Consolidated Fund of India.

Procedure in Parliament with respect to estimates.

113. (1) So much of the estimates as relates to expenditure charged upon the Consolidated Fund of India shall not be submitted to the vote of Parliament, but nothing in this clause shall be construed as preventing the discussion in either House of Parliament of any of those estimates.

(2) So much of the said estimates as relates to other expenditure shall be submitted in the form of demands for grants to the House of the People, and the House of the People shall have power to assent, or to refuse to assent, to any demand, or to assent to any demand subject to a reduction of the amount specified therein.

(3) No demand for a grant shall be made except on the recommendation of the President.

NOTES

This Article is based upon S. 34 of the Government of India Act, 1935.

Sub- cl. (1) : Discussion in Parliament on non-votable items :— This sub-clause permits discussion in Parliament even on non-votable items.

Sub-cl. (3) :—This sub-cl. enacts the well-known principle of public finance that no proposal for imposition of taxation, or for the appropriation of public revenues, nor any proposal affecting or imposing any charge upon those revenues can be made except on the responsibility of the executive. It is, therefore, provided that the President, as one in whom the executive power of the Union is vested [Cf. Art. 53 (1), *ante*] must recommend every demand for a grant.

Appropriation Bills.

114. (1) As soon as may be after the grants under article 113 have been made by the House of the People, there shall be introduced a Bill to provide for the appropriation out of the Consolidated Fund of India of all moneys required to meet—

(*a*) the grants so made by the House of the People ; and

(*b*) the expenditure charged on the Consolidated Fund of India but not exceeding in any case the amount shown in the statement previously laid before Parliament.

(2) No amendment shall be proposed to any such Bill

in either House of Parliament which will have the effect of varying the amount or altering the destination of any grant so made or of varying the amount of any expenditure charged on the Consolidated Fund of India, and the decision of the person presiding as to whether an amendment is inadmissible under this clause shall be final.

(3) Subject to the provisions of articles 115 and 116, no money shall be withdrawn from the Consolidated Fund of India except under appropriation made by law passed in accordance with the provisions of this article.

115. (1) The President shall—

Supplementary, additional or excess grants.

(*a*) if the amount authorised by any law made in accordance with the provisions of article 114 to be expended for a particular service for the current financial year is found to be insufficient for the purposes of that year or when a need has arisen during the current financial year for supplementary or additional expenditure upon some new service not contemplated in the annual financial statement for that year, or

(*b*) if any money has been spent on any service during a financial year in excess of the amount granted for that service and for that year,

cause to be laid before both the Houses of Parliament another statement showing the estimated amount of that expenditure or cause to be presented to the House of the People a demand for such excess, as the case may be.

(2) The provisions of articles 112, 113 and 114 shall have effect in relation to any such statement and expenditure or demand and also to any law to be made authorising the appropriation of moneys out of the Consolidated Fund of India to meet such expenditure or the grant in respect of such demand as they have effect in relation to the annual financial statement and the expenditure mentioned therein or to a demand for a grant and the law to be made for the authorisation of appropriation of moneys out of the Consolidated Fund of India to meet such expenditure or grant.

Votes on account, votes of credit and exceptional grants.

116. (1) Notwithstanding anything in the foregoing provisions of this Chapter, the House of the People shall have power—

(*a*) to make any grant in advance in respect of the estimated expenditure for a part of any financial year pending the completion of the procedure prescribed in article 113 for the voting of such grant and the passing of the law in accordance with the provisions of article 114 in relation to that expenditure ;

(*b*) to make a grant for meeting an unexpected demand upon the resources of India when on account of the magnitude or the indefinite character of the service the demand cannot be stated with the details ordinarily given in an annual financial statement ;

(*c*) to make an exceptional grant which forms no part of the current service of any financial year ;

and Parliament shall have power to authorise by law the withdrawal of moneys from the Consolidated Fund of India for the purposes for which the said grants are made.

(2) The provisions of articles 113 and 114 shall have effect in relation to the making of any grant under clause (1) and to any law to be made under that clause as they have effect in relation to the making of a grant with regard to any expenditure mentioned in the annual financial statement and the law to be made for the authorisation of appropriation of moneys out of the Consolidated Fund of India to meet such expenditure.

Special provisions as to financial Bills.

117. (1) A Bill or amendment making provision for any of the matters specified in sub-clauses (*a*) to (*f*) of clause (1) of article 110 shall not be introduced or moved except on the recommendation of the President and a Bill making such provision shall not be introduced in the Council of States :

Provided that no recommendation shall be required under this clause for the moving of an amendment making provision for the reduction or abolition of any tax.

(2) A Bill or amendment shall not be deemed to make

provision for any of the matters aforesaid by reason only that it provides for the imposition of fines or other pecuniary penalties, or for the demand or payment of fees for licences or fees for services rendered, or by reason that it provides for the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes.

(3) A Bill which, if enacted and brought into operation, would involve expenditure from the Consolidated Fund of India shall not be passed by either House of Parliament unless the President has recommended to that House the consideratoin of the Bill.

Procedure Generally

118 (1) Each House of Parliament may make rules for regulating, subject to the provisions of this Consitution, its procedure and the conduct of its business.

Rules of procedure.

(2) Until rules are made under clause (1), the rules of procedure and standing orders in force immediately before the commencement of this Constitution with respect to the Legislature of the Dominion of India shall have effect in relation to Parliament subject to such modifications and adaptations as may be made therein by the Chairman of the Council of States or the Speaker of the House of the People, as the case may be.

(3) The President, after consultation with the Chairman of the Council of States and the Speaker of the House of the People, may make rules as to the procedure with respect to joint sittings of, and communications between, the two Houses.

(4) At a joint sitting of the two Houses the Speaker of the House of the People, or in his absence such person as may be determined by rules of procedure made under clause (3), shall preside.

NOTES

This Article is based upon S. 38 of the Government of India Act, 1935.

Rules of Parliamentary Procedure : As an able critic has pointed out, "the general aim of rules of parliamentary procedure "is to ease deliberation in common : to raise it to an art; to ensure the hearing of every

opinion and side in a just and due proportion. But it is equally just to notice the defects to which rules of parliamentary procedure are liable, both as they actually work in the legislature and in their own proper field of deliberation, and again as they affect the executive organs of Government (and thereby the general business of the community) in that ultimate field of decision and action which lies beyond, but is already implied in, the field of deliberation."[1]

The rules of procedure of parliamentary bodies have a vital significance in the operation of democracy. Whether or no we regard them as a part of the constitution and a form of constitutional law, they affect the whole process of democratic discussion in its most crucial stage—the stage of parliamentary debate and decision. And they affect it not by travelling it, but by easing its operation. They make it possible for discussion to achieve a pattern, and to become a work of art. They do so, as Bentham justly said, by avoiding and barring the inconveniences which may beset common deliberation, and by preventing everything which might prevent the common development of the liberty and the intelligence of all the participants."[2]

Regulation by law of procedure in Parliament in relation to financial business.

119. Parliament may, for the purpose of the timely completion of financial business, regulate by law the procedure of, and the conduct of business in, each House of Parliament in relation to any financial matter or to any Bill for the appropriation of moneys out of the Consolidated Fund of India, and if and so far as any provision of any law so made is inconsistent with any rule made by a House of Parliament under clause (1) of article 118 or with any rule or standing order having effect in relation to Parliament under clause (2) of that article, such provision shall prevail.

Language to be used in Parliament.

120. (1) Notwithstanding anything in Part XVII, but subject to the provisions of article 348, business in Parliament shall be transacted in Hindi or in English :

Provided that the Chairman of the Council of States or Speaker of the House of the People, or person acting as such, as the case may be, may permit any member who cannot adequately express himself in Hindi or in English to address the House in his mother tongue.

(2) Unless Parliament by law otherwise provides, this article shall, after the expiration of a period of fifteen

1. Barker, Reflections on Government, p. 210.
2. *Ibid*,

years from the commencement of this Constitution, have effect as if the words " or in English " were omitted therefrom.

Restriction on discussion in Parliament.

121. No discussion shall take place in Parliament with respect to the conduct of any Judge of the Supreme Court or of a High Court in the discharge of his duties except upon a motion for presenting an address to the President praying for the removal of the Judge as hereinafter provided.

NOTES

This Article is based upon S. 40 of the Government of India Act, 1935.

Sub-cl. (1) : "in the discharge of his duties":—These words would obviously cover both judicial and administrative duties of a Judge.

Courts not to inquire into proceedings of Parliament.

122. (1) The validity of any proceedings in Parliament shall not be called in question on the ground of any alleged irregularity of procedure.

(2) No officer or member of Parliament in whom powers are vested by or under this Constitution for regulating procedure or the conduct of business, or for maintaining order, in Parliament shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers.

NOTES

This Article is practically a reproduction of S. 41 of the Government of India Act, 1935.

Sub-cl. (1) : enacts the salutary rule that the validity of any proceedings in Parliament cannot be impugned in a Court of Law on the ground of any alleged irregularity of procedure.

Sub-cl. (2) confers immunity on officers of Parliament in respect of what they do in the exercise of their official duties. An interesting case arose under the old Government of India Act when the Calcutta High Court granted an injunction restraining the President of the Bengal Legislative Council from placing the demand for Ministers' salaries before the Council. Such a thing cannont happen under this Article (see *Kumar Shankar Roy.* v. *H. E. A. Cotton,* 40 C. L. J. 515).

CHAPTER III.—LEGISLATIVE POWERS OF THE PRESIDENT

Powers of President to promulgate Ordinance during recess of Parliament.

123. (1) If at any time, except when both Houses of Parliament are in session, the President is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such Ordinances as the circumstances appear to him to require,

(2) An Ordinance promulgated under this article shall have the same force and effect as an Act of Parliament, but every such Ordinance—

(*a*) shall be laid before both Houses of Parliament and shall cease to operate at the expiration of six weeks from the reassembly of Parliament, or, if before the expiration of that period resolutions disapproving it are passed by both Houses, upon the second of those resolutions ; and

(*b*) may be withdrrwn at any time by the President.

Explanation.—Where the Houses of Parliament are summoned to reassemble on different dates, the period of six weeks shall be reckoned from the later of those dates for the purposes of this clause.

(3) If and so far as an Ordinance under this article makes any provision which Parliament would not under this Constitution be competent to enact, it shall be void.

NOTES

This Article is based on S. 42 of the Government of India Act, 1935. The powers conferred by S. 42 on the Governor-General under the Government of India Act are being continued and they will now be exercised by the President of the Union under the provisions of this Article. These powers only relate to such period when the Legislature is in recess, not in session. Moreover, the provisions contained in this Article do not confer upon him any power which the Parliament itself does not possess because he has no special responsibility, he has no discretion and he has no individual judgment. This Article is somewhat analogous to the provisions contained in the British Emergency Powers Act, 1920. Under that Act, the King is entitled to issue a proclamation and when a proclamation is issued, the executive is entitled to issue regulations to deal with any matter and this was permitted to be done when Parliament was not in session. This

power enables the President to promulgate a law which will enable the executive to deal with a particular situation which arises when it cannot resort to the ordinary processes of the law because the legislature is not in session.

This Article is based upon S. 42 of the Government of India Act, 1935.

Sub- cl. (2) : By this sub-clause, Resolutions disapproving an Ordinance are required to be passed by both Houses.

CHAPTER IV.—THE UNION JUDICIARY

A remarkable feature of the Constitution of India which distinguishes it from other federations is that it will have a single integrated judiciary throughout the Union. A federation being a dual polity based on divided authority with separate legislative, executive, and judicial powers for each of the two polities is bound to produce diversity in laws, in administration and judicial protection. The Indian Constitution has, however, sought to forge means and methods whereby India will have a federation and at the same time will have uniformity in all basic matters which are essential to maintain the unity of the country. One of the means adopted to secure this unity is the provision for a single integrated judiciary throughout the Union of India. "In the U. S. A. the Federal Judiciary and the State Judiciary are separate and independent of each other. The Indian Federation though a dual polity has no dual Judiciary. The High Courts and the Supreme Court form one single integrated judiciary having jurisdiction and providing remedies in all cases arising under the Constitutional law, the Civil law or the Criminal law. This is done to eliminate all diversity in all remedial procedure. Canada is the only country which furnishes a close parallel. The Australian system is only an approximation." (Speech of the Hon'ble Dr. Ambedkar in the Constituent Assembly).

This Chapter deals with the Union Judiciary and provides for the establishment and constitution of the Supreme Court of India which will consist of a Chief Justice and, until Parliament by law prescribes a larger number, of not more than seven other Judges. The Judges are to be appointed by President and are to hold office until they attain the age of sixty-five. In the case of the appointment of a Judge other than the Chief Justice, the Chief Justice of India should always be consulted but it will be open to the President to consult such of the Judges of the Supreme Court and of the High Courts in the States as the President may deem necessary. A Judge may resign or may be removed from office. The removal shall be by an order of the President passed after an address to him by each House of Parliament supported by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting. It is left to Parliament to provide suitable laws for the regulation of the procedure for the presentation of an address and for the investigation and proof of the misbehaviour or incapacity of the Judge. Retired Judges of the Supreme Court are prevented from setting up practice anywhere in India (Cf. Art. 124).

The qualifications of a Judge are set out in Art. 124 (3) and their salaries are specified in the Second Schedule. Provision is also made for the appointment of *ad hoc* Judges (Cf. Art. 127) and for the attendance of retired Judges at sittings of the Supreme Court (Cf. Art. 128).

The Supreme Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself (Cf. Art. 129), and it shall have its office at Delhi or in such other place or places, as the Chief Justice of India may, with the approval of the President, from time to time, appoint (Art. 130).

The Supreme Court has both original and appellate jurisdiction. Provision for original jurisdiction is made in Art. 131. Art. 132 deals with appellate jurisdiction of the Supreme Court in appeals from High Courts in certain cases ; Art. 133 with appellate jurisdiction of the Supreme Court in appeals from High Courts in regard to civil cases, and Art. 134 in regard to criminal cases. The Supreme Court may in its discretion grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India (Cf Art. 136). The Supreme Court has also powers of review (Cf. Art. 137).

Parliament may by law confer on the Supreme Court power to issue directions, orders or writs, including writs in the nature of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari*, for any purposes other than those mentioned in Art. 32 (2). Provision is made for enlarging the jurisdiction of the Supreme Court and this may be done by Parliament enacting suitable laws conferring such jurisdiction on the Supreme Court in respect of any of the matters in the Union List as the Parliament may think fit. It is open to the Government of India and the Government of any State by special agreement to confer on the Supreme Court such further jurisdiction and powers with respect to any matter provided Parliament by law provides for the exercise of such jurisdiction and powers by the Supreme Court (Cf. Art. 138).

The law declared by the Supreme Court is binding on all courts functioning within the Indian Union.

Provision is also made for the President consulting the Supreme Court with regard to any question of law or fact which is of such a nature and of such public importance as is expedient to obtain the opinion of the Supreme Court upon it (Cf. Art. 143).

Ths Supreme Court will make its own rules for regulating its own procedure, but these rules will be subject to any law made by Parliament and should also receive the approval of the President (Cf. Art. 145).

Appointments to the Supreme Court are made by the Chief Justice of India or such other Judge or officer of the Court as he may direct. Power is however confered on the President to frame rules requiring that in such cases as may be specified in the rule, no person not already attached to the Court shall be appointed to any office connected with the Court, save after consultation with the Union Public Service Commission. Provision is made for rules to be made by the Chief Justice regarding conditions of service of officers and servants

of the Supreme Court, but so far as these rules relate to salaries, allowances, leave or pension, they require the approval of the President. The administrative expenses of the Supreme Court shall be charged on the Consolidated Fund of India (Cf. Art. 146).

In this connection, it may be of interest to know how the Supreme Court of the U. S. A. actually functions. The Supreme Court of the United States is a very powerful judicial tribunal. It meets in Washington on the first Monday of each October, and remains in intermittent session until the following June. The Court is closed from time to time and at times for considerable periods in order to enable the nine Judges to read the briefs, pass upon petitions, and on the writing of opinions in cases which have been heard.

The U. S. Constitution does not require that Judges of the Supreme Court should be lawyers, but in fact all of them have been drawn from the legal profession. A Supreme Court Judge cannot be removed except by impeachment. The Court has both original and appellate jurisdiction. Its original jurisdiction extends to two classes of cases: (1) in all cases affecting Ambassadors, other Public Ministers and Consuls; and (2) in suits between States. The appellate jurisdiction of the Supreme Court applies to the following courts: the Federal District Courts, the Circuit Courts of Appeals, the Court of Appeals of the District of Columbia, and certain courts of the forty-eight states.

The Supreme Court may issue a writ of *certiorari* requiring that certain cases should be *certified* to it for review and to determine whether the Federal claim has been sustained or not. These are:

(*a*) where the validity of a treaty or statute is questioned;

(*b*) where a state statute is questioned as being repugnant to the Constitution, treaties, or laws of the United States;

(*c*) or where any title, right, or privilege is claimed by either party to a suit under the Constitution, treaties, or laws of the United States.

In order to obtain by *certiorari* a review in the Supreme Court of a decision of a State Court, any of the following conditions must be fulfilled :—(1) that the decision was final; (2) that a substantial Federal question was involved; (3) that the decision was with regard to Federal question not previously determined by the Supreme Court; or (4) that the decision was not in accord with applicable previous decisions of that Court.[1]

There are certain novel points of procedure. For instance, after the appeal has been allowed, the Counsel for each side will have to provide the court with briefs in advance of oral arguments. The Supreme Court *Rules* prescribe the contents of the brief. It must contain, among others, a statement of the facts, an assignment of errors, the legal question involved, the argument, and a conclusion. After the briefs are submitted, the court fixes a date on which arguments are heard. With the increase in the number of cases before the court, a time limit for argument has been fixed which was two hours for each side in the

1. See *Ableman* v. *Booth*, (1859) 21 How. 506.

beginning and has been reduced later to one hour. The next step in the process of deciding a case is what is called a conference, *i. e.* where the Judges discuss the case. The Chief Justice states his opinion last. A vote is then taken, the Chief Justice exercising his vote last. If all the Judges concur in their decision, the Chief Justice assigns the writing of the opinion. Where the Court is divided and the Chief Justice is with the majority, he allots the writing of the opinion to one of the majority. Where the Chief Justice votes with the minority, the assignment of the Court's opinion falls upon the senior Associate Justice with the majority. Whichever side the Chief Justice supports, he may at his discretion undertake to write the opinion for that side. If a Judge agrees with the majority in regard to the ultimate decision, but differs as to the reasoning behind the decision, he will write what is termed a concurring opinion. If a Judge disagrees with the decision of the majority, he will write a dissenting opinion.

A cardinal feature of the United States Constitution is the supremacy of the Supreme Court. Mr. Hugh Evander Willis, a great authority on American Constitution, in his book on 'Constitutional Law' poses the question: What is meant by the doctrine of the supremacy of the Supreme Court and answers it as follows :—

"It is a doctrine of United States constitutional law that it is the peculiar function of the Supreme Court of the United States to watch over and guard the Constitution of the United States : and that it is supreme, not only over the other branches of the federal government and the lower federal courts, but also over the state courts and the other branches of the state governments. That means that it is the function of the Supreme Court of the United States to define and maintain the doctrine of the sovereignty of the people, the doctrine of the amendability of the Constitution, the doctrine of a dual form of government, the doctrine of the separation of governmental powers, the doctrine that certain forms of personal liberty are protected against social control by any branch of the government, the doctrine of universal citizenship and suffrage, and the doctrine of the supremacy of the Supreme Court itself, or other any doctrines that it may read into the Constitution. And in exercising this function, for example, it has the power to set aside an act of Congress, or of the President, if in violation of the doctrine of separation of powers ; to set aside an act of Congress, or of the President, or of a state legislature, or of a governor, or of any other officers of government, if in violation of the guaranties in the Constitution for the protection of personal liberty against social control ; and in the same way it has the power to set aside acts of any of the branches of either the national or state government if in violation of the sovereignty of the people as a whole, the amendability of the Constitution, universal citizenship and suffrage, and the supremacy of the Supreme Court. This is the doctrine of the supremacy of the Supreme Court"

Establishment and constitution of Supreme Court.

124. (1) There shall be a Supreme Court of India consisting of a Chief Justice of India and, until Parliament by law prescribes a larger number, of not more than seven other Judges.

(2) Every Judge of the Supreme Court shall be appointed by President by warrant under his hand and seal after consultation with such of the Judges of the Supreme Court and of the High Courts in the States as the President may deem necessary for the purpose and shall hold office until he attains the age of sixty-five years :

Provided that in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of India shall always be consulted :

Provided further that—

(*a*) a Judge may, by writing under his hand addressed to the President. resign his office ;

(*b*) a Judge may be removed from his office in the manner provided in clause (4).

(3) A person shall not be qualified for appointment as a Judge of the Supreme Court unless he is a citizen of India and—

(*a*) has been for at least five years a Judge of a High Court or of two or more such Courts in succession ; or

(*b*) has been for at least ten years an advocate of a High Court or of two or more such Courts in succession ; or

(*c*) is, in the opinion of the President, a distinguished jurist.

Explanation I.—In this clause "High Court" means a High Court which exercises, or which at any time before the commencement of this Constitution exercised, jurisdiction in any part of the territory of India.

Explanation II.—In computing for the purpose of this clause the period during which a person has been an advocate, any period during which a person has held judicial office not inferior to that of a district judge after he became an advocate shall be included.

(4) A Judge of the Supreme Court shall not be removed from his office except by an order of the President passed after an address by each House of the Parliament supported by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that

House present and voting has been presented to the President in the same session for such removal on the ground of proved misbehaviour or incapacity.

(5) Parliament may by law regulate the procedure for the presentation of an address and for the investigation and proof of the misbehaviour or incapacity of a Judge under clause (4).

(6) Every person appointed to be a Judge of the Supreme Court shall, before he enters upon his office, make and subscribe before the President, or some person appointed in that behalf by him, an oath or affirmation according to the form set out for the purpose in the Third Schedule.

(7) No person who has held office as a Judge of the Supreme Court shall plead or act in any court or before any authority within the territory of India.

NOTES

Sub-cl. (1) : "until Parliament by law prescribes a larger number' In the original draft it was provided that the Supreme Court shall consist of a Chief Justice of India and such number of other Judges not being less than seven *as Parliament may by law prescribe.* Accordingly, until Parliament prescribes by law the number of Judges, the Supreme Court cannot be duly constituted if the original draft clause was retained. But such a law cannot be passed until after the Constitution has come into operation and some time must, therefore, elapse between the commencement of the Constitution and the enactment of the law during which the Supreme Court cannot come into being. In order to obviate this difficulty, it has now been provided in this sub-clause that until Parliament by law prescribes a larger number, the Supreme Court should consist of a Chief Justice and not more than seven other Judges.

It will be seen that the minimum number of Judges in the Supreme Court is not prescribed by the Constitution. The number has been left to be determined from time to time according to the volume of work coming to the Court.

Sub-cl. (2) : This sub-clause gives discretion to the President to consult such Judges of the Supreme Court as he thinks necessary. The first proviso to this clause, however, makes it obligatory on the President to consult the Chief Justice of the Supreme Court in the case of appointments of any other Judge of that Court. The reason for making consultation with certain Judges obligatory is obviously to secure that appointments are not made without such consultation and thus to minimise the chances of improper appointments.

In Great Britain, Judges are appointed by the Crown without any kind of limitation whatsoever. In the U.S.A., the appointments of Judges of the Supreme Court shall be made only with the concurrence of the

Senate. The framers of our Constitution wanted to steer a middle course. Accordingly, they have not made the President the supreme and absolute authority in the matter of making such appointments. This Article requires that the President, after consultation with such of the Judges of the High Court and of the High Courts in the States, as he may deem necessary for the purpose, can appoint the Judges. The Chief Justice of India is always to be consulted in the case of appointment of a judge other than the Chief Justice.

Sub-cl. (3) : In this sub-clause the qualifications required of a Judge of the Supreme Court are set out. According to Explanation II to this sub-clause, a person who has held a judicial office not inferior to that of a District Judge will be qualified.

Sub-cl. (4) : This sub-clause prescribes the procedure for the removal of a Judge of the Supreme Court. Under the British North America Act (S. 99), the Judges of the Superior Courts can be removed by the Governor-General on an address from the two Houses. Under the Australian Constitution, the Judges can be removed by the Governor-General on an address from both Houses for proved misbehaviour or incapacity.

This sub-clause requires a two-thirds majority of those present and voting for the presentation of the address for the removal of a Judge of the Supreme Court. In this respect, the Article goes beyond the orresponding provisions in the Constitution of Ireland, Australia, South Africa and Canada, where a bare majority of each of the two Houses suffices for the purpose.

Sub-cl. (7) : Ban on Practice : It is to be noted that a person who has held office as a Judge of the Supreme Court is banned from practising after his retirement from the Bench.

Salaries, etc., of Judges.

125. (1) There shall be paid to the Judges of the Supreme Court such salaries as are specified in the Second Schedule.

(2) Every Judge shall be entitled to such privileges and allowances and to such rights in respect of leave of absence and pension as may from time to time be determined by or under law made by Parliament and, until so determined, to such privileges, allowances and rights as are specified in the Second Schedule :

Provided that neither the privileges nor the allowances of a Judge nor his rights in respect of leave of absence or pension shall be varied to his disadvantage after his appointment.

Appointment of acting Chief Justice.

126. When the office of Chief Justice of India is vacant or when the Chief Justice is, by reason of absence or otherwise unable to perform the duties of his office, the duties of the office shall be performed by such one of the other

Judges of the Court as the President may appoint for the purpose.

Appointment of *ad hoc* Judges.

127. (1) If at any time there should not be a quorum of the Judges of the Supreme Court available to hold or continue any session of the Court, the Chief Justice of India may, with the previous consent of the President and after consultation with the Chief Justice of the High Court concerned, request in writing the attendance at the sittings of the Court, as an *ad hoc* Judge, for such period as may be necessary, of a Judge of a High Court duly qualified for appointment as a Judge of the Supreme Court to be designated by the Chief Justice of India.

(2) It shall be the duty of the Judge who has been so designated, in priority to other duties of his office, to attend the sittings of the Supreme Court at the time and for the period for which his attendance is required, and while so attending he shall have all the jurisdiction, powers and privileges, and shall discharge the duties, of a Judge of the Supreme Court.

NOTES

Article 127 is based on S. 30 of the Canadian Supreme Court Act.

Sub-cl. (1) : It will be seen that this sub-clause requires, among other things, the previous consent of the President in the matter of appointment of *ad hoc* Judges. This provision is designed to serve as a safeguard. The Chief Justice cannot make the appointment without reference to the Government of the day. Occasions might arise when the Supreme Court has to decide matters which have a political flavour. "The possibility of any political bias being exercised by the Chief Justice in the matter of the selection of *ad hoc* Judge to help to decide any particular case can also be partly obviated by the safeguard, The history of the judiciary in America has been almost a history of how politics has influenced the attitude of the judiciary. Any student of the American Constitution would know that politics has influenced to a very large extent the decisions in constitutional cases by the Supreme Court of America. There is undoubtedly need for a safeguard for providing that the executive shall have some say in a matter like this and if they really feel that the selection of a particular Judge is not proper, it is probable that the attention of the Chief Justice might be invited to that particular aspect of the matter."[1]

Sub-cl. (1) : "duly qualified for appointment as a Judge of the Supreme Court" : These words were inserted in this sub-clause with

1. Speech of Shri T. T. Krishnamachari—*Constituent Assembly Debates.*

the intention that the *ad hoc* Judge to be selected for serving in the Supreme Court should be qualified for appointment as a Judge of the Supreme Court. Every Judge of a High Court need not necessarily be so qualified [Cf. Articles 124 (3), and 217 (2) (*a*)]. See also Article 226 (2).

Attendance of retired Judges at sittings of the Supreme Court.

128. Notwithstanding anything in this Chapter, the Chief Justice of India may at any time, with the previous consent of the President, request any person who has held the office of a Judge of the Supreme Court or of the Federal Court to sit and act as a Judge of the Supreme Court, and every such person so requested shall, while so sitting and acting, be entitled to such allowances as the President may by order determine and have all the jurisdiction, powers and privileges of, but shall not otherwise be deemed to be, a Judge of that Court :

Provided that nothing in this article shall be deemed to require any such person as aforesaid to sit and act as a Judge of that Court unless he consents so to do.

NOTES

This Article is based on S. 8 of the Supreme Court of Judicature (Consolidation) Act, 1925 (15 and 16 Geo, 5-Ch. 49) which runs thus :—

"8. The Lord Chancellor may at any time, subject to the provisions of this section, request any person who has held the office of a judge of the Court of Appeal or of a judge of the High Court to sit and act as a judge of the Court of Appeal, and every such person so requested shall, while so sitting and acting, have all the jurisdiction, powers and privileges of, but shall not otherwise be deemed to be, a judge of the Court of Appeal :

Provided that nothing in this section shall be deemed to require any such person as aforesaid to sit and act as a judge of the Court of Appeal unless he consents so to do."

This is only an enabling provision.

The employment of retired Judges follows the practice of the United Kingdom and the U. S. A. If the necessity for utilising this provision does not arise, the Chief Justice will not use it.

Supreme Court to be a court of record.

129. The Supreme Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself.

This Article is intended to define the position of the Supreme Court which is stated to be that of a court of record. A Court of

Record is a Court the records of which are admitted to be of evidentiary value and they are not to be questioned when they are produced before any court. The second part of the Article says that the Court shall have power to punish of itself for contempt. As a matter of fact, the power to punish for contempt necessarily follows from the fact that it is a Court of Record. In England, this power is largely derived from the common law, but as there is no such thing as common law in India, the framers of the Constitution felt that the whole position should be stated in the Constitution itself.[1]

Seat of Supreme Court.

130. The Supreme Court shall sit in Delhi or in such other place or places, as the Chief Justice of India may, with the approval of the President, from time to time, appoint.

Original jurisdiction of the Supreme Court.

131. Subject to the provisions of this Constitution, the Supreme Court shall, to the exclusion of any other court, have original jurisdiction in any dispute—

(*a*) between the Government of India and one or more States ; or

(*b*) between the Government of India and any State or States on one side and one or more other States on the other ; or

(*c*) between two or more States ;

if and in so far as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends :

Provided that the said jurisdiction shall not extend to—

(*i*) a dispute to which a State specified in Part B of the First Schedule is a party, if the dispute arises out of any provision of a treaty, agreement, covenant, engagement, *sanad* or other similar instrument which was entered into or executed before the commencement of this Constitution and has, or has been, continued in operation after such commencement ;

(*ii*) a dispute to which any State is a party, if the dispute arises out of any provision of a treaty, agreement, covenant, engagement, *sanad* or other similar instru-

1. *See* speech of Hon'ble Dr. Ambedkar, *Constituent Assembly Debates*.

ment which provides that the said jurisdiction shall not extend to such a dispute.

NOTES

Original Jurisdiction of the Supreme Court :—This Article deals with the cases in which the Supreme Court will have original jurisdiction. By 'jurisdiction' is meant "the authority which a Court has to decide matters that are litigated before it or to take cognizance of matters presented in a formal way for its decision." (See Halsbury's Laws of England). Under S. 75 of the Australian Constitution, jurisdiction in all matters *inter alia* ; "between States or between residents of different States or between a State and a resident of another State" is conferred on the High Court of Australia which is the Federal Supreme Court for Australia. Under Article III, S. 1 of the U. S. Constitution, there is a similar provision : ".... .....the judicial power shall extend to divergence between two or more States or between a State and citizens of another State or between citizens of different States.....". But under the Constitution of India, it will be noted that the original jurisdiction of the Supreme Court is exercisable only—

(1) between the Government of India and one or more States ; or

(2) between the Government of India and any State or States on one side and one or more other States on the other.

But this rule is, however, subject to the exceptions mentioned in the proviso.

"The existence or extent of a legal right" :—This phrase may be paraphrased as a justiciable right. The test of a matter being justiciable is : "Can it be sustained on any principle of law that can be invoked as applicable ?" The expression 'legal right' would seem also to include equitable rights.[1]

"A matter in order to be justiciable must be such that a controversy of like nature could arise between individual persons and must be such that it can be determined upon principles of law."[2]

Appellate jurisdiction of Supreme Court in appeals from High Courts in certain cases.

132. (1) An appeal shall lie to the Supreme Court from any judgment, decree or final order of a High Court in the territory of India, whether in a civil, criminal or other proceeding, if the High Court certifies that the case involves a substantial question of law as to the interpretation of this Constitution.

(2) Where the Court has refused to give such a certi-

1. Cf *Warren* v. *Murray*, (1894) 2 Q. B. 648.

2. Cf. Griffith, C. J., in *South Australia* v. *Victoria*, 12 Commonwealth Law Reports, 667.

ficate, the Supreme Court may, if it is satisfied that the case involves a substantial question of law as to the interpretation of this Constitution, grant special leave to appeal from such judgment, decree or final order.

(3) Where such a certificate is given, or such leave is granted, any party in the case may appeal to the Supreme Court on the ground that any such question as aforesaid has been wrongly decided and, with the leave of the Supreme Court, on any other ground.

Explanation.—For the purposes of this article, the expression "final order" includes an order deciding an issue which, if decided in favour of the appellant, would be sufficient for the final disposal of the case.

NOTES

This Article deals with the appellate jurisdiction of the Supreme Court in appeals from High Courts in certain cases and extends to any judgment, decree or final order of a High Court in the territory of India, whether in a civil, criminal or other proceeding.

"Judgment, decree or final order" :—It is not easy to attempt a precise definition of this expression and there is a plethora of case law as to the meaning of the words and the distinctions between them. Referring to the difficulty of attempting a definition, the learned Editors of 'Halsbury's Laws of England' observe as follows : "The terms 'judgment' and 'order' in their widest sense may be said to include any decision given by a Court on a question or questions at issue between the parties to a proceeding properly before a Court. The terms as used in this title exclude decisions of a Court in criminal as opposed to civil matters and such decisions of the Court in civil matters as do not determine the main question or questions at issue between the parties for the determination of which resort has been had to the Court but only determined preliminary or subsidiary questions relating to procedure are not considered here in detail. When considered separately, the terms overlap considerably and are incapable of exact definition." (See Halsbury's Laws of England, Hailsham Edn., Vol. 19, p. 205).

A 'judgment or order' which determines the principal matter in question is termed 'final'. Blackstone says : "Final judgments are such as at once put an end to the action by declaring that the plaintiff has either entitled himself or has not to recover the remedy he sues for (S, 3 *Bl. Com.*, p. 398). The cases on the subject are not easy to reconcile. However, three alternative tests for ascertaining the finality of a judgment or order are given by Halsbury :—

"Three alternative tests for ascertaining the finality of a judgment or order may be proposed :

(1) Was the order made upon an application such that a decision in favour of either party would determine the main dispute ?

(2) Was it made upon an application upon which the main dispute could have been decided ?

(3) Does the order, as made, determine the dispute ?

The weight of authority seems to be in favour of the third of these tests." (See Halsbury's Laws of England, Hailsham's Edn., Vol. 19 p. 206, *et seq.*)

The test of finality is : "Does the judgment or order as made finally dispose of the rights of the parties ?" and this test was applied by Swinfen Eady in *Isaac and Sons* v. *Salbestein* (1916) 2 K. B. 139 (C. A.) at p. 147. See also the *Explanation to* this Article for the meaning of the words "final order".

"Substantial question of Law" :—This expression is evidently used in the same sense as in S. 110 of the Code of Civil Procedure.

Sub-cl. (3) : *Explanation :*—The explanation to this Article was added to set at rest any possible doubt as to the meaning of the words "final order" in this Article which was the subject of a recent ruling by the Federal Court of India (Cf. *Kuppuswamy Rao* v. *King*) which was a case under S. 205 of the Govt. of India Act, 1935, where the Court considered the meaning of the expression "final order".

Appellate jurisdiction of Supreme Courts in appeals from High Court in regard to civil matters.

133. (1) An appeal shall lie to the Supreme Court from any judgment, decree or final order in a civil proceeding of a High Court in the territory of India if the High Court certifies—

(*a*) that the amount or value of the subject-matter of the dispute in the court of first instance and still in dispute on appeal was and is not less than twenty thousand rupees or such other sum as may be specified in that behalf by Parliament by law ; or

(*b*) that the judgment, decree or final order involves directly or indirectly some claim or question respecting property of the like amount or value ; or

(*c*) that the case is a fit one for appeal to the Supreme Court ;

and, where the judgment, decree or final order appealed from affirms the decision of the court immediately below in any case other than a case referred to in sub-clause (*c*), if the High Court further certifies that the appeal involves some substantial question of law.

(2) Notwithstanding anything in article 132, any party appealing to the Supreme Court under clause (1) may urge as one of the grounds in such appeal that a substantial question of law as to the interpretation of this Constitution has been wrongly decided.

(3) Notwithstanding anything in this article, no appeal shall, unless Parliament by law otherwise provides, lie to the Supreme Court from the judgment, decree or final order of one Judge of a High Court.

Appellate jurisdiction of Supreme Court in regard to criminal matters.

134. (1) An appeal shall lie to the Supreme Court from any judgment, final order or sentence in a criminal proceeding of a High Court in the territory of India if the High Court—

(*a*) has on appeal reversed an order of acquittal of an accused person and sentenced him to death ; or

(*b*) has withdrawn for trial before itself any case from any court subordinate to its authority and has in such trial convicted the accused person and sentenced him to death ; or

(*c*) certifies that the case is a fit one for appeal to the Supreme Court :

Provided that an appeal under sub-clause (*c*) shall lie subject to such provisions as may be made in that behalf under clause (1) of article 145 and to such conditions as the High Court may establish or require.

(2) Parliament may by law confer on the Supreme Court any further powers to entertain and hear appeals from any judgment, final order or sentence in a criminal proceeding of a High Court in the territory of India subject to such conditions and limitations as may be specified in such law.

Jurisdiction and powers of the Federal Court under existing law to be exercisable by the Supreme Court.

135. Until Parliament by law otherwise provides, the Supreme Court shall also have jurisdiction and powers with respect to any matter to which the provisions of article 133 or article 134 do not apply if jurisdiction and powers in relation to that

matter were exercisable by the Federal Court immediately before the commencement of this Constitution under any existing law.

Special leave to appeal by the Supreme Court.

136. (1) Notwithstanding anything in this Chapter, the Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India.

(2) Nothing in clause (1) shall apply to any judgment, determination, sentence or order passed or made by any court or tribunal constituted by or under any law relating to the Armed Forces.

NOTES

Sub-cl. (1) : This sub-clause is intended to confer on the Supreme Court unfettered power to grant special leave to appeal to the Court from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India.

Review of judgments or orders by the Supreme Court.

137. Subject to the provisions of any law made by Parliament or any rules made under article 145, the Supreme Court shall have power to review any judgment pronounced or order made by it.

Enlargement of the jurisdiction of the Supreme Court.

138. (1) The Supreme Court shall have such further jurisdiction and powers with respect to any of the matters in the Union List as Parliament may by law confer.

(2) The Supreme Court shall have such further jurisdiction and powers with respect to any matter as the Government of India and the Government of any State may by special agreement confer, if Parliament by law provides for the exercise of such jurisdiction and powers by the Supreme Court.

Conferment on the Supreme Court of powers to issue certain writs.

139. Parliament may by law confer on the Supreme Court power to issue directions, orders or writs, including writs in the nature of *habeas corpus*, *mandamus*, prohibition,

quo warranto and *certiorari*, or any of them, for any purposes other than those mentioned in clause (2) of article 32.

NOTES

Writs in the nature of "habeas corpus" etc. : The words "in the nature of" are designed to enable Parliament to enact laws empowering the Supreme Court to issue writs, directions, orders, or writs including those mentioned in the Article. Thus the Article is made more comprehensive and its phraseology is brought in line with Article 32 which deals with the power of the Supreme Court to issue writs with regard to fundamental rights.

Ancillary powers of Supreme Court.

140. Parliament may by law make provision for conferring upon the Supreme Court such supplemental powers not inconsistent with any of the provisions of this Constitution as may appear to be necessary or desirable for the purpose of enabling the Court more effectively to exercise the jurisdiction conferred upon it by or under this Constitution.

NOTES

This Article practically reproduces, except for certain verbal changes, S. 215 of the Government of India Act, 1935. This is only an enabling provision enacted by way of abundant caution. In case it should turn out that in some important and vital matter some supplementary power is necessary for the purpose of enabling the Supreme Court more effectively to exercise its jurisdiction. The framers of the Constitution thought it wise to put in an enabling Article to enable the Parliament, should the need arise, to fill up the gap. The powers under the Article are definitely limited and restricted. The powers are to be such as may appear necessary to enable the Court to exercise the jurisdiction conferred upon it by or under this Constitution. Necessarily, there is no specific point in mind or the Article would have been made specific. The Parliament will have the power, should it be required, to confer upon the Court the powers necessary to enable it to perform the functions placed upon it under the Constitution.

Law declared by Supreme Court to be binding on all courts.

141. The law declared by the Supreme Court shall be binding on all courts within the territory of India.

NOTES

This Article is based on S. 212 of the Government of India Act, 1935. This Article says that the law declared by the Supreme Court shall be binding on all Courts within the territory of India. Would it include the law as expounded in an opinion given by the Supreme Court under the consultative jurisdiction conferred on it by Article 143 ? The words

used are : "Law 'declared' by the Supreme Court". Under Article 143, the Court is simply called upon to give its opinion in the form of a report to ths President which is not bidning on him. It seems difficult to contend that this can be said to be law 'declared' by the Supreme Court. In this connection it may be noted that under the Canadian Constitution, where there is a similar provision for obtaining the opinion of the Supreme Court, it has been held that the law declared in such opinion is valid and binding.

Enforcement of decrees and orders of Supreme Court and orders as to discovery, etc.

142. (1) The Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it, and any decree so passed or order so made shall be enforceable throughout the territory of India in such manner as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, in such manner as the President may by order prescribe.

(2) Subject to the provisions of any law made in this behalf by Parliament, the Supreme Court shall, as respects the whole of the territory of India, have all and every power to make any order for the purpose of securing the attendance of any person, the discovery or production of any documents, or the investigation or punishment of any contempt of itself.

NOTES

Sub-cl. (2) : This sub-clause is based on sub-clause (2) of S. 210 of the Government of India Act, 1935. This sub-clause deals with what may be called the routine of the administration of Justice. It has nothing to do with causes of action. It deals with the orders of the Supreme Court with regard to securing the attendance of persons, or the discovery or production of documents, or the investigation or punishment for contempt of Court. When the Supreme Court has made its order and it comes to be enforced against a person living anywhere in the territory of India, it will be enforced by the Court which has jurisdiction in that part of the territory of India where he is living.

Power of President to consult Supreme Court.

143. (1) If at any time it appears to the President that a question of law or fact has arisen, or is likely to arise, which is of such a nature and of such public importance that it is expedient to obtain the opinion of the Supreme Court upon it, he may refer the question to that Court for consideration and the Court may, after such hearing as it thinks fit, report to the President its opinion thereon.

(2) The President may, notwithstanding anything in clause (*i*) of the proviso to article 131, refer a dispute of the kind mentioned in the said clause to the Supreme Court for opinion and the Supreme Court shall, after such hearing as it thinks fit, report to the President its opinion thereon.

NOTES

This Article is based on S. 213 of the Government of India Act, 1935.

Consultative Jurisdiction of the Supreme Court : By this Article, the President, as the executive head of the Union, is enabled to refer questions of law or fact for the "opinion" and report of the Supreme Court. Such questions may have actually arisen or may be likely to arise, but it must be of such a nature and of such public importance that it is expedient to obtain the opinion of the Supreme Court upon it (Cf. Section 4 of the Judicial Committee Act (1933) which confers power on His Majesty the King of England to refer to the Privy Council "in such other whatsoever as His Majesty shall think fit".

As already mentioned above, the question referred to the Supreme Court for its opinion may not have actually arisen, but the President may have made the reference in anticipation of the question arising in future. Such a reference, though valid under the Indian Constitution, will be held unconstitutional in Australia [*In re* The Judiciary Act (29 Commonwealth Law Reports 257)]. Under the Canadian Constitution, there is a similar provision enabling the executive Government to obtain the opinion of the Supreme Court of Canada on question of law and fact [Cf. *Attorney General for Ontario* v. *Attorney General for Canada*, (1912) A. C. 571].

Though the consultative jurisdiction envisaged by this Article has this merit, namely, that the executive instead of giving an arbitrary ruling gets the benefit of a judicial interpretarion by an independent tribunal, *viz.*, the Supreme Court, there are certain practical inconveniences attending this procedure. To such practical inconveniences of this procedure, Lord Haldane drew pointed attention in the leading case of *Attorney-General of British Columbia* v. *Attorney General of Canada* (1914) A. C. 153, where his Lordship observed : "Under this procedure questions may be put which it is impossible to answer satisfactorily. Not only may be the question of future litigants be prejudiced by the Court laying down principles in an abstract form without any reference or relation to actual facts but it may turn out to be practically impossible to define a principle adequately and safely without previous ascertainment of the exact facts to which it is to be applied. It has therefore happened that in cases of the present class their Lordships have occasionally found themselves unable to answer all the questions put to them and have found it advisable to limit and guard their replies."

144. All authorities, civil and judicial, in the territory of India shall act in aid of the Supreme Court.

Civil and judicial authorities to act in aid of the Supreme Court.

NOTES

This is practically a reproduction of sub-clause (1) of S. 210 of the Government of India Act, 1935.

145. (1) Subject to the provisions of any law made by Parliament, the Supreme Court may from time to time, with the approval of the President, make rules for regulating generally the practice and procedure of the Court including—

Rules of Court, etc.

(*a*) rules as to the persons practising before the Court ;

(*b*) rules as to the procedure for hearing appeals and other matters pertaining to appeals including the time within which appeals to the Court are to be entered ;

(*c*) rules as to the proceedings in the Court for the enforcement of any of the rights conferred by Part III ;

(*d*) rules as to the entertainment of appeals under sub-clause (*c*) of clause (1) of article 134 ;

(*e*) rules as to the conditions subject to which any judgment pronounced or order made by the Court may be reviewed and the procedure for such review including the time within which applications to the Court for such review are to be entered ;

(*f*) rules as to the costs of and incidental to any proceedings in the Court and as to the fees to be charged in respect of proceeding therein ;

(*g*) rules as to the granting of bail ;

(*h*) rules as to stay of proceedings ;

(*i*) rules providing for the summary determination of any appeal which appears to the Court to be frivolous or vexatious or brought for the purpose of delay ;

(*j*) rules as to the procedure for inquiries referred to in clause (1) of article 317.

(2) Subject to the provisions of clause (3), rules made under this article may fix the minimum number of Judges who are to sit for any purpose, and may provide for the powers of single Judges and Division Courts.

(3) The minimum number of Judges who are to sit for the purpose of deciding any case involving a substantial question of law as to the interpretation of this Constitution or for the purpose of hearing any reference under article 143 shall be five :

Provided that, where the Court hearing an appeal under any of the provisions of this Chapter other than article 132 consists of less than five Judges and in the course of the hearing of the appeal the Court is satisfied that the appeal involves a substantial question of law as to the interpretation of this Constitution the determination of which is necessary for the disposal of the appeal, such Court shall refer the question for opinion to a Court constituted as required by this clause for the purpose of deciding any case involving such a question and shall on receipt of the opinion dispose of the appeal in conformity with such opinion.

(4) No judgment shall be delivered by the Supreme Court save in open Court, and no report shall be made under article 143 save in accordance with an opinion also delivered in open Court.

(5) No judgment and no such opinion shall be delivered by the Supreme Court save with the concurrence of a majority of the Judges present at the hearing of the case, but nothing in this clause shall be deemed to prevent a Judge who does not concur from delivering a dissenting judgment or opinion.

NOTES

This Article is based on S. 214 of the Government of India Act, 1935.

Sub-cl. (1) : Rules of Procedure : It will be seen that the rule-making power conferred on the Supreme Court by this Article is subject to two conditions—

(*i*) it should be subject to the provisions of any law made by Parliament ; and

(*ii*) the rules must be approved by the President of the Union.

Clauses (*a*) to (*j*) should not be considered as exhaustive, but they are merely *enumerative*. This is clear from the use of the word "including". In the Supreme Court of the U. S. A., all the Judges of the Court are entitled to participate in the hearing of every matter and the court never sits in division. The Judges of that Court attach the greatest importance to this practice. The Drafting Committee was of the opinion that this practice should be followed in India at least in two classes of cases, *viz.*, those which involve questions of interpretation of the Constitution and those which are referred to the Supreme Court for opinion by the President. [Cf. Sub-cl. (3) of this Article which provides that the minimum number of judges in such cases should be five]. Whether the same practice should not be extended to other classes of cases is a matter which Parliament may recall by law to be enacted under the provisions of this sub-clause.

Item (*b*) of this sub-clause gives the Court power to make rules for regulating the procedure for hearing appeals and other matters pertaining to appeals including the time within which the appeals to the Court are to be entered. This follows the practice prevalent in the Supreme Court of the U. S. A. where advocates are normally allowed only one hour to argue each case, the rest of their statements being in writing [see Introduction to this chapter].

Sub-cl. (4) : This sub-clause follows the procedure of the House of Lords in preference to that of the Privy Council. From this sub-clause it is clear that separate and concurring judgments can be delivered by the Judges who happen to be in a majority.

Officers and servants and the expenses of the Supreme Court.

146. (1) Appointments of officers and servants of the Supreme Court shall be made by the Chief Justice of India or such other Judge or officer of the Court as he may direct ;

Provided that the President may by rule require that in such cases as may be specified in the rule, no person not already attached to the Court shall be appointed to any office connected with the Court, save after consultation with the Union Public Service Commission.

(2) Subject to the provisions of any law made by Parliament, the conditions of service of officers and servants of the Supreme Court shall be such as may be prescribed by rules made by the Chief Justice of India or by some other Judge or officer of the Court authorised by the Chief Justice of India to make rules for the purpose :

Provided that the rules made under this clause shall

so far as they relate to salaries, allowances, leave or pension, require the approval of the President.

(3) The administrative expenses of the Supreme Court, including all salaries, allowances and pensions payable to or in respect of the officers and servants of the Court, shall be charged upon the Consolidated Fund of India, and any fees or orther moneys taken by the Court shall form part of that Fund.

NOTES

The object underlying this Article is to make a better provision for the independence of the Supreme Court and also to make provision that the administrative expenses of the Supreme Court shall be a charge on the Consolidated Fund of India.

Sub-cl. (2) :—The provision regarding the framing of rules with regard to the salaries, allowances, leave or pensions, of the officers and servants of the Supreme Court with the approval of the President is based on S. 242 (4) of the Government of India Act, 1935, as adapted. The framers of the Constitution considered such a provision to be necessary to ensure the independence of the judiciary.

Interpretation.

147. In this Chapter and in Chapter V of Part VI, referene to any substantial question of law as to the interpretation of this Constitution shall be construed as including references to any substantial question of law as to the interpretation of the Government of India Act, 1935 (including any enactment amending or supplementing that Act), or of any Order in Council or order made thereunder, or of the Indian Independence Act, 1947, or of any order made thereunder.

CHAPTER V.—COMPTROLLER AND AUDITOR-GENERAL OF INDIA

Comptroller and Auditor-General of India.

148. (1) There shall be a Comptroller and Auditor-General of India who shall be appointed by the President by warrant under his hand and seal and shall only be removed from office in like manner and on the like grounds as a Judge of the Supreme Court.

(2) Every person appointed to be the Comptroller and Auditor-General of India shall, before he enters upon his office, make and subscribe before the President, or some person appointed in that behalf by him, an oath or affirma-

tion according to the form set out for the purpose in the Third Schedule.

(3) The salary and other conditions of service of the Comptroller and Auditor-General shall be such as may be determined by Parliament by law and, until they are so determined, shall be as specified in the Second Schedule :

Provided that neither the salary of a Comptroller and Auditor-General nor his rights in respect of leave of absence, pension or age of retirement shall be varied to his disadvantage after his appointment.

(4) The Comptroller and Auditor-General shall not be eligible for further office either under the Government of India or under the Government of any State after he has ceased to hold his office

(5) Subject to the provisions of this Constitution and of any law made by Parliament, the conditions of service of persons serving in the Indian Audit and Accounts Department and the administrative powers of the Comptroller and Auditor-General shall be such as may be prescribed by rules made by the President after consultation with the Comptroller and Auditor-General.

(6) The administrative expenses of the office of the Comptroller and Auditor-General, including all salaries, allowances and pensions payable to or in respect of persons serving in that office, shall be charged upon the Consolidated Fund of India.

NOTES

This Article is based on S. 166, sub-sections (1), (2) and (4) of the Government of India Act, 1935.

Speaking on the importance of the office of the Auditor-General the Hon. Dr. Ambedkar said. ".....this dignitary or officer is probably the most important officer in the constitution of India. He is the one man who is going to see that the expenses voted by Parliament are not exceeded, or varied from what has been laid down by Parliament in what is called the Appropriation Act."

Duties and powers of the Comptroller and Auditor-General.

149. The Comptroller and Auditor-General shall perform such duties and exercise such powers in relation to the accounts of the Union and of the States and of any other authority or body as may be prescribed by or under any

law made by Parliament and, until provision in that behalf is so made, shall perform such duties and exercise such powers in relation to the accounts of the Union and of the States as were conferred on or exercisable by the Auditor-General of India immediately before the commencement of this Constitution in relation to the accounts of the Dominion of India and of the Provinces respectively.

NOTES

This Article is based on sub-section (3) of S. 166 of the Government of India Act, 1935.

The concluding portion of this Article was inserted in order to keep alive the ordinances, orders, bye-laws, rules and regulations made by the Governor-General under the Government of India Act, 1935. For under the Goverment of India Act, 1935 the functions of the Auditor-General were regulated not by law made by Parliament but by ordinances, orders, bye-laws etc. made by the Governor-General.

Power of Comptroller and Auditor-General to give directions as to accounts.

150. The accounts of the Union and of the States shall be kept in such form as the Comptroller and Auditor-General of India may, with the approval of the President, prescribe.

This Article is based on S. 168 of the Government of India Act, 1935.

Audit reports.

151. (1) The reports of the Comptroller and Auditor-General of India relating to the accounts of the Union shall be submitted to the President, who shall cause them to be laid before each House of Parliament.

(2) The reports of the Comptroller and Auditor-General of India relating to the accounts of a State shall be submitted to the Governor or Rajpramukh of the State, who shall cause them to be laid before the Legislature of the State.

This Article is based on S. 169 of the Government of India Act, 1935.

PART VI

THE STATES IN PART A OF THE FIRST SCHEDULE

CHAPTER I—GENERAL

Definition.

152. In this Part, unless the context otherwise requires, the expression "State" means a State specified in Part A of the First Schedule.

Cf. Article 52, *ante*.

CHAPTER II.—THE EXECUTIVE

The Governor

Governors of States

153. There shall be a Governor for each State.

Executive power of State.

154. (1) The executive power of the State shall be vested in the Governor and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution.

(2) Nothing in this article shall—

(*a*) be deemed to transfer to the Governor any functions conferred by any existing law on any other authority; or

(*b*) prevent Parliament or the Legislature of the State from conferring by law functions on any authority subordinate to the Governor.

NOTES

Cf. Article 53, *ante*.

Just as the executive power of the Union is vested in the President, the executive power of the State is vested in a Governor.

Appointment of Governor.

155. The Governor of a State shall be appointed by the President by warrant under his hand and seal.

NOTES

Cf. Article 54, *ante*.

This Article embodies the suggestion of the sub-committee which recommended that the Governors should be directly appointed by the President and that it was not necessary to provide for a panel of candidates for such appointment as per the proposals made by the Drafting Committee. The position of the Governor is now that of a mere constitutional head while the Prime Minister who is the leader of the majority party has the controlling voice in the affairs of the State.

156. (1) The Governor shall hold office during the pleasure of the President.

Term of office of Governor.

(2) The Governor may, by writing under his hand addressed to the President, resign his office.

(3) Subject to the foregoing provisions of this article, a Governor shall hold office for a term of five years from the date on which he enters upon his office :

Provided that a Governor shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office.

NOTES

Cf. Article 56, *ante*.

It has been provided in clause (*a*) of the proviso to Article 56 (1) that the President may, by writing under his hand addressed to the Vice-President, resign his office. In sub-clause (2) of Article 156, it has been similarly provided that, in the case of a State, the Governor may, by writing under his hand addressed to the President, resign his office. It is but appropriate that a Governor who is appointed directly by the President should address his resignation to him.

157. No person shall be eligible for appointment as Governor unless he is a citizen of India and has completed the age of thirty-five years.

Qualifications for appointment as Governor.

Cf. Article 58, *ante*.

158. (1) The Governor shall not be a member of either House of Parliament or of a House of the Legislature of any State specified in the First Schedule, and if a member of either House of Parliament or of a House of the Legislature

Conditions of Governor's office.

of any such State be appointed Governor, he shall be deemed to have vacated his seat in that House on the date on which he enters upon his office as Governor.

(2) The Governor shall not hold any other office of profit.

(3) The Governor shall be entitled without payment of rent to the use of his official residences and shall be also entitled to such emoluments, allowances and privileges as may be determined by Parliament by law and until provision in that behalf is so made, such emoluments, allowances and privileges as are specified in the Second Schedule.

(4) The emoluments and allowances of the Governor shall not be diminished during his term of office.

Cf. Article 59, *ante*.

Oath or affirmation by the Governor.

159. Every Governor and every person discharging the functions of the Governor shall, before entering upon his office, make and subscribe in the presence of the Chief Justice of the High Court exercising jurisdiction in relation to the State, or, in his absence, the seniormost Judge of that Court available, an oath or affirmation in the following form, that is to say—

"I, A.B. do $\frac{\text{swear in the name of God}}{\text{solemnly affirm}}$ that I will faithfully execute the office of Governor (or discharge the functions of the Governor) of ———— (*name of the State*) and will to the best of my ability preserve, protect and defend the Constitution and the law and that I will devote myself to the service and well-being of the people of ———— (*name of the State.*"

Cf. Article 60, *ante*.

Discharge of the functions of the Governor in certain contingencies.

160. The President may make such provision as he thinks fit for the discharge of the functions of the Governor of a State in any contingency not provided for in this Chapter.

Cf. Article 70, *ante*.

Power of Governor to grant pardons, etc., and to suspend, remit or commute sentences in certain cases.

161. The Governor of a State shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any office against any law relating to a matter to which the executive power of the State extends.

Cf. Article 72, *ante*.

Extent of executive power of State.

162. Subject to the provisions of this Constitution, the executive power of a State shall extend to the matters with respect to which the Legislature of the State has power to make laws :

Provided that in any matter with respect to which the Legislature of a State and Parliament have power to make laws, the executive power of the State shall be subject to, and limited by, the executive power expressly conferred by this Constitution or by any law made by Parliament upon the Union or authorities thereof.

NOTES

Cf. Article **73**, *ante*.

This Article is based on S. 49 (2) of the Government of India Act, 1935. The executive power extends to the subjects specified in the Concurrent List also except in so far as the parliamentary legislation has covered the field and in such cases the executive power of every State shall be so exercised as to ensure compliance with the laws made by Parliament and any existing laws which apply in that State, and the executive power of the Union shall extend to the giving of such directions to the State as may appear to the Government of India to be necessary for that purpose (Cf. Article 256, *post*). The executive power of the Union, as has been noted already, does not extend in any State specified in Part A or Part B of the First Schedule to matters with respect to which the legislature of the State has also power to make laws [Cf. Article 73 (1), provisos].

Proviso : The reason for this proviso is that there are certain provisions in the Constitution itself which give executive power to the Union in certain matters including matters relating to Concurrent List subjects, for instance Article 353 (*a*), *post*. Moreover, a law made by Parliament relating to a Concurrent List subject may confer executive power not only upon the Government of the Union, but also upon certain authorities of the Union.

Council of Ministers

Council of Ministers to aid and advise Governor.

163. (1) There shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Governor in the exercise of his functions, except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion.

(2) If any question arises whether any matter is or is not a matter as respects which the Governor is by or under this Constitution required to act in his discretion, the decision of the Governor in his discretion shall be final, and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in his discretion.

(3) The question whether any, and if so what, advice was tendered by Ministers to the Governor shall not be inquired into in any court.

NOTES

Cf. Article 74, *ante*.

This Article is based on S. 50 of the Government of India Act, 1935.

Council of Ministers : This Article lays down in general terms the principle of ministerial responsibility that the Governor in the various spheres of executive activity should act on the advice of his Ministers. The words used are "aid and advise" as in Article 74, *ante*. The words "except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion" are intended to emphasise that the Governor may act in his discretion in specific cases mentioned in the Constitution. The meaning of the provision is that the Governor should always act on ministerial responsibility except in particular or specific cases where he is empowered to act in his discretion. This means that Article 163 will have to be read in conjunction with such other Articles as specifically reserve to the Governor the power to act in his discretion. Article 163 should not be construed as giving the Governor power to disregard the advice of his ministers in any matter in which he finds he ought to disregard.

Other provisions as to Ministers.

164. (1) The Chief Minister shall be appointed by the Governor and the other Ministers shall be appointed by the Governor on the advice of the Chief Minister, and the Ministers shall hold office during the pleasure of the Governor :

Provided that in the States of Bihar, Madhya Pradesh and Orissa, there shall be a Minister in charge of tribal welfare who may in addition be in charge of the welfare of the Scheduled Castes and backward classes or any other work.

(2) The Council of Ministers shall be collectively responsible to the Legislative Assembly of the State.

(3) Before a Minister enters upon his office, the Governor shall administer to him the oaths of office and of secrecy according to the forms set out for the purpose in the Third Schedule.

(4) A Minister who for any period of six consecutive months is not a member of the Legislature of the State shall at the expiration of that period cease to be a Minister.

(5) The salaries and allowances of Ministers shall be such as the Legislature of the State may from time to time by law determine and, until the Legislature of the State so determines, shall be as specified in the Second Schedule.

NOTES

Cf. Article 75, *ante*.

This Article is based on S. 51 of the Government of India Act, 1935.

The principle of collective responsibility mentioned in Article 75 is embodied in sub-clause (2) of Article 164.

The Ministers are to hold office during the pleasure of the Governor. The words "during the pleasure" is a well-known expression and in the context of a parliamentary system of Government ordinarily mean that the Ministers shall not continue to hold office if they lose the confidence of the majority in the Legislative Assembly. The moment the Ministry has lost the confidence of the majority, the Governor will exercise his "pleasure" in dismissing the Ministry.

The proviso to sub-clause (1) has been incorporated in this Article as a result of the recommendations made by the sub-committee of Tribal People appointed by the Minorities' Committee of the Constituent Assembly. There it is stated that in the provinces of Bihar, Central Provinces, and Orissa, there shall be a separate Minister for Tribal Welfare, provided the Minister may hold charge simultaneously of welfare work pertaining to Scheduled Castes and backward classes or any other work. It was the intention of that Committee that this provision should appear in the Constitution itself and that it should not be relegated to any other part of it. Hence this proviso.

Council of Ministers

Council of Ministers to aid and advise Governor.

163. (1) There shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Governor in the exercise of his functions, except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion.

(2) If any question arises whether any matter is or is not a matter as respects which the Governor is by or under this Constitution required to act in his discretion, the decision of the Governor in his discretion shall be final, and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in his discretion.

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164. (1) The Chief Minister shall be appointed by the Governor and the other Ministers shall be appointed by the Governor on the advice of the Chief Minister, and the Ministers shall hold office during the pleasure of the Governor ;

Provided that in the States of Bihar, Madhya Pradesh and Orissa, there shall be a Minister in charge of tribal welfare who may in addition be in charge of the welfare of the Scheduled Castes and backward classes or any other work.

(2) The Council of Ministers shall be collectively responsible to the Legislative Assembly of the State.

(3) Before a Minister enters upon his office, the Governor shall administer to him the oaths of office and of secrecy according to the forms set out for the purpose in the Third Schedule.

(4) A Minister who for any period of six consecutive months is not a member of the Legislature of the State shall at the expiration of that period cease to be a Minister.

(5) The salaries and allowances of Ministers shall be such as the Legislature of the State may from time to time by law determine and, until the Legislature of the State so determines, shall be as specified in the Second Schedule.

NOTES

Cf. Article 75, *ante*.

This Article is based on S. 51 of the Government of India Act, 1935.

The principle of collective responsibility mentioned in Article 75 is embodied in sub-clause (2) of Article 164.

The Ministers are to hold office during the pleasure of the Governor. The words "during the pleasure" is a well-known expression and in the context of a parliamentary system of Government ordinarily mean that the Ministers shall not continue to hold office if they lose the confidence of the majority in the Legislative Assembly. The moment the Ministry has lost the confidence of the majority, the Governor will exercise his "pleasure" in dismissing the Ministry.

The proviso to sub-clause (1) has been incorporated in this Article as a result of the recommendations made by the sub-committee of Tribal People appointed by the Minorities' Committee of the Constituent Assembly. There it is stated that in the provinces of Bihar, Central Provinces, and Orissa, there shall be a separate Minister for Tribal Welfare, provided the Minister may hold charge simultaneously of welfare work pertaining to Scheduled Castes and backward classes or any other work. It was the intention of that Committee that this provision should appear in the Constitution itself and that it should not be relegated to any other part of it. Hence this proviso.

The Advocate-General for the State

Advocate-General for the State.

165. (1) The Governor of each State shall appoint a person who is qualified to be appointed a Judge of a High Court to be Advocate-General for the State.

(2) It shall be the duty of the Advocate-General to give advice to the Government of the State upon such legal matters, and to perform such other duties of a legal character, as may from time to time be referred or assigned to him by the Governor, and to discharge the functions conferred on him by or under this Constitution or any other law for the time being in force.

(3) The Advocate-General shall hold office during the pleasure of the Governor, and shall receive such remuneration as the Governor may determine.

NOTES

Cf. Article 76, *ante*.

This Article is based on S. 55 of the Government of India Act, 1935.

Conduct of Government Business

Conduct of business of the Government of a State.

166. (1) All executive action of the Government of a State shall be expressed to be taken in the name of the Governor.

(2) Orders and other instruments made and executed in the name of the Governor shall be authenticated in such manner as may be specified in rules to be made by the Governor, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor.

(3) The Governor shall make rules for the more convenient transaction of the business of the Government of the State, and for the allocation among Ministers of the said business in so far as it is not business with respect to which the Governor is by or under this Constitution required to act in his discretion.

NOTES

Cf. Article 77, *ante*.

This Article is based on S. 59 of the Government of India Act, 1935. This Article necessarily follows from Article 154, *ante*, which states that the executive power of the State shall be vested in the Governor. That being so, the only logical conclusion is that all expressions of executive action must be in the name of the Governor.

Duties of Chief Minister as respects the furnishing of information to Governor etc.

167. It shall be the duty of the Chief Minister of each State—

(*a*) to communicate to the Governor of the State all decisions of the Council of Ministers relating to the administration of the affairs of the State and proposals for legislation ;

(*b*) to furnish such information relating to the administration of the affairs of the State and proposal for legislation as the Governor may call for ; and

(*c*) if the Governor so requires, to submit for the consideration of the Council of Ministers any matter on which a decision has been taken by a Minister but which has not been considered by the Council.

NOTES

Cf. Article 78, *ante*.

Cl. (c) : Governor's Power to require reconsideration : Sub-clause (*c*) of this Article is not intended to empower the Governor to reopen any decision already taken by the Council of Ministers for further consideration of the Council. Its object is to empower the Governor to require that a case on which a decision has been taken by a Minister but has not been considered by the Council of Ministers should be submitted to the Council for consideration as occasionally cases are disposed of finally by the Minister-in-charge without reference to the Council of Ministers if the Minister does not think them to be of such importance as to merit consideration by the Council.

Regarding this sub-clause, the following extract from the speech of Shri K. M. Munshi in the Constituent Assembly during the discussion of this clause will be found instructive : –

".....Under this clause it will be open for the Governor to ask the Chief Minister for information with regard to important questions and if he feels that certain decisions have been taken not by the Cabinet as a whole but by an individual Minister which require reconsideration at the hands of the Cabinet as a whole, clause (*c*) will give him the power to get that done. What is wrong about it ? When a Minister acts behind the back of his colleagues, behind the back of the Chief Minister who is

responsible for all the actions of the Ministers, why cannot the Governor say, 'Here is a particular order. I feel that it is a matter of great importance. I want that by virtue of collective responsibilty all the Ministers must meet together and consider it ?' If they aceept it, he is bound to accept their advice. He has no right to over-rule them. It is merely a matter of caution that a decision, which in the opinion of the Constitutional Head, is such as requires the *imprimatur* of the whole Cabinet and not of a single Minister, should so receive it. There fore it is a safeguard which preserves the collective responsibility and the powers of the Prime Minister, and not a power which interferes with the Government .....The new Governor has no power except as a constitutional head. He is going to be nominated by the Centre. He is going to be a detached spectator of what is going on in the province. His function is to maintain the dignity, the stability and the collective responsibility of his government. Now in that limited sphere he can exercise some influence.....The position of the Governor must be considered from the point of view of a constitutional head as in England.....This is his (Mr. Asquith's) definition of the position of the constitutional head in England :—

'We have now a well-established tradition that in the last resort, the occupant of the Throne accepts and acts on the advice of his Ministers .....He is entitled and bound to give his Ministers all relevant information which comes to him.'

Therefore it is not as though he cannot get any information apart from what he gets from his Ministers.

'to point out objections which seem to him valid against the course which they advise ; to suggest, if he thinks fit, an alternative policy. Such instructions are always received by Ministers with the utmost respect and considered with more respect and deference than if they proceeded from any other quarter. But, in the end, the Sovereign always acts upon the advice which Ministers after (if need be) reconsideration, feel it their duty to offer. They give that advice well knowing that they can, and probably will, be called upon to account for it by Parliament.'

.....That being so, nothing need prevent us from following the successful experiment in England. We are not going to have a new experiment.....There is no harm, but there is great advantage if the Governor exercises his influence over his Cabinet. As I said, we have single parties in the provinces now, but a time might come when there will be many parties, when the Premier might fail to bring about a compromise between the parties and harmonise policies during a crisis. At that time the value of the Governor would be immense and from this point of view I submit that the powers that are given here are legitimate powers given to a constitutional head and they are essential for working out a smooth democracy and they will be most beneficial to the ministers themselves, because then they will be able to get confidential information and advice from a person who has completely identified himself with them and yet is accessibie to the other parties. From this point of view these powers, which we have accepted for the Governor, are essential and must be retained." (Constituent Assembly Debates, Vol VIII, pp. 541-543).

CHAPTER III.—THE STATE LEGISLATURE

General

Constitution of Legislatures in States.

168. (1) For every State there shall be a Legislature which shall consist of the Governor, and

(*a*) in the States of Bihar, Bombay, Madras, Punjab, the United Provinces and West Bengal, two Houses;

(*b*) in other States, one House.

(2) Where there are two Houses of the Legislature of a State, one shall be known as the Legislative Council and the other as the Legislative Assembly, and where there is only one House, it shall be known as the Legislative Assembly.

This Article is based on S. 60 of the Government of India Act, 1935.

Abolition or creation of Legislative Councils in States.

169. (1) Notwithstanding anything in article 168, Parliament may by law provide for the abolition of the Legislative Council of a State having such a Council or for the creation of such a Council in a State having no such Council if the Legislative Assembly of the State passes a resolution to that effect by a majority of the total membership of the Assembly and by a majority of not less than two thirds of the members of the Assembly present and voting.

(2) Any law referred to in clause (1) shall contain such provisions for the amendment of this Constitution as may be necessary to give effect to the provisions of the law and may also contain such supplemental, incidental and consequential provisions as Parliament may deem necessary.

(3) No such law as aforesaid shall be deemed to be an amendment of this Constitution for the purposes of article 368.

Composition of the Legislative Assemblies.

170. (1) Subject to the provisions of article 333, the Legislative Assembly of each State shall be composed of members chosen by direct election.

(2) The representation of each territorial constituency in the Legislative Assembly of a State shall be on the basis

of the population of that constituency as ascertained at the last preceding census of which the relevant figures have been published and shall, save in the case of the autonomous districts of Assam and the constituency comprising the cantonment and municipality of Shillong, be on a scale of not more than one member for every seventy-five thousand of the population :

Provided that the total number of members in the Legislative Assembly of a State shall in no case be more than five hundred or less than sixty.

(3) The ratio between the number of members to be allotted to each territorial constituency in a State and the population of that constituency as ascertained at the last preceding census of which the relevant figures have been published shall, so far as practicable, be the same throughout the State.

(4) Upon the completion of each census, the representation of the several territorial constituencies in the Legislative Assembly of each State shall be readjusted by such authority, in such manner and with effect from such date as Parliament may by law determine :

Provided that such readjustment shall not affect representation in the Legislative Assembly until the dissolution of the then existing Assembly.

Cf. Article 80, *ante*.

Composition of the Legislative Councils.

171. (1) The total number of members in the Legislative Council of a State having such a Council shall not exceed one-fourth of the total number of members in the Legislative Assembly of that State :

Provided that the total number of members in the Legislative Council of a State shall in no case be less than forty.

(2) Until Parliament by law otherwise provides, the composition of the Legislative Council of a State shall be as provided in clause (3).

(3) Of the total number of members of the Legislative Council of a State—

(*a*) as nearly as may be, one-third shall be elect-

ed by electorates consisting of members of municipalities, district boards and such other local authorities in the State as Parliament may by law specify ;

(*b*) as nearly as may be, one-twelfth shall be elected by electorates consisting of persons residing in the State who have been for at least three years graduates of any university in the territory of India or have been for at least three years in possession of qualifications prescribed by or under any law made by Parliament as equivalent to that of a graduate of any such university ;

(*c*) as nearly as may be, one-twelfth shall be elected by electorates consisting of persons who have been for at least three years engaged in teaching in such educational institutions within the State, not lower in standard than that of a secondary school, as may be prescribed by or under any law made by Parliament ;

(*d*) as nearly as may be, one-third shall be elected by the members of the Legislative Assembly of the State from amongst persons who are not members of the Assembly ;

(*e*) the remainder shall be nominated by the Governor in accordance with the provisions of clause (5).

(4) The members to be elected under sub-clauses (*a*), (*b*) and (*c*) of clause (3) shall be chosen in such territorial constituencies as may be prescribed by or under any law made by Parliament, and the elections under the said sub-clauses and under sub-clause (*d*) of the said clause shall be held in accordance with the system of proportional representation by means of the single transferable vote.

(5) The members to be nominated by the Governor under sub-clause (*e*) of clause (3) shall consist of persons having special knowledge or practical experience in respect of such matters as the following, namely :—

Literature, science, art, co-operative movement and social service.

Cf. Article 81, *ante*.

Duration of State Legislatures.

172. (1) Every Legislative Assembly of every State, unless sooner dissolved, shall continue for five years from the date appointed for its first meeting and no longer and the expiration of the said period of five years shall operate as a dissolution of the Assembly ;

Provided that the said period may, while a Proclamation of Emergency is in operation, be extended by Parliament by law for a period not exceeding one year at a time and not extending in any case beyond a period of six months after the Proclamation has ceased to operate.

(2) The Legislative Council of a State shall not be subject to dissolution, but as nearly as possible one-third of the members thereof shall retire as soon as may be on the expiration of every second year in accordance with the provisions made in that behalf by Parliament by law.

NOTES

Cf. Article 83, *ante*.

The period of "five years" was inserted by the Drafting Committee instead of "four years" as the life of the State Legislative Assembly, as it considered that under the Parliamentary system of Government the first year of a Minister's term of office would generally be taken up in gaining knowledge of the work of administration and the last year would be taken up in preparing for the next general election, and there would thus be only two years left for effective work which would be too short a period for planned administration.

Qualifications for membership of the State Legislature.

173. A person shall not be qualified to be chosen to fill a seat in the Legislature of a State unless he—

(*a*) is a citizen of India ;

(*b*) is, in the case of a seat in the Legislative Assembly, not less than twenty-five years of age and, in the case of a seat in the Legislative Council, not less than thirty years of age ; and

(*c*) possesses such other qualifications as may be

prescribed in that behalf by or under any law made by Parliament.

Cf. Article 84, *ante*.

Sessions of the State Legislature, prorogation and dissolution.

174. (1) The House or Houses of the Legislature of the State shall be summoned to meet twice at least in every year, and six months shall not intervene between their first sitting in one session and the date appointed for their first sitting in the next session.

(2) Subject to the provisions of clause (1), the Governor may from time to time—

(*a*) summon the House or either House to meet at such time and place as he thinks fit ;

(*b*) prorogue the House or Houses ;

(*c*) dissolve the Legislative Assembly.

NOTES

Cf. Article 85, *ante*.

This Article is based on S. 62 of the Government of India Act, 1935.

Right of Governor to address and send message to the Houses or Houses

175. (1) The Governor may address the Legislative Assembly or, in the case of a State having a Legislative Council, either House of the Legislature of the State, or both Houses assembled together, and may for that purpose require the attendance of members.

(2) The Governor may send message to the House or Houses of the Legislature of the State, whether with respect to a Bill then pending in the Legislature or otherwise, and a House to which any message is so sent shall with all convenient despatch consider any matter required by the message to be taken into consideration.

NOTES

Cf. Article 86, *ante*.

This Article is based on S. 63 of the Government of India Act, 1935.

Special address by the Governor at the commencement of every session.

176. (1) At the commencement of every session, the Governor shall address the Legislative Assembly or, in the case of State having a Legislative Council, both Houses assembled together and inform the Legislature of the causes of its summons.

(2) Provision shall be made by the rules regulating the procedure of the House or either House for the allotment of time for discussion of the matters referred to in such address and for the precedence of such discussion over other business of the House.

NOTES

Cf. Article 87, *ante*.

This Article is based on the practice prevalent in the United Kingdom. See also S. 63 of the Government of India Act, 1935.

Rights of Ministers and Advocate-General as respects the Houses.

177. Every Minister and the Advocate-General for a State shall have the right to speak in, and otherwise to take part in the proceedings of, the Legislative Assembly of the State or, in the case of a State having a Legislative Council, both Houses, and to speak in, and otherwise to take part in the proceedings of, any committee of the Legislature of which he may be named a member, but shall not by virtue of this article, be entitled to vote.

NOTES

Cf. Article 88, *ante*.

This Article is based on S. 64 of the Government of India Act, 1935.

Officers of the State Legislature

The Speaker and Deputy Speaker of the Legislative Assembly.

178. Every Legislative Assembly of a State shall, as soon as may be, choose two members of the Assembly to be respectively Speaker and Deputy Speaker thereof and, so often as the office of Speaker or Deputy Speaker becomes vacant, the Assembly shall choose another member to be Speaker or Deputy Speaker, as the case may be.

NOTES

Cf. Article 89, *ante*.

This Article is based on S. 65 of the Government of India Act, 1935.

179. A member holding office as Speaker or Deputy Speaker of an Assembly—

Vacation and resignation of, and removal from, the offices of Speaker and Deputy Speaker.

(*a*) shall vacate his office if he ceases to be a member of the Assembly ;

(*b*) may at any time by writing under his hand addressed, if such member is the Speaker, to the Deputy Speaker, and if such member is the Deputy Speaker, to the Speaker, resign his office ; and

(*c*) may be removed from his office by a resolution of the Assembly passed by a majority of all the then members of the Assembly :

Provided that no resolution for the purpose of clause (*c*) shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution :

Provided further that, whenever the Assembly is dissolved, the Speaker shall not vacate his office until immediately before the first meeting of the Assembly after the dissolution.

NOTES

Cf. Article 90, *ante*.

This Article provides that the Speaker may resign by writing under his hand addressed to the Deputy Speaker so that the Deputy Speaker may intimate the resignation to the Assembly. In the House of Commons of the Parliament of the United Kingdom, if a vacancy occurs by the Speaker's acceptance of office, protracted illness or death, the clerk of the House announces the death of the Speaker, or at the ensuing meeting of the House reads a letter which the Speaker stating the cause of his retirement has addressed to the clerk. (May's Parliamentary Practice, 14th edn., p. 269).

180. (1) While the office of Speaker is vacant, the duties of the office shall be performed by the Deputy Speaker or, if the office of Deputy Speaker is also vacant, by such member of the Assembly as the Governor may appoint for the purpose.

Power of the Deputy Speaker or other person to perform the duties of the office of, or to act as, Speaker

(2) During the absence of the Speaker from any sitting of the Assembly the Deputy Speaker or, if he is also absent, such person as may be determined by the rules of procedure of the Assembly, or, if no such person is present,

such other person as may be determined by the Assembly, shall act as Speaker.

Cf. Article 91, *ante*.

The Speaker and the Deputy Speaker not to preside while a resolution for his removal from office is under consideration.

181. (1) At any sitting of the Legislative Assembly, while any resolution for the removal of the Speaker from his office is under consideration, the Speaker, or while any resolution for the removal of the Deputy Speaker from his office is under consideration, the Deputy Speaker, shall not, though he is present, preside, and the provisions of clause (2) of article 180 shall apply in relation to every such sitting as they apply in relation to a sitting from which the Speaker or, as the case may be, the Deputy Speaker, is absent.

(2) The Speaker shall have the right to speak in, and otherwise to take part in the proceedings of, the Legislative Assembly while any resolution for his removal from office is under consideration in the Assembly and shall, notwithstanding anything in article 189, be entitled to vote only in the first instance on such resolution or on any other matter during such proceedings but not in the case of an equality of votes.

Cf. Article 92, *ante*.

The Chairman and Deputy Chairman of the Legislative Council.

182. The Legislative Council of every State having such Council shall, as soon as may be, choose two members of the Council to be respectively Chairman and Deputy Chairman thereof and, so often as the office of Chairman or Deputy Chairman becomes vacant, the Council shall choose another member to be Chairman or Deputy Chairman, as the case may be.

Cf. Article 93, *ante*.

Vacation and resignation of, and removal from, the offices of Chairman and Deputy Chairman.

183. A member holding office as Chairman or Deputy Chairman of a Legislative Council—

(*a*) shall vacate his office if he ceases to be a member of the Council ;

(*b*) may at any time by writing under his hand addressed, if such member is

the Chairman, to the Deputy Chairman, and if such member is the Deputy Chairman, to the Chairman, resign his office ; and

(*c*) may be removed from his office by a resolution of the Council passed by a majority of all the then members of the Council :

Provided that no resolution for the purpose of clause (*c*) shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution.

NOTES

Cf. Article 94, *ante*.

This Article is based on S. 68 of the Government of India Act, 1935.

Power of the Deputy Chairman or other person to perform the duties of the office of, or to act as, Chairman.

184. (1) While the office of Chairman is vacant, the duties of the office shall be performed by the Deputy Chairman or, if the office of Deputy Chairman is also vacant, by such member of the Council as the Governor may appoint for the purpose.

(2) During the absence of the Chairman from any sitting of the Council the Deputy Chairman or, if he is also absent, such person as may be determined by the rules of procedure of the Council, or, if no such person is present, such other person as may be determined by the Council, shall act as Chairman.

Cf. Article 95, *ante*.

The Chairman or the Deputy Chairman not to preside while a resolution for his removal from office is under consideration.

185. (1) At any sitting of the Legislative Council while any resolution for the removal of the Chairman from his office is under consideration, the Chairman, or while any resolution for the removal of the Deputy Chairman from his office is under consideration, the Deputy Chairman, shall not, though he is present, preside, and the provisions of clause (2) of article 184 shall apply in relation to every such sitting as they apply in relation to a sitting from which the Chairman or, as the case may be, the Deputy Chairman is absent.

(2) The Chairman shall have the right to speak in, and otherwise to take part in the proceedings of, the

Legislative Council while any resolution for his removal from office is under consideration in the Council and shall notwithstanding anything in article 189, be entitled to vote only in the first instance on such resolution or any other matter during such proceeding but not in the case of an equality of votes.

Cf. Article 96, *ante*.

Salaries and allowances of the Speaker and Deputy Speaker and the Chairman and Deputy Chairman.

186. There shall be paid to the Speaker and the Deputy Speaker of the Legislative Assembly, and to the Chairman and the Deputy Chairman of the Legislative Council, such salaries and allowances as may be respectively fixed by the Legislature of the State by law and, until provision in that behalf is so made, such salaries and allowances as are specified in the Second Schedule.

Cf. Article 97, *ante*.

Secretariat of State Legislature.

187. (1) The House or each House of the Legislature of a State shall have a separate secretarial staff :

Provided that nothing in this clause shall, in the case of the Legislature of a State having a Legislative Council be construed as preventing the creation of posts common to both Houses of such Legislature.

(2) The Legislature of a State may by law regulate the recruitment, and the conditions of service of persons appointed, to the secretarial staff of the House or Houses of the Legislature of the State.

(3) Until provision is made by the Legislature of the State under clause (2), the Governor may, after consultation with the Speaker of the Legislative Assembly or the Chairman of the Legislative Council, as the case may be, make rules regulating the recruitment, and the conditions of service of persons appointed, to the secretarial staff of the Assembly or the Council, and any rules so made shall have effect subject to the provisions of any law made under the said clause.

Cf. Article 98, *ante*.

Conduct of Business

188. Every member of the Legislative Assembly or the Legislative Council of a State shall, before taking his seat, make and subscribe before the Governor, or some person appointed in that behalf by him, an oath or affirmation according to the form set out for the purpose in the Third Schedule.

Oath or affirmation by members.

NOTES

Cf. Article 99, *ante* ; S. 67 of the Government of India Act, 1935.

The person presiding at the first meeting of the Legislative Assembly or the Legislative Council, of a State cannot take his seat in the Assembly or the Council, as the case may be and preside unless he has made and subscribed the oath or affirmation referred to in this Article. It is, therefore, necessary that he should first make and subscribe, an oath or affirmation either before the Governor or before some person appointed by him in that behalf and then other members can make and subscribe an oath or affirmation before him. Under the Government of India Act, 1935, such person made the declaration before the Governor and he was appointed by the Governor to be the person before whom other members were to make and subscribe an oath or affirmation.

189. (1) Save as otherwise provided in this Constitution, all questions at any sitting of a House of the Legislature of a State shall be determined by a majority of votes of the members present and voting, other than the Speaker or Chairman, or person acting as such.

Voting in Houses, power of Houses to act notwithstanding vacancies and quorum

The Speaker or Chairman, or person acting as such, shall not vote in the first instance, but shall have and exercise a casting vote in the case of an equality of votes.

(2) A House of the Legislature of a State shall have power to act notwithstanding any vacancy in the membership thereof, and any proceedings in the Legislature of a State shall be valid notwithstanding that it is discovered subsequently that some person who was not entitled so to do sat or voted or otherwise took part in the proceedings.

(3) Until the Legislature of the State by law otherwise provides, the quorum to constitute a meeting of a House of the Legislature of a State shall be ten members or one-tenth of the total number of members of the House, whichever is greater.

(4) If at any time during a meeting of the Legislative Assembly or Legislative Council of a State there is no quorum, it shall be the duty of the Speaker or Chairman, or person acting as such, either to adjourn the House or to suspend the meeting until there is a quorum.

Cf. Article 100, *ante*.

Disqualification of Members

Vacation of seats.

190. (1) No person shall be a member of both Houses of the Legislature of a State and provision shall be made by the Legislature of the State by law for the vacation by a person who is chosen a member of both Houses of his seat in one House or the other.

(2) No person shall be a member of the Legislature of two or more States specified in the First Schedule and if a person is chosen a member of the Legislatures of two or more such States, then, at the expiration of such period as may be specified in rules made by the President, that person's seat in the Legislatures of all such States shall become vacant, unless he has previously resigned his seat in the Legislatures of all but one of the States.

(3) If a member of a House of the Legislature of a State—

(*a*) becomes subject to any of the disqualifications mentioned in clause (1) of article 191 ; or

(*b*) resigns his seat by writing under his hand addressed to the Speaker or the Chairman, as the case may be,

his seat shall thereupon become vacant.

(4) If for a period of sixty days a member of a House of the Legislature of a State is without permission of the House absent from all meetings thereof, the House may declare his seat vacant :

Provided that in computing the said period of sixty days no account shall be taken of any period during which the House is prorogued or is adjourned for more than four consecutive days.

NOTES

Cf. Article 101, *ante* ; cf. S. 68 of the Government of India Act, 1935.

Membership of Legislatures of more than one State would hardly occur in practice in view of the usual provision in the electoral rules that no person would be qualified for standing as a candidate unless he is entitled to vote in some constituency in the State and no person would be included in the electoral roll of a constituency for being so entitled to vote unless he is resident in the constituency for not less than 180 days in the year.

191. (1) A person shall be disqualified for being chosen as, and for being, a member of the Legislative Assembly or Legislative Council of a State—

Disqualifications for membership.

(*a*) if he holds any office of profit under the Government of India or the Government of any State specified in the First Schedule, other than an office declared by the Legislature of the State by law not to disqualify its holder ;

(*b*) if he is of unsound mind and stands so declared by a competent court ;

(*c*) if he is an undischarged insolvent ;

(*d*) if he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgment of allegiance or adherence to a foreign State ;

(*e*) if he is so disqualified by or under any law made by Parliament.

(2) For the purposes of this article, a person shall not be deemed to hold an office of profit under the Government of India or the Government of any State specified in the First Schedule by reason only that he is a Minister either for the Union or for such State.

NOTES

Cf. Article 102, *ante* ; S. 69 of the Government of India Act, 1935.

Sub-clause (*d*) of Article 191 (1) is based on S. 44 (*i*) of the Australian Constitution Act.

Decision on questions as to disqualifications of members.

192. (1) If any question arises as to whether a member of a House of the Legislature of a State has become subject to any of the disqualifications mentioned in clause (1) of article 191, the question shall be referred for the decision of the Governor and his decision shall be final.

(2) Before giving any decision on any such question, the Governor shall obtain the opinion of the Election Commission and shall act according to such opinion.

Cf. Article 103, *ante*.

Penalty for sitting and voting before making oath or affirmation under article 188 or when not qualified or when disqualified.

193. If a person sits or votes as a member of the Legislative Assembly or the Legislative Council of a State before he has complied with the requirements of article 188, or when he knows that he is not qualified or that he is disqualified for membership thereof, or that he is prohibited from so doing by the provisions of any law made by Parliament or the Legislature of the State, he shall be liable in respect of each day on which he so sits or votes to a penalty of five hundred rupees to be recovered as a debt due to the State.

Cf. Article 104, *ante* ; S. 70 of the Government of India Act, 1935.

Powers, Privileges and Immunities of State Legislatures and their Members

Powers, privileges, etc., of the Houses of Legislatures and of the members and committees thereof

194. (1) Subject to the provisions of this Constitution and to the rules and standing orders regulating the procedure of the Legislature, there shall be freedom of speech in the Legislature of every State.

(2) No member of the Legislature of a State shall be liable to any proceedings in any court in respect of anything said or any vote given by him in the Legislature or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of a House of such a Legislature of any report, paper, votes or proceedings.

(3) In other respects, the powers, privileges and immunities of a House of the Legislature of a State, and of the members and the committees of a House of such Legis-

lature, shall be such as may from time to time be defined by the Legislature by law, and, until so defined, shall be those of the House of Commons of the Parliament of the United Kingdom, and of its members and committees, at the commencement of this Constitution.

(4) The provisions of clauses (1), (2) and (3) shall apply in relation to persons who by virtue of this Constitution have the right to speak in, and otherwise to take part in the proceedings of, a House of the Legislature of a State or any committee thereof as they apply in relation to members of that Legislature.

Cf. Article 105, *ante*; S. 71 of the Government of India Act, 1935.

Salaries and allowances of members.

195. Members of the Legislative Assembly and the Legislative Council of a State shall be entitled to receive such salaries and allowances as may from time to time be determined by the Legislature of the State by law and, until provision in that respect is so made, salaries and allowances at such rates and upon such conditions as were immediately before the commencement of this Constitution applicable in the case of members of the Legislative Assembly of the corresponding Province.

Cf. Article 106, *ante*; S. 72 of the Government of India Act, 1935.

Legislative Procedure

Provisions as to introduction and passing of Bills.

196. (1) Subject to the provisions of articles 198 and 207 with respect to Money Bills and other financial Bills, a Bill may originate in either House of the Legislature of a State which has a Legislative Council.

(2) Subject to the provisions of articles 197 and 198, a Bill shall not be deemed to have been passed by the Houses of the Legislature of a State having a Legislative Council unless it has been agreed to by both Houses, either without amendment or with such amendments only as are agreed to by both Houses.

(3) A Bill pending in the Legislature of a State shall not lapse by reason of the prorogation of the House or Houses thereof.

(4) A Bill pending in the Legislative Council of a State which has not been passed by the Legislative Assembly shall not lapse on a dissolution of the Assembly.

(5) A Bill which is pending in the Legislative Assembly of a State, or which having been passed by the Legislative Assembly is pending in the Legislative Council, shall lapse on a dissolution of the Assembly.

Cf. Article 107, *ante* ; S. 73 of the Government of India Act, 1935.

Restriction on powers of Legislative Council as to Bills other than Money Bills.

197. (1) If after a Bill has been passed by the Legislative Assembly of a State having a Legislative Council and transmitted to the Legislative Council—

(*a*) the Bill is rejected by the Council ; or

(*b*) more than three months elapse from the date on which the Bill is laid before the Council without the Bill being passed by it ; or

(*c*) the Bill is passed by the Council with amendments to which the Legislative Assembly does not agree,

the Legislative Assembly may, subject to the rules regulating its procedure, pass the Bill again in the same or in any subsequent session with or without such amendments, if any, as have been made, suggested or agreed to by the Legislative Council and then transmit the Bill as so passed to the Legislative Council.

(2) If after a Bill has been so passed for the second time by the Legislative Assembly and transmitted to the Legislative Council—

(*a*) the Bill is rejected by the Council ; or

(*b*) more than one month elapses from the date on which the Bill is laid before the Council without the Bill being passed by it ; or

(*c*) the Bill is passed by the Council with amendments to which the Legislative Assembly does not agree,

the Bill shall be deemed to have been passed by the Houses of the Legislature of the State in the form in which it was

passed by the Legislative Assembly for the second time with such amendments, if any, as have been made or suggested by the Legislative Council and agreed to by the Legislative Assembly.

(3) Nothing in this article shall apply to a Money Bill.

198. (1) A Money Bill shall not be introduced in a Legislative Council.

Special procedure in respect of Money Bills.

(2) After a Money Bill has been passed by the Legislative Assembly of a State having a Legislative Council, it shall be transmitted to the Legislative Council for its recommendations, and the Legislative Council shall within a period of fourteen days from the date of its receipt of the Bill return the Bill to the Legislative Assembly with its recommendations, and the Legislative Assembly may thereupon either accept or reject all or any of the recommendations of the Legislative Council.

(3) If the Legislative Assembly accepts any of the recommendations of the Legislative Council, the Money Bill shall be deemed to have been passed by both Houses with the amendments recommended by the Legislative Council and accepted by the Legislative Assembly.

(4) If the Legislative Assembly does not accept any of the recommendations of the Legislative Council, the Money Bill shall be deemed to have been passed by both Houses in the form in which it was passed by the Legislative Assembly without any of the amendments recommended by the Legislative Council.

(5) If a money Bill passed by the Legislative Assembly and transmitted to the Legislative Council for its recommendations is not returned to the Legislative Assembly within the said period of fourteen days, it shall be deemed to have been passed by both Houses at the expiration of the said period in the form in which it was passed by the Legistive Assembly.

NOTES

Cf. Article 169, *ante*.

This Article and all other provisions in this chapter as to "Money

Bills" have been inserted to give effect to the recommendations of the Expert Committee on the financial provisions of the Constitution.

In England, under the Parliament Act, 1911, a "Money Bill" which has been passed by the House of Commons and sent up to the House of Lords but is not passed by the House of Lords without amendment within one month after it is so sent up, is, unless the House of Commons directs to the contrary, to be presented to His Majesty and becomes an Act of Parliament on the Royal assent being signified to it. Under Article 21 (2) of the Irish Constitution, a "Money Bill" is required to be returned by the Upper House to the Lower House within 21 days.

Definition of "Money Bills"

199. (1) For the purposes of this Chapter, a Bill shall be deemed to be a Money Bill if it contains only provisions dealing with all or any of the following matters, namely—

(*a*) the imposition, abolition, remission, alteration or regulation of any tax ;

(*b*) the regulation of the borrowing of money or the giving of any guarantee by the State or the amendment of the law with respect to any financial obligations undertaken or to be undertaken by the State ;

(*c*) the custody of the Consolidated Fund or the Contingency Fund of the State, the payment of moneys into or the withdrawal of moneys from any such Fund ;

(*d*) the appropriation of moneys out of the Consolidated Fund of the State ;

(*e*) the declaring of any expenditure to be expenditure charged on the Consolidated Fund of the State, or the increasing of the amount of any such expenditure ;

(*f*) the receipt of money on account of the Consolidated Fund of the State or the public account of the State or the custody or issue of such money ; or

(*g*) any matter incidental to any of the matters specified in sub-clauses (*a*) to (*f*).

(2) A Bill shall not be deemed to be a Money Bill by reason only that it provides for the imposition of fines or other pecuniary penalties, or for the demand or payment of fees for licences or fees for services rendered, or by reason

that it provides for the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes.

(3) If any question arises whether a Bill introduced in the Legislature of a State which has a Legislative Council is a Money Bill or not, the decision of the Speaker of the Legislative Assembly of such State thereon shall be final.

(4) There shall be endorsed on every Money Bill when it is transmitted to the Legislative Council under article 198, and when it is presented to the Governor for assent under article 200, the certificate of the Speaker of the Legislative Assembly signed by him that it is a Money Bill.

NOTES

Cf. Article 110, *ante*.

Sub-cl. (2) of this Article is based on Art. 22 (1) 2° of the Irish Constitution (1787).

Assent to Bills.

200. When a Bill has beeen passed by the Legislative Assembly of a State or, in the case of a State having a Legislative Council, has been passed by both Houses of the Legislature of the State, it shall be presented to the Governor and the Governor shall declare either that he assents to the Bill or that he withholds assent therefrom or that he reserves the Bill for the consideration of the President :

Provided that the Governor may, as soon as possible after the presentation to him of the Bill for assent, return the Bill if it is not a money Bill together with a message requesting that the House or Houses will reconsider the Bill or any specified provisions thereof and, in particular, will consider the desirability of introducing any such amendments as he may recommend in his message and, when a Bill is so returned, the House or Houses shall reconsider the Bill accordingly, and if the Bill is passed again by the Honse or Houses with or without amendment and presented to the Governor for assent, the Governor shall not withhold assent therefrom :

Provided further that the Governor shall not assent to, but shall reserve for the consideration of the President, any Bill which in the opinion of the Governor would, if it became

law, so derogate from the powers of the High Court as to endanger the position which that Court is by this Constitution designed to fill.

NOTES

Cf. Article 111, *ante* ; cf. S. 75 of the Government of India Act, 1935.

Second Proviso :—The policy behind this proviso is to preserve the independence of the judiciary and ensure its freedom from the control of the executive in the administration of justice. It is but right that such questions as the jurisdiction of the High Courts, their right to fix the salary, pension, leave and allowances of the Judges and other cognate matters should not be within the purview of the legislative power of the States. The Drafting Committee had also recommended that a provision such as this for reservation by the Governor of Bills affecting the powers of High Courts for the consideration of the President on the lines of paragraph XVII—(*b*) of the Instrument of Instructions to the Governor under the Government of India Act, 1935, should be included.

See also Article 254 (2), *post*.

Bills reserved for consideration.

201. When a Bill is reserved by a Governor for the consideration of the President, the President shall declare either that he assents to the Bill or that he withholds assent therefrom :

Provided that, where the Bill is not a Money Bill, the President may direct the Governor to return the Bill to the House or, as the case may be, the Houses of the Legislature of the State together with such a message as is mentioned in the first proviso to article 200 and, when a Bill is so returned, the House or Houses shall reconsider it accordingly within a period of six months from the date of receipt of such message and, if it is again passed by the House or Houses with or without amendment, it shall be presented again to the President for his consideration.

This Article is based on S. 76 of the Government of India Act, 1935.

Procedure in Financial Matters

Annual financial statement.

202. (1) The Governor shall in respect of every financial year cause to be laid before the House or Houses of the Legislature of the State a statement of the estimated receipts and expenditure of the State for that year, in this Part referred to as the "annual financial statement".

(2) The estimates of expenditure embodied in the annual financial statement shall show separately—

(*a*) the sums required to meet expenditure described by this Constitution as expenditure charged upon the Consolidated Fund of the State ; and

(*b*) the sums required to meet other expenditure proposed to be made from the Consolidated Fund of the State ;

and shall distinguish expenditure on revenue account from other expenditure.

(3) The following expenditure shall be expenditure charged on the Consolidated Fund of each State—

(*a*) the emoluments and allowances of the Governor and other expenditure relating to his office ;

(*b*) the salaries and allowances of the Speaker and the Deputy Speaker of the Legislative Assembly and, in the case of a State having a Legislative Council, also of the Chairman and the Deputy Chairman of the Legislative Council ;

(*c*) debt charges for which the State is liable including interest, sinking fund charges and redemption charges, and other expenditure relating to the raising of loans and the service and redemption of debt ;

(*d*) expenditure in respect of the salaries and allowances of Judges of any High Court ;

(*e*) any sums required to satisfy any judgment, decree or award of any court or arbitral tribunal ;

(*f*) any other expenditure declared by this Constitution, or by the Legislature of the State by law, to be so charged.

Cf. Article 112, *ante* ; cf. S. 78 of the Government of India Act, 1935.

Procedure in Legislature with respect to estimates.

203. (1) So much of the estimates as relates to expenditure charged upon the Consolidated Fund of a State shall not be submitted to the vote of the Legislative Assembly, but nothing in this clause shall be construed as preventing the discussion in the Legislature of any of those estimates.

(2) So much of the said estimates as relates to other expenditure shall be submitted in the form of demands for grants to the Legislative Assembly, and the Legislative Assembly shall have power to assent, or to refuse to assent, to any demand, or to assent to any demand subject to a reduction of the amount specified therein.

(3) No demand for a grant shall be made except on the recommendation of the Governor.

Cf. Article 113, *ante*.

Appropriation Bills.

204. (1) As soon as may be after the grants under article 203 have been made by the Assembly, there shall be introduced a Bill to provide for the appropriation out of the Consolidated Fund of the State of all moneys required to meet—

(*a*) the grants so made by the Assembly ; and

(*b*) the expenditure charged on the Consolidated Fund of the State but not exceeding in any case the amount shown in the statement previously laid before the House or Houses.

(2) No amendment shall be proposed to any such Bill in the House or either House of the Legislature of the State which will have the effect of varying the amount or altering the destination of any grant so made or of varying the amount of any expenditure charged on the Consolidated Fund of the State, and the decision of the person presiding as to whether an amendment is inadmissible under this clause shall be final.

(3) Subject to the provisions of articles 205 and 206, no money shall be withdrawn from the Consolidated Fund of the State except under appropriation made by law passed in accordance with the provisions of this article.

Cf. Article 114, *ante*.

205. (1) The Governor shall—

Supplementary, additional or excess grants.

(*a*) if the amount authorised by any law made in accordance with the provisions of article 204 to be expended for a particular service for the current financial year is found to be insufficient for the purposes of that year or when a need has arisen during the current financial year for supplementary or additional expenditure upon some new service not contemplated in the annual financial statement for that year, or

(*b*) if any money has been spent on any service during a financial year in excess of the amount granted for that service and for that year,

cause to be laid before the House or the Houses of the Legislature of the State another statement showing the estimated amount of that expenditure or cause to be pressented to the Legislative Assembly of the State a demand for such excess, as the case may be.

(2) The provisions of articles 202, 203, and 204 shall have effect in relation to any such statement and expenditure or demand and also to any law to be made authorising the appropriation of moneys out of the Consolidated Fund of the State to meet such expenditure or the grant in respect of such demand as they have effect in relation to the annual financial statment and the expenditure mentioned therein or to a demand for a grant and the law to be made for the authorisation of appropriation of moneys out of the Consolidated Fund of the State to meet such expenditure or grant.

Cf. Article 115, *ante*.

206. (1) Notwithstanding anything in the foregoing provisions of this Chapter, the Legislative Assembly of a State shall have power—

Votes on account, votes of credit and exceptional grants.

(*a*) to make any grant in advance in respect of the estimated expenditure for a part of any financial year pending the completion of the procedure prescribed in article 203 for the

voting of such grant and the passing of the law in accordance with the provisions of article 204 in relation to that expenditure ;

(*b*) to make a grant for meeting an unexpected demand upon the resources of the State when on account of the magnitude or the indefinite character of the service the demand cannot be stated with the details ordinarily given in an annual financial statement;

(*c*) to make an exceptional grant which forms no part of the current service of any financial year ;

and the Legislature of the State shall have power to authorise by law the withdrawal of moneys from the Consolidated Fund of the State for the purposes for which the said grants are made.

(2) The provisions of articles 203 and 204 shall have effect in relation to the making of any grant under clause (1) and to any law to be made under that clause as they have effect in relation to the making of a grant with regard to any expenditure mentioned in the annual financial statement and the law to be made for the authorisation of appropriation of moneys out of the Consolidated Fund of the State to meet such expenditure.

Cf. Article 116, *ante*.

Special provisions as to financial Bills.

207. (1) A Bill or amendment making provision for any of the matters specified in sub-clauses (*a*) to (*f*) of clause (1) of article 199 shall not be introduced or moved except on the recommendation of the Governor, and a Bill making such provision shall not be introduced in a Legislative Council :

Provided that no recommendation shall be required under this clause for the moving of an amendment making provision for the reduction or abolition of any tax.

(2) A Bill or amendment shall not be deemed to make provision for any of the matters aforesaid by reason only that it provides for the imposition of fines or other pecuniary penalties, or for the demand or payment of fees for licences or fees for services rendered, or by reason that

it provides for the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes.

(3) A Bill which, if enacted and brought into operation, would involve expenditure from the Consolidated Fund of a State shall not be passed by a House of the Legislature of the State unless the Governor has recommended to that House the consideration of the Bill.

Cf. Article 117, *ante* ; cf. S. 82 of the Government of India Act, 1935.

Procedure Generally

Rules of procedure.

208. (1) A House of the Legislature of a State may make rules for regulating, subject to the provisions of this Constitution, its procedure and the conduct of its business.

(2) Until rules are made under clause (1), the rules of procedure and standing orders in force immediately before the commencement of this Constitution with respect to the Legislature for the corresponding Province shall have effect in relation to the Legislature of the State subject to such modifications and adaptations as may be made therein by the Speaker of the Legislative Assembly, or the Chairman of the Legislative Council, as the case may be.

(3) In a State having a Legislative Council the Governor, after consultation with the Speaker of the Legislative Assembly and the Chairman of the Legislative Council, may make rules as to the procedure with respect to communications between the two Houses.

Cf. Article 118, *ante* ; S. 84 of the Government of India Act, 1935.

Regulation by law of procedure in the Legislature of the State in relation to financial business.

209. The Legislature of a State may, for the purpose of the timely completion of financial business, regulate by law the procedure of, and the conduct of business in, the House or Houses of the Legislature of the State in relation to any financial matter or to any Bill for the appropriation of moneys out of the Consolidated Fund of the State, and, if and so far as any provision of any law so made is inconsistent with any rule made by the House or either House of the Legislature of the State

under clause (1) of article 208 or with any rule or standing order having effect in relation to the Legislature of the State under clause (2) of that article, such provision shall prevail.

Cf. Article 119, *ante*.

Language to be used in the Legislature.

210. (1) Notwithstanding anything in Part XVII, but subject to the provisions of article 348, business in the Legislature of a State shall be transacted in the official language or languages of the State or in Hindi or in English :

Provided that the Speaker of the Legislative Assembly or Chairman of the Legislative Council, or person acting as such, as the case may be, may permit any member who cannot adequately express himself in any of the languages aforesaid to address the House in his mother-tongue.

(2) Unless the Legislature of the State by law otherwise provides, this article shall, after the expiration of a period of fifteen years from the commencement of this Constitution, have effect as if the words "or in English" were omitted therefrom.

NOTES

Cf. Article 120, *ante*.

See generally Part XVII (relating to Official Language) and in particular Article 348 (relating to language to be used in Supreme Court, High Courts and for Acts and Bills).

Restriction on discussion in the Legislature.

211. No discussion shall take place in the Legislature of a State with respect to the conduct of any Judge of the Supreme Court or of a High Court in the discharge of his duties.

Cf. Article 121, *ante* ; Government of India Act, 1935, S. 86 (1).

Courts not to inquire into proceedings of the Legislature.

212. (1) The validity of any proceedings in the Legislature of a State shall not be called in question on the ground of any alleged irregularity of procedure.

(2) No officer or member of the Legislature of a State in whom powers are vested by or under this Constitution for regulating procedure or the conduct of business, or for maintaining order, in the Legislature shall be subject to the

jurisdiction of any court in respect of the exercise by him of those powers.

NOTES

Cf. Article 122, *ante* ; Government of India Act, 1935, S. 87.

Sub-cl. (2) : Jurisdiction of courts banned re : officers etc. of the State Legislature :—It will be noted that the language of this sub-clause is wide so as to cover even cases where such officers purport to exercise, or even irregularly exercise, their powers. *See* further notes under Article 122, *ante*.

CHAPTER IV

LEGISLATIVE POWER OF THE GOVERNOR

Power of Governor to promulgate Ordinances during recess of Legislature.

213. (1) If at any time, except when the Legislative Assembly of a State is in session, or where there is a Legislative Council in a State, except when both Houses of the Legislature are in session, the Governor is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such Ordinances as the circumstances appear to him to require :

Provided that the Governor shall not, without instructions from the President, promulgate any such Ordinance if—

(*a*) a Bill containing the same provisions would under this Constitution have required the previous sanction of the President for the introduction thereof into the Legislature ; or

(*b*) he would have deemed it necessary to reserve a Bill containing the same provisions for the consideration of the President ; or

(*c*) an Act of the Legislature of the State containing the same provisions would under this Constitution have been invalid unless, having been reserved for the consideration of the President, it had received the assent of the President.

(2) An Ordinance promulgated under this article shall have the same force and effect as an Act of the Legislature of the State assented to by the Governor, but

every such Ordinance—

(*a*) shall be laid before the Legislative Assembly of the State, or where there is a Legislative Council in the State, before both the Houses, and shall cease to operate at the expiration of six weeks from the reassembly of the Legislature, or if before the expiration of that period a resolution disapproving it is passsd by the Legislative Assembly and agreed to by the Legislative Council, if any, upon the passing of the resolution or, as the case may be, on the resolution being agreed to by the Council ; and

(*b*) may be withdrawn at any time by the Governor.

Explanation.—Where the Houses of the Legislature of a State having a Legislative Council are summoned to reassemble on different dates, the period of six weeks shall be reckoned from the later of those dates for the purposes of this clause.

(3) If and so far as an Ordinance under this article makes any provision which would not be valid if enacted in an Act of the Legislature of the State assented to by the Governor, it shall be void :

Provided that, for the purposes of the provisions of this Constitution relating to the effect of an Act of the Legislature of a State which is repugnant to an Act of Parliament or an existing law with respect to a matter enumerated in the Concurrent List, an Ordinance promulgated under this article in pursuance of instructions from the President shall be deemed to be an Act of the Legislature of the State which has been reserved for the consideration of the President and assented to by him.

NOTES

Cf. Article 123. *ante* ; Government of India Act, 1935, S. 88.

Ordinances during Recess : – This Article dealing with the power of a Governor to promulgate ordinances during the recess of the Legislature is based on S. 88 of the Government of India Act, 1935. These are like the Ordinances promulgated in the United Kingdom in a period of emergency as to which the Government has to obtain parliamentary approval within a given time.

Under Article 174. *ante*, it is provided that the Governor should summon the Legislature of a State and there is an obligation cast on him to summon the Legislature so as to meet twice at least in every year so that the necessary approval of the Legislature can be obtained.

The proviso to sub-clause (1) of this Article requiring instructions from the President before the promulgation of any such Ordinance is designed to serve a very useful purpose ; for, if the Governor promulgates an Ordinance containing any provision with respect to any matter enumerated in the Concurrent List which is repugnant to the provision of any law made by Parliament, or an existing law with respect to that matter, this proviso read in conjunction with the proviso to sub-clause (3) of this Article would cure the repugnancy and would not render such provision void.

Provisions in cases of grave emergencies :—There was a provision in the Draft Constitution empowering the Governor to issue a proclamation when a grave emergency has arisen which threatens the peace and tranquility of the State and it is not possible to carry on the Government of the State in accordance with the provisions of the Constitution, but declared that his functions shall, to such extent as may be specified in the proclamation, be exercised by him in his discretion. That provision has been omitted from the Constitution because it was felt that all references to the exercise of functions by the Governor in his discretion should be omitted from the Constitution. The President has, however, power to issue such proclamations, as to which *see* Articles 352 to 360, *post*.

CHAPTER V

THE HIGH COURTS IN THE STATES

It may be noted that the powers of the State Legislatures with regard to the Constitution and organisation of High Courts have been severely restricted by various provisions contained in the Constitution. Judges are to be appointed by the President ; they are removable by the President only on addresses by both Houses of Parliament—so that both appointment and removal have been taken out of the hands of the State authorities and vested in the Centre. (Cf. Art. 217). Minimum salaries have also been fixed and there is the further provision that neither the salary of a judge nor his rights in respect of leave or pension shall he varied to his disadvantage after his appointment. (Cf. Art. 221). Then there is the provision that every High Court shall have unqualified superintendence, over all courts throughout its territorial jurisdiction. (Cf. Art. 227). Security of tenure, security of remuneration, security of revisional jurisdiction (in the form of superintendence) have all been assured by the Constitution itself. The actual salaries of Judges have been fixed (cf. Second Schedule) in the Constitution itself. Their allowances and rights in respect of leave, of absence, and pension are to be determined by Parliament by law (cf. Art. 221) and, until so determined, they will be such as are specified in the Constitution (cf. Second Schedule). The object of these provisions is to secure judicial independence. Under the Australian, Canadian, Irish and South-African constitutions similar provisions have been enacted with the same end in view.

214. (1) There shall be a High Court for each State.

High Courts for States

(2) For the purposes of this Constitution the High Court exercising jurisdiction in relation to any Province immediately before the commencement of this Constitution shall be deemed to be the High Court for the corresponding State.

(3) The provisions of this Chapter shall apply to every High Court referred to in this article.

Cf. Article 124, *ante*.

215. Every High Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself.

High Courts to be courts of record.

Cf. Article 129, *ante*.

216. Every High Court shall consist of a Chief Justice and such other Judges as the President may from time to time deem it necessary to appoint :

Constitution of High Courts.

Provided that the Judges so appointed shall at no time exceed in number such maximum number as the President may, from time to time, by order fix in relation to that Court.

Cf. Article 124, *ante*.

217. (1) Every Judge of a High Court shall be appointed by the President by warrant under his hand and seal after consultation with the Chief Justice of India, the Governor of the State. and, in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of the High Court, and shall hold office until he attains the age of sixty years :

Appointment and conditions of the office of a Judge of a High Court.

Provided that—

(*a*) a Judge may, by writing under his hand addressed to the President, resign his office ;

(*b*) a Judge may be removed from his office by the President in the manner provided in clause (4)

of article 124 for the removal of a Judge of the Supreme Court ;

(*c*) the office of a Judge shall be vacated by his being appointed by the President to be a Judge of the Supreme Court or by his being transferred by the President to any other High Court within the territory of India.

(2) A person shall not be qualified for appointment as a Judge of a High Court unless he is a citizen of India and—

(*a*) has for at least ten years held a judicial office in the territory of India ; or

(*b*) has for at least ten years been an advocate of a High Court in any State specified in the First Schedule or of two or more such Courts in succession.

Explanation—For the purposes of this clause—

(*a*) in computing the period during which a person has been an advocate of a High Court, there shall be included any period during which the person has held judicial office after he became an advocate ;

(*b*) in computing the period during which a person has held judicial office in the territory of India or been an advocate of a High Court, there shall be included any period before the commencement of this Constitution during which he has held judicial office in any area which was comprised before the fifteenth day of August, 1947, within India as defined by the Government of India Act, 1935, or has been an advocate of any High Court in any such area, as the case may be.

NOTES

Cf. Article 124, *ante*.

The provision in clause (*b*) to the proviso that a High Court Judge shall not be removed except on an address presented by both Houses of Parliament in accordance with Article 124 (4) is designed to secure judicial independence. In this respect, the Indian Constitution is an improvement on the provisions in other constitutions like the Canadian, Australian and Irish. Reading the proviso (*b*) to this Article

with clause (4) of Article 124, it is clear that a Judge may be removed from office on the ground of proved incapacity.

There is no bar under this Article to a Judge of one High Court being appointed a Judge of another High Court. This is obvious from the provisions of sub-clause (c) to the proviso to clause (1) of this Article.

Application of certain provisions relating to Supreme Court to High Courts.

218. The provisions of clauses (4) and (5) of article 124 shall apply in relation to a High Court as they apply in relation to the Supreme Court with the substitution of references to the High Court for references to the Supreme Court.

Cf. Article 124. *ante.*

Oath or affirmation by Judges of High Courts.

219. Every person appointed to be a Judge of a High Court in a State shall, before he enters upon his office, make and subscribe before the Governor of the State, or some person appointed in that behalf by him, an oath or affirmation according to the form set out for the purpose in the Third Schedule.

Prohibition of practising in courts or before any authority by Judges.

220. No person who has held office as a Judge of a High Court after the commencement of this Constitution shall plead or act in any court or before any authority within the territory of India.

NOTES

This Article is designed to prohibit retired Judges from practising in any court or before any authority in the territory of India.

Salaries, etc., of Judges.

221. (1) There shall be paid to the Judges of each High Court such salaries as are specified in the Second Schedule.

(2) Every Judge shall be entitled to such allowances and to such rights in respect of leave of absence and pension as may from time to time be determined by or under law made by Parliament and, until so determined, to such allowances and rights as are specified in the Second Schedule :

Provided that neither the allowances of a Judge nor

his rights in respect of leave of absence or ponsion shall be varied to his disadvantage after his appointment.

Cf. Article 125, *ante*.

Transfer of a Judge from one High Court to another.

222. (1) The President may, after consultation with the Chief Justice of India, transfer a Judge from one High Court to any other High Court within the territory of India.

(2) When a Judge is so transferred, he shall, during the period he serves as a Judge of the other Court, be entitled to receive in addition to his salary such compensatory allowance as may be determined by Parliament by law and, until so determined, such compensatory allowance as the President may by order fix.

Appointment of acting Chief Justice.

223. When the office of Chief Justice of a High Court is vacant or when any such Chief Justice is, by reason of absence or otherwise, unable to perform the duties of his office, the duties of the office shall be performed by such one of the other Judges of the Court as the President may appoint for the purpose.

Cf. Article 126, *ante*.

Attendance of retired Judges at sittings of High Courts.

224. Notwithstanding anything in this Chapter, the Chief Justice of a High Court for any State may at any time, with the previous consent of the President, request any person who has held the office of a Judge of that Court or of any other High Court to sit and act as a Judge of the High Court for that State, and every such person so requested shall, while so sitting and acting, be entitled to such allowances as the President may by order determine and have all the jurisdiction, powers and privileges of, but shall not otherwise be deemed to be, a Judge of that High Court :

Provided that nothing in this article shall be deemed to require any such person as aforesaid to sit and act as a Judge of that High Court unless he consents so to do.

NOTES

This Article is based on S. 8 of the Supreme Court of Judidature (Consolidation) Act, 1925 (15 and 16 Geo. 5-Ch. 49). See also Article 128, *ante*.

Jurisdiction of existing High Courts.

225. Subject to the provisions of this Constitution and to the provisions of any law of the appropriate Legislature made by virtue of powers conferred on that Legislature by this Constitution, the jurisdiction of, and the law administered in, any existing High Court, and the respective powers of the Judges thereof in relation to the administration of justice in the Court, including any power to make rules of Court and to regulate the sittings of the Court and of members thereof sitting alone or in Division Courts, shall be the same as immediately before the commencement of this Constitution :

Provided that any restriction to which the exercise of original jurisdiction by any of the High Courts with respect to any matter concerning the revenue or concerning any act ordered or done in the collection thereof was subject immediately before the commencement of this Constitution shall no longer apply to the exercise of such jurisdiction.

Power of High Courts to issue certain writs.

226. (1) Notwithstanding anything in article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases any Government, within those territories, directions, orders or writs, including writs in the nature of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari*, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.

(2) The power conferred on a High Court by clause (1) shall not be in derogation of the power conferred on the Supreme Court by clause (2) of article 32.

Cf Article 139, *ante*.

Power of superintendence over all courts by the High Court.

227. (1) Every High Court shall have superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction.

(2) Without prejudice to the generality of the foregoing provision, the High Court may—

(*a*) call for returns from such courts ;

(*b*) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts ; and

(*c*) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts.

(3) The High Court may also settle tables of fees to be allowed to the sheriff and all clerks and officers of such courts and to attorneys, advocates and pleaders practising therein :

Provided that any rules made, forms prescribed or tables settled under clause (2) or clause (3) shall not be inconsistent with the provision of any law for the time being in force, and shall require the previous approval of the Governor.

(4) Nothing in this article shall be deemed to confer on a High Court powers of superintendence over any court or tribunal constituted by or under any law relating to the Armed Forces.

Transfer of certain cases to High Court.

228. If the High Court is satisfied that a case pending in a court subordinate to it involves a substantial question of law as to interpretation of this Constitution the determination of which is necessary for the disposal of the case, it shall withdraw the case and may—

(*a*) either dispose of the case itself, or

(*b*) determine the said question of law and return the case to the court from which the case has been so withdrawn together with a copy of its judgment on such question, and the said court shall on receipt thereof proceed to dispose of the case in conformity with such judgment.

Officers and servants and the expenses of High Courts.

229. (1) Appointments of officers and servants of a High Court shall be made by the Chief Justice of the Court or such other Judge or officer of the Court as he may direct :

Provided that the Governor of the State in which the High Court has its principal seat may by rule require

that in such cases as may be specified in the rule no person not already attached to the Court shall be appointed to any office connected with the Court save after consultation with the State Public Service Commission.

(2) Subject to the provisions of any law made by the Legislature of the State, the conditions of service of officers and servants of a High Court shall be such as may be prescribed by rules made by the Chief Justice of the Court or by some other Judge or officer of the Court authorised by the Chief Justice to make rules for the purpose :

Provided that the rules made under this clause shall, so far as they relate to salaries, allowances, leave or pensions, require the approval of the Governor of the State in which the High Court has its principal seat.

(3) The administrative expenses of a High Court, including all salaries, allowances and pensions payable to or in respect of the officers and servants of the Court, shall be charged upon the Consolidated Fund of the State, and any fees or other moneys taken by the Court shall form part of that Fund.

Cf. Article 146, *ante*.

230. Parliament may by law—

Extension of or exclusion from the jurisdiction of High Courts.

(*a*) extend the jurisdiction of a High Court to, or

(*b*) exclude the jurisdiction of a High Court from,

any State specified in the First Schedule other than, or any area not within, the State in which the High Court has its principal seat.

Cf. Article 140. *ante*.

231. Where a High Court exercises jurisdiction in relation to any area outside the State in which it has its principal seat, nothing in this Constitution shall be construed—

Restrictions on the powers of the Legislatures of States to make laws with respect to jurisdiction of a High Court in a State having jurisdiction outside that State.

(*a*) as empowering the Legislature of the State in which the Court has its principal seat to increase, restrict or abolish that jurisdiction ;

(*b*) as empowering the Legislature of a State specified in Part A or Part B of the First Schedule in which any such area is situate, to abolish that jurisdiction ; or

(*c*) as preventing the Legislature having power to make laws in that behalf for any such area, from passing, subject to the provisions of clause (*b*), such laws with respect to the jurisdiction of the Court in relation to that area as it would be competent to pass if the principal seat of the Court were in that area.

Interpretation.

232. Where a High Court exercises jurisdiction in relation to more than one State specified in the First Schedule or in relation to a State and an area not forming part of the State—

(*a*) references in this Chapter to the Governor in relation to the Judges of High Court shall be construed as references to the Governor of the State in which the Court has its principal seat ;

(*b*) the reference to the approval by the Governor of rules, forms and tables for subordinate courts shall be construed as a reference to the approval thereof by the Governor or the Rajpramukh of the State in which the subordinate court is situate, or if it is situate in an area not forming part of any State specified in Part A or Part B of the First Schedule, by the President ; and

(*c*) references to the Consolidated Fund of the State shall be construed as references to the Consolidated Fund of the State in which the Court has its principal seat.

CHAPTFR VI.--SUBORDINATE COURTS

This chapter marks a departure from the previous practice under the Government of India Act, 1935. Both the Drafting Committee and the Special Committee were of the opinion that this chapter should be inserted in order to secure the separation of the judiciary from the executive (cf. Art. 50, *ante*) and the control of the High Court over the subordinate judicial services, civil or criminal.

Under the Government of India Act, 1935, the administration

of justice in each district was divided into civil and criminal. These functions were combined in the District Judge who was also the Sessions Judge and exercised criminal powers as well. But below him there were two district branches, civil and criminal. On the civil side we had in some provinces Subordinate Judges and Munsiffs, and on the criminal side, district magistrates and subordinate magistrates.

The recruitment of subordinate civil judiciary was governed by S. 255 of the Government of India Act, 1935, under which the Governor in consultation with the Provincial Public Service Commission and the High Court defined their qualifications. Their posting, promotion, leave, etc. were done by the High Court under S. 255 (3) of that Act. But with regard to the administration of criminal justice, the appointments of the District and Subordinate magistrates were made by the Provincial Government under the Criminal Procedure Code and the High Court had no say in the matter.

The Drafting Committee wanted to place both the branches of the subordinate judiciary under the control of the High Court ; accordingly they have provided for this in this chapter (cf. Art. 235).

Appointment of district judges.

233. (1) Appointments of persons to be, and the posting and promotion of, district judges in any State shall be made by the Governor of the State in consultation with the High Court exercising jurdisdiction in relation to such State.

(2) A person not already in the service of the Union or of the State shall only be eligible to be appointed a district judge if he has been for not less than seven years an advocate or a pleader and is recommended by the High Court for appointment.

Recruitment of persons other than district judges to the judicial service.

234. Appointments of persons other than district judges to the judicial service of a State shall be made by the Governor of the State in accordance with rules made by him in that behalf after consultation with the State Public Service Commission and with the High Court exercising jurisdiction in relation to such State.

Control over subordinate courts.

235. The control over district courts and courts subordinate thereto including the posting and promotion of, and the grant of leave to, persons belonging to the judicial service of a State and holding any post inferior to the post of district judge shall be vested in the High Court, but nothing in this article shall be construed as taking away from any

such person any right of appeal which he may have under the law regulating the conditions of his service or as authorising the High Court to deal with him otherwise than in accordance with the conditions of his service prescribed under such law.

236. In this Chapter—

Interpretation.

(*a*) the expression "district judge" includes judge of a city civil court, additional district judge, joint district judge, assistant district judge, chief judge of a small cause court, chief presidency magistrate, additional chief presidency magistrate, sessions judge, additional sessions judge and assistant sessions judge,

(*b*) the expression "judicial service" means a service consisting exclusively of persons intended to fill the post of district judge and other civil judicial posts inferior to the post of district judge.

237. The Governor may by public notification direct that the foregoing provisions of this Chapter and any rules made thereunder shall with effect from such date as may be fixed by him in that behalf apply in relation to any class or classes of magistrates in the State as they apply in relation to persons appointed to the judicial service of the State subject to such exceptions and modifications as may be specified in the notification.

Application of the provisions of this Chapter to certain class or classes of magistrates

PART VII

THE STATES IN PART B OF THE FIRST SCHEDULE

Application of provisions of Part VI to States in Part B of the First Schedule.

238. The provisions of Part VI shall apply in relation to the States specified in Part B of the First Schedule as they apply in relation to the States specified in Part A of that Schedule subject to the following modifications and omissions, namely :—

(1) For the word "Governor" wherever it occurs in the said Part VI, except where it occurs for the second time in clause (*b*) of article 232, the word "Rajpramukh" shall be substituted.

(2) In article 152, for the word and letter "Part A" the word and letter "Part B" shall be substituted.

(3) Articles 155, 156 and 157 shall be omitted.

(4) In article 158,—

(*i*) in clause (1), for the words "be appointed" the word "becomes" shall be substituted ;

(*ii*) for clause (3), the following clause shall be substituted, namely :—

"(3) The Rajpramukh shall, unless he has his own residence in the principal seat of Government of the State, be entitled without payment of rent to the use of an official residence and shall be also entitled to such allowances and privileges as the President may, by general or special order, determine." ;

(*iii*) in clause (4), the words "emoluments and" shall be omitted.

(5) In article 159, after the words "seniormost Judge

of that Court available" the words "or in such other manner as may be prescribed in that behalf by the President" shall be inserted.

(6) In article 164, for the proviso to clause (1) the following proviso shall be substituted, namely :—

"Provided that in the State of Madhya Bharat there shall be a Minister in charge of tribal welfare who may in addition be in charge of the welfare of the Scheduled Castes and backward classes for any other work."

(7) In article 168, for clause (1) the following clause shall be substituted, namely :—

"(1) For every State there shall be a Legislature which shall consist of the Rajpramukh and—

(*a*) in the State of Mysore, two Houses ;

(*b*) in other States, one House."

(8) In article 186, for the words "as are specified in the Second Schedule" the words "as the Rajpramukh may determine" shall be substituted.

(9) In article 195, for the words "as were immediately before the commencement of this Constitution applicable in the case of members of the Legislative Assembly of the corresponding Province" the words "as the Rajpramukh may determine" shall be substituted.

(10) In clause (3) of article 202—

(*i*) for sub-clause (*a*), the following sub-clause shall be substituted, namely :—

"(*a*) the allowances of the Rajpramukh and other expenditure relating to his office as determined by the President by general or special order ;"

(*ii*) for sub-clause (*f*) the following sub-clauses shall be substituted, namely :—

"(*f*) in the case of the State of Travancore-Cochin, a sum of fifty-one lakhs of

rupees required to be paid annually to the Devaswom fund under the covenant entered into before the commencement of this Constitution by the Rulers of the Indian States of Travancore and Cochin for the formation of the United State of Travancore and Cochin ;

(*g*) any other expenditure declared by this Constitution, or by the Legislature of the State by law, to be so charged."

(11) In article 208, for clause (2), the following clause shall be substituted, namely :—

"(2) Until rules are made under clause (1), the rules of procedure and standing orders in force immediately before the commencement of this Constitution with respect to the Legislature for the State or, where no House of the Legislature for the State existed, the rules of procedure and standing orders in force immediately before such commencement with respect to the Legislative Assembly of such Province as may be specified in that behalf by the Rajpramukh of the State, shall have effect in relation to the Legislature of the State subject to such modifications and adaptations as may be made therein by the Speaker of the Legislative Assembly or the Chairman of the Legislative Council, as the case may be."

(12) In clause (2) of article 214, for the word "Province" the words "Indian State" shall be substituted.

(13) For article 221, the following article shall be substituted, namely :—

etc., of Judges.

221. (1) There shall be paid to the Judges of each High Court such salaries as may be determined by the President after consultation with the Rajpramukh.

(2) Every Judge shall be entitled to such allowances and to such rights in respect of leave of absence and pension as may from time to

time be determined by or under law made by Parliament and, until so determined, to such allowances and rights as may be determined by the President after consultation with the Rajpramukh :

Provided that neither the allowances of a Judge nor his rights in respect of leave of absence or pension shall be varied to his disadvantage after his appointment."

PART VIII

THE STATES IN PART C OF THE FIRST SCHEDULE

Administration of States in Part C of the First Schedule.

239. (1) Subject to the other provisions of this Part, a State specified in Part C of the First Schedule shall be administered by the President acting, to such extent as he thinks fit, through a Chief Commissioner or a Lieutenant-Governor to be appointed by him or through the Government of a neighbouring State :

Provided that the President shall not act through the Government of a neighbouring State save after—

(*a*) consulting the Government concerned ; and

(*b*) ascertaining in such manner as the President considers most appropriate the views of the people of the State to be so administered.

(2) In this article, references to a State shall include references to a part of a State.

Creation or continuance of local Legislatures or Council of advisers or Ministers.

240. (1) Parliament may by law create or continue for any State specified in Part C of the First Schedule and administered through a Chief Commissioner or Lieutenant-Governor—

(*a*) a body, whether nominated, elected or partly nominated and partly elected, to function as a Legislature for the State ; or

(*b*) a Council of Advisors or Ministers,

or both with such constitution, powers and functions, in each case, as may be specified in the law.

(2) Any such law as is referred to in clause (1) shall not be deemed to be an amendment of this Constitution for the purposes of article 368 notwithstanding that it contains any provision which amends or has the effect of amending the Constitution.

High Courts for States in Part C of the First Schedule.

241. (1) Parliament may by law constitute a High Court for a State specified in Part C of the First Schedule or declare any court in any such State to be a High Court for all or any of the purposes of this Constitution.

(2) The provisions of Chapter V of Part VI shall apply in relation to every High Court referred to in clause (1) as they apply in relation to a High Court referred to in article 214 subject to such modifications or exceptions as Parliament may by law provide.

(3) Subject to the provisions of this Constitution and to the provisions of any law of the appropriate Legislature made by virtue of powers conferred on that Legislature by or under this Constitution, every High Court exercising jurisdiction immediately before the commencement of this Constitution in relation to any State specified in Part C of the First Schedule or any area included therein shall continue to exercise such jurisdiction in relation to that State or area after such commencement.

(4) Nothing in this article derogates from the power of Parliament to extend or exclude the jurisdiction of a High Court in any State specified in Part A or Part B of the First Schedule to or from, any State specified in Part C of that Schedule or any area included within that State.

Coorg.

242. (1) Until Parliament by law otherwise provides, the constitution, powers and functions of the Coorg Legislative Council shall be the same as they were immediately before the commencement of this Constitution.

(2) The arrangements with respect to revenues collected in Coorg and expenses in respect of Coorg shall, until other provision is made in that behalf by the President by order, continue unchanged.

PART IX

THE TERRITORIES IN PART D OF THE FIRST SCHEDULE AND OTHER TERRITORIES NOT SPECIFIED IN THAT SCHEDULE

Administration of territories specified in Part D of the First Schedule and other territories not specified in that Schedule.

243. (1) Any territory specified in Part D of the First Schedule and any other territory comprised within the territory of India but not specified in that Schedule shall be administered by the President acting, to such extent as he thinks fit, through a Chief Commissioner or other authority to be appointed by him.

(2) The President may make regulations for the peace and good government of any such territory and any regulations so made may repeal or amend any law made by Parliament or any existing law which is for the time being applicable to such territory and, when promulgated by the President, shall have the same force and effect as an Act of Parliament which applies to such territory,

PART X

THE SCHEDULED AND TRIBAL AREAS

Administration of Scheduled Areas and tribal areas.

244. (1) The provisions of the Fifth Schedule shall apply to the administration and control of the Scheduled Areas and Scheduled Tribes in any State specified in Part A or Part B of the First Schedule other than the State of Assam.

(2) The provisions of the Sixth Schedule shall apply to the administration of the tribal areas in the State of Assam.

PART XI

RELATIONS BETWEEN THE UNION AND THE STATES

CHAPTER I.—LEGISLATIVE RELATIONS

The division of governmental powers, or rather, of the right to exercise them, between the Union and State Governments is in constitutional parlance, spoken of as "division of sovereignty". Even in the U. S. A. which may be taken as typical of a federal constitution, the States have never been treated upon a basis of equality with the National Government and States when a conflict arose, have always been obliged to yield to the National government, though the maintenance of this supremacy unimpaired, while at the same time preserving to the States their propre autonomy and independence of action has been a difficult task ; and probably, in a federal form of government, this task will continue to tax to the utmost the legal and political abilities of all constitution-makers. How best the framers of the Indian constitution have succeeded in this task is for the public to judge but there is no doubt that the provisions of this Part of the constitution bear ample evidence of a sincere attempt to establish a strong central government.

"Some critics have said that the centre is too strong. Others have said that it must be made stronger. The Draft Constitution has struck a balance. However much you may deny powers to the Centre, it is difficult to prevent the Centre from becoming strong. Conditions in modern world are such that centralization of powers is inevitable. One has only to consider the growth of the Federal Government in the U. S. A. which notwithstanding the very limited powers given to it by the Constitution has out-grown its former self and has overshadowed and eclipsed the State Governments. This is due to modern conditions. The same conditions would operate on the Government of India and nothing that one can do will help to prevent it from being strong. On the other hand, we must resist the tendency to make it stronger. It cannot chew more than it can digest. Its strength must be commensurate with its weight. It would be a folly to make it so strong that it may fall by its own weight." (Speech of the Hon. Dr. Ambedkar, *Constituent Assembly Debates*).

In the words of a learned critic, of the U. S. Constitution, "Centralization is not an end in itself, either to be advocated or deplored ; it is a tendency that has developed as a kind of by-product, in the effort to get the public machinery called government to do things that the public wants done." W. Brooke Graves, *Uniform State Action, a Possible Substitute for Centralization* [Chapel Hill, (1934), p. 290].

Distribution of Legislative Powers

Extent of laws made by Parliament and by the Legislatures of State.

245. (1) Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of the State.

(2) No law made by Parliament shall be deemed to be invalid on the ground that it would have extra-territorial operation.

NOTES

This Article is based on S 99 of the Government of India Act, 1935.

This Article indicates that the Constitution is a grant of powers. No legislative power belongs to the National Government unless it has been expressly or by implication granted by the Constitution. This is the first and most fundamental among all principles of constitutional interpretation. The Arcticle defines the territorial limit of the powers of legislation vested in the Parliament and the legislatures of the States.

Sub-cl. (2) makes it clear that laws enacted by Parliament cannot be attacked on the ground of extra territorial operation. For example, item 57 of the Union List (see Seventh Schedule) shows that Parliament is given legislative power in regard to "fishing and fisheries beyond territorial waters." It will, therefore, be open to Parliament to enact fishery legislation which is of extra territorial application. Being a sovereign legislature, the powers of the Indian Parliament like that of the British Parliament are subject to no limitation whatever. That the powers of the British Parliament are unfettered was made clear in *Craft* v. *Dumphy*, (1933) A. C. 156 and in Re *Bathori*, (1934) A. C. 91. It is important to note that extra territorial powers of legislation are conferred on the Union Parliament only and not on the State Legislatures.

Subject-matter of laws made by Parliament and by the Legislatures of States.

246. (1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the "Union List").

(2) Notwithstanding anything in clause (3), Parliament, and, subject to clause (1), the Legislature of any State specified in Part A or Part B of the First Schedule also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the "Concurrent List").

(3) Subject to clauses (1) and (2), the Legislature of any State specified in Part A or Part B of the First Schedule has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the "State List").

(4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included in Part A or Part B of the First Schedule notwithstanding that such matter is a matter enumerated in the State List.

NOTES

This Article is based on S. 100 of the Government of India Act, 1935.

This Article attempts to define the exact scope of legislative powers of the Parliament and of the legislatures in the States. A clear demarcation of the fields of the Union and of the States is one of the problems of modern federalism, for federalism necessarily involves distribution of legislative powers. In this connection, the remarks of the Joint Parliamentary Committee (see paragraph 230 of the Joint Parliamentary Committee's Report) prior to the framing of the Government of India Act, 1935, with regard to the provisions of S. 100 of that Act will be found instructive : "We do not disguise the fact that these proposals will open the door to litigation of a kind which has hitherto been almost unknown in India. But a statutory allocation of exclusive jurisdictions to the Centre and the provinces respectively is the only possible foundation for provincial autonomy. We are fully sensible of the immense practical advantages of the present system and of the uncertainties of litigation which have followed elsewhere from a statutory delimitation of competing jurisdictions."

The Union List, the dominant List :—The words "notwithstanding anything in clauses (2) and (3)" in sub-clause (1) of this Article are intended to emphasise that the Union List is the dominant List and that the Central law will prevail over the State law. The framers of the Constitution preferred to base this Article on S. 100 of the Government of India Act, 1935, because that Act had been in force for over 10 years and its exact implications have been settled by judicial authority. It was thought preferable to retain what was already familiar in preference to something knew. This is also further reinforced by the use of the words "subject to clauses (1) and (2)" which occur in the beginning of sub-clause (3) of this Article.

This Article read in conjunction with Articles 248 and 251 leads to the following conclusions :—

(1) Where there is over-lapping between a subject falling within the scope of the Union List and the State List, the subject, to the extent

of the overlapping, is to be treated as one exclusively Union on which the State legislature is incompetent to legislate.

(2) Where there is any overlapping between the Union List and the Concurrent List, the Union List will prevail so that the State Legislature cannot legislate on the subject.

(3) Where there is overlapping between a subject falling within the Concurrent List and the State List, the subject is to be treated as within the Concurrent List, thus ensuring the power of Parliament to legislate over the subject. It is only such subjects as are not within the enumerated subjects in Lists I and III that are within the exclusive competence of the Legislatures of the States.

So for the purpose of deciding whether any Act is *ultra vires* as not being within the compentence of a particular Legislative Body, it is necessary to examine the Lists and to see whether the subject in question may readily be said to fall within the enumerated powers of either Legislature. The Lists must be read together and the language of the one interpreted in the light of the other. (Cf. *The Citizens Insurance Co. of Canada* v. *Parsons* 7 A. C. 109). The correct test for determining the true scope of a piece of legislation has been stated in *Attorney-General for Ontario* v. *Reciprocal Insurers Co.* (1924) A. C. 328 at p. 337 as follows: ".....it has been formally laid down that the Courts must ascertain the true nature and character of the enactment, its 'pith and substance', and it is the result of this investigation, not the form alone which the Statute may have assumed under the hand of the draughtsman, that will determine within which of the Legislative lists the legislation falls and for this purpose the legislation must be scrutinised in its entirety".

Moreover, the powers conferred on the legislature to make laws is "with respect to any of the matters enumerated" etc. These words also occur in S. 51, of the Australian Canstitution Act and have been construed in several Australian decisions. Thus, in the *Waterside Workers Case* (28, Commonwealth Law Reports at p. 232) it is stated as follows :—"The words 'with respect to' are not words of enlargement but of indication. They indicate that you are to look to the following enumeration to see the actual subject of the power".

Power to enact incidental or ancillary legislation :—It has been laid down by the Privy Council in *Attorney General for Ontario* v. *Attorney General for Canada* (1894) A. C. 189, that the power to enact incidental or ancillary legislation is included in the grant of substantive power and follows without any express provision to that effect. This principle has been acted upon by the Indian Courts in a number of cases.

Principle of Severability :—If any Legislature attempts to encroach into the fields which are not within its competence, the legislation enacted by it is said to be *ultra vires* of the legislature, but if an enactment is found to consist of provisions which are *ultra vires* as covering subjects not within its competence but within the competence of another

legislative body, it does not follow that the whole enactment is necessarily invalid, for, if some provisions alone offend against the rule of distribution of powers, they may be severable from the rest. Again, when the subject matter of the enactment is within the competence of the Legislature, it may purport to apply it to persons and things beyond its competence, for instance, in excess of the limits indicated in Article 245, in which, case the enactment may be entirely valid as to some subject, but *ultra vires* as to others. This principle of severability can only apply if the offending provisions are not so inter-woven into the scheme that they are not severable. Cooley, in his "Constitutional Limitations" (p. 246) says : "The whole Act is not void unless all the provisions are connected in subject-matter, depending on each other, operating together with the same purpose, or otherwise so connected together in meaning that it cannot be presumed that the legislature would have passed the one without the other. The point is whether they are essentially and inseparably connected in substance. If, when the unconstitutional portion is struck out, that which remains is complete in itself and capable of being executed in accordance with the apparent legislative intent, wholly independent of that which was rejected, it must be sustained. On the other hand, if the provisions are so mutually connected with and dependent on each other as constitution, considerations or compensating for each other as to warrant the belief that the legislature intended them as a whole, and if all could not be carried into effect, the legislature would not pass the residue independently, then if some parts are unconstitutional all the provisions which are thus dependent, constitutional or connected must fall with them."

Power of Parliament to provide for the establishment of certain additional courts.

247. Notwithstanding anything in this Chapter, Parliament may by law provide for the establishment of any additional courts for the better administration of laws made by Parliament or of any existing law with respect to a matter enumerated in the Union List.

Residuary powers of legislation.

248. (1) Parliament has exclusive power to make any law with respect to any matter not enumerated in the Concurrent List or State List.

(2) Such power shall include the power of making any law imposing a tax not mentioned in either of those Lists.

NOTES

This Article makes it clear that all residuary powers of legislation should remain with Parliament.

Power of Parliament to legislate with respect to a matter in the State List in the national interest.

249. (1) Notwithstanding anything in the foregoing provisions of this Chapter, if the Council of States has declared by resolution supported by not less than two-thirds of the members present and voting that it is necessary or expedient in the national interest that Parliament should make laws with respect to any matter enumerated in the State List specified in the resolution, it shall be lawful for Parliament to make laws for the whole or any part of the territory of India with respect to that matter while the resolution remains in force.

(2) A resolution passed under clause (1) shall remain in force for such period not exceeding one year as may be specified therein :

Provided that, if and so often as a resolution approving the continuance in force of any such resolution is passed in the manner provided in clause (1), such resolution shall continue in force for a further period of one year from the date on which under this clause it would otherwise have ceased to be in force.

(3) A law made by Parliament which Parliament would not but for the passing of a resolution under clause (1) have been competent to make shall, to the extent of the incompetency, cease to have effect on the expiration of a period of six months after the resolution has ceased to be in force, except as respects things done or omitted to be done before the expiration of the said period.

NOTES

This Article in its present form incorporates the recommendations made by the Special Committee. It confers power on Parliament to legislate with respect to a matter in the State List in the national interest upon a resolution passed by the Council of State backed by two-thirds of the members present and voting.

This is a very important Article. Under this Article, Parliament can legislate when a subject becomes a matter of national concern as distinguished from provincial concern, though the subject belongs to the State List, provided a resolution is passed by a two-thirds majority in favour of such exercise of power by the Centre.

Power of Parliament to legislate with respect to any matter in the State List if a Proclamation of Emergency is in operation.

250. (1) Notwithstanding anything in this Chapter, Parliament shall, while a Proclamation of Emergency is in operation, have power to make laws for the whole or any part of the territory of India with respect to any of the matters enumerated in the State List.

(2) A law made by Parliament which Parliament would not but for the issue of a Proclamation of Emergency have been competent to make shall, to the extent of the incompetency, cease to have effect on the expiration of a period of six months after the Proclamation has ceased to operate, except as respects things done or omitted to be done before the expiration of the said period.

NOTES

This Article, like Art. 249, gives power to Parliament in an emergency.

This Article is based on S. 102 of the Government of India Act, 1935.

As to Proclamation of Emergency, see Article 352, *post*.

Inconsistency between laws made by Parliament under articles 249 & 250 and laws made by the Legislatures of States.

251. Nothing in articles 249 and 250 shall restrict the power of the Legislature of a State to make any law which under this Constitution it has power to make, but if any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament has under either of the said articles power to make, the law made by Parliament, whether passed before or after the law made by the Legislature of the State, shall prevail, and the law made by the Legislature of the State shall to the extent of the repugnancy, but so long only as the law made by Parliament continues to have effect, be inoperative.

Power of Parliament to legislate for two or more States by consent and adoption of such legislation by any other State.

252. (1) If it appears to the Legislatures of two or more States to be desirable that any of the matters with respect to which Parliament has no power to make laws for the States except as provided in articles 249 and 250 should be regulated in such States by

Parliament by law, and if resolutions to that effect are passed by all the Houses of the Legislatures of those States, it shall be lawful for Parliament to pass an Act for regulating that matter accordingly, and any Act so passed shall apply to such States and to any other State by which it is adopted afterwards by resolution passed in that behalf by the House or, where there are two Houses, by each of the Houses of the Legislature of that State.

(2) Any Act so passed by Parliament may be amended or repealed by an Act of Parliament passed or adopted in like manner but shall not, as respects any State to which it applies, be amended or repealed by an Act of the Legislature of that State.

NOTES

Under this Article, Parliament can exercise power to legislate in respect of subjects in the State List if the States consent to such exercise.

Sub-cl. (2) :—This Article states that an Act passed by Parliament with the consent of the States should not be allowed to be amended or repealed by an Act of the Legislature of any State to which it applies, but should be amended or repealed only an on Act of Parliament passed or adopted in the same manner in which the principal Act was passed or adopted. This is in conformity with the provisions of S. 51 (xxxvii) read with S. 109 of the Commonwealth of Australia Constitution Act.

Legislation for giving effect to international agreements.

253. Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for the whole or any part of the territory of India implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body.

NOTES

The object underlying this provision is that Parliament should have unfettered power to make any law for any State or part thereof for implementing any Treaty Agreement or Convention with any foreign country or countries.

Inconsistency between laws made by Parliament and laws made by the Legislatures of States.

254. (1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law

with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.

(2) Where a law made by the Legislature of a State specified in Part A or Part B of the First Schedule with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State :

Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State.

NOTES

This Article is based on S. 107 of the Government of India Act, 1935.

This Article deals with a case where there is an inconsistency between laws made by Parliament and laws made by Legislatures of States in the field of the Concurrent List. In such cases, the Parliamentary Legislation will prevail.

"Repugnant to" :—The word 'repugnant' means 'inconsistent with' or 'contrary to'. Such contrariety may be in quality, in matter or in respect of the form prescribed (see *Foster's case*, 11 Coke Rep. 56 b.) As to the precise signification of the word 'repugnant' as used in this Article, see the following cases : *Wallwork* v. *Fielding*, (1922) 2 K. B. 66 C. A. ; *Kutner* v. *Phillips*, (1891) 2 Q. B. 267 ; *Forkes* v. *A. G. Manitoba* (1937), A. C. 260 ; and *Clyde Engineering Co.* v. *Coburn*, 37 Commonwealth Law Reports, 466.

Requirements as to recommendations and previous sanctions to be regarded as matters of procedure only.

255. No Act of Parliament or of the Legislature of a State specified in Part A or Part B of the First Schedule, and no provision in any such Act, shall be invalid by reason only that some recommendation or previous sanction required by this Constitution was

not given, if assent to that Act was given—

(*a*) where the recommendation required was that of the Governor, either by the Governor or by the President ;

(*b*) where the recommendation required was that of the Rajpramukh, either by the Rajpramukh or by the President ;

(*c*) where the recommendation or previous sanction required was that of the President, by the President.

This Article is based on S. 109 (2) of the Government of India Act. 1935.

CHAPTER II.—ADMINISTRATIVE RELATIONS

General

Obligation of States and the Union.

256. The executive power of every State shall be so exercised as to ensure compliance with the laws made by Parliament and any existing laws which apply in that State, and the executive power of the Union shall extend to the giving of such directions to a State as may appear to the Government of India to be necessary for that purpose.

This Article is based on S. 122 of the Government of India Act, 1935.

Control of the Union over States in certain cases.

257. (1) The executive power of every State shall be so exercised as not to impede or prejudice the exercise of the executive power of the Union, and the executive power of the Union shall extend to the giving of such directions to a State as may appear to the Government of India to be necessary for that purpose.

(2) The executive power of the Union shall also extend to the giving of directions to a State as to the construction and maintenance of means of communication declared in the direction to be of national or military importance :

Provided that nothing in this clause shall be taken as restricting the power of Parliament to declare highways or

waterways to be national highways or national waterways or the power of the Union with respect to the highways or waterways so declared or the power of the Union to construct and maintain means of communication as part of its functions with respect to naval, military and air force works.

(3) The executive power of the Union shall also extend to the giving of directions to a State as to the measures to be taken for the protection of the railways within the State.

(4) Where in carrying out any direction given to a State under clause (2) as to the construction or maintenance of any means of communication or under clause (3) as to the measures to be taken for the protection of any railway, costs have been incurred in excess of those which would have been incurred in the discharge of the normal duties of the State if such direction had not been given, there shall be paid by the Government of India to the State such sum as may be agreed, or, in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of India, in respect of the extra costs so incurred by the State.

NOTES

This Article is based on S. 126 of the Government of India Act, 1935.

This Article deals with the exercise of the executive power of the Union in the States. Article 73 (1) says that the executive power of the Union extends to all matters with respect to which the Parliament has power to make laws, but by reason of the proviso to that sub-clause, it does not extend in any State specified in Part A or Part B of the First Schedule to matters to which the Legislature of the State has also power to make laws. Thus, it is clear that although the Parliament has power to make laws in respect of matters falling within the Concurrent List, and the Parliament, by reason of Article 246, dominates in that field, the administration of such laws has to be carried out through the instrumentality of the Sate executive. In such cases, it is provided by this Article that the executive power of the Union shall extend to giving of directions to a State. The object underlying this rule is succinctly put by the Joint Parliamentary Committee which preceded the Government of India Act, 1935, as follows : "The objects of legislation in this field will be predominantly matters of Provincial concern, and the agency by which such legislation will be administered will be almost exclusively a Provincial agency. The Federal Legislature will be generally used as an instrument of legislation in this field merely from consideration of

practical convenience and, if this procedure were to carry with it automatically an extension of the scope of Federal Administration, the Provinces might feel that they were exposed to dangerous encroachment."

Sub-cl. (2) : This sub-clause embodies the recommendation of the Drafting Committee that when any direction is given to a State by the Union as to the construction or maintenance of any means of communication declared to be of national and military importance, there should be a provision on the lines of sub-clause (3) of Article 258 for payment of extra cost incurred by the State in carrying out such directions. Accordingly, provision has been made in sub-clause (4) of this Article for such payment [cf. Article 257 (4)].

Power of the Union to confer powers, etc., on States in certain cases.

258. (1) Notwithstanding anything in this Constitution, the President may, with the consent of the Government of a State, entrust either conditionally or unconditionally to that Government or to its officers functions in relation to any matter to which the executive power of the Union extends.

(2) A law made by Parliament which applies in any State may, notwithstanding that it relates to a matter with respect to which the Legislature of the State has no power to make laws, confer powers and impose duties, or authorise the conferring of powers and the imposition of duties, upon the State or officers and authorities thereof.

(3) Where by virtue of this article powers and duties have been conferred or imposed upon a State or officers or authorities thereof, there shall be paid by the Government of India to the State such sum as may be agreed, or, in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of India, in respect of any extra costs of administration incurred by the State in connection with the exercise of those powers and duties.

NOTES

This Article is based on S. 124 of the Government of India Act, 1935.

Sub-cl. (2) : In view of the language of this sub-clause, such administrative difficulties as arose in Australia as the result of the decision in *Commonwealth* v. *New South Wales* (33 Commonwealth Law Reports 1) where it was held that the Commonwealth Legislature was incompetent to impose duties upon provincial officials, are not likely to arise under our Constitution.

Armed Forces in States in Part B of the First Schedule.

259. (1) Notwithstanding anything in this Constitution, a State specified in Part B of the First Schedule having any Armed Forces immediately before the commencement of this Constitution may, until Parliament by law otherwise provides, continue to maintain the said Forces after such commencement subject to such general or special orders as the President may from time to time issue in that behalf.

(2) Any such Armed Forces as are referred to in clause (1) shall form part of the Armed Forces of the Union.

Jurisdiction of the Union in relation to territories outside India.

260. The Government of India may be agreement with the Government of any territory not being part of the territory of India undertake any executive, legislative or judicial functions vested in the Government of such territory, but every such agreement shall be subject to, and governed by, any law relating to the exercise of foreign jurisdiction for the time being in force.

Public acts, records and judicial proceedings.

261. (1) Full faith and credit shall be given throughout the territory of India to public acts, records and judicial proceedings of the Union and of every State.

(2) The manner in which and the conditions under which the acts, records and proceedings referred to in clause (1) shall be proved and the effect thereof determined shall be as provided by law made by Parliament.

(3) Final judgments or orders delivered or passed by civil courts in any part of the territory of India shall be capable of execution anywhere within that territory according to law.

NOTES

This Article is based on Art.IV, S. 1 of the Constitution of the United States (1787) which reads as follows : "Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state ; and the Congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved and the effect thereof".

"Public acts" :—By "public acts" is meant the statutes in force of the union and every state ; and when litigation in any State involves a statute of another State such a statute should be given full force and effect as in the State by whose legislature it was enacted[1]. Under the corresponding provisions of the U. S. Constitution it has been held that the term "statutes" in this context refers not only to statutes proper, but also to constitutions[2], corporate charters[3], and possibly executive and legislative acts[4].

The provision that 'full faith and credit shall be given throughout the territory of India, to public acts, records, etc.' does not give any extra territorial effect to state legislation. It simply requires that, when rights or obligations have in one State been fixed by the statutes of that State, the force of such statutes in fixing such rights or obligations shall be recognized in controversies arising in any other State.

"Public records" :—The "public records" which are referred to are not only records of judicial proceedings but records of deeds of conveyance, mortgages, births, deaths, marriages, and the like, kept in public offices.

"Judicial proceedings" :—The full faith and credit clause applies not only to statutes but to judicial proceedings as well.

Sub. cl. (2) ; Powers of Parliament :—By this clause power is conferred on Parliament to prescribe the method of proof and also the effect to be given to public acts, records and judicial proceedings. Speaking with reference to the powers of the Congress in the United States under the full faith and credit clause, Prof. Cook[5], a great authority on the American constitution has observed that the Congress has the power to provide (1) for service in other states of the processes in civil suits, (2) for the direct enforcement of state judgments in other states, (3) for compelling states to enforce judgments in other states by rendering a new judgment, and (4) for the compulsory recognition by the states of rights granted by legislative acts of other states.

Rule of evidence, not of jurisdiction :—This clause shows that the doctrine of full faith and credit merely establishes a *rule of evidence*, not a rule of jurisdiction [cf. *State of Winconsin* v. *Pelican Insurance Co.*, (1888) 127 U. S. 265, 291.

Sub. Cl. (3) :—This clause enacts that final judgments or orders delivered or passed by civil courts in any part of the territory of India can be executed anywhere within the said territory. In America also it is now settled law that as to judgments the states are compelled to entertain actions upon judgments of sister states.

1. Cf. *Chicago Railway Co.* v, *Wiggins Ferry Co.*, (1881) 119 U. S. 622.
2. *Smithsonian Institution* v. *St. John*, (1909) 214 U. S. 19.
3. *Supreme Council, etc.* v *Green*, (1915) 237 U. S. 531.
4. Willis on Constitutional Law, p. 461.
5. See Article entitled "Powers of the Congress under the Full Faith and Credit Clause, 28 Yale Law" Journal, 421.

Foreign judgments :—Foreign judgments are given recognition only on the basis of the common law rule of conflict of laws. For the purpose of the full faith and credit clause, foreign judgments are treated as distinct from judgments of the states within the Union of India. In such cases the states are left free to apply the rule of Conflict of laws. Judgments delivered by the courts of a state are distinguishable from foreign judgments in as much as "they are not re-examinable on the merits according to the rules of conflict of laws, but must be given the same credit, validity and effect in the courts of that state which would be given in the courts of the state where rendered"[1].

Diputes relating to Waters

262. (1) Parliament may by law provide for the adjudication of any dispute or complaint with respect to the use, distribution or control of the waters of, or in, any inter-State river or river valley.

Adjudication of disputes relating to waters of inter-State rivers or river valleys.

(2) Notwithstanding anything in this Constitution, Parliament may by law provide that neither the Supreme Court nor any other court shall exercise jurisdiction in respect of any such dispute or complaint as is referred to in clause (1).

NOTES

Disputes relating to waters :—This Article empowers parliament to enact laws in order to provide for the adjudication of disputes relating to waters of inter-State rivers or river valleys. Sub-clause (2) is designed to empower Parliament to enact provisions barring the jurisdiction of the Supreme Court or other courts in respect of such disputes.

In the original draft there were four Articles dealing with this subject which were based on sections 130 to 133 of the Government of India Act, 1935, and providing among other things for the appointment by the President of a commission consisting of experts in irrigation,, engineering, administration, finance, or law to investigate such disputes or to make report. But these proposals were ultimately dropped.

Co-ordination between States

263. If at any time it appears to the President that the public interests would be served by the establishment of a Council charged with the duty of—

Provisions with respect to an inter-State Council.

(*a*) inquiring into and advising upon disputes

1, Willis on Constitutional Law, p. 455.

which may have arisen between States ;

(*b*) investigating and discussing subjects in which some or all of the States, or the Union and one or more of the States, have a common interest ; or

(*c*) making recommendations upon any such subject and, in particular, recommendations for the better co-ordination of policy and action with respect to that subject,

it shall be lawful for the President by order to establish such a Council, and to define the nature of the duties to be performed by it and its organisation and procedure.

NOTES

Inter-State Council :—This Article is a reproduction of S. 135 of the Government of India Act, 1935.

The object of this Article is two-fold, *viz.*, (1) to co-ordinate state activities; and (2) to promote Inter-State co-operation and research and to resolve Inter-State disputes. This will be done by the President establishing an Inter-State Council. Such a Council will also serve to iron out all Inter-State differences and animosities. *See also* Art. 252, *ante*.

The functions of an Inter-State Council under this Article are purely advisory. Under Art. 131, *ante*, the original Jurisdiction of the Supreme Court extends to any dispute involving any question on which the existence or extent of a legal right depends. Art. 263 should not be construed as depriving the Supreme Court of such jurisdiction.

PART XII

FINANCE, PROPERTY, CONTRACTS AND SUITS

CHAPTER I.—FINANCE

General

Interpretation.

264. In this Part, unless the context otherwise requires,—

(*a*) "Finance Commission" means a Finance Commission constituted under article 280 ,

(*b*) "State" does not include a State specified in Part C of the First Schedule ;

(*c*) references to States specified in Part C of the First Schedule shall include references to any territory specified in Part D of the First Schedule and any other territory comprised within the territory of India but not specified in that Schedule.

Taxes not to be imposed save by authority of law.

265. No tax shall be levied or collected except by authority of law.

Consolidated Funds and public accounts of India and of the States.

266. (1) Subject to the provisions of article 267 and to the provisions of this Chapter with respect to the assignment of the whole or part of the net proceeds of certain taxes and duties to States, all revenues received by the Government of India, all loans raised by that Government by the issue of treasury bills, loans or ways and means advances and all moneys received by that Government in repayment of loans shall form one consolidated fund to be entitled "the Consolidated Fund of India", and all revenues received by the Government of a State, all loans raised by that Government by the issue of treasury

bills, loans or ways and means advances and all moneys received by that Government in repayment of loans shall form one consolidated fund to be entitled "the Consolidated Fund of the State".

(2) All other public moneys received by or on behalf of the Government of India or the Government of a State shall be credited to the public account of India or the public account of the State, as the case may be.

(3) No moneys out of the Consolidated Fund of India or the Consolidated Fund of a State shall be appropriated except in accordance with law and for the purposes and in the manner provided in this Constitution.

Contingency Fund.

267. (1) Parliament may by law establish a Contingency Fund in the nature of an imprest to be entitled "the Contingency Fund of India" into which shall be paid from time to time such sums as may be determined by such law, and the said Fund shall be placed at the disposal of the President to enable advances to be made by him out of such Fund for the purposes of meeting unforeseen expenditure pending authorisation of such expenditure by Parliament by law under article 115 or article 116.

(2) The Legislature of a State may by law establish a Contingency Fund in the nature of an imprest to be entitled "the Contingency Fund of the State" into which shall be paid from time to time such sums as may be determined by such law, and the said Fund shall be placed at the disposal of the Governor or Rajpramukh of the State to enable advances to be made by him out of such Fund for the purposes of meeting unforeseen expenditure pending authorisation of such expenditure by the Legislature of the State by law under article 205 or article 206.

Distribution of Revenues between the Union and the States

Duties levied by the Union but collected and appropriated by the States.

268. (1) Such stamp duties and such duties of excise on medicinal and toilet preparations as are mentioned in the Union List shall be levied by the Government of India but shall be collected—

(*a*) in the case where such duties are leviable within any State specified in Part C of the First Schedule, by the Government of India, and

(*b*) in other cases, by the State within which such duties are respectively leviable.

(2) The proceeds in any financial year of any such duty leviable within any State shall not form part of the Consolidated Fund of India, but shall be assigned to that State.

NOTES

As for the reasons for including duties of excise on medical and toilet preparations containing alcohol or any substance included in sub-paragraph (b) of entry 84 of the Union List (Cf. Seventh Schedule, List I) in that entry as duties leviable by the union, *vide* foot note under item 84 of List I of Seventh Schedule. Such duties have been included in sub-cl. (1) of this Article in view of their inclusion in the Union List.

Taxes levied and collected by the Union but assigned to the States.

269. (1) The following duties and taxes shall be levied and collected by the Government of India but shall be assigned to the States in the manner provided in clause (2), namely :—

(*a*) duties in respect of succession to property other than agricultural land ;

(*b*) estate duty in respect of property other than agricultural land ;

(*c*) terminal taxes on goods or passengers carried by railway, sea or air ;

(*d*) taxes on railway fares and freights ;

(*e*) taxes other than stamp duties on transactions in stock-exchanges and futures markets ;

(*f*) taxes on the sale or purchase of newspapers and on advertisements published therein.

(2) The net proceeds in any financial year of any such duty or tax, except in so far as those proceeds represent proceeds attributable to States specified in Part C of the First Schedule, shall not form part of the Consolidated Fund of India, but shall be assigned to the States within which that duty or tax is leviable in that year, and shall be distributed among those States in accordance with such principles of distribution as may be formulated by Parliament by law.

Taxes levied and collected by the Union and distributed between the Union and the States.

270. (1) Taxes on income other than agricultural income shall be levied and collected by the Government of India and distributed between the Union and the States in the manner provided in clause (2).

(2) Such percentage, as may be prescribed, of the net proceeds in any financial year of any such tax, except in so far as those proceeds represent proceeds attributable to States specified in Part C of the First Schedule or to taxes payable in respect of Union emoluments, shall not form part of the Consolidated Fund of India, but shall be assigned to the States within which that tax is leviable in that year, and shall be distributed among those States in such manner and from such time as may be prescribed.

(3) For the purposes of clauses (2), in each financial year such percentage as may be prescribed of so much of the net proceeds of taxes on income as does not represent the net proceeds of taxes payable in respect of Union emoluments shall be deemed to represent proceeds attributable to States specified in Part C of the First Schedule.

(4) In this article—

(*a*) "taxes on income" does not include a corporation tax ;

(*b*) "prescribed" means—

(*i*) until a Finance Commission has been constituted, prescribed by the President by order, and

(*ii*) after a Finance Commission has been constituted, prescribed by the President by

order after considering the recommendations of the Finance Commission ;

(*c*) "Union emoluments" includes all emoluments and pensions payable out of the Consolidated Fund of India in respect of which income-tax is chargeable.

NOTES

Sub-cl. (4) : "taxes on income" :—"Corporation tax" is defined in Art. 366 (6), *post*, as a tax on income. But as it was the intention of the framers of the constitution to exclude a corporation tax from the purview of Article 270, this is made clear in express terms in sub-cl. (4) (a).

Surcharge on certain duties and taxes for purposes of the Union.

271. Notwithstanding anything in articles 269 and 270, Parliament may at any time increase any of the duties or taxes referred to in those articles by a surcharge for purposes of the Union and the whole proceeds of any such surcharge shall form part of the Consolidated Fund of India.

Taxes which are levied and collected by the Union and may be distributed between the Union and the States.

272. Union duties of excise other than such duties of excise on medicinal and toilet preparations as are mentioned in the Union List shall be levied and collected by the Government of India, but, if Parliament by law so provides, there shall be paid out of the Consolidated Fund of India to the States to which the law imposing the duty extends sums equivalent to the whole or any part of the net proceeds of that duty, and those sums shall be distributed among those States in accordance with such principles of distribution as may be formulated by such law.

NOTES

This Article is based on sub-section (1) of Section 140 of the Government of India Act, 1935, as adapted, with regard to the distribution of excise duties.

Grants in lieu of export duty on jute and jute products.

273. (1) There shall be charged on the Consolidated Fund of India in each year as grants-in-aid of the revenues of the States of Assam, Bihar, Orissa and West Bengal, in lieu of assignment of any share of the net proceeds in each year of

export duty on jute and jute products to those States, such sums as may be prescribed.

(2) The sums so prescribed shall continue to be charged on the Consolidated Fund of India so long as any export duty on jute or jute products continues to be levied by the Government of India or until the expiration of ten years from the commencement of this Constitution, whichever is earlier.

(3) In this article, the expression "prescribed" has the same meaning as in article 270.

Prior recommendation of President required to Bills affecting taxation in which States are interested.

274. (1) No Bill or amendment which imposes or varies any tax or duty in which States are interested, or which varies the meaning of the expression " agricultural income " as defined for the purposes of the enactments relating to Indian income-tax, or which affects the principles on which under any of the foregoing provisions of this Chapter moneys are or may be distributable to States, or which imposes any such surcharge for the purposes of the Union as is mentioned in the foregoing provisions of this Chapter, shall be introduced or moved in either House of Parliament except on the recommendation of the President.

(2) In this article, the expression "tax or duty in which States are interested" means—

(*a*) a tax or duty the whole or part of the net proceeds whereof are assigned to any State ; or

(*b*) a tax or duty by reference to the net proceeds whereof sums are for the time being payable out of the Consolidated Fund of India to any State.

Grants from the Union to certain States.

275. (1) Such sums as Parliament may by law provide shall be charged on the Consolidated Fund of India in each year as grants-in-aid of the revenues of such States as Parliament may determine to be in need of assistance, and different sums may be fixed for different States :

Provided that there shall be paid out of the Consolidated Fund of India as grants-in-aid of the revenues of a State such capital and recurring sums as may be necessary to enable that State to meet the costs of such schemes of development as may be undertaken by the State with the approval of the Government of India for the purpose of promoting the welfare of the Scheduled Tribes in that State or raising the level of administration of the Scheduled Areas therein to that of the administration of the rest of the areas of that State :

Provided further that there shall be paid out of the Consolidated Fund of India as grants-in-aid of the revenues of the State of Assam sums, capital and recurring,equivalent to—

(*a*) the average excess of expenditure over the revenues during the two years immediately preceding the commencement of this Constitution in respect of the tribal areas specified in Part A of the table appended to paragraph 20 of the Sixth Schedule ; and

(*b*) the costs of such schemes of development as may be undertaken by that State with the approval of the Government of India for the purpose of raising the level of administration of the said areas to that of the administration of the rest of the areas of that State.

(2) Until provision is made by Parliament under clause (1), the powers conferred on Parliament under that clause shall be exercisable by the President by order and any order made by the President under this clause shall have effect subject to any provision so made by Parliament :

Provided that after a Finance Commission has been constituted no order shall be made under this clause by the President except after considering the recommendations of the Finance Commission.

Taxes on professions, trades, callings and employments.

276. (1) Notwithstanding anything in article 246, no law of the Legislature of a State relating to taxes for the benefit of the State or of a municipality, district board, local board

or other local authority therein in respect of professions, trades, callings or employments shall be invalid on the ground that it relates to a tax on income.

(2) The total amount payable in respect of any one person to the State or to any one municipality, district board, local board or other local authority in the State by way of taxes on professions, trades, callings and employments shall not exceed two hundred and fifty rupees per annum :

Provided that if in the financial year immediately preceding the commencement of this Constitution there was in force in the case of any State or any such municipality, board or authority a tax on professions, trades, callings or employments the rate, or the maximum rate, of which exceeded two hundred and fifty rupees per annum, such tax may continue to be levied until provision, to the contrary is made by Parliament by law, and any law so made by Parliament may be made either generally or in relation to any specified States, municipalities, boards or authorities.

(3) The power of the Legislature of a State to make laws as aforesaid with respect to taxes on professions, trades, callings and employments shall not be construed as limiting in any way the power of Parliament to make laws with respect to taxes on income accruing from or arising out of professions, trades, callings and employments.

Savings.

277. Any taxes, duties, cesses or fees which, immediately before the commencement of this Constitution, were being lawfully levied by the Government of any State or by any municipality or other local authority or body for the purposes of the State, municipality, district or other local area may, notwithstanding that those taxes, duties, cesses or fees are mentioned in the Union List, continue to be levied and to be applied to the same purposes until provision to the contrary is made by Parliament by law.

Cf. S. 143 (2) of the Government of India Act, 1935.

Agreement with States in Part B of the First Schedule with regard to certain financial matters.

278. (1) Notwithstanding anything in this Constitution, the Government of India may, subject to the provisions of clause (2), enter into an agreement with the Government of a State specified in Part B of the First Schedule with respect to—

(*a*) the levy and collection of any tax or duty leviable by the Government of India in such State and for the distribution of the proceeds thereof otherwise than in accordance with the provisions of this Chapter ;

(*b*) the grant of any financial assistance by the Government of India to such State in consequence of the loss of any revenue which that State used to derive from any tax or duty leviable under this Constitution by the Government of India or from any other sources ;

(*c*) the contribution by such State in respect of any payment made by the Government of India under clause (1) of article 291,

and, when an agreement is so entered into, the provisions of this Chapter shall in relation to such State have effect subject to the terms of such agreement.

(2) An agreement entered into under clause (1) shall continue in force for a period not exceeding ten years from the commencement of this Constitution :

Provided that the President may at any time after the expiration of five years from such commencement terminate or modify any such agreement if after consideration of the report of the Finance Commission he thinks it necessary to do so.

Calculation of "net proceeds", etc.

279. (1) In the foregoing provision of this Chapter, "net proceeds" means in relation to any tax or duty the proceeds thereof reduced by the cost of collection, and for the purposes of those provisions the net proceeds of any tax or duty, or of any part of any tax or duty, in or attributable

to any area shall be ascertained and certified by the Comptroller and Auditor-General of India, whose certificate shall be final.

(2) Subject as aforesaid, and to any other express provision of this Chapter, a law made by Parliament or an order of the President may, in any case where under this Part the proceeds of any duty or tax are, or may be, assigned to any State, provide for the manner in which the proceeds are to be calculated, for the time from or at which and the manner in which any payments are to be made, for the making of adjustments between one financial year and another, and for any other incidental or ancillary matters.

Cf. S. 144 of the Government of India Act, 1935.

Finance Commission.

280. (1) The President shall, within two years from the commencement of this Constitution and thereafter at the expiration of every fifth year or at such earlier time as the President considers necessary, by order constitute a Finance Commission which shall consist of a Chairman and four other members to be appointed by the President.

(2) Parliament may by law determine the qualifications which shall be requisite for appointment as members of the Commission and the manner in which they shall be selected.

(3) It shall be the duty of the Commission to make recommendations to the President as to—

(*a*) the distribution between the Union and the States of the net proceeds of taxes which are to be, or may be, divided between them under this Chapter and the allocation between the States of the respective shares of such proceeds ;

(*b*) the principles which should govern the grants-in-aid of the revenues of the States out of the Consolidated Fund of India ;

(*c*) the continuance or modification of the terms of any agreement entered into by the Gov-

ernment of India with the Government of any State specified in Part B of the First Schedule under clause (1) of article 278 or under article 306 ; and

(*d*) any other matter referred to the Commission by the President in the interests of sound finance.

(4) The Commission shall determine their procedure and shall have such powers in the performance of their functions as Parliament may by law confer on them.

NOTES

This Article provides for the constitution of a finance Commission within two years from the commencement of the constitution and thereafter at the expiration of every fifth year or at such earlier time as the President thinks necessary.

Recommendations of the Finance Commission.

281. The President shall cause every recommendation made by the Finance Commission under the provisions of this Constitution together with an explanatory memorandum as to the action taken thereon to be laid before each House of Parliament.

Miscellaneous Financial Provisions

Expenditure defrayable by the Union or a State out of its revenues.

282. The Union or a State may make any grants for any public purpose, notwithstanding that the purpose is not one with respect to which Parliament or the Legislature of the State, as the case may be, may make laws.

Cf. S. 152 (2) of the Government of India Act, 1935.

Custody, etc., of Consolidated Funds, Contingency Funds and moneys credited to the public accounts.

283. (1) The custody of the Consolidated Fund of India and the Contingency Fund of India, the payment of moneys into such Funds, the withdrawal of moneys therefrom, the custody of public moneys other than those credited to such Funds received by or on behalf of the Government of India, their payment into the public account of India and the withdrawal of

moneys from such account and all other matters connected with or ancillary to matters aforesaid shall be regulated by law made by Parliament, and, until provision in that behalf is so made, shall be regulated by rules made by the President.

(2) The custody of the Consolidated Fund of a State and the Contingency Fund of a State, the payment of moneys into such Funds, the withdrawal of moneys therefrom, the custody of public moneys other than those credited to such Funds received by or on behalf of the Government of the State, their payment into the public account of the State and the withdrawal of moneys from such account and all other matters connected with or ancillary to matters aforesaid shall be regulated by law made by the Legislature of the State, and, until provision in that behalf is so made, shall be regulated by rules made by the Governor or Rajpramukh of the State.

NOTES

This Article is based on S. 151 of the Government of India Act, 1935. The object of this Article is to secure *inter alia* that all public moneys shall be paid into the public accout of India or the public account of the State as the case may be. This is with a view to regularising the receipts of money and finally allocating those receipts either to the revenues of the Government of India or of the State.

Custody of suitors' deposits and other moneys received by public servants and courts.

284. All moneys received by or deposited with—

(*a*) any officer employed in connection with the affairs of the Union or of a State in his capacity as such, other than revenues or public moneys raised or received by the Government of India or the Government of the State, as the case may be, or

(*b*) any court within the territory of India to the credit of any cause, matter, account or persons,

shall be paid into the public account of India or the public account of the State, as the case may be.

Exemption of property of the Union from State taxation.

285. (1) The property of the Union shall, save in so far as Parliament may by law otherwise provide, be exempt from all taxes imposed by a State or by any authority within a State.

(2) Nothing in clause (1) shall, until Parliament by law otherwise provides, prevent any authority within a State from levying any tax on any property of the Union to which such property was immediately before the commencement of this Constitution liable or treated as liable, so long as that tax continues to be levied in that State.

Cf. S. 154 of the Government of India Act, 1935.

Restrictions as to imposition of tax on the sale or purchase of goods.

286. (1) No law of a State shall impose, or authorise the imposition of, a tax on the sale or purchase of goods where such sale or purchase takes place—

(*a*) outside the State ; or

(*b*) in the course of the import of the goods into, or export of the goods out of, the territory of India.

Explanation.—For the purposes of sub-clause (*a*), a sale or purchase shall be deemed to have taken place in the State in which the goods have actually been delivered as a direct result of such sale or purchase for the purpose of consumption in that State, notwithstanding the fact that under the general law relating to sale of goods the property in the goods has by reason of such sale or purchase passed in another State.

(2) Except in so far as Parliament may by law otherwise provide, no law of a State shall impose, or authorise the imposition of, a tax on the sale or purchase of any goods where such sale or purchase takes place in the course of inter-State trade or commerce :

Provided that the President may by order direct that any tax on the sale or purchase of goods which was being lawfully levied by the Government of any State immediately before the commencement of this Constitution shall, notwithstanding that the imposition of such tax is contrary to the provisions of this clause, continue to be levied until the thirtyfirst day of March, 1951.

(3) No law made by the Legislature of a State imposing, or authorising the imposition of, a tax on the

sale or purchase of any such goods as have been declared by Parliament by law to be essential for the life of the community shall have effect unless it has been reserved for the consideration of the President and has received his assent.

Exemption from taxes on electricity.

287. Save in so far as Parliament may by law otherwise provide, no law of a State shall impose, or authorise the imposition of, a tax on the consumption or sale of electricity (whether produced by a Government or other persons) which is—

(*a*) consumed by the Government of India, or sold to the Government of India for consumption by that Government ; or

(*b*) consumed in the construction, maintenance or operation of any railway by the Government of India or a railway company operating that railway, or sold to that Government or any such railway company for consumption in the construction, maintenance or operation of any railway,

and any such law imposing, or authorising the imposition of, a tax on the sale of electricity shall secure that the price of electricity sold to the Government of India for consumption by that Government, or to any such railway company as aforesaid for consumption in the construction, maintenance or operation of any railway, shall be less by the amount of the tax than the price charged to other consumers of a substantial quantity of electricity.

Cf. S. 154-A of the Government of India Act, 1935.

Exemption from taxation by States in respect of water or electricity in certain cases.

288. (1) Save in so far as the President may by order otherwise provide, no law of a State in force immediately before the commencement of this Constitution shall impose, or authorise the imposition of, a tax in respect of any water or electricity stored, generated, consumed, distributed or sold by any authority established by any existing law or any law made by Parliament for regulating or developing any inter-State river or river-valley.

Explanation.—The expression "law of a State in force" in this clause shall include a law of a State passed or made before the commencement of this Constitution and not previously repealed, notwithstanding that it or parts of it may not be then in operation either at all or in particular areas.

(2) The Legislature of a State may by law impose, or authorise the imposition of, any such tax as is mentioned in clause (1), but no such law shall have any effect unless it has, after having been reserved for the consideration of the President, received his assent ; and if any such law provides for the fixation of the rates and other incidents of such tax by means of rules or orders to be made under the law by any authority, the law shall provide for the previous consent of the President being obtained to the making of any such rule or order.

Exemption of property and income of a State from Union taxation

289. (1) The property and income of a State shall be exempt from Union taxation.

(2) Nothing in clause (1) shall prevent the Union from imposing, or authorising the imposition of, any tax to such extent, if any, as Parliament may by law provide in respect of a trade or business of any kind carried on by, or on behalf of, the Government of a State, or any operations connected therewith, or any property used or occupied for the purposes of such trade or business, or any income accruing or arising in connection therewith.

(3) Nothing in clause (2) shall apply to any trade or business, or to any class of trade or business, which Parliament may by law declare to be incidental to the ordinary functions of government.

NOTES

Cf. S. 155 (1) of the Government of India Act, 1935.

This Article states that the property and income of a State shall be exempt from taxation. But the union may levy a tax in respect of a trade or business carried on by or on behalf of the Government of a State. S. 155 of the Government of India Act, 1935, enacted that profits from trade or business carried on by a Provincial Government would be taxable if the trade or business was carried on outside the Province. The provisions of this Article are based on the recommendations of the Expert Committee on the financial provisions of the Union Constitution.

Power is conferred on Parliament to enact laws imposing a tax on such trade or business carried on by the Government of a State. Sub-cl. (3) confers power on Parliament to declare by law that any class of trade or business shall not be taxable.

Adjustment in respect of certain expenses and pensions.

290. Where under the provisions of this Constitution the expenses of any court or Commission, or the pension payable to or in respect of a person who has served before the commencement of this Constitution under the Crown in India or after such commencement in connection with the affairs of the Union or of a State, are charged on the Consolidated Fund of India or the Consolidated Fund of a State, then, if—

(*a*) in the case of a charge on the Consolidated Fund of India, the court or Commission serves any of the separate needs of a State, or the person has served wholly or in part in connection with the affairs of a State ; or

(*b*) in the case of a charge on the Consolidated Fund of a State, the court or Commission serves any of the separate needs of the Union or another State, or the person has served wholly or in part in connection with the affairs of the Union or another State,

there shall be charged on and paid out of the Consolidated Fund of the State or, as the case may be, the Consolidated Fund of India or the Consolidated Fund of the other State, such contribution in respect of the expenses or pension as may be agreed, or as may in default of agreement be determined by an arbitrator to be appointed by the Chief Justice of India.

Cf. S. 156 of the Government of India Act, 1935.

Privy purse sums of Rulers.

291. (1) Where under any covenant or agreement entered into by the Ruler of any Indian State before the commencement of this Constitution, the payment of any sums, free of tax, has been guaranteed or assured by the Government of the Dominion of India to any Ruler of such State as privy purse—

(*a*) such sums shall be charged on, and paid out of, the Consolidated Fund of India ; and

(*b*) the sums so paid to any Ruler shall be exempt from all taxes on income.

(2) Where the territories of any such Indian State as aforesaid are comprised within a State specified in Part A or Part B of the First Schedule, there shall be charged on, and paid out of, the Consolidated Fund of that State such contribution, if any, in respect of the payments made by the Government of India under clause (1) and for such period as may, subject to any agreement entered into in that behalf under clause (1) of article 278, be determined by order of the President.

CHAPTER II.—BORROWING

Borrowing by the Government of India.

292. The executive power of the Union extends to borrowing upon the security of the Consolidated Fund of India within such limits, if any, as may from time to time be fixed by Parliament by law and to the giving of guarantees within such limits, if any, as may be so fixed.

Cf. S. 162 of the Government of India Act, 1935.

Borrowing by States.

293. (1) Subject to the provisions of this article, the executive power of a State extends to borrowing within the territory of India upon the security of the Consolidated Fund of the State within such limits, if any, as may from time to time be fixed by the Legislature of such State by law and to the giving of guarantees within such limits, if any, as may be so fixed.

(2) The Government of India may, subject to such conditions as may be laid down by or under any law made by Parliament, make loans to any State or, so long as any limits fixed under article 292 are not exceeded, give guarantees in respect of loans raised by any State, and any sums required for the purpose of making such loans shall be charged on the Consolidated Fund of India.

(3) A State may not without the consent of the Government of India raise any loan if there is still outstanding any part of a loan which has been made to the State by the Government of India or by its predecessor Government or in respect of which a guarantee has been given by the Government of India or by its predecessor Government.

(4) A consent under clause (3) may be granted subject to such conditions, if any, as the Government of India may think fit to impose.

Cf. S. 163 of the Government of India Act, 1935.

CHAPTER III.—PROPERTY, CONTRACTS, RIGHTS, LIABILITIES, OBLIGATIONS AND SUITS

294. As from the commencement of this Constitution—

Succession to property, assets, rights, liabilities and obligations in certain cases.

(*a*) all property and assets which immediately before such commencement were vested in His Majesty for the purposes of the Government of the Dominion of India and all property and assets which immediately before such commencement were vested in His Majesty for the purposes of the Government of each Governor's Province shall vest respectively in the Union and the corresponding State, and

(*b*) all rights, liablities and obligations of the Government of the Dominion of India and of the Government of each Governor's Province, whether arising out of any contract or otherwise, shall be the rights, liabilities and obligations respectively of the Government of India and the Government of each corresponding State,

subject to any adjustment made or to be made by reason of the creation before the commencement of this Constitution of the Dominion of Pakistan or of the Provinces of West Bengal, East Bengal, West Punjab and East Punjab.

295. (1) As from the commencement of this Constitution—

Succession to property, assets, rights, liabilities and obligations in other cases.

(*a*) all property and assets which immediately before such commencement were vested in any Indian State corresponding to a State specified in Part B of the First Schedule shall vest in the Union, if the purposes for which such property and assets were held immediately before such commencement will thereafter be purposes of the Union relating to any of the matters enumerated in the Union List, and

(*b*) all rights, liabilities and obligations of the Government of any Indian State corresponding to a State specified in Part B of the First Schedule, whether arising out of any contract or otherwise, shall be the rights, liabilities and obligations of the Government of India, if the purposes for which such rights were acquired or liabilities or obligations were incurred before such commencement will thereafter be purposes of the Government of India relating to any of the matters enumerated in the Union List,

subject to any agreement entered into in that behalf by the Government of India with the Government of that State.

(2) Subject as aforesaid, the Government of each State specified in Part B of the First Schedule shall, as from the commencement of this Constitution, be the successor of the Government of the corresponding Indian State as regards all property and assets and all rights, liabilities and obligations, whether arising out of any contract or otherwise, other than those referred to in clause (1).

Property accruing by escheat or lapse or as *bona vacantia*.

296. Subject as hereinafter provided, any property in the territory of India which, if this Constitution had not come into operation, would have accrued to His Majesty, or, as the case may be, to the Ruler of an Indian State by escheat or lapse, or as *bona vacantia* for want of a rightful owner, shall, if it is property situate in a State, vest in such State, and shall, in any other case, vest in the Union :

Provided that any property which at the date when it would have so accrued to His Majesty or to the Ruler of an Indian State was in the possession or under the control of the Government of India or the Government of a State shall, according as the purposes for which it was then used or held were purposes of the Union or of a State, vest in the Union or in that State.

Explanation.—In this article, the expressions "Ruler" and "Indian State" have the same meanings as in article 363.

Cf. S. 174 of the Government of India Act, 1935.

Things of value lying within territorial waters to vest in the Union.

297. All lands, minerals and other things of value underlying the ocean within the territorial waters of India shall vest in the Union and be held for the purposes of the Union.

Power to acquire property.

298. (1) The executive power of the Union and of each State shall extend, subject to any law made by the appropriate Legislature, to the grant, sale, disposition or mortgage of any oroperty held for the purposes of the Union or of such State, as the case may be, and to the purchase or acquisition of property for those purposes respectively, and to the making of contracts.

(2) All property acquired for the purposes of the Union or of a State shall vest in the Union or in such State, as the case may be.

Cf. S. 175 (1) and (2) of the Government of India Act, 1935.

Contracts.

299. (1) All contracts made in the exercise of the executive power of the Union or of a State shall be expressed to be made by the President, or by the Governor or the Rajpramukh of the State, as the case may be, and all such contracts and all assurances of properry made in the exercise of that power shall be executed on behalf of the President or the Governor or the Rajpramukh by such persons and in such manner as he may direct or authorise.

(2) Neither the President nor the Governor nor the Rajpramukh shall be personally liable in respect of any contract or assurance made or executed for the purposes of this Constitution, or for the purposes of any enactment relating to the government of India heretofore in force, nor shall any person making or executing any such contract or assurance on behalf of any of them be personally liable in respect thereof.

Cf. S. 175 (3) and (4) of the Government of India Act, 1935.

Suits and proceedings.

300. (1) The Government of India may sue or be sued by the name of the Union of India and the Government of a State may sue or be sued by the name of the State and may, subject to any provisions which may be made by Act of Parliament or

of the Legislature of such State enacted by virtue of powers conferred by this Constitution, sue or be sued in relation to their respective affairs in the like cases as the Dominion of India and the corresponding Provinces or the corresponding Indian States might have sued or been sued if this Constitution had not been enacted.

(2) If at the commencement of this Constitution—

(*a*) any legal proceedings are pending to which the Dominion of India is a party, the Union of India shall be deemed to be substituted for the Dominion in those proceedings ; and

(*b*) any legal proceedings are pending to which a Province or an Indian State is a party, the corresponding State shall be deemed to be substituted for the Province or the Indian State in those proceedings.

NOTES

Cf. S. 176 (1) of the Government of India Act, 1935.

The Government of India may sue and be sued in the name of the Union of India and the Government of a State in the name of the State concerned. In the orginal draft of the constitution it was proposed that the Government of India may be sued in the name of the "Government of India". But this was changed into the "Union of India" as it was thought that the entity to sue and be sued may be specific and that an unknown and undefined body like "the Government" could not sue in such a name. (See *Columbia Government* v. *Rothschild*, 1 Sim. 94.)

PART XIII

TRADE, COMMERCE AND INTERCOURSE WITHIN THE TERRITORY OF INDIA

This Part deals with the subject of trade, commerce and intercourse within the territory of India. After laying down the general rule that trade, commerce and intercourse throughout the territory of India shall be free (cf. Article 301), the succeeding Articles proceed to lay down the exception to the rule. Power is conferred on Parliament to impose restrictions on trade, commerce and intercourse between one State and another or within any part of the territory of India in the interest of the public (cf. Article 302). But the next Article proceeds to point out that such power should not be abused by the Parliament or the State Legislature by preferring one State to another, or by making discrimination between one State and another (cf. Art. 303). The succeeding Article deals with the power of a State Legislature and it is stated that a State Legislature can levy a tax on goods imported from other States, but this power is subject to the condition that such tax must be levied only in cases where similar goods manufactured or produced in that State itself are subject to tax. The idea is that there should be no discrimination between goods so imported and goods so manufactured or produced. The State Legislature can also impose reasonable restrictions on the freedom of trade, commerce or intercourse with or within that State in the interest of the public. But a Bill seeking to impose any such restrictions cannot be moved or introduced in the Legislature of a State without the previous sanction of the President (cf. Art. 304). Art. 305 says that nothing in Articles 301 and 303 shall affect the provisions of any existing law except in so far as the President may by order otherwise provide.

The power conferred by this Chapter on the Parliament and the State Legislatures is what is known as the "Commerce Power" under the U. S. Constitution.

Under that Constitution, next to the power to tax, the Commerce Clause has become one of the most important grants of authority contained in the Constitution. Indeed, the Commerce Power is authority for most of the distinctly regulatory activities of the U. S. Federal Government. As a great Authority on the American Constitution has pointed out, the Commerce Power "has been the means whereby the U. S. National Government has assumed ever-increasing authority over matters affecting the daily lives of the American people."

301. Subject to the other provisions of this Part, trade, commerce and intercourse throughout the territory of India shall be free.

Freedom of trade, commerce and intercourse.

Power of Parliament to impose restrictions on trade, commerce and intercourse.

302. Parliament may by law impose such restrictions on the freedom of trade, commerce or intercourse between one State and another or within any part of the territory of India as may be required in the public interest.

NOTES

Under this Article Parliament has power not only to direct the flow of commerce, but also to foster, protect, control, restrain, and even prohibit commerce in the public interest in certain cases. The aim of the Framers of the Constitution was to confer on Parliament unquestioned authority to control all forms of interstate intercourse.

"trade, commerce or intercourse" :—The words used are "trade, commerce or inercourse". These words have not been defined either in our Constitution or in the U. S. Constitution. The meaning of these words should ordinarily present no difficulty. But even here certain nice questions have arisen. Take the case of persons engaged in professional occupations, such as doctors, lawyers, accountants, and architects. Because their activities are usually confined to the localities they serve, there is no difficulty in holding that they are not engaged in "interstate commerce." But where professional groups have formed themselves into associations, for their mutual advantage and have sought to control the entire profession, the question arises when a professional service is a "trade" and if so when it becomes interstate commerce. These questions have arisen under the U. S. Constitution but have not been definitely settled.[1]

Under the U. S. Constitution (See Art. I, S. 8, clause 3), this is called the "commerce clause". The commerce clause was first interpreted by the U. S. Supreme Court in 1824 in the case of *Gibbons* v. *Ogdcn.*[2] This is the leading decision justifying federal control on the basis of commerce power. In this case it was held that the word "commerce" should be given a wide meaning and that it includes not merely the exchange of commodities, but also navigation. Chief Justice Marshall observed. "Commerce, undoubtedly, is traffic, but it is something more :

1. Cf. *American Medical Association* v. *United States*, (1942) 317 U, S. 519. The question was raised whether a doctor's profession is a "trade" within the meaning of the Sherman Act, but the case was decided without deciding the question. But the U. S. Supreme Court have held that a group health co-operative was a trade or business.

2. (1824) 19 Wheaton 1. In this case, an exclusive right to navigate steamboats on the waters of the New York State had been given to two persons by the New York legislature. One Ogden secured a licence for steamboat navigation from these two persons. Gibbons, who had originally been a partner with Ogden but was now his rival, was operating steamboats between New York and New Jersey under a licence granted by the Federal Government. Ogden desiring to eliminate his competitor, filed a suit in the New York Court to obtain an injunction straining Gibbons from further operations whereupon Gibbons appealed to the U. S. Supreme Court. Marshall, C. J., gave a decision in favour of Gibbons and ruled that navigation in innavigable rivers is interstate commerce and that the Federal law must prevail over the State law,

it is intercourse. It describes the commercial intercourse between nations, in all its branches, and is regulated by prescribing rules for carrying on that intercourse." But the word 'commerce' cannot be extended indefinitely. The U. S. Supreme Court has held that 'commerce does not include the buying and selling of Bills of Exchange or the writing of Insurance Policies or the processes of manufacturing. In the famous Child Labour decision of 1919, the Supreme Court held that the Congress should not, under colour of regulating interstate commerce, dictate the conditions under which manufacturing might be carried on within any state of the Union even though the manufactured goods were intended to be sold in other States. The determination of who may be employed in the industry within the bounds of the State, was held to rest with the legislatures of the State.

The meaning of interstate commerce under the U. S. Constitution has gradually developed through a series of Court decisions which were decided as and when new problems arose. At the present time, the Congress can regulate commodities moved from State to State ; place restrictions on persons from State to State ; can regulate the instruments of interstate transportation by land, water or air and can regulate the interstate transmission of information by telegraph, telephone, wireless or radio. Manufacturing or any other form of productive enterprise has been held to be interstate commerce if organised on a national scale and carried on in two or more States. That this is so will be seen from the following quotation from the opinion of Chief Justice Hughes of the U. S. Supreme Court : "In view of Respondent's far-flung activities, it is idle to say that the effect would be indirect or remote. It is obvious that it would be immediate and might be catastrophic.....When industries organise themselves on a national scale, making their relation to interstate commerce the dominant factor in their activities, how can it be maintained that their "industrial labour relations constitute a forbidden field into which Courts may not enter when it is necessary to protect interstate commerce from paralysing consequences of industrial war ? "

The right to regulate commerce includes the right to foster, aid, and encourage commerce as also the right to control and restrain, but it must be done with due regard for the welfare of those who are immediately concerned and of the public at large (See *Gibbons* v. *Ogden*, supra). But the Congress will only use its powers to regulate interstate commerce in order to protect health, morals, safety and general welfare.

In pursuance of the power conferreed on it under the commerce clause, the U. S. Congress has prohibited the transportation in interstate commerce of food or drugs which are misbranded, adulterated, or in a condition unfit for human consumption [Cf. *Mc Dermott* v. Wisconsin, (1913) 228, U. S. 115.] Similarly, it has been held that the Congress can regulate to prevent the spread of disease from one State to another through shipment of cattle in interstate commerce. Thus, a Federal Act which authorised Federal Agents to take part in dipping and disinfecting cattle within a State was upheld as being constitutional. Upon the same principle, it has been held that the Congress may require domestic cattle to be treated to eradicate infectious disease (Cf. *Missouri Cansas and Texas Rail Road* v. *Haber* (1898) 169 U. S. 693).

Scope of this Article :—Goods moved from one State to another must be said to come within the scope of this Article as soon as they are delivered to and accepted by a common carrier for transportation to another State or when continuous journey from another State has begun. Thus goods placed upon a station platform of a railway do not come within the mischief of this Article until they are accepted by the railway [*Coessero*) (1886) 116 U. S. 517]. Similarly, logs of wood placed on a river bank for storage awaiting spring freshets to float them to another State have been held not come within the scope of the interstate commerce clause [*Diamond Match Co.* v. *Ontonagon* (1903) 188 U. S. 82]. Under this Article, in the interstates of the public it is open to Parliament by law to impose such restrictions on the freedom of trade, commerce and intercourse from one State to another or within any part of the tertitory of India as it thinks fit. The test therefore is 'public interest'. Thus it will be open to Parliament, by virtue of powers under this Article, to enact laws to prohibit commerce in obscene publications, in lottery tickets, obscene films, transport of commodities as diseascd cattle, dangerous explosives, impure or adulterated foods aud drug, and goods and persons infected with disease. Similarly, it will be open to Parliament to enact suitable laws to regulate the interstate movement of persons as well as commodities and to enact quarantine laws and regulations.

Restrictions on the legislative powers of the Union and of the States with regard to trade and commerce.

303. (1) Notwithstanding anything in article 302, neither Parliament nor the Legislature of a State shall have power to make any law giving, or authorising the giving of, any preference to one State over another, or making, or authorising the making of, any discrimination between one State and another, by virtue of any entry relating to trade and commerce in any of the Lists in the Seventh Schedule.

(2) Nothing in clause (1) shall prevent Parliament from making any law giving, or authorising the giving of, any preference or making, or authorising the making of, any discrimination if it is declared by such law that it is necessary to do so for the purpose of dealing with a situation arising from scarcity of goods in any part of the territory of India.

Restrictions on trade, commerce and intercourse among States.

304. Notwithstanding anything in article 301 or article 303, the Legislature of a State may by law—

(*a*) impose on goods imported from other States any tax to which similar goods manufactured or produced in that State are subject, so, however, as not to discriminate between

goods so imported and goods so manufactured or produced ; and

(*b*) impose such reasonable restrictions on the freedom of trade, commerce or intercourse with or within that State as may be required in the public interest :

Provided that no Bill or amendment for the purposes of clause (*b*) shall be introduced or moved in the Legislature of a State without the previous sanction of the President.

NOTES

Under this Article, it would appear that the States may impose reasonable health, moral, or safety regulations upon interstate commerce in the public interest and for the general welfare.

Sub-cl. (a) :—This Article empowers the legislature of a State to enact laws imposing any tax on goods imported from other States provided that similar goods manufactured or produced in that State are subject to the same tax. But this rule is subject to an important exception, namely, that such imposition of taxation should not amount to discrimination between goods so imported and so manufactured or prodnced. *See* in this connection, Art. 286, *ante*.

Sub-cl. (a) :—Under this sub-clause it will not be open to the State Legislature to impose any tax on commodities produced in another State at a higher rate than those produced within the State nor is it competent for a State to place a higher licence upon the right to sell commodities made outside the State than upon those produced within State [*General American Bank Car Corporation* v. *Day* (1926) 270 U. S. 367].

Sub-cl. (b) :—This sub-clause empowers the State Legislature to impose reasonable restrictions in interstate commerce as may be required in the public interest. Here 'public interest' may be paraphrased as equivalent to the protection of health, moral, safety and the general welfare (what is called 'police powers' under the U. S. Constitution).

Effect of articles 301 and 303 on existing laws.

305. Nothing in articles 301 and 303 shall affect the provisions of any existing law except in so far as the President may by order otherwise provide.

Power of certain States in Part B of the First Schedule to impose restrictions on trade and commerce.

306. Nothwithstanding anything in the foregoing provisions of this Part or in any other provisions of this Constitution, any State specified in Part B of the First Schedule which before the commencement of this Constitution was levying any tax or duty

on the import of goods into the State from other States or on the export of goods from the State to other States may, if an agreement in that behalf has been entered into between the Government of India and the Government of that State, continue to levy and collect such tax or duty subject to the terms of such agreement and for such period not exceeding ten years from the commencement of this Constitution as may be specified in the agreement :

Provided that the President may at any time after the expiration of five years frgm such commencement terminate or modify any such agreement if, after consideration of the report of the Finance Commission constituted under article 280, he thinks it necessary to do so.

Appointment of authority for carrying out the purposes of articles 301 to 304.

307. Parliament may by law appoint such authority as it considers appropriate for carrying out the purposes of articles 301, 302, 303 and 304, and confer on the authority so appointed such powers and such duties as it thinks necessary.

PART XIV

SERVICES UNDER THE UNION AND THE STATES

CHAPTER I.—SERVICES

We must have government to live, to work, to advance, to enjoy the fruits of our labour. The success or failure of that government, and the kind of service which it renders, will rest in the last analysis upon the capacity and character of the men and women who constitute it. We must therefore maintain a governmental system under which the government attracts to the public service its share of the capacity and character of the man power of the nation[1].

"The dual polity which is inherent in a federal system is followed in all federations by a dual service. In all Federations there is a Federal Civil Service and a State Civil Service. The Indian Federation, though a dual Polity, will have a Dual Service but with one exception. It is recognised that in every country there are certain posts in its administrative set-up which might be called strategic from the point of view of maintaining the standard of administration. It may not be easy to spot such posts in a large and complicated machinery of administration. But there can be no doubt that the standard of administration depends upon the calibre of the Civil Servants who are appointed to these strategic posts. Fortunately for us we have inherited from the past system of administration which is common to the whole of the country and we know what are these strategic posts. The Constitution provides that without depriving the States of their right to form their own Civil Services there shall be an All India Service recruited on an All-India basis with common qualifications, with uniform scale of pay and members of which alone could be appointed to these strategic posts throughout the Union." (Speech of the Hon: Dr. Ambedkar, *Constituent Assembly Debates*).

Interpretation.

308. In this Part, unless the context otherwise requires, the expression "State" means a State specified in Part A or Part B of the First Schedule.

Recruitment and conditions of service of persons serving the Union or a State.

309. Subject to the provisions of this Constitution, Acts of the appropriate Legislature may regulate the recruitment, and conditions of service of persons appointed, to public

1. Commission of Inquiry of Public Service Personnel, *Better Government Personnel, p. 15.*

services and posts in connection with the affairs of the Union or of any State :

Provided that it shall be competent for the President or such persons as he may direct in the case of services and posts in connection with the affairs of the Union, and for the Governor or Rajpramukh of a State or such person as he may direct in the case of services and posts in connection with the affairs of the State, to make rules regulating the recruitment, and the conditions of service of persons appointed, to such services and posts until provision in that behalf is made by or under an Act of the appropriate Legislature under this article, and any rules so made shall have effect subject to the provisions of any such Act.

Tenure of office of persons serving the Union or a State.

310. (1) Except as expressly provided by this Constitution, every person who is a member of a defence service or of a civil service of the Union or of an all-India service or holds any post connected with defence or any civil post under the Union, holds office during the pleasure of the President, and every person who is a member of a civil service of a State or holds any civil post under a State holds office during the pleasure of the Governor or, as the case may be, the Rajpramnkh of the State.

(2) Notwithstanding that a person holding a civil post under the Union or a State holds office during the pleasure of the President or, as the case may be, of the Governor or Rajpramukh of the State,any contract under which a person, not being a member of a defence service or of an all-India service or of a civil service or of a civil service of the Union or a State, is appointed under this Constitution to hold such a post may, if the President or the Governor or the Rajpramukh, as the case may be, deems it necessary in order to secure the services of a person having special qualifications, provide for the payment to him of compensation, if before the expiration of an agreed period that post is abolished or he is, for reasons not connected with any misconduct on his part, required to vacate that post.

Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union of a State.

311. (1) No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him :

Provided that this clause shall not apply—

(*a*) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge ;

(*b*) where an authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to give to that person an opportunity of showing cause ; or

(*c*) where the President or Governor or Rajpramukh, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to give to that person such an opportunity.

(3) If any question arises whether it is reasonably practicable to give to any person an opportunity of showing cause under clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank, as the case may be, shall be final.

All-India services.

312. (1) Notwithstanding anything in Part XI, if the Council of States has declared by resolution supported by not less than two-thirds of the members present and voting that it is necessary or expedient in the national interest so to do, Parliament may by law provide for the creation of one or more all-India services common to the Union and the States; and, subject to the other provisions of this Chapter, regulate the recruitment, and the conditions of service of persons appointed, to any such service.

(2) The services known at the commencement of this Constitution as the Indian Administrative Service and the Indian Police Service shall be deemed to be services created by Parliament under this article.

313. Until other provision is made in this behalf under this Constitution, all the laws in force immediately before the commencement of this Constitution and applicable to any public service or any post which continues to exist after the commencement of this Constitution, as an all-India service or as service or post under the Union or a State shall continue in force so far as consistent with the provisions of this Constitution.

Transitional provisions.

314. Except as otherwise expressly provided by this Constitution, every person who having been appointed by the Secretary of State or Secretary of State in Council to a civil service of the Crown in India continues on and after the commencement of this Constitution to serve under the Government of India or of a State shall be entitled to receive from the Government of India and the Government of the State, which he is from time to time serving, the same conditions of service as respects remuneration, leave and pension, and the same rights as respects disciplinary matters or rights as similar thereto as changed circumstances may permit as that person was entitled to immediately before such commencement.

Provision for protection of existing officers of certain services.

CHAPTER II.—PUBLIC SERVICE COMMISSIONS

315. (1) Subject to the provisions of this article, there shall be a Public Service Commission for the Union and a Public Servic Commission for each State.

Public Service Commissions for the Union and for the States.

(2) Two or more States may agree that there shall be one Public Service Commission for that group of States, and if a resolution to that effect is passed by the House or, where there are two Houses, by each House of the Legislature of each of those States, Parliament may by law provide for the appointment of a Joint State Public Service Commission (referred to in this Chapter as Joint Commission) to serve the needs of those States.

(3) Any such law as aforesaid may contain such incidental and consequential provisions as may be necessary or desirable for giving effect to the purposes of the law.

(4) The Public Service Commission for the Union, if requested so to do by the Governor or Rajpramukh of a State, may, with the approval of the President, agree to serve all or any of the needs of the State.

(5) References in this Constitution to the Union Public Service Commission or a State Public Service Commission shall, unless the context otherwise requires, be construed as references to the Commission serving the needs of the Union or, as the case may be, the State as respects the particular matter in question.

Appointment and term of office of members.

316. (1) The Chairman and other members of a Public Service Commission shall be appointed, in the case of the Union Commission or a Joint Commission, by the President, and in the case of a State Commission, by the Governor or Rajpramukh of the State :

Provided that as nearly as may be one-half of the members of every Public Service Commission shall be persons who at the dates of their respective appointments have held office for at least ten years either under the Government of India or under the Government of a State, and in computing the said period of ten years any period before the commencement of this Constitution during which a person has held office under the Crown in India or under the Government of an Indian State shall be included.

(2) A member of a Public Service Commission shall hold office for a term of six years from the date on which he enters upon his office or until he attains, in the case of the Union Commission, the age of sixty-five years, and in the case of a State Commission or a Joint Commission, the age of sixty years, whichever is earlier :

Provided that—

(*a*) a member of a Public Service Commission may, by writing under his hand addressed,

in the case of the Union Commission or a Joint Commission, to the President, and in the case of a State Commission, to the Governor or Rajpramukh of the State, resign his office ;

(*b*) a member of a Public Service Commission may be removed from his office in the manner provided in clause (1) or clause (3) of article 317.

(3) A person who holds office as a member of a Public Service Commission shall, on the expiration of his term of office, be ineligible for re-appointment to that office.

Removal and suspension of a member of a Public Service Commission.

317. (1) Subject to the provisions of clause (3), the Chairman or any other member of a Public Service Commission shall only be removed from his office by order of the President on the ground of misbehaviour after the Supreme Court, on reference being made to it by the President, has, on inquiry held in accordance with the procedure prescribed in that behalf under article 145, reported that the Chairman or such other member, as the case may be, ought on any such ground to be removed.

(2) The President, in the case of the Union Commission or a Joint Commission, and the Governor or Rajpramukh, in the case of a State Commission, may suspend from office the Chairman or any other member of the Commission in respect of whom a reference has been made to the Supreme Court under clause (1) until the President has passed orders on receipt of the report of the Supreme Court on such reference.

(3) Notwithstanding anything in clause (1), the President may by order remove from office the Chairman or any other member of a Public Service Commission if the Chairman or such other member, as the case may be,—

(*a*) is adjudged an insolvent ; or

(*b*) engages during his term of office in any paid employment outside the duties of his office ; or

(*c*) is, in the opinion of the President, unfit to continue in office by reason of infirmity of mind or body.

(4) If the Chairman or any other member of a Public Service Commission is or becomes in any way concerned or interested in any contract or agreement made by or on behalf of the Government of India or the Government of a State or participates in any way in the profit thereof or in any benefit or emolument arising therefrom otherwise than as a member and in common with the other members of an incorporated company, he shall, for the purposes of clause (1), be deemed to be guilty of misbehaviour.

Power to make regulations as to conditions of service of members and staff of the Commission.

318. In the case of the Union Commission or a Joint Commission, the President and, in the case of a State Commission, the Governor or Rajpramukh of the State may by regulations—

(*a*) determine the number of members of the Commission and their conditions of service ; and

(*b*) make provision with respect to the number of members of the staff of the Commission and their conditions of service :

Provided that the conditions of service of a member of a Public Service Commission shall not be varied to his disadvantage after his appointment,

319. On ceasing to hold office—

Prohibition as to the holding of offices by members of Commission on ceasing to be such members.

(*a*) the Chairman of the Union Public Service Commission shall be ineligible for further employment either under the Government of India or under the Government of a State ;

(*b*) the Chairman of a State Public Service Commission shall be eligible for appointment as the Chairman or any other member of the Union Public Service Commission or as the Chairman of any other State Public Service

Commission, but not for any other employment either under the Government of India or under the Government of a State ;

(*c*) a member other than the Chairman of the Union Public Service Commission shall be eligible for appointment as the Chairman of the Union Public Service Commission or as the Chairman of a State Public Service Commission, but not for any other employment either under the Government of India or under the Government of a State ;

(*d*) a member other than the Chairman of a State Public Service Commission shall be eligible for appointment as the Chairman or any other member of the Union Public Service Commission or as the Chairman of that or any other State Public Service Commission, but not for any other employment either under the Government of India or under the Government of a State.

Functions of Public Service Commissions.

320. (1) It shall be the duty of the Union and the State Public Service Commissions to conduct examinations for appointments to the services of the Union and the services of the State respectively.

(2) It shall be the duty of the Union Public Service Commission, if requested by any two or more States so to do, to assist those States in framing and operating schemes of joint recruitment for any services for which candidates possessing special qualifications are required.

(3) The Union Public Service Commission or the State Public Service Commission, as the case may be, shall be consulted—

(*a*) on all matters relating to methods of recruitment to civil services and for civil posts ;

(*b*) on the principles to be followed in making appointments to civil services and posts and in making promotions and transfers from one service to another and on the suitability of

candidates for such appointments, promotions or transfers ;

(*c*) on all disciplinary matters affecting a person serving under the Government of India or the Government of a State in a civil capacity, including memorials or petitions relating to such matters ;

(*d*) on any claim by or in respect of a person who is serving or has served under the Government of India or the Government of a State or under the Crown in India or under the Government of an Indian State, in a civil capacity, that any costs incurred by him in defending legal proceedings instituted against him in respect of acts done or purporting to be done in the execution of his duty should be paid out of the Consolidated Fund of India, or, as the case may be, out of the Consolidated Fund of the State ;

(*e*) on any claim for the award of a pension in respect of injuries sustained by a person while serving under the Government of India or the Government of a State or under the Crown in India or under the Government of an Indian State, in a civil capacity, and any question as to the amount of any such award,

and it shall be the duty of a Public Service Commission to advise on any matter so referred to them and on any other matter which the President, or, as the case may be, the Governor or Rajpramukh of the State, may refer to them :

Provided that the President as respects the all-India services and also as respects other services and posts in connection with the affairs of the Union, and the Governor or Rajpramukh, as the case may be, as respects other services and posts in connection with the affairs of a State, may make regulations specifying the matters in which either generally, or in any particular class of case or in any particular circumstances, it shall not be necessary for a Public Service Commission to be consulted.

(4) Nothing in clause (3) shall require a Public Service

Commission to be consulted as respects the manner in which any provision referred to in clause (4) of article 16 may be made or as respects the manner in which effect may be given to the provisions of article 335.

(5) All regulations made under the proviso to clause (3) by the President or the Governor or Rajpramukh of a State shall be laid for not less than fourteen days before each House of Parliament or the House or each House of the Legislature of the State, as the case may be, as soon as possible after they are made, and shall be subject to such modifications, whether by way of repeal or amendment, as both Houses of Parliament or the House or both Houses of the Legislature of the State may make during the session in which they are so laid.

Power to extend functions of Public Service Commissions.

321. An Act made by Parliament or, as the case may be, the Legislature of a State may provide for the exercise of additional functions by the Union Public Service Commission or the State Public Service Commission as respects the services of the Union or the State and also as respects the services of any local authority or other body corporate constituted by law or of any public institution.

Expenses of Public Service Commissions.

322. The expenses of the Union or a State Public Service Commission, including any salaries, allowances and pensions payable to or in respect of the members or staff of the Commission, shall be charged on the Consolidated Fund of India or, as the case may be, the Consolidated Fund of the State.

Reports of Public Service Commissions.

323. (1) It shall be the duty of the Union Commission to present annually to the President a report as to the work done by the Commission and on receipt of such report the President shall cause a copy thereof together with a memorandum explaining, as respects the cases, if any, where the advice of the Commission was not accepted, the reasons for such non-acceptance to be laid before each House of Parliament.

(2) It shall be the duty of a State Commission to present annually to the Governor or Rajpramukh of the State a report as to the work done by the Commission, and

it shall be the duty of a Joint Commission to present annually to the Governor or Rajpramukh of each of the States the needs of which are served by the Joint Commission a report as to the work done by the Commission in relation to that State, and in either case the Governor or Rajpramukh, as the case may be, shall, on receipt of such report, cause a copy thereof together with a memorandum explaining, as respects the cases, if any, where the advice of the Commission was not accepted, the reasons for such non-acceptance to be laid before the Legislature of the State.

PART XV

ELECTIONS

Superintendence, direction and control of elections to be vested in an Election Commission.

324. (1) The superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and to the Legislature of every State and of elections to the offices of President and Vice-President held under this Constitution, including the appointment of election tribunals for the decision of doubts and disputes arising out of or in connection with elections to Parliament and to the Legislatures of States shall be vested in a Commission (referred to in this Constitution as the Election Commission).

(2) The Election Commission shall consist of the Chief Election Commissioner and such number of other Election Commissioners, if any, as the President may from time to time fix and the appointment of the Chief Election Commissioner and other Election Commissioners shall, subject to the provisions of any law made in that behalf by Parliament, be made by the President.

(3) When any other Election Commissioner is so appointed the Chief Election Commissioner shall act as the Chairman of the Election Commission.

(4) Before each general election to the House of the People and to the Legislative Assembly of each State, and before the first general election and thereafter before each biennial election to the Legislative Council of each State having such Council, the President may also appoint after consultation with the Election Commission such Regional Commissioners as he may consider necessary to assist the Election Commission in the performance of the functions conferred on the Commission by clause (1).

(5) Subject to the provisions of any law made by Parliament, the conditions of service and tenure of office of

the Election Commissioners and the Regional Commissioners shall be such as the President may by rule determine :

Provided that the Chief Election Commissioner shall not be removed from his office except in like manner and on the like grounds as a Judge of the Supreme Court and the conditions of service of the Chief Election Commissioner shall not be varied to his disadvantage after his appointment :

Provided further that any other Election Commissioner or a Regional Commissioner shall not be removed from office except on the recommendation of the Chief Election Commissioner.

(6) The President, or the Governor or Rajpramukh of a State, shall, when so requested by the Election Commission, make available to the Election Commission or to a Regional Commissioner such staff as may be necessary for the discharge of the functions conferred on the Election Commission by clause (1).

No person to be ineligible for inclusion in, or to claim to be included in a special electoral roll on grounds of religion, race, caste or sex.

325. There shall be one general electoral roll for every territorial costituency for election to either House of Parliament or to the House or either House of the Legislature of a State and no person shall be ineligible for inclusion in any such roll or claim to be included in any special electoral roll for any such constituency on grounds only of religion, race, caste, sex or any of them.

Elections to the House of the People and to the Legislative Assemblies of States to be on the basis of adult suffrage.

326. The elections to the House of the People and to the Legislative Assembly of every State shall be on the basis of adult suffrage ; that is to say, every person who is a citizen of India and who is not less than twenty-one years of age on such date as may be fixed in that behalf by or under any law made by the appropriate Legislature and is not otherwise disqualified under this Constitution or any law made by the appropriate Legislature on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practice, shall be entitled to be registered as a voter at any such election.

Power of Parliament to make provision with respect to elections to Legislatures.

327. Subject to the provisions of this Constitution, Parliament may from time to time by law make provision with respect to all matters relating to, or in connection with, elections to either House of Parliament or to the House or either House of the Legislature of a State including the preparation of electoral rolls, the delimitation of constituencies and all other matters necessary for securing the due constitution of such House or Houses.

Power of Legislature of a State to make provision with respect to elections to such Legislature.

328. Subject to the provisions of this Constitution and in so far as provision in that behalf is not made by Parliament, the Legislature of a State may from time to time by law make provision with respect to all matters relating to, or in connection with, the elections to the House or either House of the Legislature of the State including the preparation of electroral rolls and all other matters necessary for securing the due constitution of such House or Houses.

Bar to interference by courts in electoral matters.

329. Notwithstanding anything in this Constitution—

(*a*) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under article 327 or article 328, shall not be called in question in any court ;

(*b*) no election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature.

PART XVI

SPECIAL PROVISIONS RELATING TO CERTAIN CLASSES

Reservation of seats for Scheduled Castes and Scheduled Tribes in the House of the People.

330. (1) Seats shall be reserved in the House of the People for—

(*a*) the Scheduled Castes ;

(*b*) the Scheduled Tribes except the Scheduled Tribes in the tribal areas of Assam ; and

(*c*) the Scheduled Tribes in the autonomous districts of Assam.

(2) The number of seats reserved in any State for the Scheduled Castes or the Scheduled Tribes under clause (1) shall bear, as nearly as may be, the same proportion to the total number of seats allotted to that State in the House of the People as the population of the Scheduled Castes in the State or of the Scheduled Tribes in the State or part of the State, as the case may be, in respect of which seats are so reserved, bears to the total population of the State.

NOTES

The Article follows the decision of the Advisory Committee with regard to the reservation of the seats in the House of the People as adapted by the Constituent Assembly.

Representation of the Anglo-Indian community in the House of the People.

331. Notwithstanding anything in article 81, the President may, if he is of opinion that the Anglo-Indian community is not adequately represented in the House of the People, nominate not more than two members of that community to the House of the People.

Reservation of seats for Scheduled Castes and Scheduled Tribes in the Legislative Assemblies of the States.

332. (1) Seats shall be reserved for the Scheduled Castes and the Scheduled Tribes, except the Scheduled Tribes in the tribal areas of Assam, in the Legislative Assembly of every State specified in Part A or Part B of the First Schedule.

(2) Seats shall be reserved also for the autonomous districts in the Legislative Assembly of the State of Assam.

(3) The number of seats reserved for the Scheduled Castes or the Scheduled Tribes in the Legislative Assembly of any State under clause (1) shall bear, as nearly as may be, the same proportion to the total number of seats in the Assembly as the population of the Scheduled Castes in the State or of the Scheduled Tribes in the State or part of the State, as the case may be, in respect of which seats are so reserved, bears to the total population of the State.

(4) The number of seats reserved for an autonomous district in the Legislative Assembly of the State of Assam shall bear to the total number of seats in that Assembly a proportion not less than the population of the district bears to the total population of the State.

(5) The constituencies for the seats reserved for any autonomous district of Assam shall not comprise any area outside that district except in the case of the constituency comprising the cantonment and municipality of Shillong.

(6) No person who is not a member of a Scheduled Tribe of any autonomous district of the State of Assam shall be eligible for election to the Legislative Assembly of the State from any constituency of that district except from the constituency comprising the cantonment and municipality of Shillong.

Representation of the Anglo-Indian community in the Legislative Assemblies of the States.

333. Notwithstanding anything in article 170, the Governor or Rajpramukh of a State may, if he is of opinion that the Anglo-Indian community needs representation in the Legislative Assembly of the State and is not adequately represented therein, nominate such number of members of the community to the Assembly as he considers appropriate.

Reservation of seats and special representation to cease after ten years.

334. Notwithstanding anything in the foregoing provisions of this Part, the provisions of this Constitution relating to—

(*a*) the reservation of seats for the Scheduled Castes and the Scheduled Tribes in the House of the People and in the Legislative Assemblies of the States; and

(*b*) the representation of the Anglo-Indian community in the House of the People and in the Legislative Assemblies of the States by nomination,

shall cease to have effect on the expiration of a period of ten years from the commencement of this Constitution :

Provided that nothing in this article shall affect any representation in the House of the People or in the Legislative Assembly of a State until the dissolution of the then existing House or Assembly, as the case may be.

Claims of Scheduled Castes and Scheduled Tribes to services and posts.

335. The claims of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State.

Special provision for Anglo-Indian community in certain services.

336. (1) During the first two years after the commencement of this Constitution, appointments of members of the Anglo-Indian community to posts in the railway, customs, postal and telegraph services of the Union shall be made on the same basis as immediately before the fifteenth day of August, 1947.

During every succeeding period of two years, the number of posts reserved for the members of the said community in the said services shall, as nearly as possible, be less by ten per cent than the numbers so reserved during the immediately preceding period of two years :

Provided that at the end of ten years from the commencement of this Constitution all such reservations shall cease.

(2) Nothing in clause (1) shall bar the appointment of members of the Anglo-Indian community to posts other than, or in addition to, those reserved for the community under that clause if such members are found qualified for appointment on merit as compared with the members of other communities.

Special provision with respect to educational grants for the benefit of Anglo-Indian community.

337. During the first three financial years after the commencement of this Constitution, the same grants, if any, shall be made by the Union and by each State specified in Part A or Part B of the First Schedule for the benefit of the Anglo-Indian community in respect of education as were made in the financial year ending on the thirty-first day of March, 1948.

During every succeeding period of three years the grants may be less by ten per cent than those for the immediately preceding period of three years :

Provided that at the end of ten years from the commencement of this Constitution such grants, to the extent to which they are a special concession to the Anglo-Indian community, shall cease :

Provided further that no educational institution shall be entitled to receive any grant under this article unless at least forty per cent of the annual admissions therein are made available to members of communities other than the Anglo-Indian community.

Special Officer for Scheduled Castes, Scheduled Tribes, etc.

338. (1) There shall be a Special Officer for the Scheduled Castes and Scheduled Tribes to be appointed by the President.

(2) It shall be the duty of the Special Officer to investigate all matters relating to the safeguards provided for the Scheduled Castes and Scheduled Tribes under this Constitution and report to the President upon the working of those safeguards at such intervals as the President may direct, and the President shall cause all such reports to be laid before each House of Parliament.

(3) In this article, references to the Scheduled Castes

and Scheduled Tribes shall be construed as including references to such other backward classes as the President may, on receipt of the report of a Commission appointed under clause (1) of article 340, by order specify and also to the Anglo-Indian community.

Control of the Union over the administration of Scheduled Areas and the welfare of Scheduled Tribes.

339. (1) The President may at any time and shall at the expiration of ten years from the commencement of this Constitution by order appoint a Commission to report on the administration of the Scheduled Areas and the welfare of the Scheduled Tribes in the States specified in Part A and Part B of the First Schedule.

The order may define the composition, powers and procedure of the Commission and may contain such incidental or ancillary provisions as the President may consider necessary or desirable.

(2) The executive power of the Union shall extend to the giving of directions to any such State as to the drawing up and execution of schemes specified in the direction to be essential for the welfare of the Scheduled Tribes in the State.

Appointment of a Commission to investigate the conditions of backward classes.

340. (1) The President may by order appoint a Commission consisting of such persons as he thinks fit to investigate the conditions of socially and educationally backward classes within the territory of India and the difficulties under which they labour and to make recommendations as to the steps that should be taken by the Union or any State to remove such difficulties and to improve their condition and as to the grants that should be made for the purpose by the Union or any State and the conditions subject to which such grants should be made, and the order appointing such Commission shall define the procedure to be followed by the Commission.

(2) A Commission so appointed shall investigate the matters referred to them and present to the President a report setting out the facts as found by them and making such recommendations as they think proper.

(3) The President shall cause a copy of the report so presented together with a memorandum explaining the action taken thereon to be laid before each House of Parliament.

Scheduled Castes.

341. (1) The President may, after consultation with the Governor or Rajpramukh of a State, by public notification, specify the castes, races or tribes or parts of or groups within castes, races or tribes which shall for the purposes of this Constitution be deemed to be Scheduled Castes in relation to that State.

(2) Parliament may by law include in or exclude from the list of Scheduled Castes specified in a notification issued under clause (1) any caste, race or tribe or part of or group within any caste, race or tribe, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.

Scheduled Tribes.

342. (1) The President may, after consultation with the Governor or Rajpramukh of a State, by public notification, specify the tribes or tribal communities or parts of or groups within tribes or tribal communities which shall for the purposes of this Constitution be deemed to be Scheduled Tribes in relation to that State.

(2) Parliament may by law include in or exclude from the list of Scheduled Tribes specified in a notification issued under clause (1) any tribe or tribal comm[illegible]r group within any tribe or tribal comm[illegible]s aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.

PART XVII

OFFICIAL LANGUAGE

CHAPTER I.—LANGUAGE OF THE UNION

343. (1) The official language of the Union shall be Hindi in Devanagri script.

Official language of the Union.

The form of numerals to be used for the official purposes of the Union shall be the international form of Indian numerals.

(2) Notwithstanding anything in clause (1), for a period of fifteen years from the commencement of this Constitution, the English language shall continue to be used for all the official purposes of the Union for which it was being used immediately before such commencement :

Provided that the President may, during the said period, by order authorise the use of the Hindi language in addition to the English language and of the Devanagri form of numerals in addition to the international form of Indian numerals for any of the official purposes of the Union.

(3) Notwithstanding anything in this article, Parliament may by law provide for the use, after the said period of fifteen years, of—

(*a*) the English language, or

(*b*) the Devanagri form of numerals,

for such purposes as may be specified in the law.

344. (1) The President shall, at the expiration of five years from the commencement of this Constitution and thereafter at the expiration of ten years from such commencement, by order constitute a Commission which shall consist of a Chairman and such other members representing the

Commission and Committee of Parliament on official language.

different languages specified in the Eighth Schedule as the President may appoint, and the order shall define the procedure to be followed by the Commission.

(2) It shall be the duty of the Commission to make recommendations to the President as to—

(*a*) the progressive use of the Hindi language for the official purposes of the Union ;

(*b*) restrictions on the use of the English language for all or any of the official purposes of the Union ;

(*c*) the language to be used for all or any of the purposes mentioned in article 348 ;

(*d*) the form of numerals to be used for any one or more specified purposes of the Union ;

(*e*) any other matter referred to the Commission by the President as regards the official language of the Union and the language for communication between the Union and a State or between one State and another and their use.

(3) In making their recommendations under clause (2), the Commission shall have due regard to the industrial, cultural and scientific advancement of India, and the just claims and the interests of persons belonging to the non-Hindi speaking areas in regard to the public services.

(4) There shall be constituted a Committee consisting of thirty members, of whom twenty shall be members of the House of the People and ten thall be members of the Council of States to be elected respectively by the members of the House of People and the members of the Council of States in accordance with the system of proportional representation by means of the single transferable vote.

(5) It shall be the duty of the Committee to examine the recommendations of the Commission constituted under clause (1) and to report to the President their opinion thereon.

(6) Notwithstanding anything in article 343, the President may, after consideration of the report referred to

in clause (5), issue directions in accordance with the whole or any part of that report.

CHAPTER II.—REGIONAL LANGUAGES

Official language or languages of a State.

345. Subject to the provisions of articles 346 and 347, the Legislature of a State may by law adopt any one or more of the languages in use in the State or Hindi as the language or languages to be used for all or any of the official purposes of that State :

Provided that, until the Legislature of the State otherwise provides by law, the English language shall continue to be used for those official purposes within the State for which it was being used immediately before the commencement of this Constitution.

Official language for communication between one State and another or between a State and the Union.

346. The language for the time being authorised for use in the Union for official purposes shall be the official language for communication between one State and another State and between a State and the Union :

Provided that if two or more States agree that the Hindi language should be the official language for communication between such States, that language may be used for such communication.

Special provision relating to language spoken by a section of the population of a State.

347. On a demand being made in that behalf, the President may, if he is satisfied that a substantial proportion of the population of a State desire the use of any language spoken by them to be recognised by that State, direct that such language shall also be officially recognised throughout that State or any part thereof for such purpose as he may specify.

CHAPTER III

LANGUAGE OF THE SUPREME COURT, HIGH COURTS, ETC.

Language to be used in the Supreme Court and in the High Courts and for Acts, Bills, etc.

348. (1) Notwithstanding anything in the foregoing provisions of this Part, until Parliament by law otherwise provides—

(*a*) all proceedings in the Supreme Court and in every High Court,

(*b*) the authoritative texts—

(*i*) of all Bills to be introduced or amendments thereto to be moved in either House of Parliament or in the House or either House of the Legislature of a State,

(*ii*) of all Acts passed by Parliament or the Legislature of a State and of all Ordinances promulgated by the President or the Governor or Rajpramukh of a State, and

(*iii*) of all orders, rules, regulations and bye-laws issued under this Constitution or under any law made by Parliament or the Legislature of a State,

shall be in the English language.

(2) Notwithstanding anything in sub-clause (*a*) of clause (1), the Governor or Rajpramukh of a State may, with the previous consent of the President, authorise the use of the Hindi Language, or any other language used for any official purposes of the State, in proceedings in the High Court having its principal seat in that State :

Provided that nothing in this clause shall apply to any judgment, decree or order passed or made by such High Court.

(3) Notwithstanding anything in sub-clause (*b*) of clause (1), where the Legislature of a State has prescribed any language other than the English language for use in Bills introduced in, or Acts passed by, the Legislature of the State or in Ordinances promulgated by the Governor or Rajpramukh of the State or in any order, rule, regulation or bye-law referred to in paragraph (*iii*) of that sub-clause, a translation of the same in the English language published under the authority of the Governor or Rajpramukh of the State in the official Gazette of that State shall be deemed to be the authoritative text thereof in the English language under this article.

Special procedure for enactment of certain laws relating to language.

349. During the period of fifteen years from the commencement of this Constitution, no Bill or amendment making provision for the language to be used for any of the purposes mentioned in clause (1) of article 348 shall be introduced or moved in either House of Parliament without the previous sanction of the President, and the President shall not give his sanction to the introduction of any such Bill or the moving of any such amendment except after he has taken into consideration the recommendations of the Commission constituted under clause (1) of article 344 and the report of the Committee constituted under clause (4) of that article.

CHAPTER IV.—SPECIAL DIRECTIVES

Language to be used in representation for redress of grievances.

350. Every person shall be entitled to submit a representation for the redress of any grievance to any officer or authority of the Union or a State in any of the languages used in the Union or in the State, as the case may be.

Directive for development of the Hindi language.

351. It shall be the duty of the Union to promote the spread of the Hindi language, to develop it so that it may serve as a medium of expression for all the elements of the composite culture of India and to secure its enrichment by assimilating without interfering with its genius, the forms, style and expressions used in Hindustani and in the other languages of India specified in the Eighth Schedule, and by drawing, wherever necessary or desirable, for its vocabulary, primarily on Sanskrit and secondarily on other languages.

PART XVIII

EMERGENCY PROVISIONS

This Part deals with the powers of the President to act in an emergency whereby the security of India or of any part thereof is threatened, whether by war or external aggression or internal disturbances. He may then issue a Proclamation by which he will assume certain over-all powers which are detailed in article 353 and the succeeding articles. The definition of emergency is left to the President, but it is clear that apart from external aggression end internal commotion it will also include economic depression and financial crisis. This is clear from Art. 360.

Even under the Constitution of the United States the President enjoys similar powers which he may exercise only during an "emergency". The existence of such powers was brought forcibly to the force when President Roosevelt, soon after his installation in office, proclaimed a bank holiday and prohibited gold and silver exports and foreign exchange transactions. The President's proclamation was validated three days later by the Emergency Banking Act.

But the framers of our Constitution profiting from the experience of the working of other constitutions, have inserted suitable provisions in the Constitution to assure the rigour of legalism and rigidity which are inherent in all federal constitutions. (All federal systems including the American are placed in a tight mould of federalism. No matter what the circumstances, it cannot change its form and shape. It can never be unitary. On the other hand our Constitution can be both unitary as well as federal according to the requirements of time and circumstances.) In normal times, it is framed to work as a federal system. *But in times of war it is so designed as to make it work as though it was a unitary system. Once the President issues a Proclamation which he is authorised to do under the provisions of Article 352, the whole scene becomes transformed and the State becomes unitary.* The Union can claim if it wants (1) the power to legislate upon any subject even though it may be in the State list, (2) the power to give directions to the States as to how they should exercise their executive authority in matters which are within their charge, (3) the power to vest authority for any purpose in any officer, and (4) the power to suspend the finanancial provisions of the Constitution. Such a power of converting itself into a unitary State no federation possesses[1].)

Speaking on the Draft constitution, the Hon. Dr. Ambedkar said : "The provisions relating to amendment of the Constitution have come

1. Adapted from the speech of the Hon. Dr. Ambedkar, *Constituent Assembly Debates.*

in for a virulent attack at the hands of the critics of the Draft Constitution. It is said that the provisions contained in the Draft make amendment difficult. It is proposed that the Constitution should be amendable by a simple majority at least for some years. The argument is subtle and ingenious. It is said that this Constituent Assembly is not elected by adult suffrage while the future Parliament will be elected on adult suffrage and yet the former has been given the right to pass the Constitution by a simple majority while the latter has been denied the same right. It is paraded as one of the absurdities of the Draft Constitution. I must repudiate the charge because it is without foundation. To know how simple are the provisions of the Draft Constitution in respect of amending the Constitution one has only to study the provisions for amendment contained in the American and Australian Constitutions. Compared to them those contained in the Draft Constitution will be found to be the simplest. The Draft Constitution has eliminated the elaborate and difficult procedures such as a decision by a convention or a referendum. The Powers of amendment are left with the Legislatures Central and Provincial. It is only for amendments of specified matters ...that the ratification of the State legislatures is required. All other Articles of the Constitution are left to be amended by Parliament. The only limitation is that it shall be done by a majority of not less than two-thirds of the members of each House present and voting and a majority of the total membership of each House. It is difficult to conceive of a simpler method of amending the Constitution.

What is said to be the absurdity of the amending provisions is founded upon a misconception of the position of the Constituent Assembly and of the future Parliament elected under the Constitution. The Constituent Assembly in making a Constitution has no partisan motive. Beyond securing a good and workable constitution it has no axe to grind. In considering the Articles of the Constitution it has no eye on getting through a particular measure. The future Parliament if it met as a Constituent Assembly, its members will be acting as partisans seeking to carry amendments to the Constitution to facilitate the passing of party measures which they have failed to get through in Parliament by reason of some Article of the Constitution which has acted as an obstacle in their way Parliament will have an axe to grind, while the Constituent Assembly has none. That is the difference between the Constituent Assembly and Parliament. That explains why the Constituent Assembly though elected on limited franchise can be trusted to pass the Constitution by simple majority and why Parliament though elected on adult suffrage cannot be trusted with the power to amend it by the same means." (Speech of the Hon. Dr. Ambedker, *Constituent Assembly Debates.*)

Proclamation of Emergency.

352. (1) If the President is satisfied that a grave emergency exists whereby the security of India or of any part of the territory thereof is threatened, whether by war or external aggression or internal disturbance, he may, by Proclamation, make a declaration to that effect.

(2) A Proclamation issued under clause (1)—

(*a*) may be revoked by a subsequent Proclamation ;

(*b*) shall be laid before each House of Parliament ;

(*c*) shall cease to operate at the expiration of two months unless before the expiration of that period it has been approved by resolutions of both Houses of Parliament :

Provided that if any such Proclamation is issued at a time when the House of the People has been dissolved or the dissolution of the House of the People takes place during the period of two months referred in to sub-clause (*c*), and if a resolution approving the Proclamation has been passed by the Council of States, but no resolution with respect to such Proclamation has been passed by the House of the People before the expiration of that period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution unless before the expiration of the said period of thirty days a resolution approving the Proclamation has been also passed by the House of the People.

(3) A proclamation of Emergency declaring that the security of India or any part of the territory thereof is threatened by war or by external aggression or by internal disturbance may be made before the actual occurrence of war or of any such aggression or disturbance if the President is satisfied that there is imminent danger thereof.

Effect of Proclamation of Emergency.

353. While a Proclamation of Emergency is in operation, then—

(*a*) notwithsthnding anything in this Constitution, the executive power of the Union shall extend to the giving of directions to any State as to the manner in which the executive power thereof is to be exercised ;

(*b*) the power of Parliament to make laws with respect to any matter shall include power to make laws conferring powers and imposing duties, or authorising the conferring of powers

and the imposition of duties, upon the Union or officers and authorities of the Union as respects that matter, notwithstanding that it is one which is not enumerated in the Union List.

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Sub-clause (*b*) of this Article empowers Parliament to make laws with respect to any matter in the State List or in the Concurrent List conferring of powers and imposing duties or authorising the conferring of power and the imposition of duties upon the Union or officers and authorities of the Union as respects that matter for the executive power of the Union does not ordinarily extend to such matters. It is not necessary to provide for the conferment of powers and the imposition of duties on the Government or officers and authorities of States as respects any matter in the State List or in the Concurrent List as the executive power of the States extends to such matters. It is also not necessary to provide for the conferment of powers and the imposition of duties upon the Government, or officers and authorities of any State with respect to any matter in the Union List in view of sub-clause (2) of Article 252.

Application of provisions relating to distribution of revenues while a Proclamation of Emergency is in operation.

354. (1) The President may, while a Proclamation of Emergency is in operation, by order direct that all or any of the provisions of articles 268 to 279 shall for such period, not extending in any case beyond the expiration of the financial year in which such Proclamation ceases to operate, as may be specified in the order, have effect subject to such exceptions or modifications as he thinks fit.

(2) Every order made under clause (1) shall, as soon as may be after it is made, be laid before each House of Parliament.

This Article is based on the recommendations of the Expert Committee on the financial provisions of the Constitution.

Duty of the Union to protect States against external aggression and internal disturbance.

355. It shall be the duty of the Union to protect every State against external aggression and internal disturbance and to ensure that the government of every State is carried on in accordance with the provisions of this Constitution.

This Article ensures aid from the Union to every State against external aggression and internal commotion.

Provisions in case of failure of constitutional machinery in States.

356. (1) If the President, on receipt of a report from the Governor or Rajpramukh of a State or otherwise, is satisfied that a situation has arisen in which the government of the State cannot be carried on in accordance with the provisions of this Constitution, the President may by Proclamation—

(*a*) assume to himself all or any of the functions of the Government of the State and all or any of the powers vested in or exercisable by the Governor or Rajpramukh, as the case may be, or any body or authority in the State other than the Legislature of the State ;

(*b*) declare that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament ;

(*c*) make such incidental and consequential provisions as appear to the President to be necessary or desirable for giving effect to the objects of the Proclamation, including provisions for suspending in whole or in part the operation of any provisions of this Constitution relating to any body or authority in the State :

Provided that nothing in this clause shall authorise the President to assume to himself any of the Powers vested in or exercisable by a High Court, or to suspend in whole or in part the operation of any provision of this Constitution relating to High Courts.

(2) Any such Proclamation may be revoked or varied by a subsequent Proclamation.

(3) Every Proclamation under this article shall be laid before each House of Parliament and shall, except where it is a Proclamation revoking a previous Proclamation, cease to operate at the expiration of two months unless before the expiration of that period it has been approved by resolutions of both Houses of Parliament :

Provided that if any such Proclamation (not being a Proclamation revoking a previous Proclamation) is issued at a time when the House of the People is dissolved or the

dissolution of the House of the People takes place during the period of two months referred to in this clause, and if a resolution approving the Proclamation has been passed by the Council of States, but no resolution with respect to such Proclamation has been passed by the House of the People before the expiration of that period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution unless before the expiration of the said period of thirty days a resolution approving the Proclamation has been also passed by the House of the People.

(4) A Proclamation so approved shall, unless revoked, cease to operate on the expiration of a period of six months from the date of the passing of the second of the resolutions approving the Proclamation under clause (3):

Provided that if and so often as a resolution approving the continuance in force of such a Proclamation is passed by both Houses of Parliament, the Proclamation shall, unless revoked, continue in force for a further period of six months from the date on which under this clause it would otherwise have ceased to operate, but no such Proclamation shall in any case remain in force for more than three years:

Provided further that if the dissolution of the House of the People takes place during any such period of six months and a resolution approving the continuance in force of such Proclamation has been passed by the Council of States, but no resolution with respect to the continuance in force of such Proclamation has been passed by the House of the People during the said period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution unless before the expiration of said period of thirty days a resolution approving the continuance in force of the Proclamation has been also passed by the House of the People.

Exercise of legislative powers under Proclamation issued under article 356.

357. (1) Where by a Proclamation issued under clause (1) of article 356, it has been declared that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament, it shall be competent—

(*a*) for Parliament to confer on the President the power of the Legislature of the State to make laws, and to authorise the President to delegate, subject to such conditions as he may think fit to impose, the power so conferred to any other authority to be specified by him in that behalf ;

(*b*) for Parliament, or for the President or other authority in whom such power to make laws is vested under sub-clause (*a*), to make laws conferring powers and imposing duties, or authorising the conferring of powers and the imposition of duties, upon the Union or officers and authorities thereof ;

(*c*) for the President to authorise when the House of the People is not in session expenditure from the Consolidated Fund of the State pending the sanction of such expenditure by Parliament.

(2) Any law made in exercise of the power of the Legislature of the State by Parliament or the President or other authority referred to in sub-clause (a) of clause (1) which Parliament or the President or such other authority would not, but for the issue of a Proclamation under article 356, have been competent to make shall, to the extent of the incompetency, cease to have effect on the expiration of a period of one year after the Proclamation has ceased to operate except as respects things done or omitted to be done before the expiration of the said period, unless the provisions which shall so cease to have effect are sooner repealed or re-enacted with or without modification by Act of the appropriate Legislature.

Suspension of provisions of article 19 during emergencies.

358. While a Proclamation of Emergency is in operation, nothing in article 19 shall restrict the power of the State as defined in Part III to make any law or to take any executive action which the State would but for the provisions contained in that Part be competent to make or to take, but any law so made shall, to the extent of the incompetency, cease to have effect as soon as the Proclamation ceases to operate, except as respects things done

or omitted to be done before the law so ceases to have effect.

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This Article provides for the suspension of the provisions of Art. 19 when a Proclamation of Emergency is in operation. A Proclamation of Emergency can be issued only when the President is satisfied that a grave emergency has arisen whereby the security of India is threatened whether by war or domestic violence. In such times of grave crisis when the very existence of the State is at stake, it was thought necessary to curtail fundamental rights which are enjoyed in normal times. Such provisions are to be found under the U. S. Constitution [cf. Article 1, S. 9 (2)] and the Irish Constitution (cf. Art. 40 (3) 3°.]

The Drafting Committee had recommended that no provision should be made for the suspension of the fundamental rights under Article 19 or for the suspension of the enforcement of such rights under Article 32 where an emergency is declared by the Government of a State as it will create unnecessnry complications.

Suspension of the enforcement of the rights conferred by Part III during emergencies.

359. (1) Where a Proclamation of Emergency is in operation, the President may by order declare that the right to move any court for the enforcement of such of the rights conferred by Part III as may be mentioned in the order and all proceedings pending in any court for the enforcement of the rights so mentioned shall remain suspended for the period during which the Proclamation is in force or for such shorter period as may be specified in the order.

(2) An order made as aforesaid may extend to the whole or any part of the territory of India.

(3) Every order made under clause (1) shall, as soon as may be after it is made, be laid before each House of Parliament.

Provisions as to financial emergency.

360. (1) If the President is satisfied that a situation has arisen whereby the financial stability or credit of India or of any part of the territory thereof is threatened, he may by a Proclamation make a declaration to that effect.

(2) The provisions of clause (2) of article 352 shall apply in relation to a Proclamation issued under this article

as they apply in relation to a Proclamation of Emergency issued under article 352.

(3) During the period any such Proclamation as is mentioned in clause (1) is in operation, the executive authority of the Union shall extend to the giving of directions to any State to observe such canons of financial propriety as may be specified in the directions, and to the giving of such other directions as the President may deem necessary and adequate for the purpose.

(4) Notwithstanding anything in this Constitution—

(*a*) any such direction may include—

(*i*) a provision requiring the reduction of salaries and allowances of all or any class of persons serving in connection with the affairs of a State ;

(*ii*) a provision requiring all Money Bills or other Bills to which the provisions of article 207 apply to be reserved for the consideration of the President after they are passed by the Legislature of the State;

(*b*) it shall be competent for the President during the period any Proclamation issued under this article is in operation to issue directions for the reduction of salaries and allowances of all or any class of persons serving in connection with the affairs of the Union including the Judges of the Supreme Court and High Courts.

PART XIX

MISCELLANEOUS

Protection of President and Governors and Rajpramukhs.

361. (1) The President, or the Governor or Rajpramukh of a State, shall not be answerable to any court for the exercise and performance of the powers and duties of his office or for any act done or purporting to be done by him in the exercise and performance of those powers and duties ;

Provided that the conduct of the President may be brought under review by any court, tribunal or body appointed or designated by either House of Parliament for the investigation of a charge under article 61 :

Provided further that nothing in this clause shall be construed as restricting the right of any person to bring appropriate proceedings against the Government of India or the Government of a State.

(2) No criminal proceedings whatsoever shall be instituted or continued against the President, or the Governor or Rajpramukh of a State, in any court during his term of office.

(3) No process for the arrest or imprisonment of the President, or the Governor or Rajpramukh of a State, shall issue from any court during his term of office.

(4) No civil proceedings in which relief is claimed against the President, or the Governor or Rajpramukh of a State, shall be instituted during his term of office in any court in respect of any act done or purporting to be done by him in his personal capacity, whether before or after he entered upon his office as President, or as Governor or Rajpramukh of such State, until the expiration of two months next after notice in writing has been delivered to the President or the Governor or the Rajpramukh, as the case may be, or left at his office stating the nature of the proceedings, the cause of action therefor, the name, descrip-

tion and place of residence of the party by whom such proceedings are to be instituted and the relief which he claims.

Rights and privileges of Rulers of Indian States.

362. In the exercise of the power of Parliament or of the Legislature of a State to make laws or in the exercise of the executive power of the Union or of a State, due regard shall be had to the guarantee or assurance given under any such covenant or agreement as is referred to in clause (1) of article 291 with respect to the personal rights, privileges and dignities of the Ruler of an Indian State.

Bar to interference by courts in disputes arising out of certain treaties, agreements, etc.

363. (1) Notwithstanding anything in this Constitution but subject to the provisions of article 143, neither the Supreme Court nor any other court shall have jurisdiction in any dispute arising out of any provision of a treaty, agreement, covenant, engagement, *sanad* or other similar instrument which was entered into or executed before the commencement of this Constitution by any Ruler of an Indian State and to which the Government of the Dominion of India or any of its predecessor Governments was a party and which has or has been continued in operation after such commencement, or in any dispute in respect of any right accruing under or any liability or obligation arising out of any of the provisions of this Constitution relating to any such treaty, agreement, covenant, engagement, *sanad* or other similar instrument.

(2) In this article—

(*a*) "Indian State' means any territory recognised before the commencement of this Constitution by His Majesty or the Government of the Dominion of India as being such a State ; and

(*b*) "Ruler" includes the Prince, Chief or other person recognised before such commencement by His Majesty or the Government of the Dominion of India as the Ruler of any Indian State.

Special provisions as to major ports and aerodromes.

364. (1) Notwithstanding anything in this Constitution, the President may by public notification direct that as from such date as may be specified in the notification—

(*a*) any law made by Parliament or by the Legislature of a State shall not apply to any major port or aerodrome or shall apply thereto subject to such exceptions or modifications as may be specified in the notification, or

(*b*) any existing law shall cease to have effect in any major port or aerodrome except as respects things done or omitted to be done before the said date, or shall in its application to such port or aerodrome have effect subject to such exceptions or modifications as may be specified in the notification.

(2) In this article—

(*a*) "major port" means a port declared to be a major port by or under any law made by Parliament or any existing law and includes all areas for the time being included within the limits of such port ;

(*b*) "aerodrome" means aerodrome as defined for the purposes of the enactments relating to airways, aircraft and air navigation.

Effect of failure to comply with, or to give effect to, directions given by the Union.

365. Where any State has failed to comply with, or to give effect to any direcrions given in the exercise of the executive power of the Union under any of the provisions of this Constitution, it shall be lawful for the President to hold that a situation has arisen in which the government of the State cannot be carried on in accordance with the provisions of this Constitution.

Definitions.

366. In this Constitution, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say—

(1) "agricultural income" means agricultural income as defined for the purposes of the enactments relating to Indian income-tax ;

(2) "an Anglo-Indian" means a person whose father or any of whose other male progeni-

tors in the male line is or was of European descent but who is domiciled within the territory of India and is or was born within such territory of parents habitually resident therein and not established there for temporary purposes only;

(3) "article" means an article of this Constitution ;

(4) "borrow" includes the raising of money by the grant of annuities, and "loan" shall be construed accordingly ;

(5) "clause" means a clause of the article in which the expression occurs ;

(6) "corporation tax" means any tax on income, so far as that tax is payable by companies and is a tax in the case of which the following conditions are fulfilled :—

(*a*) that it is not chargeable in respect of agricultural income ;

(*b*) that no deduction in respect of the tax paid by companies is, by any enactments which may apply to the tax, authorised to be made from dividends payable by the companies to individuals ;

(*c*) that no provision exists for taking the tax so paid into account in computing for the purposes of Indian income-tax the total income of individuals receiving such dividends, or in computing the Indian income-tax payable by, or refundable to, such individuals ;

(7) "corresponding Province", "corresponding Indian State" or "corresponding State" means in cases of doubt such Province, Indian State or State as may be determined by the President to be the corresponding Province, the corresponding Indian State or the corresponding

State, as the case may be, for the particular purpose in question ;

(8) "debt" includes any liability in respect of any obligation to repay capital sums by way of annuities and any liability under any guarantee, and "debt charges" shall be construed accordingly ;

(9) "estate duty" means a duty to be assessed on or by reference to the principal value, ascertained in accordance with such rules as may be prescribed by or under laws made by Parliament or the Legislature of a State relating to the duty, of all property passing upon death or deemed, under the provisions of the said laws, so to pass ;

(10) "existing law" means any law, Ordinance, order, bye-law, rule or regulation passed or made before the commencement of this Constitution by any Legislature, authority or person having power to make such a law, Ordinance, order, bye-law, rule or regulation ;

(11) "Federal Court" means the Federal Court constituted under the Government of India Act, 1935 ;

(12) "goods" includes all materials, commodities, and articles ;

(13) "guarantee" includes any obligation undertaken before the commencement of this Constitution to make payments in the event of the profits of an undertaking falling short of a specified amount ;

(14) "High Court" means any court which is deemed for the purposes of this Constitution to be a High Court for any State and includes—

(*a*) any Court in the territory of India constituted or reconstituted under this Consti-

tution as a High Court, and

(*b*) any other Court in the territory of India which may be declared by Parliament by law to be a High Court for all or any of the purposes of this Constitution ;

(15) "Indian State" means any territory which the Government of the Dominion of India recognised as such a State ;

(16) "Part" means a Part of this Constitution ;

(17) "pension" means a pension, whether contributory or not, of any kind whatsoever payable to or in respect of any person, and includes retired pay so payable, a gratuity so payable and any sum or sums so payable by way of the return, with or without interest thereon or any other addition thereto, of subscriptions to a provident fund ;

(18) "Proclamation of Emergency" means a Proclamation issued under clause (1) of article 352 ;

(19) "public notification" means a notification in the Gazette of India, or, as the case may be, the Official Gazette of a State ;

(20) "railway" does not include—

(*a*) a tramway wholly within a municipal area, or

(*b*) any other line of communication wholly situate in one State and declared by Parliament by law not to be a railway ;

(21) "Rajpramukh" means—

(*a*) in relation to the State of Hyderabad, the person who for the time being is recognised by the President as the Nizam of Hyderabad ;

(*b*) in relation to the State of Jammu and Kashmir or the State of Mysore, the person who for the time being is recognised by the President as the Maharaja of that State ; and

(*c*) in relation to any other State specified in Part B of the First Schedule, the person who for the time being is recognised by the President as the Rajpramukh of that State,

and includes in relation to any of the said States any person for the time being recognised by the President as competent to exercise the powers of the Rajpramukh in relation to that State ;

(22) "Ruler" in relation to an Indian State means the Prince, Chief or other person by whom any such covenant or agreement as is referred to in clause (1) of article 291 was entered into and who for the time being is recognised by the President as the Ruler of the State, and includes any person who for the time being is recognised by the President as the successor of such Ruler ;

(23) "Schedule" means a Schedule to this Constitution ;

(24) "Scheduled Castes" means such castes, races or tribes or parts of or groups within such castes, races or tribes as are deemed under article 341 to be Scheduled Castes for the purposes of this Constitution ;

(25) "Scheduled Tribes" means such tribes or tribal communities or parts of or groups within such tribes or tribal communities as are deemed under article 342 to be Scheduled Tribes for the purposes of this Constitution ;

(26) "securities" includes stock ;

(27) "sub-clause" means a sub-clause of the clause in which the expression occurs ;

(28) "taxation" includes the imposition of any tax or impost, whether general or local or special, and "tax" shall be construed accordingly ;

(29) "tax on income" includes a tax in the nature of an excess profits tax ;

(30) "Uparajpramukh" in relation to any State specified in Part B of the First Schedule means the person who for the time being is recognised by the President as the Uparajpramukh of that State.

Interpretation.

367. (1) Unless the context otherwise requires, the General Clauses Act, 1897, shall, subject to any adaptations and modifications that may be made therein under article 372, apply for the interpretation of this Constitution as it applies for the interpretation of an Act of the Legislature of the Dominion of India.

(2) Any reference in this Constitution to Acts or laws of, or made by, Parliament, or to Acts or laws of, or made by, the Legislature of a State specified in Part A or Part B of the First Schedule, shall be construed as including a reference to an Ordinance made by the President or, to an Ordinance made by a Governor or Rajpramukh, as the case may be.

(3) For the purposes of this Constitution "foreign State" means any State other than India :

Provided that, subject to the provisions of any law made by Parliament, the President may by order declare any State not to be a foreign State for such purposes as may be specified in the order.

PART XX

AMENDMENT OF THE CONSTITUTION

Procedure for amendment of the Constitution.

368. An amendment of this Constitution may be initiated only by the introduction of a Bill for the purpose in either House of Parliament, and when the Bill is passed in each House by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting, it shall be presented to the President for his assent and upon such assent being given to the Bill, the Constitution shall stand amended in accordance with the terms of the Bill:

Provided that if such amendment seeks to make any change in—

(*a*) article 54, article 55, article 73, article 162 or article 241, or

(*b*) Chapter IV of Part V, Chapter V of Part VI, or Chapter I of Part XI, or

(*c*) any of the Lists in the Seventh Schedule, or

(*d*) the representation of States in Parliament, or

(*e*) the provisions of this article,

the amendment shall also require to be ratified by the Legislatures of not less than one-half of the States specified in Parts A and B of the First Schedule by resolutions to that effect passed by those Legislatures before the Bill making provision for such amendment is presented to the President for assent.

PART XXI

TEMPORARY AND TRANSITIONAL PROVISIONS

Following the Australian Constitution there are as many as five or six Articles the provisions of which are of a temporary duration and which could be replaced by Parliament at any time by provisions suitable for the occasion.

Temporary power to Parliament to make laws with respect to certain matters in the State List as if they were matters in the Concurrent List.

369. Notwithstanding anything in this Constitution, Parliament shall, during a period of five years from the commencement of this Constitution, have power to make laws with respect to the following matters as if they were enumerated in the Concurrent List, namely :—

(*a*) trade and commerce within a State in, and the production, supply and distribution of, cotton and woollen textiles, raw cotton (including ginned cotton and unginned cotton or *kapas*), cotton seed, paper (including newsprint), foodstuffs (including edible oilseeds and oil), cattle fodder (including oil-cakes and other concentrates), coal (including coke and derivatives of coal), iron, steel and mica ;

(*b*) offences against laws with respect to any of the matters mentioned in clause (*a*), jurisdiction and powers of all courts except the Supreme Court with respect to any of those matters, and fees in respect of any of those matters but not including fees taken in any court ;

but any law made by Parliament, which Parliament would not but for the provisions of this article have been competent to make, shall, to the extent of the incompetency, cease to have effect on the expiration of the said period, except as respects things done or omitted to be done before the expiration thereof.

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370. (1) Notwithstanding anything in this Constitution,—

Temporary provisions with respect to the State of Jammu and Kashmir.

(*a*) the provisions of article 238 shall not apply in relation to the State of Jammu and Kashmir ;

(*b*) the power of Parliament to make laws for the said State shall be limited to—

(*i*) those matters in the Union List and the Concurrent List which, in consultation with the Government of the State, are declared by the President to correspond to matters specified in the Instrument of Accession governing the accession of the State to the Dominion of India as the matters with respect to which the Dominion Legislature may make laws for that State ; and

(*ii*) such other matters in the said Lists as, with the concurrence of the Government of the State, the President may by order specify.

Explanation.—For the purposes of this article, the Government of the State means the person for the time being recognised by the President as the Maharaja of Jammu and Kashmir acting on the advice of the Council of Ministers for the time being in office under the Maharaja's Proclamation dated the fifth day of March, 1948 ;

(*c*) the provisions of article 1 and of this article shall apply in relation to that State ;

(*d*) such of the other provisions of this Constitution shall apply in relation to that State subject to such exceptions and modifications as the President may by order specify :

Provided that no such order which relates

to the matters specified in the Instrument of Accession of the State referred to in paragraph (*i*) of sub-clause (*b*) shall be issued except in consultation with the Government of the State :

Provided further that no such order which relates to matters other than those referred to in the last preceding proviso shall be issued except with the concurrence of that Government.

(2) If the concurrence of the Government of the State referred to in paragraph (*ii*) of sub-clause (*b*) of clause (1) or in the second proviso to sub-clause (*d*) of that clause be given before the Constituent Assembly for the purpose of framing the Constitution of the State is convened, it shall be placed before such Assembly for such decision as it may take thereon.

(3) Notwithstanding anything in the foregoing provisions of this article, the President may, by public notification, declare that this article shall cease to be operative or shall be operative only with such exceptions and modifications and from such date as he may specify :

Provided that the recommendation of the Constituent Assembly of the State referred to in clause (2) shall be necessary before the President issues such a notificatian.

Temporary provisions with respect to States in Part B of the First Schedule.

371. Notwithstanding anything in this Constitution, during a period of ten years from the commencement thereof, or during such longer or shorter period as Parliament may by law provide in respect of any State, the Government of every State specified in Part B of the First Schedule shall be under the general control of, and comply with such particular directions, if any, as may from time to time be given by, the President :

Provided that the President may by order direct that the provisions of this article shall not apply to any State specified in the order.

Contitnuance in force of existing laws and their adaptation.

372. (1) Notwithstanding the repeal by this Constitution of the enactments referred to in article 395 but subject to the other provisions of this Constitution, all the law in force in the territory of India immediately before the commencement of this Constitution shall continue in force therein until altered or repealed or amended by a competent Legislature or other competent authority.

(2) For the purpose of bringing the provisions of any law in force in the territory of India into accord with the provisions of this Constitution, the President may by order make such adaptations and modifications of such law, whether by way of repeal or amendment, as may be necessary or expedient, and provide that the law shall, as from such date as may be specified in the order, have effect subject to the adaptations and modifications so made, and any such adaptation or modification shall not be questioned in any court of law.

(3) Nothing in clause (2) shall be deemed—

(*a*) to empower the President to make any adaptation or modification of any law after the expiration of two years from the commencement of this Constitution; or

(*b*) to prevent any competent Legislature or other competent authority from repealing or amending any law adapted or modified by the President under the said clause.

Explanation I.—The expression "law in force" in this article shall include a law passed or made by a Legislature or other compentent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that it or parts of it may not be then in operation either at all or in particular areas.

Explanation II.—Any law passed or made by a Legislature or other competent authority in the territory of India which immediately before the commencement of this Constitution had extra-territorial effect as well as effect in the territory of India shall, subject to any such adaptations

and modifications as aforesaid, continue to have such extra-territorial effect.

Explanation III.—Nothing in this article shall be construed as continuing any temporary law in force beyond the date fixed for its expiration or the date on which it would have expired if this Constitution had not come into force.

Explanation IV.—An Ordinance promulgated by the Governor of a Province under section 88 of the Government of India Act, 1935, and in force immediately before the commencement of this Constitution shall, unless withdrawn by the Governor of the corresponding State earlier, cease to operate at the expiration of six weeks from the first meeting after such commencement of the Legislative Assembly of that State functioning under clause (1) of article 382, and nothing in this article shall be construed as continuing any such Ordinance in force beyond the said period.

Power of President to make order in respect of persons under preventive detention in certain cases.

373. Until provision is made by Parliament under clause (7) of article 22, or until the expiration of one year from the commencement of this Constitution, whichever is earlier, the said article shall have effect as if for any reference to Parliament in clauses (4) and (7) thereof there were substituted a reference to the President and for any reference to any law made by Parliament in those clauses there were substituted a reference to an order made by the President.

Provisions as to Judges of the Federal Court and proceedings pending in the Federal Court or before His Majesty in Council.

374. (1) The Judges of the Federal Court holding office immediately before the commencement of this Constitution shall, unless they have elected otherwise, become on such commencement the Judges of the Supreme Court and shall thereupon be entitled to such salaries and allowances and to such rights in respect of leave of absence and pension as are provided for under article 125 in respect of the Judges of the Supreme Court.

(2) All suits, appeals and proceedings, civil or criminal, pending in the Federal Court at the commencement of this Constitution shall stand removed to the Supreme Court,

and the Supreme Court shall have jurisdiction to hear and determine the same, and the judgments and orders of the Federal Court delivered or made before the Commencement of this Constitution shall have the same force and effect as if they had been delivered or made by the Supreme Court.

(3) Nothing in this Constitution shall operate to invalidate the exercise of jurisdiction by His Majesty in Council to dispose of appeals and petitions from, or in respect of, any judgment, decree or order of any court within the territory of India in so far as the exercise of such jurisdiction is authorised by law, and any order of His Majesty in Council made on any such appeal or petition after the commencement of this Constitution shall for all purposes have effect as if it were an order or decree made by the Supreme Court in the exercise of the jurisdiction conferred on such Court by this Constitution.

(4) On and from the commencement of this Consitution the jurisdiction of the authority functioning as the Privy Council in a State specified in Part B of the First Schedule to entertain and dispose of appeals and petitions from or in respect of any judgment, decree or order of any court within that State shall cease, and all appeals and other proceedings pending before the said authority at such commencement shall be transferred to, and disposed of by, the Supreme Court.

(5) Further provision may be made by Parliament by law to give effect to the provisions of this article.

Courts, authorities and officers to continue to function subject to the provisions of the Constitution.

375. All courts of civil, criminal and revenue jurisdiction, all authorities and all officers, judicial, executive and ministerial, throughout the territory of India, shall continue to exercise their respective functions subject to the provisions of this Constitution.

Provisions as to Judges of High Courts.

376. (1) Notwithstanding anything in clause (2) of article 217, the Judges of a High Court in any Province holding office immediately before the commencement of this Constitution shall, unless they have elected otherwise, become on

such commencement the Judges of the High Court in the corresponding State, and shall thereupon be entitled to such salaries and allowances and to such rights in respect of leave of absence and pension as are provided for under article 221 in respect of the Judges of such High Court.

(2) The Judges of a High Court in any Indian State corresponding to any State specified in Part B of the First Schedule holding office immediately before the commencement of this Constitution shall, unless they have elected otherwise, become on such commencement the Judges of the High Court in the State so specified and shall, notwithstanding anything in clauses (1) and (2) of article 117 but subject to the proviso to clause (1) of that article, continue to hold office until the expiration of such period as the President may by order determine.

(3) In this article, the expression "Judge" does not include an acting Judge or an additional Judge.

Provisions as to Comptroller and Auditor-General of India.

377. The Auditor-General of India holding office immediately before the commencement of this Constitution shall, unless he has elected otherwise, become on such commencement the Comptroller and Auditor-General of India and shall thereupon be entitled to such salaries and to such rights in respect of leave of absence and pension as are provided for under clause (3) of article 148 in respect of the Comptroller and Auditor-General of India and be entitled to continue to hold office until the expiration of his term of office as determined under the provisions which were applicale to him immediately before such commencement.

Provision as to Public Service Commission.

378. (1) The members of the Public Service Commission for the Dominion of India holding office immediately before the commencement of this Constitution shall, unless they have elected otherwise, become on such commencement the members of the Public Service Commission for the Union and shall, notwithstanding anything in clauses (1) and (2) of article 316 but subject to the proviso to clause (2) of that article, continue to hold office until the expiration of their term of office as determined under the rules which

were applicable immediately before such commencement to such members.

(2) The members of a Public Service Commission of a Province or of a Public Service Commission serving the needs of a group of Provinces holding office immediately before the commencement of this Constitution shall, unless they have elected otherwise, become on such commencement the member of the Public Service Commission for the corresponding State or the members of the Joint State Public Service Commission serving the needs of the corresponding States, as the case may be, and shall, notwithstanding anything in clauses (1) and (2) of article 316 but subject to the proviso to clause (2) of that article, continue to hold office until the expiration of their term of office as determined under the rules which were applicable immediately before such commencement to such members.

Provisions as to provisional Parliament and the Speaker and Deputy Speaker thereof.

379 (1) Until both Houses of Parliament have been duly constituted and summoned to meet for the first session under the provisions of this Constitution, the body functioning as the Constituent Assembly of the Dominion of India immediately before the commencement of this Constitution shall be the provisional Parliament and shall exercise all the powers and perform all the duties conferred by the provisions of this Constitution on Parliament

Explanation.—For the purposes of this clause, the Constituent Assemby of the Dominion of India includes—

(*i*) the members chosen to represent any State or other territory for which representation is provided under clause (2), and

(*ii*) the members chosen to fill casual vacancies in the said Assembly.

(2) The Parliament may by rules provide for—

(*a*) the representation in the provisional Parliament functioning under clause (1) of any State or other territory which was not represented in the Constituent Assembly of the Dominion of India immediately before the commence-

ment of this Constitution,

(*b*) the manner in which the representatives of such States or other territories in the provisional Parliament shall be chosen, and

(*c*) the qualifications to be possessed by such representatives.

(3) If a member of the Constituent Assembly of the Dominion of India was, on the sixth day of October, 1949, or thereafter at any time before the commencement of this Constitution, a member of a House of the Legislature of a Governor's Province or of an Indian State corresponding to any State specified in Part B of the First Schedule or a Minister for any such State, then, as from the commencement of this Constitution the seat of such member in the Constituent Assembly shall, unless he has ceased to be a member of that Assembly earlier, become vacant and every such vacancy shall be deemed to be a casual vacancy.

(4) Notwithstanding that any such vacancy in the Constituent Assembly of the Dominion of India as is mentioned in clause (3) has not occurred under that clause, steps may be taken before the commencement of this Constitution for the filling of such vacancy, but any person chosen before such commencement to fill the vacancy shall not be entitled to take his seat in the said Assembly until after the vacancy has so occurred.

(5) Any person holding office immediately before the commencement of this Constitution as Speaker or Deputy Speaker of the Constituent Assembly when functioning as the Dominion Legislature under the Government of India Act, 1935, shall on such commencement be the Speaker or, as the case may be, the Deputy Speaker of the provisional Parliament functioning under clause (1).

Provision as to President.

380. (1) Such person as the Constituent Assembly of the Dominion of India shall have elected in that behalf shall be the President of India until a President has been elected in accordance with the provisions contained in Chapter I of Part V and has entered upon his office.

(2) In the event of the occurrence of any vacancy

in the office of the President so elected by the Constituent Assembly of the Dominion of India by reason of his death, resignation, or removal, or otherwise, it shall be filled by a person elected in that behalf by the provisional Parliament functioning under article 379, and until a person is so elected, the Chief Justice of India shall act as President.

Council of Ministers of the President.

381. Such persons as the President may appoint in that behalf shall become members of the Council of Ministers of the President under this Constitution, and, until appointments are so made, all persons holding office as Ministers for the Dominion of India immediately before the commencement of this Constitution shall on such commencement become, and shall continue to hold office as, members of the Council of Ministers of the President under this Constitution.

Provisions as to provisional Legislatures for States in Part A of the First Schedule.

382. (1) Until the House or Houses of the Legislature of each State specified in Part A of the First Schedule has or have been duly constituted and summoned to meet for the first session under the provisions of this Constitution, the House or Houses of the Legislature of the corresponding Province functioning immediately before the commencement of this Constitution shall exercise the powers and perform the duties conferred by the provisions of this Constitution on the House or Houses of the Legislature of such State.

(2) Notwithstanding anything in clause (1), where a general election to reconstitute the Legislative Assembly of a Province has been ordered before the commencement of this Constitution, the election may be completed after such commencement as if this Constitution had not come into operation, and the Assembly so reconstituted shall be deemed to be the Legislative Assembly of that Province for the purposes of that clause.

(3) Any person holding office immediately before the commencement of this Constitution as Speaker or Deputy Speaker of the Legislative Assembly or President or Deputy President of the Legislative Council of a Province shall on such commencement be the Speaker or Deputy Speaker of the Legislative Assembly or the Chairman or Deputy Chairman of the Legislative Council, as the case may be, of

by the President of India :

Provided that where any such seat as is mentioned in this clause was, immediately before it became vacant, held by a person belonging to the Scheduled Castes or to the Muslim or the Sikh community and representing a Province or, as the case may be, a State specified in Part A of the First Schedule, the person to fill such seat shall, unless the President of the Constituent Assembly or the President of India, as the case may be, considers it necessary or expedient to provide otherwise, be of the same community:

Provided further that at an election to fill any such vacancy in the seat of a member representing a Province or a State specified in Part A of the First Schedule, every member of the Legislative Assembly of that Province or of the corresponding State or of that State, as the case may be, shall be entitled to participate and vote.

Explanation.—For the purposes of this clause—

(*a*) all such castes, races or tribes or parts of or groups within castes, races or tribes as are specified in the Government of India (Scheduled Castes) Order, 1936, to be Scheduled Castes in relation to any Province shall be deemed to be Scheduled Castes in relation to that Province or the corresponding State until a notification has been issued by the President under clause (1) of article 341 specifying the Scheduled Castes in relation to that corresponding State;

(*b*) all the Scheduled Castes in any Province or State shall be deemed to be a single community.

(2) Casual vacancies in the seats of membes of a House of the Legislature of a State functioning under article 382 or article 385 shall be filled, and all matters in connection with the filling of such vacancies (including the decision of doubts and disputes arising out of, or in connection with, elections to fill such vacancies) shall be regulated in accordance with such provisions governing the filling of such vacancies and regulating such matters as were in force

immediately before the commencement of this Constitution subject to such exceptions and modifications as the President may by order direct.

Provision as to Bills pending in the Dominion Legislature and in the Legislatures of Provinces and Indian States.

389. A Bill which immediately before the commencement of this Constitution was pending in the Legislature of the Dominion of India or in the Legislature or any Province or Indian State may, subject to any provision to the contrary which may be included in rules made by Parliament or the Legislature of the corresponding State under this Constitution, be continued in Parliament or the Legislature of the corresponding State, as the case may be, as if the proceedings taken with reference to the Bill in the Legislature of the Dominion of India or in the Legislature of the Province or Indian State had been taken in Parliament or in the Legislature of the corresponding State.

Moneys received or raised or expenditure incurred between the commencement of the Constitution and the 31st day of March, 1950.

390. The provisions of this Constitution relating to the Consolidated Fund of India or the Consolidated Fund of any State and the appropriation of moneys out of either of such Funds shall not apply in relation to moneys received or raised or expenditure incurred by the Government of India or the Government of any State between the commencement of this Constitution and the thirty-first day of March, 1950, both days inclusive, and any expenditure incurred during that period shall be deemed to be duly authorised if the expenditure was specified in a schedule of authorised expenditure authenticated in accordance with the provisions of the Government of India Act, 1935, by the Governor-General of the Dominion of India or the Governor of the corresponding Province or is authorised by Rajpramukh of the State in accordance with such rules as were applicable to the authorisation of expenditure from the revenues of the corresponding Indian State immediately before such commencement.

Power of the President to amend the First and Fourth Schedules in certain contingencies.

391. (1) If at any time between the passing of this Constitution and its commencement any action is taken under the provisions of the Government of India Act, 1935, which in the opinion of the President requires

any amendment in the First Schedule and the Fourth Schedule, the President may, notwithstanding anything in this Constitution, by order, make such amendments in the said Schedules as may be necessary to give effect to the action so taken, and any such order may contain such supplemental, incidental and consequential provisions as the President may deem necessary.

(2) When the First Schedule or the Fourth Schedule is so amended, any reference to that Schedule in this Constitution shall be construed as a reference to such Schedule as so amended.

Power of the President to remove difficulties.

392. (1) The President may, for the purpose of removing any difficulties, particularly in relation to the transition from the provisions of the Government of India Act, 1935, to the provisions of this Constitution, by order direct that this Constitution shall, during such period as may be specified in the order, have effect subject to such adaptations, whether by way of modification, addition or omission, as he may deem to be necessary or expedient :

Provided that no such order shall be made after the first meeting of Parliament duly constituted under Chapter II of Part V.

(2) Every order made under clause (1) shall be laid before Parliament.

(3) The powers conferred on the President by this article, by article 324, by clause (3) of article 367 and by article 391 shall, before the commencement of this Constitution, be exercisable by the Governor-General of the Dominion of India.

NOTES

Cf. S. 310 of the Government of India Act, 1935. This Article is designed to prevent difficulties which are likely to present themselves during the transition from the provisions of the Government of India Act, 1935, to the provisions of the Constitution. It is provided that during the transitional period, adaptations will have to be made in various provisions of the Constitution by order issued by the President under sub-clause (1).

PART XXII

SHORT TITLE, COMMENCEMENT AND REPEALS

Short Title.

393. This Constitution may be called the Constitution of India.

Commencement.

394. This article and articles 5, 6, 7, 8, 9, 60, 324, 366, 367, 379, 380, 388, 391, 392 and 393 shall come into force at once, and the remaining provisions of this Constitution shall come into force on the twenty-sixth day of January, 1950, which day is referred to in this Constitution as the commencement of this Constitution.

Repeals.

395. The Indian Independence Act, 1947, and the Government of India Act, 1935, together with all enactments amending or supplementing the latter Act, but not including the Abolition of Privy Council Jourisdiction Act, 1949, are hereby repealed.

FIRST SCHEDULE

(Articles 1, 4 and 391)

The States and the territories of India

PART A

Names of States	*Names of corresponding Provinces*
1. Assam	Assam
2. Bihar	Bihar
3. Bombay	Bombay
4. Madhya Pradesh	The Central Provinces and Berar
5. Madras	Madras
6. Orissa	Orissa
7. Punjab	East Punjab
8. The United Provinces	The United Provinces
9. West Bengal	West Bengal

Territories of States

The territory of the State of Assam shall comprise the territories which immediately before the commencement of this Constitution were comprised in the Province of Assam, the Khasi States and the Assam Tribal Areas.

The territory of the State of West Bengal shall comprise the territory which immediately before the commencement of this Constitution was comprised in the Province of West Bengal.

The territory of each of the other States in this Part shall comprise the territories which immediately before the commencement of this Constitution were comprised in the corresponding Province and the territories which, by virtue of an order made under section 290A of the Government of India Act, 1935, were immediately before such commencement being administered as if they formed part of that Province.

PART B

Names of States

1. Hyderabad. 2. Jammu and Kashmir. 3. Madhya Bharat. 4. Mysore. 5. Patiala and East Punjab States Union. 6. Rajasthan. 7. Saurashtra. 8. Travancore-Cochin. 9. Vindhya Pradesh.

Territories of States

The territory of each of the States in this Part shall comprise the territory which immediately before the commencement of this Constitution was comprised in the corresponding Indian State, and—

(*a*) in the case of each of the States of Rajasthan and Saurashtra, shall also comprise the territories which immediately before such commencement were being administered by the Government of the corresponding Indian State, whether under the provisions of the Extra-Provincial Jurisdiction Act, 1947, or otherwise; and

(*b*) in the case of the State of Madhya Bharat, shall also comprise the territory which immediately before such commencement was comprised in the Chief Commissioner's Province of Panth Piploda.

PART C

Names of States

1. Ajmer. 2. Bhopal. 3. Bilaspur. 4. Cooch-Behar. 5. Coorg. 6. Delhi. 7. Himachal Pradesh. 8. Kutch. 9. Manipur. 10. Tripura.

Territories of States

The territory of each of the States of Ajmer, Coorg and Delhi shall comprise the territory which immediately before the commencement of this Constitution was comprised in the Chief Commissioners' Provinces of Ajmer-Merwara, Coorg and Delhi, respectively.

The territory of each of the other States in this Part shall comprise the territories which, by virtue of an order made under section 290A of the Government of India Act, 1935, were immediately before the commencement of this Constitution being administered as if they were a Chief Commissioner's Province of the same name.

PART D

The Andaman and Nicobar Islands.

SECOND SCHEDULE

[Articles 59(3), 65(3), 75(6), 97, 125, 148(3), 158(3), 164(5), 186 and 221]

PART A

Provisions as to the President and the Governors of States specified in Part A of the First Schedule

1. There shall be paid to the President and to the Governors of the States specified in Part A of the First Schedule the following emoluments per mensem, that is to say :—

The President	...	...	10,000 rupees
The Governor of a State	...	...	5,500 rupees

2. There shall also be paid to the President and to the Governors of the States so specified such allowances as were payable respectively to the Governor-General of the Dominion of India and to the Governors of the corresponding Provinces immediately before the commencement of this Constitution.

3. The President and the Governors of such States throughout their respective terms of office shall be entitled to the same privileges to which the Governor-General and the Governors of the corresponding Provinces were respectively entitled immediately before the commencement of this Constitution.

4. While the Vice-President or any other person is discharging the functions of, or is acting as, President, or

any person is discharging the functions of the Governor, he shall be entitled to the same emoluments, allowances and privileges as the President or the Governor whose functions he discharges or for whom he acts, as the case may be.

PART B

Provisions as to the Ministers for the Union and for the States in Part A and Part B of the First Schedule

5. There shall be paid to the Prime Minister and to each of the other Ministers for the Union such salaries and allowances as were payable respectively to the Prime Minister and to each of the other Ministers for the Dominion of India immediately before the commencement of this Constitution.

6 There shall be paid to the Ministers for any State specified in Part A or Part B of the First Schedule such salaries and allowances as were payable to such Ministers for the corresponding Province or the correspodning Indian State, as the case may be, immediately before the commencement of this Constitution.

PART C

Provisions as to the Speaker and the Deputy Speaker of the House of the People and the Chairman and the Deputy Chairman of the Council of States and the Speaker and the Deputy Speaker of the Legislative Assembly of a State in Part A of the First Schedule and the Chairman and the Deputy Chairman of the Legislative Council of any such State.

7. There shall be paid to the Speaker of the House of the People and the Chairman of the Council of States such salaries and allowances as were payable to the Speaker of the Constituent Assembly of the Dominion of India immediately before the commencement of this Constitution, and there shall be paid to the Deputy Speaker of the House of the People and to the Deputy Chairman of the Council of States such salaries and allowances as were payable to the Deputy Speaker of the Constituent Assembly of the Dominion of India immediately before such commencement.

8. There shall be paid to the Speaker and the Deputy Speaker of the Legislative Assembly of a State specified in Part A of the First Schedule and to the Chairman and the

Deputy Chairman of the Legislative Council of such State such salaires and allowances as were payable respectively to the Speaker and the Deputy Speaker of the Legislative Assembly and the President and the Deputy President of the Legislative Council of the corresponding Province immediately before the commencement of this Constitution and, where the corresponding Province had no Legislative Council immediately before such commencement, there shall be paid to the Chairman and the Deputy Chairman of the Legislative Council of the State such salaries and allowances as the Governor of the State may determine.

PART D

Provisions as to the Judges of the Supreme Court and of the High Courts in States in Part A of the First Schedule

9. (1) There shall be paid to the Judges of the Supreme Court, in respect of time spent on actual service, salary at the following rates per mensem, that is to say :—

The Chief Justice	.. ..	5,000 rupees
Any other Judge	.. ..	4,000 rupees

Provided that if a Judge of the Supreme Court at the time of his appointment is in receipt of a pension (other than a disability or wound pension) in respect of any previous service under the Government of India or any of its predecessor Governments or under the Government of a State or any of its predecessor Governments, his salary in respect of service in the Supreme Court shall be reduced by the amount of that pension.

(2) Every Judge of the Supreme Court shall be entitled without payment of rent to the use of an official residence.

(3) Nothing in sub-paragraph (2) of this paragraph shall apply to a Judge who, immediately before the commencement of this Constitution—

(*a*) was holding office as the Chief Justice of the Federal Court and has become on such commencement the Chief Justice of the Supreme Court under clause (1) of article 374, or

(*b*) was holding office as any other Judge of the

Federal Court and has on such commencement become a Judge (other than the Chief Justice) of the Supreme Court under the said clause

during the period he holds office as such Chief Justice or other Judge and every Judge who so becomes the Chief Justice or other Judge of the Supreme Court shall, in respect of time spent on actual service as such Chief Justice or other Judge, as the case may be, be entitled to receive in addition to the salary specified in sub-paragraph (1) of this paragraph as special pay an amount equivalent to the difference betwen the salary so specified and the salary which he was drawing immediately before such commencement.

(4) Every Judge of the Supreme Court shall receive such reasonable allowances to reimburse him for expenses incurred in travelling on duty within the territory of India and shall be afforded such reasonable facilities in connection with travelling as the President may from time to time prescribe.

(5) The rights in respect of leave of absence (including leave allowances) and pension of the Judges of the Supreme Court shall be governed by the provisions which, immediately before the commencement of this Constitution, were applicable to the Judges of the Federal Court.

10. (1) There shall be paid to the Judges of the High Court of each State specified in Part A of the First Schedule, in respect of time spent on actual service, salary at the following rates per mensem, that is to say :—

The Chief Justice	4,000 rupees
Any other Judge	3,500 rupees

(2) Every person who immediately before the commencement of this Constitution—

(*a*) was holding office as the Chief Justice of a High Court in any Province and has on such commencement become the Chief Justice of the High Court in the corresponding State under clause (1) of article 376, or

(*b*) was holding office as any other Judge of a High

Court in any Province and has on such commencement become a Judge (other than the Chief Justice) of the High Court in the corresponding State under the said clause,

shall, if he was immediately before such commencement drawing a salary at a rate higher than that specified in sub-paragraph (1) of this paragraph, be entitled to receive in respect of time spent on actual service as such Chief Justice or other Judge, as the case may be, in addition to the salary specified in the said sub-paragraph as special pay an amount equivalent to the difference between the salary so specified and the salary which he was drawing immediately before such commencement.

(3) Every Judge of a High Court shall receive such reasonable allowances to reimburse him for expenses incurred in travelling on duty within the territory of India and shall be afforded such reasonable facilities in connection with travelling as the President may from time to time prescribe.

(4) The rights in respect of leave of absence (including leave allowances) and pension of the Judges of the High Court of any State shall be governed by the provisions which, immediately before the commencement of this Constitution, were applicable to the Judges of the High Court in the corresponding Province.

11. In this Part, unless the context otherwise requires—

(*a*) the expression "Chief Justice" includes an acting Chief Justice, and a "Judge" includes an *ad hoc* Judge ;

(*b*) "actual service" includes—

(*i*) time spent by a Judge on duty as a Judge or in the performance of such other functions as he may at the request of the President undertake to discharge ;

(*ii*) vacations, excluding any time during which the Judge is absent on leave ; and

(*iii*) joining time on transfer from a High Court to the Supreme Court or from one High Court to another,

PART E

Provisions as to the Comptroller and Auditor-General of India.

12. (1) There shall be paid to the Comptroller and Auditor-General of India a salary at the rate of four thousand rupees per mensem.

(2) The person who was holding office immediately before the commencement of this Constitution as Auditor-General of India and has become on such commencement the Comptroller and Auditor-General of India under article 377 shall in addition to the salary specified in sub-paragraph (1) of this paragraph be entitled to receive as special pay an amount equivalent to the difference between the salary so specified and the salary which he was drawing as Auditor-General of India immediately before such commencement.

(3) The rights in respect of leave of absence and pension and the other conditions of service of the Comptroller and Auditor-General of India shall be governed or shall continue to be governed, as the case may be, by the provisions which were applicable to the Auditor-General of India immediately before the commencement of this Constitution and all references in those provisions to the Governor-General shall be construed as references to the President.

THIRD SCHEDULE

[Articles 75(4), 99, 124(6), 148(2), 164(3), 188 and 219]

Forms of Oaths or Affirmations

I

Form of oath of office for a Minister for the Union :—

"I, A. B., do $\frac{\text{swear in the name of God}}{\text{solemnly affirm}}$ that I will bear true faith and allegiance to the Constitution of India as by law established, that I will faithfully and conscientiously discharge my duties as a Minister for the Union and that I will do right to all manner of people in accordance with the Constitution and the law, without fear or favour, affection or ill~~will~~."

II

Form of oath of secrecy for a Minister for the Union :—

"I, A. B., do $\frac{\text{swear in the name of God}}{\text{solemnly affirm}}$ that I will not directly or indirectly communicate or reveal to any person or persons any matter which shall be brought under my consideration or shall become known to me as a Minister for the Union except as may be required for the due discharge of my duties as such Minister."

III

Form of oath or affirmation to be made by a member of Parliament :—

"I, A. B., having been elected (or nominated) a member of the Council of States (or the House of the People) do $\frac{\text{swear in the name of God}}{\text{solemnly affirm}}$ that I will bear true faith and allegiance to the Constitution of India as by law established and that I will faithfully discharge the duty upon which I am about to enter."

IV

Form of oath or affirmation to be made by the Judges of the Supreme Court and the Comptroller and Auditor-General of India :—

"I, A.B., having been appointed Chief Justice (or a Judge, of the Supreme Court of India (or Comptroller and Auditor-General of India) do $\frac{\text{swear in the name of God}}{\text{solemnly affirm}}$ that I will bear true faith and allegiance to the Constitution of India as by law established, that I will duly and faithfully and to the best of my ability, knowledge and judgment perform the duties of my office without fear or favour, affection or illwill and that I will uphold the Constitution and the laws."

V

Form of oath of office for a Minister for a State :—

"I, A.B , do swear in the name of God / solemnly affirm that I will bear true faith and allegiance to the Constitution of India as by law established, that I will faithfully and conscientiously discharge my duties as a Minister for the State of..... .....and that I will do right to all manner of people in accordance with the Constitution and the law without fear or favour, affection or illwill."

VI

Form of oath of secrecy for a Minister for a State :—

"I, A.B., do swear in the name of God / solemnly affirm that I will not directly or indirectly communicate or reveal to any person or persons any matter which shall be brought under my consideration or shall become known to me as a Minister for the State of ..... except as may be required for the due discharge of my duties as such Minister."

VII

Form of oath or affirmation to be made by a member of the Legislature of a State :—

"I, A.B., having been elected (or nominated) a member of the Legislative Assembly (or Legislative Council), do swear in the name of God / solemnly affirm that I will bear true faith and allegiance to the Constitution of India as by law established and that I will faithfully discharge the duty upon which I am about to enter."

VIII

Form of oath or affirmation to be made by the Judges of a High Court :—

"I, A B. having been appointed Chief Justice (or a Judge) of the High Court at (or of)....do swear in the name of God / solemnly affirm that I will bear true faith and allegiance to the Constitution of India as by law established, that I will duly and faithfully and to the best of my ability, knowledge and judg-

ment perform the duties of my office without fear or favour, affection or illwill and that I will uphold the Constitution and the laws."

FOURTH SCHEDULE

[Article 4 (1), 80 (2) and 391]

Allocation of seats in the Council of States

To each State or group of States specified in the first column of the table of seats appended to this Schedule there shall be allotted the number of seats specified in the second column of the said table opposite to that State or group of States, as the case may be.

TABLE OF SEATS

THE COUNCIL OF STATES

Representatives of States specified in Part A of the First Schedule

1	2
States	Total Seats
1. Assam	6
2. Bihar	21
3. Bombay	17
4. Madhya Pradesh	12
5. Madras	27
6. Orissa	9
7. Punjab	8
8. The United Provinces	31
9. West Bengal	14
TOTAL ...	145

Representatives of States specified in Part B of the First Schedule

1	2
States	Total Seats
1. Hyderabad	11
2. Jammu and Kashmir	4
3. Madhya Bharat	6
4. Mysore	6
5. Patiala and East Punjab States Union	3
6. Rajasthan	9
7. Saurashtra	4
8. Travancore-Cochin	6
9. Vindhya Pradesh	4
TOTAL ...	53

Representatives of States specified in Part C of the First Schedule

1	2
States and Groups of States	Total Seats
1. Ajmer 2. Coorg	1
3. Bhopal	1
4. Bilaspur 5. Himachal Pradesh	1
6. Cooch-Behar	1
7. Delhi	1
8. Kutch	1
9. Manipur 10. Tripura	1
TOTAL ...	7
TOTAL OF ALL SEATS ...	205

FIFTH SCHEDULE

[Article 244 (1)]

Provisions as to the Administration and Control of Scheduled Areas and Scheduled Tribes

PART A

GENERAL

1. Interpretation.—In this Schedule, unless the context otherwise requires, the expression "State" means a State specified in Part A or Part B of the First Schedule but does not include the State of Assam.

2. Executive power of a State in Scheduled Areas.—Subject to the provisions of this Schedule, the executive power of a State extends to the Scheduled Areas therein.

3. Report by the Governor or Rajpramukh to the President regarding the administration of Scheduled Areas.—The Governor or Rajpramukh of each State having Scheduled Areas therein shall annually, or whenever so required by the President, make a report to the President regarding the administration of the Scheduled Areas in that State and the executive power of the Union shall extend to the giving of directions to the State as to the administration of the said areas.

PART B

Administration and Control of Scheduled Areas and Scheduled Tribes

4. Tribes Advisory Council.—(1) There shall be established in each State having Scheduled Areas therein and, if the President so directs, also in any State having Scheduled Tribes but not Scheduled Areas therein, a Tribes Advisory Council consisting of not more than twenty members of whom, as nearly as may be, three-fourths shall be the representatives of the Scheduled Tribes in the Legislative Assembly of the State :

Provided that if the number of representatives of the

Scheduled Tribes in the Legislative Assembly of the State is less than the number of seats in the Tribes Advisory Council to be filled by such representatives, the remaining seats shall be filled by other members of those tribes.

(2) It shall be the duty of the Tribes Advisory Council to advise on such matters pertaining to the welfare and advancement of the Scheduled Tribes in the State as may be referred to them by the Governor or Rajpramukh, as the case may be.

(3) The Governor or Rajpramukh may make rules prescribing or regulating, as the case may be,—

(*a*) the number of members of the Council, the mode of their appointment and the appointment of the Chairman of the Council and of the officers and servants thereof ;

(*b*) the conduct of its meetings and its procedure in general ; and

(*c*) all other incidental matters.

5. **Law applicable to Scheduled Areas.**—(1) Notwithstanding anything in this Constitution, the Governor or Rajpramukh, as the case may be, may by public notification direct that any particular Act of Parliament or of the Legislature of the State shall not apply to a Scheduled Area or any part thereof in the State or shall apply to a Scheduled Area or any part thereof in the State subject to such exceptions and modifications as he may specify in the notification and any direction given under this sub-paragraph may be given so as to have retrospective effect.

(2) The Governor or Rajpramukh, as the case may be, may make regulations for the peace and good government of any area in a State which is for the time being a Scheduled Area.

In particular and without prejudice to the generality of the foregoing power, such regulations may—

(*a*) prohibit or restrict the transfer of land by or among members of the Scheduled Tribes in such area ;

(*b*) regulate the allotment of land to members of the Scheduled Tribes in such area ;

(*c*) regulate the carrying on of business as money-lender by persons who lend money to members of the Scheduled Tribes in such area.

(3) In making any such regulation as is referred to in sub-paragraph (2) of this paragraph, the Governor or Rajpramukh may repeal or amend any Act of Parliament or of the Legislature of the State or any existing law which is for the time being applicable to the area in question.

(4) All regulations made under this paragraph shall be submitted forthwith to the President and, until assented to by him, shall have no effect.

(5) No regulation shall be made under this paragraph unless the Governor or the Rajpramukh making the regulation has, in the case where there is a Tribes Advisory Council for the State, consulted such Council.

PART C

SCHEDULED AREAS

6. Scheduled Areas.—(1) In this Constitution, the expression "Scheduled Areas" means such areas as the President may by order declare to be Scheduled Areas.

(2) The President may at any time by order—

(*a*) direct that the whole or any specified part of a Scheduled Area shall cease to be a Scheduled Area or a part of such an area ;

(*b*) alter, but only by way of rectification of boundaries, any Scheduled Area ;

(*c*) on any alteration of the boundaries of a State or on the admission into the Union or the establishment of a new State, declare any territory not previously included in any State to be, or to form part of, a Scheduled Area ;

and any such order may contain such incidental and consequential provisions as appear to the President to be

necessary and proper, but save as aforesaid, the order made under sub-paragraph (1) of this paragraph shall not be varied by any subsequent order.

PART D

AMENDMENT OF THE SCHEDULE

7. Amendment of the Schedule.—(1) Parliament may from time to time by law amend by way of addition, variation or repeal any of the provisions of this Schedule and, when the Schedule is so amended, any reference to this Schedule in this Constitution shall be construed as a reference to such Schedule as so amended.

(2) No such law as is mentioned in sub-paragraph (1) of this paragraph shall be deemed to be an amendment of this Constitution for the purposes of article 368.

SIXTH SCHEDULE

[Article 244 (2) and 275 (1)]

Provisions as to the Administration of Tribal Areas in Assam

1. Autonomous districts and autonomous regions.—(1) Subject to the provisions of this paragraph, the tribal areas in each item of Part A of the table appended to paragraph 20 of this Schedule shall be an autonomous district.

(2) If there are different Scheduled Tribes in an autonomous district, the Governor may, by public notification, divide the area or areas inhabited by them into autonomous regions.

(3) The Governor may, by public notification,—

(*a*) include any area in Part A of the said table,

(*b*) exclude any area from Part A of the said table,

(*c*) create a new autonomous district,

(*d*) increase the area of any autonomous district,

(*e*) diminish the area of any autonomous district,

(*f*) unite two or more autonomous districts or parts thereof so as to form one autonomous district,

(*g*) define the boundaries of any autonomous district :

Provided that no order shall be made by the Governor under clauses (*c*), (*d*), (*e*) and (*f*) of this sub-paragraph except after consideration of the report of a Commission appointed under sub-paragraph (1) of paragraph 14 of this Schedule.

2. Constitution of District Councils and Regional Councils.—(1) There shall be a District Council for each autonomous district consisting of not more than twenty-four members, of whom not less than three-fourths shall be elected on the basis of adult suffrage.

(2) There shall be a separate Regional Council for each area constituted an autonomous region under sub-paragraph (2) of paragraph 1 of this Schedule.

(3) Each District Council and each Regional Council shall be a body corporate by the name respectively of "the District Council of (*name of district*)" and "the Regional Council of (*name of region*)", shall have perpetual succession and a common seal and shall by the said name sue and be sued.

(4) Subject to the provisions of this Schedule, the administration of an autonomous district shall, in so far as it is not vested under this Schedule in any Regional Council within such district, be vested in the District Council for such district and the administration of an autonomous region shall be vested in the Regional Council for such region.

(5) In an autonomous district with Regional Councils, the District Council shall have only such powers with respect to the areas under the authority of the Regional Council as may be delegated to it by the Regional Council in addition to the powers conferred on it by this Schedule with respect to such areas.

(6) The Governor shall make rules for the first constitution of District Councils and Regional Councils in consultation with the existing tribal Councils or other representative tribal organisations within the autonomous districts or regions concerned, and such rules shall provide for—

(*a*) the composition of the District Councils and Regional Councils and the allocation of seats therein ;

(*b*) the delimitation of territorial constituencies for the purpose of elections to those Councils ;

(*c*) the qualifications for voting at such elections and the preparation of electoral rolls therefor ;

(*d*) the qualifications for being elected at such elections as members of such Councils ;

(*e*) the term of office of members of such Councils ;

(*f*) any other matter relating to or connected with elections or nominations to such Councils ;

(*g*) the procedure and the conduct of business in the District and Regional Councils ;

(*h*) the appointment of officers and staff of the District and Regional Councils.

(7) The District or the Regional Council may after its first constitution make rules with regard to the matters specified in sub-paragraph (6) of this paragraph and may also make rules regulating—

(*a*) the formation of subordinate local Council or Boards and their procedure and the conduct of their business; and

(*b*) generally all matters relating to the transaction of business pertaining to the administration of the district or region, as the case may be :

Provided that until rules are made by the District or the Regional Council under this sub-paragraph the rules

made by the Governor under sub-paragraph (6) of this paragraph shall have effect in respect of elections to, the officers and staff of, and the procedure and the conduct of business in, each such Council:

Provided further that the Deputy Commissioner or the Sub-Divisional Officer, as the case may be, of the North Cachar and Mikir Hills shall be the Chairman *ex-officio* of the District Council in respect of the territories included in items 5 and 6 respectively of Part A of the table appended to paragraph 20 of this Schedule and shall have power for a period of six years after the first constitution of the District Council, subject to the control of the Governor, to annul or modify any resolution or decision of the District Council or to issue such instructions to the District Council, as he may consider appropriate, and the District Council shall comply with every such instruction issued.

3. Powers of the District Councils and Regional Councils to make laws.—(1) The Regional Council for an autonomous region in respect of all areas within such region and the District Council for an autonomous district in respect of all areas within the district except those which are under the authority of Regional Councils, if any, within the district shall have power to make laws with respect to—

(*a*) the allotment, occupation or use, or the setting apart, of land, other than any land which is a reserved forest, for the purposes of agriculture or grazing or for residential or other non-agricultural purposes or for any other purpose likely to promote the interests of the inhabitants of any village or town:

Provided that nothing in such laws shall prevent the compulsory acquisition of any land, whether occupied or unoccupied, for public purposes by the Government of Assam in accordance with the law for the time being in force authorisng such acquisition;

(*b*) the management of any forest not being a reserved forest;

(*c*) the use of any canal or water-course for the purpose of agriculture;

(*d*) the regulation of the practice of *jhum* or other forms of shifting cultivation;

(*e*) the establishment of village or town committees or councils and their powers;

(*f*) any other matter relating to village or town administration, including village or townpolice and public health and sanitation;

(*g*) the appointment or succession of Chiefs or Headmen;

(*h*) the inheritance of property;

(*i*) marriage;

(*j*) social customs.

(2) In this paragraph, a "reserved forest" means any area which is a reserved forest under the Assam Forest Regulation, 1891, or under any other law for the time being in force in the area in question.

(3) All laws made under this paragraph shall be submitted forthwith to the Governor and until assented to by him, shall have no effect.

4. Administration of justice in autonomous districts and autonomous regions.—(1) The Regional Council for an autonomous region in respect of areas within such region and the District Council for an autonomous district in respect of areas within the district other than those which are under the authority of the Regional Councils, if any, within the district may constitute village councils or courts for the trial of suits and cases between the parties all of whom belong to Scheduled Tribes within such areas, other than suits and cases to which the provisions of sub-paragraph (1) of paragraph 5 of this Schedule apply, to the exclusion of any court in the State, and may appoint suitable persons to be members of such village Councils or presiding officers of such courts, and may also appoint such officers as may be necessary for the administration of the laws made under paragraph 3 of this Schedule.

(2) Notwithstanding anything in this Constitution, the Regional Council for an autonomous region or any court constituted in that behalf by the Regional Council or, if in

respect of any area within an autonomous district there is no Regional Council, the District Council for such district, or any court constituted in that behalf by the District Council, shall exercise the powers of a court of appeal in respect of all suits and cases triable by a village council or court constituted under sub-paragraph (1) of this paragraph within such region or area, as the case may be, other than those to which the provisions of sub-paragraph (1) of paragraph 5 of this Schedule apply, and no other court except the High Court and the Supreme Court shall have jurisdiction over such suits or cases.

(3) The High Court of Assam shall have and exercise such jurisdiction over the suits and cases to which the provisions of sub-paragraph (2) of this paragraph apply as the Governor may from time to time by order specify.

(4) A Regional Council or District Council, as the case may be, may with the previous approval of the Governor make rules regulating—

(*a*) the constitution of village councils and courts and the powers to be exercised by them under this paragraph ;

(*b*) the procedure to be followed by village councils or courts in the trial of suits and cases under sub-paragraph (1) of this paragraph ;

(*c*) the procedure to be followed by the Regional or District Council or any court constituted by such Council in appeals and other proceedings under sub-paragraph (2) of this paragraph ;

(*d*) the enforcement of decisions and orders of such Councils and courts ;

(*e*) all other ancillary matters for the carrying out of the provisions of sub-paragraphs (1) and (2) of this paragraph.

5. Conferment of powers under the Code of Civil Procedure, 1908, and the Code of Criminal Procedure, 1898, on the Regional and District Councils and on certain courts and officers for the trial of certain suits, cases and offences.—(1) The Governor may, for the trial of suits or

cases arising out of any law in force in any autonomous district or region being a law specified in that behalf by the Governor, or for the trial of offences punishable with death, transportation for life, or imprisonment for a term of not less than five years under the Indian Penal Code or under any other law for the time being applicable to such district or region, confer on the District Council or the Regional Council having authority over such district or region or on courts constituted by such District Council or on any officer appointed in that behalf by the Governor, such powers under the Code of Civil Procedure, 1908, or, as the case may be, the Code of Criminal Procedure, 1898, as he deems appropriate, and thereupon the said Council, court or officer shall try the suits, cases or offences in exercise of the powers so conferred.

(2) The Governor may withdraw or modify any of the powers conferred on a District Council, Regional Council, court or officer under sub-paragraph (1) of this paragraph.

(3) Save as expressly provided in this paragraph, the Code of Civil Procedure, 1908, and the Code of Criminal Procedure, 1898, shall not apply to the trial of any suits, cases or offences in an autonomous district or in any autonomous region to which the provisions of this paragraph apply.

6. Powers of the District Council to establish primary schools, etc.—The District Council for an autonomous district may establish, construct, or manage primary schools, dispensaries, markets, cattle pounds, ferries, fisheries, roads and waterways in the district and, in particular, may prescribe the language and the manner in which primary education shall be imparted in the primary school in the district.

7. District and Regional Funds.—(1) There shall be constituted for each autonomous district, a District Fund and for each autonomous region, a Regional Fund to which shall be credited all moneys received respectively by the District Council for that district and the Regional Council for that region in the course of the administration of such district or region, as the case may be, in accordance with the provisions of this Constitution.

(2) Subject to the approval of the Governor, rules may be made by the District Council and by the Regional Council for the management of the District Fund or, as the case may be, the Regional Fund, and the rules so made may prescribe the procedure to be followed in respect of payment of money into the said Fund, the withdrawal of moneys therefrom, the custody of moneys therein and any other matter connected with or ancillary to the matters aforesaid.

8. Powers to assess and collect land revenue and to impose taxes.—(1) The Regional Council for an autonomous region in respect of all lands within such region and the District Council for an autonomous district in respect of all lands within the district except those which are in the areas under the authority of Regional Councils, if any, within the district, shall have the power to assess and collect revenue in respect of such lands in accordance with the principles for the time being followed by the Government of Assam in assessing lands for the purpose of land revenue in the State of Assam generally.

(2) The Regional Council for an autonomous region in respect of areas within such region and the District Council for an autonomous district in respect of all areas in the district except those which are under the authority of Regional Councils, if any, within the district, shall have power to levy and collect taxes on lands and buildings, and tolls on persons resident within such areas.

(3) The District Council for an autonomous district shall have the power to levy and collect all or any of the following taxes within such district, that is to say—

(*a*) taxes on professions, trades, callings and employments;

(*b*) taxes on animals, vehicles and boats;

(*c*) taxes on the entry of goods into a market for sale therein, and tolls on passengers and goods carried in ferries; and

(*d*) taxes for the maintenance of schools, dispensaries or roads.

(4) A Regional Council or District Council, as the case

may be, may make regulations to provide for the levy and collection of any of the taxes specified in sub-paragraphs (2) and (3) of this paragraph.

9. Licences or leases for the purpose of prospecting for, or extraction of, minerals.—(1) Such share of the royalties accruing each year from licences or leases for the purpose of prospecting for, or the extraction of, minerals granted by the Government of Assam in respect of any area within an autonomous district as may be agreed upon between the Government of Assam and the District Council of such district shall be made over to that District Council.

(2) If any dispute arises as to the share of such royalties to be made over to a District Council, it shall be referred to the Governor for determination and the amount determined by the Governor in his discretion shall be deemed to be the amount payable under sub-paragraph (1) of this paragraph to the District Council and the decision of the Governor shall be final.

10. Power of District Council to make regulations for the control of money-lending and trading by non-tribals.—(1) The District Council of an autonomous district may make regulations for the regulation and control of money-lending or trading within the district by persons other than Scheduled Tribes resident in the district.

(2) In particular and without prejudice to the generality of the foregoing power, such regulations may—

(*a*) prescribe that no one except the holder of a licence issued in that behalf shall carry on the business of money-lending ;

(*b*) prescribe the maximum rate of interest which may be charged or be recovered by a money-lender ;

(*c*) provide for the maintenance of accounts by money-lenders and for the inspection of such accounts by officers appointed in that behalf by the District Council;

(*d*) prescribe that no person who is not a member of the Scheduled Tribes resident in the district shall carry on wholesale or retail business in

any commodity except under a licence issued in that behalf by the District Council:

Provided that no regulations may be made under this paragraph unless they are passed by a majority of not less than three-fourths of the total membership of the District Council:

Provided further that it shall not be competent under any such regulations to refuse the grant of a licence to a money-lender or a trader who has been carrying on business within the district since before the time of the making of such regulations.

(3) All regulations made under this paragraph shall be submitted forthwith to the Governor and, until assented to by him, shall have no effect.

11. Publication of laws, rules and regulations made under the Schedule.—All laws, rules and regulations made under this Schedule by a District Council or a Regional Council shall be published forthwith in the Official Gazette of the State and shall on such publication have the force of law.

12. Application of Acts of Parliament and of the Legislature of the State to autonomous districts and autonomous regions.—(1) Notwithstanding anything in this Constitution—

(*a*) no Act of the Legislature of the State in respect of any of the matters specified in paragraph 3 of this Schedule as matters with respect to which a District Council or a Regional Council may make laws, and no Act of the Legislature of the State prohibiting or restricting the consumption of any non-distilled alcoholic liquor shall apply to any autonomous district or autonomous region unless in either case the District Council for such district or having jurisdiction over such region by public notification so directs, and the District Council in giving such direction with respect to any Act may direct that the Act shall in its application to such district or region or any

part thereof have effect subject to such exceptions or modifications as it think fit;

(*b*) the Governor may, by public notification, direct that any Act of Parliament or of the Legislature of the State to which the provisions of clause (*a*) of this sub-paragraph do not apply shall not apply to an autonomous district or an autonomous region, or shall apply to such district or region or any part thereof subject to such exceptions or modifications as he may specify in the notification.

(2) Any direction given under sub-paragraph (1) of this paragraph may be given so as to have retrospective effect.

13. Estimated receipts and expenditure pertaining to autonomous districts to be shown separately in the annual financial statement.—The estimated receipts and expenditure pertaining to an autonomous district which are to be credited to, or is to be made from, the Consolidated Fund of the State of Assam shall be first placed before the District Council for discussion and then after such discussion be shown separately in the annual financial statement of the State to be laid before the Legislature of the State under article 202.

14. Appointment of Commission to inquire into and report on the administration of autonomous districts and autonomous regions.—(1) The Gonernor may at any time appoint a Commission to examine and report on any matter specified by him relating to the administration of the antonomous districts and autonomous regions in the State, including matters specified in clauses (*c*), (*d*), (*e*) and (*f*) of sub-paragraph (3) paragraph 1 of this Schedule, or may appoint a Commission to inquire into and report from time to time on the administration of autonomous districts and autonomous regions in the State generally and in particular on—

(*a*) the provision of educational and medical facilities and communications in such districts and regions;

(*b*) the need for any new or special legislation in respect of such districts and regions; and

(*c*) the administration of laws, rules and regulations made by the District and Regional Councils;

and define the procedure to be followed by such Commission.

(2) The report of every such Commission with the recommendations of the Governor with respect thereto shall be laid before the Legislature of the State by the Minister concerned together with an explanatory memorandum regarding the action proposed to be taken thereon by the Government of Assam.

(3) In allocating the business of the Government of the State among his Ministers the Governor may place one of his Ministers specially in charge of the welfare of the autonomous districts and autonomous regions in the State.

15. Annulment or suspension of acts and resolutions of District and Regional Councils —(1) If at any time the Governor is satisfied that an act or resolution of a District or a Regional Council is likely to endanger the safety of India, he may annul or suspend such act or resolution and take such steps as he may consider necessary (including the suspension of the Council and the assumption to himself of all or any of the powers vested in or exercisable by the Council) to prevent the commission or continuance of such act, or the giving of effect to such resolution.

(2) Any order made by the Governor under sub-paragraph (1) of this paragraph together with the reasons therefor shall be laid before the Legislature of the State as soon as possible and the order shall, unless revoked by the Legislature of the State, continue in force for a period of twelve months from the date on which it was so made :

Provided that if and so often as a resolution approving the continuance in force of such order is passed by the Legislature of the State, the order shall unless cancelled by the Governor continue in force for a further period of twelve months from the date on which under this paragraph it would otherwise have ceased to operate.

16. Dissolution of a District or a Regional Council.— The Governor may on the recommendation of a Commission

appointed under paragraph 14 of this Schedule by public notification order the dissolution of a District or a Regional Council and—

(*a*) direct that a fresh general election shall be held immediately for the reconstitution of the Council, or

(*b*) subject to the previous approval of the Legislature of the State assume the administration of the area under the authority of such Council himself or place the administration of such area under the Commission appointed under the said paragraph or any other body considered suitable by him for a period not exceeding twelve months :

Provided that when an order under clause (*a*) of this paragraph has been made, the Governor may take the action referred to in clause (*b*) of this paragraph with regard to the administration of the area in question pending the reconstitution of the Council on fresh general election :

Provided further that no action shall be taken under clause (*b*) of this paragraph without giving the District or the Regional Council, as the case may be, an opportunity of placing its views before the Legislature of the State.

17. Exclusion of areas from autonomous districts in forming constituencies in such districts —For the purposes of elections to the Legislative Assembly of Assam, the Governor may by order declare that any area within an autonomous district shall not form part of any constituency to fill a seat or seats in the Assembly reserved for any such district but shall form part of a constituency to fill a seat or seats in the Assembly not so reserved to be specified in the order.

18. Application of the provisions of this Schedule to areas specified in Part B of the table appended to paragraph 20. (1) The Governor may—

(*a*) subject to the previous approval of the President, by public notification, apply all or any of the foregoing provisions of this Schedule to any tribal area specified in Part B of the table appended to paragraph 20 of this

Schedule or any part of such area and thereupon such area or part shall be administered in accordance with such provisions, and

(*b*) with like approval, by public notification, exclude from the said table any tribal area specified in Part B of that table or any part of such area.

(2) Until a notification is issued under sub-paragraph (1) of this paragraph in respect of any tribal area specified in Part B of the said table or any part of such area, the administration of such area or part thereof, as the case may be, shall be carried on by the President through the Governor of Assam as his agent and the provisions of Part IX shall apply thereto as if such area or part thereof were a territory specified in Part D of the First Schedule.

(3) In the discharge of his functions under sub-paragraph (2) of this paragraph as the agent of the President the Governor shall act in his discretion.

19. **Transitional provisions.**—(1) As soon as possible after the commencement of this Constitution the Governor shall take steps for the constitution of a District Council for each autonomous district in the State under this Schedule and, until a District Council is so constituded for an autonomous district, the administration of such district shall be vested in the Governor and the following provisions shall apply to the administration of the areas within such district instead of the foregoing provisions of this Schedule, namely :—

(*a*) no Act of Parliament or of the Legislature of the State shall apply to any such area unless the Governor by public notification so directs ; and the Governor in giving such a direction with respect to any Act may direct that the Act shall, in its application to the area or to any specified part thereof, have effect subject to such exceptions or modifications as he thinks fit ;

(*b*) the Governor may make regulations for the peace and good government of any such area and any regulations so made may repeal or

amend any Act of Parliament or of the Legislature of the State or any existing law which is for the time being applicable to such area.

(2) Any direction given by the Governor under clause (*a*) of sub-paragraph (1) of this paragraph may be given so as to have retrospective effect.

(3) All regulations made under clause (*b*) of sub-paragraph (1) of this paragraph shall be submitted forthwith to the President and, until assented to by him, shall have no effect.

20. Tribal areas.—(1) The areas specified in Parts A and B of the table below shall be the tribal areas within the State of Assam.

(2) The United Khasi-Jaintia Hills District shall comprise the territories which before the commencement of this Constitution were known as the Khasi States and the Khasi and Jaintia Hills District, excluding any areas for the time being comprised within the cantonment and municipality of Shillong, but including so much of the area comprised within the municipality of Shillong as formed part of the Khasi State of Mylliem :

Provided that for the purposes of clauses (*e*) and (*f*) of sub paragraph (1) of paragraph 3, paragraph 4, paragraph 5, paragraph 6, sub-paragraph (2), clauses (*a*), (*b*) and (*d*) of sub-paragraph (3) and sub-paragraph (4) of paragraph 8, and clause (*d*) of sub-paragraph (2) of paragraph 10 of this Schedule, no part of the area comprised within the municipality of Shillong shall be deemed to be within the District.

(3) Any reference in the table below to any district (other than the United Khasi-Jaintia Hills District) or administrative area shall be construed as a reference to that district or area at the commencement of this Constitution :

Provided that the tribal areas specified in Part B of the table below shall not include any such areas in the plains as may, with the previous approval of the President, be notified by the Governor of Assam in that behalf.

TABLE

PART A

1. The United Khasi-Jaintia Hills District.
2. The Garo Hills District.
3. The Lushai Hills District.
4. The Naga Hills District.
5. The North Cachar Hills.
6. The Mikir Hills.

PART B

1. North East Frontier Tract including Balipara Frontier Tract, Tirap Frontier Tract, Abor Hills District and Misimi Hills District.

2. The Naga Tribal Area.

21. Amendment of the Schedule.—(1) Parliament may from time to time by law amend by way of addition, variation or repeal any of the provisions of this Schedule and, when the Schedule is so amended, any reference to this Schedule in this Constitution shall be construed as a reference to such Schedule as so amended.

(2) No such law as is mentioned in sub-paragraph (1) of this paragraph shall be deemed to be an amendment of this Constitution for the purposes of article 368.

SEVENTH SCHEDULE

[Article 246]

List I—Union List*

1. Defence of India and every part thereof including

*It will be seen that the Union List covers a large number of subjects. Parliament has exclusive power of legislation over as many as 97 subjects. This may be contrasted with the Australian Constitution where the Australian Parliament has exclusive authority to legislate only in regard to three matters or so. This has been done to secure the greatest possible elasticity and to assuage the rigour of rigidity and legalism which are inherent in federalism.

preparation for defence and all such acts as may be conducive in times of war to its prosecution and after its termination to effective demobilisation.

2. Naval, military and air forces ; any other armed forces of the Union.

3. Delimitation of cantonment areas, local self-government in such areas, the constitution and powers within such areas of cantonment authorities and the regulation of house accommodation (including the control of rents) in such areas.

4. Naval, military and air force works.

5. Arms, firearms, ammunition and explosives.

6. Atomic energy and mineral resources necessary for its production.

7. Industries declared by Parliament by law to be necessary for the purpose of defence or for the prosecution of war.

8. Central Bereau of Intelligence and Investigation.

9. Preventive detention for reasons connected with Defence, Foreign Affairs, or the security of India ; persons subjected to such detention.

10. Foreign Affairs ; all matters which bring the Union into relation with any foreign country.

11. Diplomatic, consular and trade representation.

12. United Nations Organisation.

13. Participation in international conferences, associations and other bodies and implementing of decisions made thereat.

14. Entering into treaties and agreements with foreign countries and implementing of treaties, agreements and conventions with foreign countries.

15. War and peace.

16. Foreign jurisdiction.

17. Citizenship, naturalisation and aliens.

18. Extradition.

19. Admission into, and emigration and expulsion from, India; passports and visas.

20. Pilgrimages to places outside India.

21. Piracies and crimes committed on the high seas or in the air; offences against the law of nations committed on land or the high seas or in the air.

22. Railways.

23. Highways declared by or under law made by Parliament to be national highways.

24. Shipping and navigation on inland waterways, declared by Parliament by law to be national waterways, as regards mechanically propelled vessels; the rule of the road on such waterways.

25. Maritime shipping and navigation, including shipping and navigation on tidal waters; provision of education and training for the mercantile marine and regulation of such education and training provided by States and other agencies.

26. Lighthouses, including lightships, beacons and other provision for the safety of shipping and aircraft.

27. Ports declared by or under law made by Parliament or existing law to be major ports, including their delimitation, and the constitution and powers of port authorities therein.

28. Port quarantine, including hospitals connected therewith; seamen's and marine hospitals.

29. Airways; aircraft and air navigation; provision of aerodromes; regulation and organisation of air traffic and of aerodromes; provision for aeronautical education and training and regulation of such education and training provided by States and other agencies.

30. Carriage of passengers and goods by railway, sea or

air, or by national waterways in mechanically propelled vessels.

31. Posts and telegraphs; telephones, wireless, broadcasting and other like forms of communication.

32. Property of the Union and the revenue therefrom, but as regards property situated in a State specified in Part A or Part B of the First Schedule subject to legislation by the State, save in so far as Parliament by law otherwise provides.

33. Acquisition or requisitioning of property for the purposes of the Union.

34. Courts of wards for the estates of Rulers of Indian States.

35. Public debt of the Union.

36. Currency coinage and legal tender; foreign exchange.

37. Foreign loans.

38. Reserve Bank of India.

39. Post Office Savings Bank.

40. Lotteries organised by the Government of India or the Government of a State.

41. Trade and commerce with foreign countries; import and export across customs frontiers; difinition of customs frontiers.

42. Inter-State trade and commerce.

43. Incorporation, regulation and winding up of trading corporations, including banking, insurance and financial corporations but not including co-operative societies.

44. Incorporation, regulation and winding up of corporations, whether trading or not, with objects not confined to one State, but not including universities.

45. Banking.

46. Bills of exchange, cheques, promissory notes and other like instruments.

47. Insurance.

48. Stock exchanges and futures markets.

49. Patents, inventions and designs ; copyright ; trade-marks and merchandise marks.

50. Establishment of standards of weight and measure.

51. Establishment of standards of quality for goods to be exported out of India or transported from one State to another.

52. Industries, the control of which by the Union is declared by Parliament by law to be expedient in the public interest.

53. Regulation and development of oilfields and mineral oil resources ; petroleum and petroleum products ; other liquids and substances declared by Parliament by law to be dangerously inflammable.

54. Regulation of mines and mineral development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest.

55. Regulation of labour and safety in mines and oilfields.

56. Regulation and development of inter-State rivers and river valleys to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest.

57. Fishing and fisheries beyond territorial waters.

58. Manufacture, supply and distribution of salt by Union agencies ; regulation and control of manufacture, supply and distribution of salt by other agencies.

59. Cultivation, manufacture, and sale for export, of opium.

60. Sanctioning of cinematograph films for exhibition.

61. Industrial disputes concerning Union employees.

62. The institutions known at the commencement of this Constitution as the National Library, the Indian Museum, the Imperial War Museum, the Victoria Memorial and the Indian War Memorial, and any other like institution financed by the Government of India wholly or in part

and declared by Parliament by law to be an institution of national importance.

63. The institutions known at the commencement of this Constitution as the Benares Hindu University, the Aligarh Muslim University and the Delhi University, and any other institution declared by Parliament by law to be an institution of national importance.

64. Institutions for scientific or technical education financed by the Government of India wholly or in part and declared by Parliament by law to be institutions of national importance.

65. Union agencies and institutions for—

(*a*) professional, vocational or technical training, including the training of police officers ; or

(*b*) the promotion of special studies or research ; or

(*c*) scientific or technical assistance in the investigation or detection of crime.

66. Co-ordination and determination of standards in institutions for higher education or research and scientfic and technical institutions.

67. Ancient and historical monuments and records, and archaeological sites and remains, declared by Parliament by law to be of national importance.

68. The Survey of India, the Geological, Botanical, Zoological and Anthropological Surveys of India ; Meteorological organisations.

69. Census.

70. Union public services ; all-India services ; Union Public Service Commission.

71. Union pensions, that is to say, pensions payable by the Government of India or out of the Consolidated Fund of India.

72. Elections to Parliament, to the Legislatures of States and to the offices of President and Vice-President; the Election Commission.

73. Salaries and allowances of members of Parliament, the Chairman and Deputy Chairman of the Council of States

and the Speaker and Deputy Speaker of the House of the People.

74. Powers, privileges and immunities of each House of Parliament and of the members and the committees of each House ; enforcement of attendance of persons for giving evidence or producing documents before committees of Parliament or commissions appointed by Parliament.

75. Emoluments, allowances, privileges, and rights in respect of leave of absence, of the President and Governors ; salaries and allowances of the Ministers for the Union ; the salaries, allowances, and rights in respect of leave of absence and other conditions of service of the Comptroller and Auditor-General.

76. Audit of the accounts of the Union and of the States.

77. Constitution, organisation, jurisdiction and powers of the Supreme Court (including contempt of such Court), and the fees taken therein ; persons entitled to practise before the Supreme Court.

78. Constitution and organisation of the High Courts except provisions as to officers and servants of High Courts; persons entitled to practise before the High Courts.

79. Extension of the jurisdiction of a High Court having its principal seat in any State to, and exclusion of the jurisdiction of any such High Court from, any area outside that State.

80. Extension of the powers and jurisdiction of members of a police force belonging to any State to any area outside that State, but not so as to enable the police of one State to exercise powers and jurisdiction in any area outside that State without the consent of the Government of the State in which such area is situated; extension of the powers and jurisdiction of members of a police force belonging to any State to railway areas outside that State.

81. Inter-State migration; inter-State quarantine.

82. Taxes on income other than agricultural income.

83. Duties of customs including export duties.

*84. Duties of excise on tobacco and other goods manufactured or produced in India except—

(*a*) alcoholic liquors for human consumption ;

(*b*) opium, Indian hemp and other narcotic drugs and narcotics,

but including medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (*b*) of this entry.

85. Corporation tax.

86. Taxes on the capital value of the assets, exclusive of agricultural land, of individuals and companies ; taxes on the capital of companies.

87. Estate duty in respect of property other than agricultural land.

88. Duties in respect of succession to property other than agricultural land.

†89. Terminal taxes on goods or passengers, carried by railway, sea or air ; taxes on railway fares and freights.

‡90. Taxes other than stamp duties on transactions in stock exchanges and futures markets.

91. Rates of stamp duty in respect of bills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, transfer of shares, debentures, proxies and receipts

92. Taxes on the sale or purchase of newspapers and on advertisements published therein.

93. Offences against laws with respect to any of the matters in this List.

*The Drafting Committee was of opinion that duties of excise on medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (b) of this entry should be included in this entry as duties leviable by the Union, as it thought that uniform rates of excise duty should be fixed in respect of these goods in all States for the sake of development of the pharmaceutical industry. The levy of different rates in different States is likely to lead to a discrimination in favour of goods imported from foreign countries which would be detrimental to the interests of Indian manufacturers as was pointed out by the Drugs Enquiry Committee in their report 1931.

†As railways and airways extend over several States, it was thought fit to vest the power of legislation with respect to the levy of such taxes in the Union Parliament than in the State legislature.

‡This entry has been inserted to follow the recommendation of the Expert Committee on the Financial Provisions of the Constitution.

95. Jurisdiction and powers of all courts, except the Supreme Court, with respect to any of the matters in this List; admiralty jurisdiction.

96. Fees in respect of any of the matters in this List, but not including fees taken in any court.

97. Any other matter not enumerated in List II or List III including any tax not mentioned in either of those Lists.

List II—State List

1. Public order (but not including the use of naval, military or air forces or any other armed forces of the Union in aid of the civil power).

2. Police, including railway and village police.

3. Administration of justice; constitution and organisation of all courts, except the Supreme Court and the High Court; officers and servants of the High Court; procedure in rent and revenue courts; fees taken in all courts except the Supreme Court.

4. Prisons, reformatories, Borstal institutions and other institutions of a like nature, and persons detained therein; arrangements with other States for the use of prisons and other institutions.

5. Local government, that is to say, the constitution and powers of municipal corporations, improvement trusts, district boards, mining settlement authorities and other local authorities for the purpose of local self-government or village administration.

6. Public health and sanitation; hospitals and dispensaries.

7. Pilgrimages, other than pilgrimages to places outside India.

8. Intoxicating liquors, that is to say, the production, manufacture, possession, transport, purchase and sale of intoxicating liquors.

9. Relief of the disabled and unemployable.

10. Burials and burial grounds; cremations and cremation grounds.

11. Education including universities, subject to the provisions of entries 63, 64, 65 and 66 of List I and entry 25 of List III.

12. Libraries, museums and other similar institutions controlled or financed by the State ; ancient and historical monuments and records other than those declared by Parliament by law to be of national importance.

13. Communications, that is to say, roads, bridges, ferries, and other means of communication not specified in List I ; municipal tramways ; ropeways ; inland waterways and traffic thereon subject to the provisions of List I and List III with regard to such waterways ; vehicles other than mechanically propelled vehicles.

14. Agriculture, including agricultural education and research, protection against pests and prevention of plant diseases.

15. Preservation, protection and improvement of stock and prevention of animal diseases ; veterinary training and practice.

16. Pounds and the prevention of cattle trespass.

17. Water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power subject to the provisions of entry 56 or List I.

18. Land, that is to say, rights in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land; land improvement and agricultural loans; colonization.

19. Forests.

20. Protection of wild animals and birds.

21. Fisheries.

22. Courts of wards subject to the provisions of entry 34 of List I ; encumbered and attached estates.

23. Regulation of mines and mineral development subject to the provisions of List I with respect to regulation and development under the control of the Union.

24. Industries subject to the provisions of entry 52 of List I.

25. Gas and gas-works.

26. Trade and commerce within the State subject to the provisions of entry 33 of List III.

27. Production, supply and distribution of goods subject to the provisions of entry 33 of List III.

28. Markets and fairs.

29. Weights and measures except establishment of standards.

30. Money-lending and money-lenders; relief of agricultural indebtedness.

31. Inns and inn-keepers.

32. Incorporation, regulation and winding up of corporations, other than those specified in List I, and universities; unincorporated trading, literary, scientific, religious and other societies and associations; co-operative societies.

33. Theatres and dramatic performances; cinemas subject to the provisions of entry 60 of List I; sports, entertainments and amusements.

34. Betting and gambling.

35. Works, lands and buildings vested in or in the possession of the State.

36. Acquisition or requisitioning of property, except for the purposes of the Union, subject to the provisions of entry 42 of List III.

37. Elections to the Legislature of the State subject to the provisions of any law made by Parliament.

38. Salaries and allowances of members of the Legislature of the State, of the Speaker and Deputy Speaker of the Legislative Assembly and, if there is a Legislative Council, of the Chairman and Deputy Chairman thereof.

39. Powers, privileges and immunities of the Legislative Assembly and of the members and the committees thereof, and, if there is a Legislative Council, of that Council and of the members and the committees thereof; enforce-

ment of attendance of persons for giving evidence or producing documents before committees of the Legislature of the State.

40. Salaries and allowances of Ministers for the State.

41. State public services ; State Public Service Commision.

42. State pensions, that is to say, pensions payable by the State or out of the Consolidated Fund of the State.

43. Public debt of the State.

44. Treasure trove.

45. Land revenue, iucluding the assessment and collection of revenue, the maintenance of land records, survey for revenue purposes and records of rights, and alienation of revenues.

46. Taxes on agricultural income.

47. Duties in respect of succession to agricultural land.

48. Estate duty in respect of agricultural land.

49. Taxes on lands and buildings.

50. Taxes on mineral rights subject to any limitations imposed by Parliament by law relating to mineral development.

51. Duties of excise on the following goods manufactured or produced in the State and countervailing duties at the same or lower rates on similar goods manufactured or produced elsewhere in India :—

(*a*) alcoholic liquors for human consumption ;

(*b*) opium, Indian hemp and other narcotic drugs and narcotics ;

but not including medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (*b*) of this entry.

52. Taxes on the entry of goods into a local area for consumption, use or sale therein.

53. Taxes on the consumption or sale of electricity.

54. Taxes on the sale or purchase of goods other than newspapers.

55. Taxes on advertisements other than advertisements published in the newspapers.

56. Taxes on goods and passengers carried by road or on inland waterways.

57. Taxes on vehicles, whether mechanically propelled or not, suitable for use on roads, including tramcars subject to the provisions of entry 35 of List III.

58. Taxes on animals and boats.

59. Tolls.

60. Taxes on professions, trades, callings and employments.

61. Capitation taxes.

62. Taxes on luxuries, including taxes on entertainments, amusements, betting and gambling.

63. Rates of stamp duty in respect of documents other than those specified in the provisions of List I with regard to rates of stamp duty.

64. Offences against laws with respect to any of the matters in this List.

65. Jurisdiction and powers of all courts, except the Supreme Court, with respect to any of the matters in this List.

66. Fees in respect of any of the matters in this List, but not including fees taken in any court.

List III—Concurrent List

1. Criminal law, including all matters included in the Indian Penal Code at the commencement of this Constitution

*Like the Constitution of the Australian Commonwealth, the Constitution of India has a long list of subjects for concurrent powers of legislation. Under the Australian Constitution such concurrent subjects are 39. Under our constitution they number 47. It will be seen that with a view to eliminate all diversity from laws which are at the basis of civic and corporate life, the Codes of Civil & Criminal Laws, such as the Civil Procedure Code, Penal Code, the Criminal Procedure Code, the Evidence Act, Transfer of Property Act, Laws of Marriage and Divorce, are placed in the Concurrent List so that the necessary uniformity can always be preserved without impairing the federal system.

but excluding offences against laws with respect to any of the matters specified in List I or List II and excluding the use of naval, military or air forces or any other armed forces of the Union in aid of the civil power.

2. Criminal procedure, including all matters included in the Code of Criminal Procedure at the commencement of this Coustitution.

3. Preventive detention for reasons connected with the security of a State, the maintenance of public order, or the maintenance of supplies and services essential to the community ; persons subjected to such detention.

4. Removal from one State to another State of prisoners, accused persons and persons subjected to preventive detention for reasons specified in entry 3 of this List.

*5. Marriage and divorce ; infants and minors ; adoption ; wills, intestacy and succession ; joint family and partition ; all matters in respect of which parties in judicial proceedings were immediately before the commencement of this Constitution subject to their personal law.

6. Transfer of property other than agricultural land ; registration of deeds and documents.

7. Contracts, including partnership, agency, contracts of carriage, and other special forms of contracts, but not including contracts relating to agricultural land.

8. Actionable wrongs.

9. Bankruptcy and insolvency.

10. Trust and Trustees.

11. Administrators-general and official trustees.

12. Evidence and oaths ; recognition of laws, public acts and records, and judicial proceedings.

13. Civil procedure, including all matters included in the Code of Civil Procedure at the commencement of this Constitution, limitation and arbitration.

*The Drafting Committee was of opinion that if there is to be a uniform personal law, *e.g.*, for Hindus, throughout India, all the matters included therein at present should be put into the Concurrent List. Hence the enlargement of this entry.

14. Contempt of court, but not including contempt of the Supreme Court.

15. Vagrancy ; nomadic and migratory tribes.

16. Lunacy and mental deficiency, including places for the reception or treatment of lunatics and mental deficients.

17. Prevention of cruelty to animals.

18. Adulteration of foodstuffs and other goods.

19. Drugs and poisons, subject to the provisions of entry 59 of List I with respect to opium.

*20. Economic and social planning.

21. Commercial and industrial monopolies, combines and trusts.

22. Trade Unions ; industrial and labour disputes.

23. Social security and social insurance ; employment and unemployment.

24. Welfare of labour including conditions of work, provident funds, employers' liability, workmen's compensation, invalidity and old age pensions and maternity benefits.

25. Vocational and technical training of labour.

26. Legal, medical and other professions

27. Relief and rehabilitation of persons displaced from their original place of residence by reason of the setting up of the Dominions of India and Pakistan.

28. Charities and charitable institutions, charitable and religious endowments and religious institutions.

29. Prevention of the extension from one State to another of infectious or contagious diseases or pests affecting men, animals or plants.

30. Vital statistics including registration of births and deaths.

31. Ports other than those declared by or under law made by Parliament or existing law to be major ports.

*This has been inserted in this List pursuant to the recommendations of the Union Powers Committee.

32. Shipping and navigation on inland waterways as regards mechanically propelled vessels, and the rule of the road on such waterways, and the carriage of passengers and goods on inland waterways subject to the provisions of List I with respect to national waterways.

33. Trade and commerce in and the production, supply and distribution of the products of industries where the control of such industries by the Union is declared by Parliament by law to be expedient in the public interest.

34. Price control.

35. Mechanically propelled vehicles including the principles on which taxes on such vehicles are to be levied.

36. Factories.

37. Boilers.

38. Electricity.

39. Newspapers, books and printing presses.

40. Archæological sites and remains other than those declared by Parliament by law to be of national importance.

41. Custody, management and disposal of property (including agricultural land) declared by law to be evacuee property.

42. Principles on which compensation for property acquired or requisitioned for the purposes of the Union or of a State or for any other public purpose is to be determined, and the form and the manner in which such compensation is to be given.

43. Recovery in a State of claims in respect of taxes and other public demands, including arrears of land-revenue and sums recoverable as such arrears, arising outside that State.

44. Stamp duties other than duties or fees collected by means of judicial stamps, but not including rates of stamp duty.

45. Inquiries and statistics for the purposes of any of the matters specified in List II or List III.

46. Jurisdiction and powers of all courts, except the Supreme Court, with respect to any of the matters in this List.

47. Fees in respect of any of the matters in this List, but not including fees taken in any court.

EIGHTH SCHEDULE

[Articles 344 (1) and 351]

Languages

1. Assamese. 2. Bengali. 3. Gujarati. 4. Hindi. 5. Kannada. 6. Kashmiri. 7. Malayalam. 8. Marathi. 9. Oriya. 10. Punjabi. 11. Sanskrit. 12. Tamil. 13. Telugu. 14. Urdu.

PART II

NOTIFICATIONS, RULES, ORDERS, ETC., UNDER THE CONSTITUTION OF INDIA.

(1)—Article 6.

*Ministry of Home Affairs Notification No. 140/49—F. II, Dated 1st December, 1949.**—In pursuance of sub-clause (ii) of clause (b) of Article 6 of the Constitution of India, the Government of the Dominion of India is pleased to appoint, in respect of each of the territorial divisions specified in column 1 of the Schedule hereto annexed, the officer specified in column 2 thereof, as the officer by whom persons residing within that territorial division will be registered as citizens of India under the provisions of the said sub-clause.

THE SCHEDULE

Territorial division.	Designation of registering officer
I. PROVINCES :	
1. The area within the jurisdiction of the Calcutta Corporation.	The Collector of Stamp Revenues for Calcutta.
1A. Each sub-division or Tahsil (by whatever name called) of 24 Parganas district excluding any area falling within the jurisdiction of the Calcutta Corporation or any other district of West Bengal,	The officer (by whatever name designated) in charge of the revenue administration of the sub-division or Tahsil ;
2. The Presidency-town of Madras.	Collector of Madras.
3. The Presidency-town of Bombay.	Collector of Bombay,
3A. Bilaspur. ...	The Revenue Assistant.
3B. Coorg. ...	The Assistant Commissioner.
3C. Ajmer-Merwara. ...	The Relief and Rehabilitation Commissioner.
4. Each revenue sub-division of the Cachar District in Assam.	The Sub-Divisional Officer.
5. Any other District in a Province.	The Collector or Deputy Commissioner.

* As amended by Notification No. 140/49-F. II, dated the 7th December 1949.

Territorial division	Designation of registering officer
II. STATES :	
1. Each Division of the United State of Travancore-Cochin (viz. Trivandrum, Quilon, Kottayam and Trichur).	The Dewan Peishkar of the Division.
1A. Each sub-district of Saurashtra.	The Deputy Collector of the sub-district.
2. Each District of any other State.	The officer (by whatever name designated) in charge of the revenue administration of the District.

(2)—Article 6.

Ministry of Home Affairs, Notification No. 140/49-F. II. dated the 14th December, 1949.—In pursuance of sub-clause (ii) of clause (b) of Article 6 of the Constitution of India, the Government of the Dominion of India is pleased to appoint in respect of the area within the jurisdiction of tne Calcutta Corporation the following Additional Registering Officers by whom persons residing within that area may be registered as citizens of India under the provisions of the said sub-clause :

1. Sri Dhirendra Nath Sarkar,
2. Sri Pabitra Kumar Ghosh,
3. Sri Durga Sankar Bose,
4. Sri Anil Kumar Dutta,
5. Sri Kshitish Chandra Dhar,
6. Sri Nirendra Nath Chakravarti,
7. Sri Barindra Nath Sen,
8. Sri Hem Kumar Ganguly,
9. Sri S. Burdhan,
10. Sri Akhil Kumar Mookerjee,
11. Sri .Satyaranjan Dutta,
12. Sri Gouripada Chakravarti,
13. Sri Banku Behari Sinha,
14. Sri Nalini Kanta Choudhuri,
15. Sri Gonesh Chandra De,
16. Sri Dwijendra Mohan Moitra.

(3)—Article 6.

MINISTRY OF HOME AFFAIRS

28th December, 1949

No. 140/49-F. II.—In pursuance of sub-clause (*ii*) of clause (*b*) of Article 6 of the Constitution of India, the Government of the Dominion of India is pleased to direct that the following amendment shall be made in the schedule to the Government of India, Ministry of Home Affairs. Notification No. 140/49-F. II dated the 1st December 1949 namely :—

In the said schedule, under the heading "States" after entry IA the following entry shall be inserted, namely :—

"IB.	Each Division of Tripura State.	The Divisional Officer"

(4)—Article 6.

31st December, 1949

No. 140/49-F.II.—In pursuance of sub-clause (*ii*) of clause (*b*) of Article 6 of the Constitution of India, the Government of the Dominion of India is pleased to appoint, in respect of each of the Districts of West Bengal specified in column 1 of the Schedule hereto annexed, the persons specified in column 2 thereof, as Additional Registering Officers by whom persons residing within the territorial divisions specified in column 3 thereof be registered as Citizens of India under the provisions of the said sub-clause.

District	Name and/or designation of officer	Territorial division
I. 24-Parganas.	1. Sree S. P. Ganguly. Sub-Collector.	Sadar Sub-dibision, Alipore.
	2. Sree P. C. Bhadra, Sub-Dy. Collector.	Do.
	3. Sree A. C. Biswas, Sub-Dy. Collector.	Barrackpore Sub-division.
	4. Sree A. C. Chanda, Sub-Dy. Collector.	Do.
	5. Sree N. N. Mazumdar, Sub-Dy. Colleetor.	Do.
	6. Sree D. B. Biswas, Dy. Magte. & Dy. Collr.	Baraset Sub-Divn.
	7. Sree R. Sen, Sub-Dy. Collector.	Do.
	8. Sree S. K. Seal, Rehabilitation Officer.	Do.
	9. Sree A. K. Malaker, Sub-Dy. Collr.	Basirhat Sub-Divn.
	10. Sree J. N. Hore, Sub-Divisional Munsif.	Do.
	11. Sree S. K. Saha, Sub-Dy. Collr.	Bongaon Sub-Divn.
	12. Sree S. C. Mukerjee, Sub-Dy. Collr.	Diamond Harbour Sub-Division.
II. Nadia	1. Sree M. M. Banerjee, Dy. Collr.	Whole district.
	2. Sree B. B. Mandal, I.A.S., Asstt. Collr.	Kishnagar Municipality.
	3. Sree B. N. Chatterjee, Dy. Collr.	P. S. Nabadwip.
	4. Sree S. Basu, Sub-Dy. Collr.	P. S. Hanskhali and Santipur.
	5. Sree M. N. Guha, Sub-Dy. Magistrate.	P. S. Ranaghat, Chakdah and Harnighata.
	6. Sree A. C. Sen, Sub-Dy. Magistrate.	P. S. Nakashipara, Kaliganj, Tehatta, Karimpur and Krishnaganj.

District	Name and/or designation of officer	Territorial division
III. Howrah.	1. Sree Purna Chandra Sen, Senior Dy. Magistrate.	Sadar Sub-Divn.
	2. Sree S. S. Dutta, Probationary Dy. Magte.	Do.
	3. Sree A. R. Bose, Probationary Sub-Dy. Magistrate.	Do.
	4. Sree D. P. Guha, Probationary Sub-Dy. Magistrate.	Do.
	5. Sree J. N. Chowdhury, Circle Officer.	Do.
	6. Sree R. R. Chowdhury, Probationary Sub-Magte.	Uluberia Sub-Divn.
	7. Sree M. L. Ghose, Circle Officer, Uluberia.	Do.
	8. Sree J. Chakraborty, Circle Officer, Amta.	Do.
IV. Murshidabad.	1. Sree A. Niyogi, I. A. S., A. D. M.	For the whole of the district.
	2. Sree S. P. Banerjee, Senior Dy. Magistrate.	Do.
	3. Sree N. C. Ukil, Circle Officer, Sadar (South).	South Circle of the Sadar Sub-Divn.
	4. Sree M. R. Mazumdar, Circle Officer, Sadar (North).	Northern Circle of the Sadar Sub-Divn. and Raninagar P. S. of the Lalbagh Sub-Divn.
	5. Sree M. M. Sarkar, Circle Officer, Lalhagh.	All thanas of the Lalbagh Sub-Divn. except Raninagar.
	6. Sree B. K. Guha Rai, Circle Officer, Jangipur (South).	South Cirle of the Jangipur Sub-Division.
	7. Sree P. Sarkar, Circle Officer, Jangipur (North).	Northern Circle of Jangipur Sub-Divn.
	8. Sree H. P. Das, Circle Officer, Kandi (West).	West Circle of Kandi Sub-Division.
	9. Sree C. S. Bhattacharyya, Circle Officer, Kandi (East).	East Circle of Kandi Sub-Division.
V. Jalpaiguri.	1. Sri M. N. Sengupta, Sub-Deputy Collector.	Kotwali & Rajganj Thanas.
	2. Sree N. C. Pututundi, Sub-Deputy Collector.	Mainaguri & Dhupguri thanas.
	3. Sree A. R. Basak, Sub-Deputy Collector.	Mal, Matelli and Nagrakata thanas.

District	Name and/or designation of officer	Territorial division
	4. Sree J. N. Chakraborty, Sub-Deputy Magistrate.	Falakata and Madarihat thanas.
	5. Sree G. N. Basak, Sub-Deputy Magistrate.	Kalchuni & Kumargram thanas.
VI. Darjeeling.	1. Sree S. B. Das Gupta, Sub-Deputy Magistrate.	Sadar Sub-Division.
	2. Sree R. N. Banerjee, 2nd Officer, Siliguri Sub-Division.	Siliguri Sub-Division.
	3. Sree S. K. Chowdhury, 2nd Officer, Kurseong Sub-Division.	Kurseong Sub-Division.
	4. Sree S. G. Maidunald, 2nd Officer, Kalimpong Sub-Division.	Kalimpong Sub-Division.
VII. Malda.	1. Sree S. P. Mukherjee, Relief and Rehabilitation Officer.	For the whole of district.
VIII. Midnapore.	1. Sree P. M. Mukherjee, Sub-Deputy Collector.	Jhargram Sub-Division.
	2. Sree R. C. Mitra, Circle Officer, Koulti.	Contai & Khedgru P. S.
	3. Sree A. K. Roy, Circle Officer, Egra.	Egra & Ramnagore P. S.
	4. Sree R. K. Buchar. Circle Officer, Bhagawanpore.	Bhagawanpur and Potashpur P. S.
	5. Sree A. K. Dutt, Sub-Deputy Magistrate.	For Tamluk Sub-Division.
IX. Bankura.	1. Circle Officer, Bankura Sadar.	P. S, of Bankura, Onda and Chhatna.
	2. Circle Officer, Gangajalghati.	P. S. Gangajalghati, Mejhia, Barjora and Salotra.
	3. Circle Officer, Raipur.	P. S. Raipur, Simlapar, and Taldangra.
	4. Circle Officer, Khatra.	P. S. Iudpur, Khatra and Ranibondh.
	5. Circle Officer, Vishnupur.	P. S. Vishnupur, Joypur and Kotulpur.

District	Name and/or designation of officer	Territorial division
	6. Circle Officer, Sonamukhi.	P. S. Sonamukhi, Patrasayer and Indas.
X. Hooghly.	1. Sree H. N. Bhattacharjee, Sub-Deputy Collector.	Sadar Sub-Division.
	2. Sree S.K. Das Gupta, Sub-Collector.	Serampur Sub-Division.
	3. Sree F. M. Sanyal, Sub-Collector.	Do.
	4. Janab S. M. Ali Mirza, Sub-Deputy Collector.	Do.
	5. Sree H. C. Saha, Sub-Collector.	Arambagh Sub-Division.
	6. Sree C. C. Roy, Senior Deputy Collector.	Sadar Sub-Division.
	7. Sree B. N. Mazumdar, Deputy Collector.	Do.
	8. Sree P. N. Naskar, Sub-Collector.	Do.
	9. Sree S. N. Mukherji, Sub-Collector.	Do.

(5)—Article 392.

MINISTRY OF LAW

7th January, 1950.

No. C. O. 1.—The following Order made by the Governor-General is published for general information :—

THE CONSTITUTION (REMOVAL OF DIFFICULTIES) ORDER, NO. I.

In exercise of the powers conferred by clauses (1) and (3) of article 392 of the Constitution of India, the Governor-General is pleased to make the following Order, namely :—

1. (1) This Order may be called the Constitution (Removal of Difficulties) Order, No. I.

(2) It shall come into force at once.

2. During the period of six months from the commencement of this Order, the Constitution of India shall have effect subject to the following adaptations :—

(1) To article 379, the following clause shall be added, namely :—

"(6) Notwithstanding anything in this Constitution the Governor-General of the Dominion of India may, at any time before the commencement of this Constitution, summon the provisional Parliament to meet after such commencement for the first session at such time and place as he thinks fit."

(2) For clause (1) of article 380, the following clause shall be substituted, namely :—

"(1) Until a President has been elected in accordance with the provisions contained in Chapter I of Part V and has entered upon his office, such person as the Constituent Assembly of the Dominion of India shall have elected in that behalf in accordance with such rules as may be made by the President of that Assembly shall be the President of India ; and the person so elected shall, before entering upon his office, make and subscribe the oath or affirmation prescribed in article 60 in the presence of the Chief Justice of India or, in his absence, the seniormost Judge of the Supreme Court available, notwithstanding that such Chief Justice or Judge has not made and subscribed the oath or affirmation prescribed under clause (6) of article 124."

(3) Article 383 shall be renumbered as clause (1) of that article and the following clause shall be added thereto, namely :—

"(2) Any such person as afosesaid shall, before entering upon the office of the Governor of the State, make and subscribe the oath or affirmation prescribed in article 159 in the presence of the Chief Justice of the High Court for that State or, in his absence, the seniormost Judge of that Court available, notwithstanding that such Chief Justice or Judge has not made and subscribed the oath or affirmation prescribed under article 219."

(6)—Article 379.

PARLIAMENT OF INDIA

7th January, 1950

Parliament of India Notification F. No. 85-III/49-A.—The Governor-General, in exercise of the power conferred by Clause (6) of Article 379 of the Constitution, is pleased to direct that a session of Parliament shall commence at New Delhi on Saturday, the 28th January, 1950, at 10-45 A. M.

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