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THE
GOVERNMENT OF INDIA ACT

1935

BY
TWO VAKILS

1946

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HISTORICAL INTRODUCTION

In order to clearly understand the constitutional developments in India it is usual to divide the period from 1600—1945 into five well-defined stages :—

Stages of constitutional developments.

- (1) 1600—1765. The first stage begins with the grant of Charter to the East India Company during the reign of Queen Elizabeth in 1600 for a period of 15 years, which was renewed from time to time. It terminate with the grant of *Diwani*—the fiscal administration of Bengal, Behar and Orissa to the Company in 1765 by Shah Alam.
- (2) 1765—1858.—The second stage begins in 1765 and during this period the Government in India and the Home Government in England were both re-organised. It terminates in 1858 with the assumption by the British Crown of the direct responsibility of the Government of India.
- (3) 1858—1919.—The third stage begins with the passing of the Government of India Act, 1858 and terminates with the passing of the Government of India Act, 1919. During this period several reforms took place and ultimately by the passing of the said Act of 1919 control over certain departments of the Provincial Governments was transferred from the Secretary of State to the Provincial Ministers responsible to the Provincial Legislatures.
- (4) 1919—1935.—The fourth stage begins

with the passing of the Government of India Act, 1919 and terminates with the passing of the Government of India Act, 1935, the main features of which are the establishment of an All India Federation, autonomy in the Provinces and Dyarchy at Centre.

- (5) 1935 *onwards*.—The fifth stage begins with the passing of the Government of India Act, 1935 and is the period through which we are passing.

FIRST PERIOD

1600—1765

In 1600 a few merchants of London approached Queen Elizabeth of England for the grant of a Charter to trade in the East Indies. Their request was granted and the British East India Company was formed. The Company was to elect every year one Governor, a Deputy Governor, and a Committee consisting of 24 persons. The Charter conferred power on the Company to make reasonable laws, constitutions, orders and ordinances not repugnant to the laws, statutes and customs of the English realm.

Formation
of East
India Com-
pany in 1600

The Company established trading depots, or factories in various parts of India.

Charter of
1661.

The Charter of 1661 conferred on the Company power and command over their fortresses, and authority to appoint Governors and other officers for their Government.

The Charters granted by the sovereign from time to time, conferred on the Company the exclusive privilege of trading in the East Indies. Rival companies were started and the Directors of the East India Company, claiming a monopoly by reason of the provisions in the Charter, seized a ship 'Red-bridge', belonging to a rival company. The legality was questioned, and the matter was brought before the Parliament Thereupon the House of Commons in 1694 passed a resolution that all subjects have an equal right to trade with the East Indies, unless prevented by an Act of Parliament. This resolution was the first active interference by Parliament with the com-

Charter of
1694.

mercial privileges of the Company. Parliament exercised this right in 1698 and passed an Act under which a new company was formed. But the old and new companies were amalgamated in 1702.

Grant of
Diwani by
Shah Alam
in 1765.

The battle of Plassey (1757) and Baxar (1764) made the Company sovereign *de facto* and the grant of Diwani (i.e., the right to collect revenue and of administering civil justice) in 1765 by Shah Alam made them sovereign *de jure* of the three provinces of Bengal, Behar and Orissa.

SECOND PERIOD

1765—1858

Acts of 1767.

The grant of Diwani, by which traders had become rulers of territories, made the proprietors in England more greedy. They raised the dividend to 10 and 12 per cent. In 1767 Parliament passed five Acts with reference to the affairs of the Company. These Acts related only to certain details such as qualification of a member to vote at a meeting of the Company, declaration of dividend and such like matters. But it was by the Regulating Act of 1773 that the British Parliament directly interfered in Indian affairs and assumed actual responsibility for the Government of India.

Regulating
Act, 1778.

Till the passing of the said Act the three presidencies of Bengal, Bombay and Madras were independent of each other. The Governor-in-Council of each of these Presidencies had powers, by Commission from the Company, to administer law for the Government of the territories within their Province. The Government of each was absolute within its own limits, and responsible only to the Company or the Court of Directors in England, and the General Court of Proprietors. The Anglo-French Wars in Arcot, the Anglo-Mysore War and the war

against Siraj-ud-Daula of Bengal demonstrated the necessity of all the Presidency Governments working in co-operation with one another. As after the battle of Plassey the British East India Company had become masters of the Mughal Provinces of Bengal and Behar, the Regulating Act of 1773 provided that the British Government of Bengal should in all foreign and military affairs exercise powers of supervision over the Governments of Madras and Bombay. The old Presidency Councils which were a bit unwieldy in size were abolished and small executive councils i.e., of four members were appointed for each Presidency. The provision that everything in these executive councils should be decided by a majority of votes, put Warren Hastings into many difficulties. So in 1784, Pitt's India Act was passed. The number of executive councillors was reduced from 4 to 3, and the Governor received the power of veto over the decisions of the Executive Council. The outbreak of the second war against Mysore and the first war against the Marhattas showed that neither the Company's Government in India, nor the Court of Directors in England could be trusted with the conduct of military and foreign affairs without the supervision of the British Government in England. So the Pitt's India Act also established a Board of Control, where members were to be appointed by the British Government in England, and whose President was to be appointed by the British Prime Minister. The Charter of the British East India Company was renewed in 1793. Under the Charter very minor changes were made in the administrative machinery of the country. The Commander-in-Chief was however, now allowed to attend the meetings of the Executive Council as an ex-officio member. In 1813 the Company's Charter was again renewed, conferring powers on Local Governments to impose taxes on persons subject to the jurisdiction of the Supreme Court and trade privileges of the Company were also taken

Pitt's India
Act, 1784.

Charter
of 1813.

**Charter of
1883.**

away by this Charter and trade of India was opened to all Englishmen. The Company's Charter was again renewed in 1833 by which several important changes were introduced. Authority was given for the creation of another Presidency Province for Agra.

The Court of Directors became entirely subordinate to the Board of Control. The Governor of Bengal now became the Governor-General of India. The legislative powers vested in the Local Governments were abolished and sole legislative powers vested in the Governor-General of India. In order to cope with the increased work of the Governor-General of India, another member of the Executive Council for law was appointed. The laws passed by the Governor-General in Council under the said Act of 1833 were to have the force of Acts of Parliament.

**Charter of
1853.**

The last renewal of the Company's Charter took place in 1853. It had become evident that the legislative work at the headquarters of the Government of India had become very heavy and the Central Government being at a distance could not understand the local needs of the Provinces. So, to cope with this, the Executive Council of the Government of India was expanded, so as to consist of 12 members :—

The Governor-General, the Commander-in-Chief, 4 Ordinary Members of the Governor General's Council, the Chief Justice and a Puisne Judge of Bengal, and 4 members from the four provinces.

The sitting of the Legislative Council were made public and their proceedings were officially published.

**Mutiny of
1857—1858.**

In 1857 mutiny broke out at several places and by the end 1858 the country was pacified.

The result of the mutiny was that the Company's

rule in India was ended and that of the Crown was begun.

End of
Company's
rule.

THIRD PERIOD

1858—1919

In August 1858, the British Parliament passed the Government of India Act, which vested the Government of this country in the hands of the British Crown. Dual Government by the Board of Control and by the Court of Directors was abolished, and the Act declared that India was to be governed directly by and in the name of the Crown acting through a Secretary of State, to whom were transferred the powers formerly exercised either by the Court of Directors or by the Board of Control. The Secretary of State was to be aided by a council of 15 members, of whom 8 were to be appointed by the Crown, and 7 elected by the Directors of the East India Company.

Government
of India Act
1858.

The Indian Councils Act of 1861 modified the constitution of the Governor-General's Executive Council; and the Indian Legislatures were also broadened. A fifth ordinary member was added to the council, excluding the Commander-in-Chief. For purposes of legislation the Governor-General's Council was reinforced by additional members not less than 6 and not more than 12, nominated by the Governor-General and holding office for two years. Not less than one-half of these additional members were to be non-officials.

Indian
Councils
Act, 1861.

The powers of legislation which had been taken away from Local Governments, by the Act of 1833 were restored to them by the said Act of 1861, and these councils were also expanded by the addition of not less than 6 and not more than 12, at least half of whom were to be non-officials. The assent of the Governor-General to laws passed by the Local Councils was made essential, subject to the

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veto of the Crown acting through the Secretary of State. Power to make ordinances, to be in force for 6 months, was also conferred on the Governor-General.

The Governor-General was also empowered to establish, by proclamation, Legislative Councils in Bengal, North-Western Province and Punjab. The Act further provided a most effective check on legislative interference with the executive, even by way of advice or suggestion. It definitely delimited the powers of the Legislative Councils. Their functions were strictly limited to legislation and they were expressly forbidden to transact any business except the consideration of, and enactment of legislative measures, or to entertain any motion except a motion for leave to introduce a bill, or having reference to a bill actually introduced. They could not enquire into grievances, call for information or examine the conduct of the executive.

Formation
of Indian
National
Congress,
1885.

In 1885 the Indian National Congress was founded to press for (a) reduction in the military expenditure, (b) indianization of public services and (c) enlargement of the legislative councils, with enhanced powers.

Indian
Councils
Act, 1892.

In 1892 more constitutional reforms were made by the Indian Councils Act, 1892. By this Act the legislatures were enlarged, provision was made for interpellations and discussions of the budget subject to the conditions and restrictions prescribed by the rules made by the Governor-General in Council or the Governor-in-Council and the additional members were to be nominated in accordance with the Governor-General in Council and approved by the Secretary of State. Under the regulation so made, a certain number of these nominations had to be made on the recommendation of specified persons, bodies and associations, the intention being to give a representative character to the persons so nominated.

In 1909 further reforms (by the name of Minto Marley reforms) were introduced by the Indian Councils Act, 1909. By this Act the Councils were greatly enlarged. The numbers of additional members to the Indian Legislative Council was increased from 16 to 60. Out of these 60, as many as 32 were to be non-officials, and 28 officials. Out of 32 non-officials 27 were to be elected. The powers of the Legislative Councils were also increased. The members could now move resolutions and non-official members could introduce private bills into the Councils. The size of the Provincial Councils was also increased. The number of members in the Legislative Councils of Bombay, Madras, Bengal and United Provinces, was increased from 15 to 50. In the case of the Punjab, Burma, Eastern Bengal and Central Provinces the number was fixed at 30. It was during these reforms that communal representation was first introduced into the legislative bodies. The Musalmans, the Landlords and the commercial classes obtained separate representation through separate electorates. But, as in the Central Legislature, the officials still had majority, the non-official Indians could not effectively influence the decisions of the Government.

Minto-Morley Reforms of 1909.

While the war was still going on, and Indian armies were still in the battlefields of Europe, Africa, Mesopotamia, Mr. Montague, the Secretary of State for India, made in August, 1917, the following memorable statement.—“The policy of His Majesty’s Government, with which the Government of India are in complete accord, is that of the increasing associations of Indians in every branch of the administration, and the gradual development of self-governing institutions, with a view to the progressive realization of Responsible Government in India, as an integral part of the British Empire.” To give effect to this policy, Mr. Montague himself came to India. He and Lord Chelmsford made a thorough enquiry, and produced their report in 1918 and a

Montague-Chelmsford Reforms,

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new Government of India Act based on this report was passed by the British Parliament in 1919.

The preamble to the said Act laid down :—

- (1) That it is the declared policy of Parliament to provide for the increasing associations of Indians in every branch of Indian administration, and for the gradual development of self-governing institutions, with a view to the progressive realization of responsible Government in British India as an integral part of the Empire.
 - (2) That progress in giving effect to this policy can only be achieved by successive stages, and it is expedient that substantial steps in this direction should now be taken.
 - (3) That the time and manner of each advance can be determined only by Parliament, upon which responsibility lies for the welfare and advancement of the Indian people.
 - (4) That the action of Parliament in such matters must be guided by the co-operation received from them or whom or when new opportunities of service will be conferred, and by the extent to which it is found that that confidence can be reposed in their sense of responsibility.
 - (5) That concurrently with the gradual development of self-governing institutions in the Provinces of India it is expedient to give to these Provinces in Provincial matters the largest measure of independence of the Government of India which is compatible with the due discharge by latter of its own responsibilities.
-

FOURTH PERIOD

1919—1935

The Government of India Act, 1919, introduced radical changes in the India constitution. The number of Indian Members in the Viceroy's Executive Council was increased from one to three. The Central Legislative was now to consist of two chambers. The upper chamber, called the Council of State, was to consist of 60 members, out of whom 20 were to be officials and 40 non-officials. The Lower House, called the Legislative Assembly, was to consist of 144 members, out of whom 26 were to be officials and 118 non-officials. So in both the chambers there was to be a non-official majority. Another change made was the introduction of direct election. Now the people were to send their representatives to the Council of State and the Legislative Assembly directly. Under the new scheme the Government was to place its entire budget before the Assembly in the form of Demands. All heads of expenditure except military Foreign and Political, Ecclesiastical, the Public Debt Services, and the salaries of servants appointed by the Secretary of State for India, were to be voted upon by the Assembly. In legislative matters all measures had to obtain the concurrence of both the chambers. But to provide for abnormal circumstances the Viceroy possessed the powers of veto and certification. In the sphere of Provincial Governments more radical changes were made. The provincial departments were divided into two categories, the Reserved and the Transferred. The Reserved Departments were to be administered, as before, by the Governor-in-Council, while the

1.
Government
of India Act
1919.
2.

Transferred Departments were to be administered by Ministers, chosen by the Governor from among the elected members of the Council. Subjects such as Finance, Courts of Law, Police, Jails, Land Revenue, Irrigation and Stamp were to be Reserved Departments. On the other hand, subjects like Excise, Registration, Education, Medical Relief, Agriculture, Industries, and Local Self-Governments were to be Transferred Departments. If the policy of the ministers was not approved by the Legislature they had to resign. Along with the introduction of these constitutional changes, in the legislative bodies and their powers, the resources of the Central and Provincial Governments were completely separated, so that the Provincial Governments may be able to enjoy autonomous power. It was also provided in the said Act that after a ten years' trial a statutory commission would be appointed to examine the working of this constitution and to suggest further reforms.

Non-co-operation movement and boycott of councils, 1920.

The Indian nationalists were, however, not satisfied with the said reforms of 1919, for they wanted some elements of responsibility in the Central Government also and complete responsibility in the Provincial Governments.

People were also resentful on account of Jallianwala massacres and martial law atrocities. The Muslims too were specially angry on account of the defeat of Turkey and the new future of Khilafat. So when the elections under the new constitution took place in 1920, the nationalists non-co-operated and boycotted the elections. But after some time when the treaty with Turkey was revived, the question of Khilafat was to some extent solved, Martial Law sufferers were to some extent given some assistance, the law against the Press and Public meetings that were passed in the time of Lord Minto, Lord Harding were repealed and the Rowlat Act was allowed to lapse, the non-co-operation movement weakened. The people gave up the boycott of councils and

formed the Swaraj Party and took part in elections in 1923, their policy being to offer obstruction to the Governments from within the Councils. Dyarchy was brought to a standstill in Central Provinces and Bengal where ministry after ministry succumbed to the votes of the Legislatures. Non-co-operation Movement and later the Civil Disobedience Movement were started. The result was that the Statutory Commission promised in the said Act of 1919 was appointed in 1927, that is, two years earlier than the appointed period, under the Chairmanship of Sir John Simon with six other Members of the British Parliament. But Indian Public opinion reacted severely against the formation of an All-white Commission. The Commission, however, visited India and submitted its report in 1930. The Commission condemned the Dyarchy of the Provincial Governments and recommended :—

Formation of
Swaraj party
1923

Simon
Commission
1927

Report, 1930

- (1) an ultimate Federal Constitution for India, (2) abolition of Dyarchy in the Provinces, (3) extension of franchise and increase in the number of members in the Provincial Legislatures, (4) retention of separate communal electorates, (5) retention of Governor's special powers in the executive sphere and his power of certifications in respect of Bills and rejected or reduced demands in the annual budget, (6) continuance of the independence of executive without making it responsible to the Legislatures and (7) separation of Burma from India. After the said report was submitted the First Round Table Conference was convened in London in 1930, at the close of which the Prime Minister declared :—

First Round
Table
Conference
1930

“ The view of His Majesty's Government is that responsibility for the Government of India should be placed upon Legis-

Declaration
of 1930.

latures, Central and Provincial, with such provisions as may be necessary to guarantee during a period of transition, the observance of certain obligations and to meet other special circumstances and also with such guarantees as are required by minorities to protect their political liberties and rights.”

The said declaration was formally approved in December 1931 by the Parliament. The Civil Disobedience Movement started in 1933, was called off after an agreement between the Viceroy Lord Irwin and Mahatma Gandhi on behalf of the Congress. After this agreement Mahatma Gandhi proceeded to London to attend the Second Round Table Conference, as the sole plenipotentiary of the Congress. At the close of this Conference, no settlement having been arrived at among the nominated delegates on the communal question, the Premier announced his decision, known as the Communal Award, to maintain separate electorates for Mohammedan, Europeans, Christians, and various other sectional interests and keeping the general seats to be contested by the Hindus. Scheduled cases were also given a separate electorate. But as the result of a fast Mahatma Gandhi brought about a change in the award in respect of the schedule castes and the separate electorate provided for them was abolished. A large representation for them was, however, agreed to by Mahatma Gandhi and the seats allotted to them in the Bengal Legislature was increased from 10 to 30. This agreement was known as Poona Pact.

**Irwin-Gandhi Pact
1931.**

**Second Round Table
Conference,
1931**

**Communal
Award.**

**Third Round
Table
Conference
1932**

The Third Round Table Conference met again in London in November 1932, after which the proposal for constitutional reforms were put forward in a White Paper. In 1933, a Joint Select Committee of both the Houses of the British

Parliament was appointed to examine the White Paper and on the lines of the suggestion of the said committee the present Government of India Act, 1935, was passed in the teeth of opposition in India by the Congress and in England by the socialists.

Passing of
Government
of India Act
1935

FIFTH PERIOD

(From 1935 onwards)

The main features of the Government of India Act, 1935, are :—

Main features
of the Act
of 1935.

- (a) The establishment of an All-India Federation to which the Indian States have been given the right to accede ;
- (b) Autonomy in the Provinces ;
- (c) Dyarchy at the Centre ;
- (d) The establishment of a Federal Court for India for the purposes of interpreting the constitution ;
- (e) Separation of Burma and Aden from India ;
- (f) Creation of two new Provinces of Sindh and Orissa.

The people of India were not satisfied with the reforms introduced by the Government of India Act, 1935. The following were the chief objections :—

Criticism of
the Reforms
of 1935.

- (a) The preamble to the old Act of 1919 remained unrepealed and the goal of Dominion Status as the ultimate aim of constitutional progress was not recognized, though in 1929 the Viceroy, Lord Irwin, had definitely stated on behalf of his Majesty's Government that the natural issue of the India's Constitutional progress was the attainment of Dominion

Goal of
Dominion
Status not
recognized
and Preamble
of 1919
stood un-
repealed.

Status. The Secretary of State, Sir Samuel Hoare, too observed, during the course of discussions on the India Bill, as follows :—

“ The position of the Government, therefore, is this : They stand firmly by the pledge contained in the 1919 Preamble, which is not part of their plan to repeal, and by the interpretation put by the Viceroy in 1929, on the Preamble, that the natural issue of the India's progress, as there contemplated, is the attainment of Dominion Status. The declaration 1929 was made to remove doubts which had been felt as to the meaning of the Preamble of 1919. There is, therefore, no need to enshrine in an Act words and phrases which would add nothing new to the declaration of the Preamble. In saying that we stand by our pledge, I include of course, not only pledges given to British India and Burma as part of the British India but also our agreement with the Indian States.”

The Secretary of State stated before the Joint Select Committee which considered the white paper that Dominion Status for India was a distant dream. Dominion Status for India implies the following two conditions :—

- (1) The British Parliament should cease to legislate for India, making the Provinces and the Federal centre fully self-governing.
 - (2) The crown should cease to exercise powers of paramountcy over the Indian States.
- (2) The second objection raised was that no uniform principle was applied in the distribu-

tion of seats among the provinces and communities. Moreover the Communal Award, in which the scheme of representation and distribution of seats in the Provincial Legislatures was based, recognized the system of separate electorates which was anti-national and contrary to the spirit of true citizenship. It partitioned India into Muslim and non-Muslim Provinces.

Distribution of seats quite irregular and system of separate electorates highly anti-national.

(3) The third objection was that the Act established dyarchical system of Government at the centre according to which the following departments were reserved for the exclusive control of the Governor-General :—

Dyarchy established at the centre.

- (i) Defence ;
- (ii) Ecclesiastical affairs ;
- (iii) External affairs ;
- (iv) Functions in or relation to tribal areas.

Further railways were to be administered by a Statutory Board uncontrolled by the Federal Legislature.

Even in the case of transferred subjects the Governor-General was vested with overriding powers for the discharge of the so-called "special responsibilities." The Secretary of State was also to continue to make recruitment and regulate the conditions of employment of Indian Civil Service, Indian Medical and Indian Police.

The election for the Federal Assembly was changed from direct to indirect with the result that opportunities of immediate contact between the citizens and the Federal Legislature were removed and the prestige of the Assembly lacked popular control.

As the states were to enter the Federation or to stay out according to their free will and no radical change was to be made therein without the

consent of the Federated states, the task of constitutional progress was made more difficult.

Governors vested with vast overriding powers in discharge of their special responsibilities in Provinces.

(4) Though diarchy was abolished in the Provinces and replaced by a unified administration under the control of ministers, still in several matters Governors were given discretion to act. The Governors were vested with overriding powers for the discharge of this so-called "special responsibilities." Second chambers were set up in several provinces. Some reservations were also made in the Department of Law and Order. Limitation were also imposed in respect of recruitment regulation and control of services.

Military expenditure remained very high and no contribution made by Home Government thereto.

(5) So far as the defence of the country was concerned there were several serious objections. The proportion of military expenditure was not reduced and remained very high as before. No contribution was made by the Home Government for the cost of the army maintained in India for the Imperial needs. The officers in the army were not indianised and British troops in India were not eliminated. The capitation charges, too, levied by the Home Government towards cost of recruiting, training, equipping and transporting British troops for services in India, were not abolished.

The constitution was too rigid.

(6) Again, the constitution did not contain within itself provisions for its over developments. The Legislature in India was not vested with any constituent powers for the purpose. The constitution was thus too rigid. This was inspite of the fact that the Statutory Commission's recommendation that the constitution should contain within itself potentialities of full development.

Congress success in the Provincial elections

From 1935 onwards.—In March 1937 elections to the Provincial Legislatures were held. The Congress secured majorities in eight provinces, viz., Bombay, Madras, United Provinces, Central Provinces, Behar, Orissa, North-West Frontier

Province and Assam and the question of office acceptance came up before it. The All India Congress Committee, accordingly passed the following resolution :—

“ The All India Congress Committee authorizes and permits acceptance of ministerial offices in the provinces where the Congress commands majority in the Legislature, provided that ministerships shall not be accepted unless the leader of the congress party in the Legislature, is satisfied and is able to state publicly that the Governor will not use his special powers of interference or set aside the advice of the ministers in regard to their constitutional activities.”

Congress refused to accept offices.

The Governors declined to give the said assurance and the Congress refused to form their cabinets in any of the provinces. On 8th April, 1937, the Secretary of State for India (Lord Zetland) stated in the House of Lords as follows :—

“ The Governors could not give, within the frame work of the constitution, the assurance that was asked for by the Indian National Congress and Mr. Gandhi was in error in asserting that he could. But even if the constitution admitted a pledge of this kind being given, the giving of it would have involved a grave breach of faith with the minorities and others in India, who were promised the measure of protection against arbitrary rule of majority afforded by the special responsibilities of the Governors and the powers conferred on them of making the safeguards effective.”

The Congress, as represented by Mahatma Gandhi, however, modified its demand and asked for assurance that the Governors would not ordina-

rily use their admittedly large powers of interference. At this the Viceroy made the following statement on 26th June, 1937 :—

Viceroy's
assurance
dated 26th
June, 1937.

“ There was no justification for the fear that the Governors would seek occasions for interfering with the policy of their ministers, or for the gratuitous and uncalled for exercise of the special responsibilities imposed upon them by the Act, to impede or challenge their ministers in the day-to-day administration of the Province.”

Dead lock
removed.

On the above assurance having been made the Congress Working Committee decided to accept offices in the provinces in which it was in majority, and a serious crisis was averted. Till the time, however, of the acceptance of offices by the Congress the Governors formed interim minority ministries in the provinces and carried on the Government with their aid. This arrangement, however, was not provided for by the constitution, for the instrument of instructions provided that “in making appointment to the council of his ministers the Governor shall use his best endeavours to select his ministers in the following manner, that is to say, in consultation with the person who, in his judgment, is likely to command a stable majority in the Legislature, to appoint those persons including, so far as practicable, members of important minority communities who will best be in a position to command the confidence of the Legislature.”

Federal Constitution.—

Federal
constitution
also objected
to by all
the commu-
nities.

So far as Federal constitution was concerned the same was also opposed by all the principal parties. The Hindus took a serious objection to communal electorates for the Federal Legislature. They also claimed representation in proportion to their population, i.e., 66 per cent. as against 42 per cent. The Mohammadans, on the other hand, were not satisfied even with one-third seats on the

basis of communal electorates and claimed equal representation both in British India and Indian States. The Princes also opposed the Federal plan. They did not wish to part with any power. They were also afraid that there would be a rapid growth of democratic movement in their territories if they joined in the Federation. In spite of all this the parliament made no attempt to amend the Federal constitution. In the meanwhile along with the working of the provincial autonomy separatist tendencies grew among the Muslims who, under the leadership of Mr. Jinnah, put forward a Pakistan scheme for the grouping of Provinces according to communal basis. This was vehemently opposed by the Hindus and the Sikhs. The Congress too opposed it but not in clear and unequivocal terms.

War and its effect.—With the outbreak of war in Europe between England and Germany on 3rd September, 1939, the Viceroy appealed to all parties to co-operate with England in the war efforts. The Congress, holding ministries in eight provinces, demanded an immediate clarification of Britain's war aims in respect of India. On 18th October 1939 the Viceroy made a declaration of policy on behalf of His Majesty's Government to the following effect :—

Second
Great War
began in
Sept. 1939.

- (a) that His Majesty's Government recognized Dominion Status as the goal for India;
- (b) that the Government would reconsider the scheme of the constitution at the end of the war in consultation with the leaders of the parties;
- (c) that the Government contemplated the formation of a consultative group of representatives of several parties and interests in the country.

The Congress Working Committee regarded the

Congress refused to give support to the British Government and their ministries resigned.

Viceroy's statement as "in every way unfortunate" and declared "in the circumstances the committee cannot possibly give any support to Great Britain, for it would amount to an endorsement of the Imperialistic policy which Congress has always sought to end. As a first step in the direction the Committee calls upon the Congress Ministries to tender their resignations." At this the eight Congress Ministries tendered their resignations with the result of the formation of a Coalition Ministry in Assam and break down of the constitution in the other seven provinces.

Viceroy's further clarification of war aims

In Aug. 1940 the Viceroy further clarified the position and declared that at "the end of the War, they (His Majesty's Government) would be very willing to enter into consultation with representatives of the several communities, parties and interests in India and with the Indian Princes with a view to securing their aid and co-operation in the framing of such constitutional modifications as may seem desirable." The Viceroy also offered immediate expansion of its Executive Council and establishment of a War Advisory Committee to secure closer association of Indian public opinion with the war effort. The Viceroy further declared that the Parliament will not transfer power to any system of Government whose authority was directly denied by large and powerful elements in India's national life. But the Viceroy's statement did not put an end to the political deadlock. It rather widened the gulf between the Government and the nationalist parties in India except that the Muslim League welcomed the terms of the declaration particularly the provision that no constitution will be accepted which was not acceptable to the minorities. Several attempts were made to resolve the political deadlock but of no avail. In 1942 when the Japanese forces advanced in Burma the Indian question suddenly assumed great importance in the political

Congress and other nationalist parties in India not satisfied with the Viceroy's statement.

Japanese advancement in Burma in 1942 and

circles of Great Britain. The matter was taken up by the British War Cabinet, which decided to send Sir Stafford Cripps to India with a draft declaration to India for discussion with the Indian leaders. The declaration was as follows:—

British declaration known as "Cripps proposal."

"The object is the creation of a new Indian Union which shall constitute a Dominion associated with the United Kingdom and other Dominions by a common allegiance to the Crown but equal to them in every respect, in no way subordinate in any respect of its domestic and external affairs.

His Majesty's Government, therefore, make the following declaration:—

- (a) Immediately upon the cessation of hostilities steps shall be taken to set up in India, in the manner described hereinafter, an elected body charged with the task of framing a new constitution for India.
- (b) Provision shall be made, as set out below, for the participation of Indian States in the constitution-making body.
- (c) His Majesty's Government undertake to accept and implement forthwith the constitution so framed subject only to:—
 - (i) The right of any Province of British India that is not prepared to accept the new constitution to retain its present constitutional provision being made for its subsequent accession if it so decides.

With such non-acceding provinces, should they so desire, His Majesty's Government will be prepared to agree upon a new constitution giving them the

same full status as the Indian Union and arrived at by a procedure analogous to that here laid down.

- (ii) The signing of a treaty which shall be negotiated between His Majesty's Government and the constitution-making body. This treaty will cover all necessary matters arising out of the complete transfer of responsibility from British to Indian hands; it will make provision, in accordance with the undertakings given by His Majesty's Government, for the protection of racial and religious minorities, but will not impose any restriction on the power of the Indian Union to decide in future its relationship to other member states of the British Commonwealth.

Whether or not an Indian State elects to adhere to the constitution it will be necessary to negotiate a revision of its treaty arrangements so far as this may be required in the new constitution.

- (d) The constitution-making body shall be composed as follows, unless the leaders of Indian opinion in the principal communities agrees upon some other form before the end of hostilities:—

Immediately upon the result being known of provincial elections which will be necessary at the end of hostilities, the entire membership of the Lower Houses of Provincial Legislatures shall as a single electoral college proceed to the election of the constitution-making body by the system of proportionate representation. This new body shall be in number about 1/10th of the number of electoral college.

“Indian States shall be invited to appoint representatives in the same proportion to their total population as in the case of representatives of British India as a whole and with the same powers as British Indian members.

- (e) During the critical period which now faces India and until the new constitution can be formed, His Majesty's Government must inevitably bear the responsibility for, and retain the control and direction of the Defence of India as part of their world war effort, but the task of organising to the full the military, moral and material resources of India must be the responsibility of the people of India. His Majesty's Government desire and invite the immediate and effective participation of the leaders of the principal sections of the Indian people in the counsels of their country, of the Commonwealth, and of the United Nations. Thus they will be enabled to give their active and constructive help in the discharge of a task which is vital and essential for the future freedom of India.”

The above proposal was submitted to the leaders of the Indian opinion by the War Cabinet. Sir Stafford made it clear that the said proposal must be accepted or rejected as a whole. The Congress rejected the same in spite of the fact that it contained a recognition of Indian's claim to self-government and independence after the war. The following were the main objections raised against the said proposal :—

Congress rejected the Cripps proposal.

- (a) It gave option to the provinces to accede or not accede to the Union. It also empowered contiguous provinces to form separate unions.

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- (b) It did not contemplate any change in the constitution of any Indian State. It empowered the Ruler to appoint representatives to the Constituent Assembly in case the state possessed no elected legislature.
- (c) It ruled out any major change in the constitution during the war. Though His Majesty's Government desired and invited the immediate participation of Indian leaders in the counsels, leaving only the portfolio of defence in the hands of the British Commander-in-Chief, popular government was not to be set up at the centre, for the Viceroy's Council was not to function as a Cabinet of Ministers responsible to the legislature but was to work subject to the Viceroy's veto and under the control of the India Office.

Other parties also rejected the proposal.

The said proposal was also rejected by the Hindu Mahasabha because it endangered the unity of India and favoured the Muslim plan for *Pakistan*. The Muslim League also did the same for it did not specifically accept the claim of Muslim community to self-determination.

Simla Conference.

In August, 1945 Lord Wavel, the present Viceroy of India, called at Simla a conference of the leaders of the major political parties of India to form a Provisional Government at the Centre till the end of the war, but the negotiations failed for some differences among the leaders on the selection of the ministry. The war has now ended and the elections for the Provincial and Central Legislatures are being held. After the result of the said elections a further move shall be made from the Viceroy in consultation with the British Government.

CHAPTER I

Indian Federation

On the presentation of an address to His Majesty by both Houses of Parliament and on the fulfilment of the following conditions, His Majesty may, under the Act, declare by a proclamation that, as from a day mentioned in it, the Provinces and such of the States as have acceded or may hereafter accede to the Federation shall be united in a Federation under the Crown. The conditions referred to are—

Proclamation of Federation of India.

- (a) that such number of States, aggregate population whereof amounts to at least one-half of the total population of the States, have acceded to the Federation; and
- (b) that such number of States, Rulers whereof are entitled to 52 seats out of 104 allotted to the States in the Council of State, have acceded to the Federation (*Vide S. 5*).

A state shall be deemed to have acceded to the Federation if the Ruler has executed an Instrument of Accession and His Majesty has signified his acceptance of the same. The said instrument shall provide that the Ruler—

Accession of Indian States.

- (a) accedes to the Federation as established under the Act with the intent that His Majesty the King, the Governor-General of India, the Federal Legislature, the Federal Court and any other Federal authority established for the purposes of

GOVERNMENT OF INDIA ACT, 1935

the Federation shall, but subject always to the terms thereof, exercise in relation to the State such functions as may be vested in them by or under this Act, and

- (b) assumes the obligation of ensuring that due effect is given within the State to the provisions of the Act so far as they are applicable therein by virtue of the Instrument of Accession.

The Instrument shall also specify the matters regarding which the Federal Legislature shall make laws for the State.

A Ruler may, by a Supplementary Instrument vary the Instrument of Accession by extending the function which by virtue of that Instrument are exercisable by His Majesty or any Federal Authority in relation to his State.

All Courts shall take Judicial Notice of the Instrument of Accession. In case of conflict between the Act and the Instrument, the latter will prevail, for it has been made clear in the Act that the Federal Legislature shall have no powers to make laws for a State otherwise than in accordance with its Instrument of Accession and any limitations contained therein. (*Vide S. 6*).

CHAPTER II

Federal Executive

The executive authority of the Federation shall be exercised on behalf of His Majesty by the Governor-General, either directly or through officers subordinate to him. The Governor-General is appointed by His Majesty and has (i) all such powers and duties as are conferred or imposed on him by or under the Act and (ii) such other powers,

Appointment
of Function
of Governor
General and
Crown Re-
presentative.

not being powers connected with the exercise of the functions of the Crown in its relation with Indian States, as His Majesty may be pleased to assign to him. Besides the Governor-General, a Representative of His Majesty for the exercise of the function of the Crown in its relation with Indian States is appointed by His Majesty and has such powers and duties in the exercise of those functions, not being powers or duties conferred or imposed by or under the Act on the Governor-General, as His Majesty may be pleased to assign to him. It shall be lawful for His Majesty to appoint one person to fill both the said offices. (*Vide* Ss. 3 and 7).

The principle underlying the separation of the functions of the Governor-General and the Crown Representative is that none but the Federal Authorities should perform federal functions and that federal authorities should not interfere in the sphere of paramountcy.

So far States are concerned there are two kinds of provisions, "protected" and "unprotected". The "unprotected" provisions are contained in the Second Schedule. They are nearly all those which relate to the purely British India side and an amendment may be made thereof without affecting the accession of a State; provided that no such amendment (unless agreed to by the State) should extend the powers of the federal authority in relation to the State itself. Those provisions of the Act which are not mentioned in the second schedule are called the "protected" provisions of the Act. They deal with the fundamental parts of the Federal Constitution and with other parts which directly affect the States. They cannot be amended unless all the Rulers, (who have acceded to the Federation) agree to the amendment. If any such amendment is made the States shall have a right to secede or, in other words, the State's Instrument of Accession shall be voidable. In case of amendment of any "protected" provision the States may with-

draw from the Federation.

Dyarchy at
cen'tre.

Under the present Act Dyarchy, though abolished in the Provinces, has been introduced at the Federal Centre. Thus the following subjects have been kept as the reserved subjects, the functions of the Governor-General with regard to which shall be exercised by him in his discretion :—

Reserved
subjects.

- (i) Defence ;
- (ii) External Affairs ;
- (iii) Ecclesiastical Affairs ; and
- (iv) Administration of Tribal Areas.

The Governor-General may appoint counsellors, not exceeding three in number, to assist him in the exercise of the said functions. (*Vide* S. 11).

Transferred
subjects.

The remaining subjects shown on the Federal Legislative list have been transferred for administration to the Governor-General acting with the aid and advice of the Council of Ministers, the number of ministers not exceeding ten in number.

The Governor-General, shall however, be free to exercise his individual judgment in any case where he is required to do so under the Act. (*Vide* S. 9).

Thus if any special responsibility of the Governor-General under the Act is involved he shall exercise his individual judgment as to the action to be taken. [*Vide* S. 12 (2)]

If any question arises, whether any matter is or is not a matter in respect of which the Governor-General is required to act in his discretion or to exercise his individual judgment, the decision of the Governor-General in his discretion shall be final. (*Vide* S 9).

Although the Act provides that the Governor-General shall exercise his functions in part in his discretion and in part with the aid and advice of

Ministers, nevertheless the Governor-General is instructed to encourage the practice of joint consultation between himself, his Counsellors and his Ministers. (*Vide* Para XVII of Instrument of Instructions).

The executive authority of the Governor-General (i.e. Federation) extends to—

- (a) the matters to which the Federal Legislature has power to make laws ;
- (b) the raising in British India on behalf of His Majesty of Naval, Military and Air Forces and to the governance of His Majesty's forces borne on the Indian establishment ;
- (c) the exercise of such rights, authority and jurisdiction as are exercisable by His Majesty in relation to tribal areas.

Extent of executive authority of the Federation.

But the executive authority of the Federation extends to any Federated State only in respect of those matters with respect to which the Federal Legislature has power to make laws for that State and with such limitations as may be specified in the Instrument of Accession of the State.

The executive authority of the Ruler of a Federated State shall, however, continue to be exercisable by him even in regard to any subject within the jurisdiction of the Federal Legislature unless and until a Federal law has been passed dealing with that subject. Agreement may, however, be made between the Governor-General and the Ruler for the administration of Federal Law by the Ruler himself in his State, but the Governor-General shall have power to inspect such administrations and issue such instructions to the Ruler as he thinks fit. (*Vide* S. 8).

The salaries and conditions of Service of the Counsellors appointed by the Governor-General to

Salaries etc.
of the
Councillors.

assist him in the exercise of the reserved subjects shall be such as may be prescribed by His Majesty in Council. (*Vide S. 11*).

Choosing,
summoning
and dismissal
of ministers

The Ministers shall be chosen and summoned by the Governor-General, shall be sworn as members of the council, and shall hold office during his pleasure. A minister shall cease to hold office if for a period of six consecutive months he is not a member of either Chamber of Legislature.

Salaries of
ministers.

The salaries of ministers shall be determined by the Federal Legislature by Act and until determined by the said Legislature shall be determined by the Governor-General. The salary of a minister shall not, however, be varied during his term of office. (*Vide S. 10*).

Instrument
of Instruc-
tions regard-
ing appoint-
ment of
ministers.

The Instrument of instructions provides that in making appointments to the Council of Ministers the Governor-General shall make his best endeavours to select his ministers in consultation with the person who, in his judgment, is most likely to command a stable majority in the Legislature and to appoint those persons (including so far as practicable representatives of the Federated States and members of important minority communities) who will be best in a position to command the confidence of the Legislature. The ministers shall, therefore, have no collective responsibility but will only be individually responsible to the Legislature.

Instrument
of Instruc-
tions.

An Instrument of Instructions shall be issued to the Governor-General to guide him in the discharge of his functions. The draft of the same (which it is proposed to recommend His Majesty to issue to the Governor-General) shall be laid by the Secretary of State before both Houses of Parliament for approval.

But the validity of anything done by the Governor-General shall not be called in question on the ground that it was done otherwise than in accord-

ance with any Instrument of Instructions issued to to him. (*Vide* S. 13).

The Governor-General shall have the following special responsibilities :—

- (a) the prevention of any grave menace to the peace or tranquility of India or any part thereof;
- (b) the safeguarding of the financial stability and credit of the Federal Government;
- (c) the safeguarding of the legitimate interests of the minorities ;
- (d) the securing of the rights of the past and present members of public services and the safeguarding of their interest ;
- (e) the securing in the sphere of executive action of the purposes which the provisions of Chapter III of Part V (which deal with discriminations) of the Act are designed to secure in relation to legislation;
- (f) the prevention of discriminatory or penal treatment of goods of United Kingdom or Burmese origin imported into India ;
- (g) the protection of the rights of any Indian State and the rights and dignity of the Ruler thereof;
- (h) the securing of the due discharge of his functions with respect to matters which have been left by the Act to his discretion or to the exercise of his individual judgment. (*Vide* S. 12).

In so far as the Governor-General is required by this Act to act in his discretion or to exercise his individual judgment, he shall be under the general control of the Secretary of State. The directions of the Secretary of State issued to the Governor-General shall not, however, be inconsistent with

Superintendence of Secretary of State.

any Instrument of Instructions issued by His Majesty (*Vide S. 14*).

**Financial
Advisor.**

The Governor-General may appoint a person to be his Financial Advisor whose duty shall be to assist him in the discharge of his special responsibility for safeguarding the financial stability and credit of the Federal Government and to give advice to the Federal Government upon any matter relating to finance with respect to which he may be consulted. The salary and allowance of the Financial Advisor shall be determined by the Governor-General. (*Vide S. 15*).

**Advocate-
General for
the Federa-
tion.**

The Governor-General shall appoint an Advocate-General, for the Federation whose duty shall be to give advice to the Federal Government upon such legal matters and to perform such other duties of a legal character as may be referred or assigned to him by the Governor-General. In the performance of his duties he shall have right of audience in all Courts in British India and in a case in which federal interests are concerned in all Courts in the Federated States. He shall hold office during the pleasure of the Governor-General and shall receive such remuneration as the Governor-General may determine. (*Vide S. 16*).

**Conduct of
business of
the Federal
Government.**

The Governor-General shall, after consultation with his ministers, make rules for the conduct of the business of the Federal Government and for the allocation among the ministers of the said business, in so far as it is not business with respect to which the Governor-General is required under the Act to act in his discretion. (*Vide S. 17*).

CHAPTER III

Federal Legislature

The Federal Legislature shall consist of His Majesty, represented by the Governor-General, and

two Chambers, known as Council of State and the Federal Assembly. Both the said Houses shall consist of representatives of British India and of the Indian States chosen in accordance with the provisions of the First Schedule of the Act. The Council of State shall be a permanent body not subject to dissolution but about one-third of its members shall retire every third year. Every Federal Assembly shall, however, continue for 5 years only but the same may be dissolved earlier by the Governor-General acting in his discretion.

The expiration of the said period of five years from the date of its first meeting shall operate as a dissolution of the Assembly.

The Chambers of the Federal Legislature shall be summoned to meet at least once a year.

The Governor-General may in his discretion summon the chambers or either chamber to meet at such time and place as he thinks fit, prorogue the chambers or dissolve the Federal Assembly. (*Vide* S. 18).

Sessions of the Legislature, prorogation and dissolution.

The Governor-General may in his discretion address either chamber or both chambers assembled together, and for that purpose require the attendance of members. He may also send message to either chamber for consideration with respect to any Bill, whether pending or not. (*Vide* S. 20.)

Rights of Governor-General to address and send message to Chambers.

The Ministers, Counsellors and the Advocate-General shall have the right to speak in and otherwise take part in the proceedings of either chamber, but shall not, as such, be entitled to vote. (*Vide* S. 21).

Rights of Ministers, Counsellors, and Advocate-General as respects Chambers.

Thus a minister shall vote only in the chamber of which he is a member.

The Council of State shall elect two of its members as the President and Deputy President, who shall be paid such salaries as may be determined by the Federal Legislature. Similarly the Federal

Officers of Chambers.

Assembly shall elect two of its members as the Speaker and Deputy Speaker, who shall also receive salaries as determined by the Federal Legislature.

Voting in
Chambers.

All questions at any sitting of the chamber or chambers shall be determined by a majority of votes of the members present and voting, other than the President or Speaker or person acting as such.

The President or Speaker or the 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.

One-sixth of the members shall form a quorum in either chamber. (*Vide* S. 23).

Privileges
of members.

The members of the Legislature, subject to the rules and orders regulating the Procedure of the Federal Legislature, shall have freedom of speech in the Legislature.

But no discussion shall take place in the Federal Legislature with respect to the conduct of any Judge of the Federal Court or a High Court in the discharge of his duties or the conduct of the Ruler of a Federated State. The members shall also not have the right to enter into any discussion regarding the salary or allowance of the Governor-General and the expenditure incurred in discharging the functions of the Crown in relation to States.

The Governor-General is further empowered to stop discussion of a Bill, etc., which might be a menace to the peace and tranquility of India or any part thereof. (*Vide* S. 40).

No member of the legislature, shall, however, be liable to any proceedings in any Court in respect of any thing said or vote given in the Legislature or any Committee thereof.

In other respects, viz., immunity from arrest during the continuance of a Session of Legislature,

the privileges of members shall be determined by Act of the Federal Legislature.

The Federal Legislature shall not pass any law conferring on either chamber the status of a Court or any punitive or disciplinary powers other than a power to remove or exclude a person infringing the rules or standing orders, or otherwise behaving in a disorderly manner. (*Vide S. 28*).

Member of either chamber shall receive such salaries and allowances as may be determined by Act of the Federal Legislature (*Vide S. 29*).

No person shall be a member of both the chambers.

A member's seat shall become vacant if he —

- (a) resigns his seat by a writing addressed to the Governor-General ; or
- (b) is without permission absent from all meetings of the chamber for a period of sixty days ; or
- (c) becomes subject to any of the following disqualifications :—
 - (i) if he holds any office of profit under the Crown of India other than an office declared by an Act of the Federal Legislature not to disqualify its holder; A minister shall not be deemed to hold office of profit;
 - (ii) if he is of unsound mind and stands so declared by a competent Court ;
 - (iii) if he is an undischarged insolvent;
 - (iv) if he has been convicted or found guilty of an offence or corrupt or illegal practice relating to elections unless such period has elapsed as may be specified in an Order-in-Council or Act of Federal Legislature which has declared the said offence

Salaries of members.

Vacation of seats.

Disqualifications of membership.

- or practice as a disqualification for membership;
- (v) if he has been convicted of any other offence and sentenced to transportation or imprisonment by a Court in British India or a Federated State for not less than two years and until five years have elapsed after his release. The Governor-General may, however, reduce this period;
- (vi) if, having been nominated as a candidate for the Federal or Provincial Legislature, he failed to lodge a return of election expenses within a specified time and in the prescribed manner and until five years have elapsed from the date by which the return ought to have been lodged. This period may be reduced by the Governor-General;
- (vii) a person shall also not be capable of being elected a member while he is serving a sentence of transportation or of imprisonment for a criminal offence. (*Vide* Ss. 25 and 26).

Legislative Procedure

Introduction and passing of Bills.

A bill may originate in either Chamber of the Legislature.

A bill pending before the Council of State which has not been passed by the Federal Assembly shall not lapse on the dissolution of the Assembly. But a Bill pending before the Federal Assembly, or which having been passed by the Federal Assembly is pending in the Council of State shall lapse on a dissolution of the Assembly. No Bill, however, shall lapse by mere prorogation of the chambers. (*Vide* S. 30).

A bill shall not be deemed to have been passed

by the Legislature unless it has been agreed to by both the Chambers.

But if after a bill has been passed by one Chamber and transmitted to the other Chamber—

- (a) the bill is rejected by the other chamber ;
or
- (b) the Chamber have finally disagreed as to the amendments to be made in the Bill ;
or
- (c) more than six months have elapsed from the date of the reception of the Bill by the other chamber without the same being presented to the Governor-General for his assent,

the Governor-General may, unless the Bill has lapsed by dissolution of the Assembly, require the Chambers to meet in a joint session for the purpose of deliberating and voting on the Bill. The Bill shall be deemed to have been passed, with or without amendments, by a majority of members of both Chambers present and voting. (*Vide* S. 31).

When a bill has been passed by the chambers, it shall be presented to the Governor-General who may, in his discretion, declare that he assents to the Bill or that he withholds assent therefrom or that he reserves the Bill for the signification of His Majesty's pleasure. He may also return the Bill for reconsideration with such amendments as he may recommend and the chamber shall reconsider the same accordingly.

Assent to
Bills and
power of
Crown to dis-
allow Acts.

Any Act assented to by the Governor-General may be disallowed by His Majesty within twelve months from the day of the Governor-General's assent. (*Vide* S. 32).

As to reservation of Bills for the significance of His Majesty's pleasure, it has been provided in the

Instrument of Instructions (Para. XIII) that, without prejudice to the generality of the Governor-General's powers as to reservation of Bills, he shall not consent to but shall reserve for the signification of His Majesty's pleasure the following classes of Bills :—

- (a) any bill the provisions of which would repeal or be repugnant to the provisions of any Act of Parliament extending to British India ;
- (b) any bill which in his opinion would, if become law, so derogate from the powers of the High Court of any Province as to endanger the position which those Courts are by the Act designed to fill ;
- (c) any bill regarding which he feels doubt whether it does or does not offend against the provisions of the Act relating to discrimination, etc., (Chapter III, Part V) or compulsory acquisition of land, etc., under S. 299;
- (d) any bill passed by the Provincial Legislature and reserved for his consideration which alters the character of the Permanent Settlement.

**Annual
Financial
Statement.**

A statement of the estimated receipts and expenditure of the Federation for each financial year known as "annual financial statement" shall be laid before both chambers of the Federal Legislature at the instance of the Governor-General. The said statement shall show separately the sums required to meet the expenditure which has been declared by the Act as expenditure charged upon the revenues of the Federation, and the sums required to meet other expenditure to be defrayed out of the revenues of the Federation.

**Nonvotable
items : Ex-**

The following expenditure shall be "expenditure charged on the revenues of the Federation" and

shall not be submitted to the vote of the Legislature :—

penditure
charged on
the revenues
of Federation

- (a) the salary and allowances of the Governor General;
- (b) debt charges for which the Federation is liable, including interest, sinking fund charges and redemption charges;
- (c) salaries and allowances of Ministers, Counsellors, Financial Advisor and his staff Advocate-General and Chief Commissioners;
- (d) salaries, allowances and pensions of Federal Court Judges and the pensions of the High Court Judges;
- (e) expenditure for the purpose of the discharge by the Governor-General of his functions, with respect to defence, ecclesiastical affairs, external affairs and tribal areas; provided that the sum charged regarding ecclesiastical affairs in any year shall not exceed forty-two lacs of rupees, exclusive of pension charges;
- (f) sums payable to His Majesty on account of expenses incurred in discharging the functions of the Crown in its relation with Indian States;
- (g) grants for the administration of excluded areas in a province;
- (h) sums required to satisfy any judgment, decree or award of any Court or arbitral tribunal;
- (i) any other expenditure declared by the Act or any Act of the Federal Legislature to be so charged. If any question arises whether any proposed expenditure falls

within the category of charged expenditure or not it shall be decided by the Governor-General in his discretion. (*Vide* S. 33).

**Procedure in
Legislature
with respect
to estimates.**

But as already stated, the non-votable items of expenditure may be discussed by the Legislature except with respect to items mentioned in clauses (a) and (f) above. (*Vide* S. 34).

Estimates of expenditure, other than the charged ones, shall be submitted in the form of demands for grants to the Federal Assembly and thereafter to the Council of State, and either chamber shall have power to assent or to refuse to assent to any demand or to assent to a demand subject to a specified reduction. If the Federal Assembly refuses any demand it shall not be submitted to the Council of State unless the Governor-General so directs. Similarly if the Federal Assembly reduces any demand, it shall not be raised by the Council of State unless the Governor-General so directs. If the two Chambers disagree with respect to any demand it shall be decided in a joint sitting of both the chambers. No demand for a grant shall be made except on the recommendation of the Governor-General. (*Vide* S. 34).

**Authenticat-
ion of sche-
dule of
authorized
expenditure.**

The Governor-General shall authenticate by his signature a schedule specifying the grants made by the chambers and the charged expenditure.

Where, however, the Governor-General is of opinion that a refusal or reduction of a demand by the chambers would affect the due discharge of his special responsibilities he may also include in the schedule such additional amount, not exceeding the amount of the rejected or reduced demand, as appears to him necessary.

The said authenticated schedule shall be laid before both chambers but shall not be open to discussion or vote therein.

Any Bill imposing or increasing any tax or regulating the borrowing of money or the giving of any guarantee by the Federal Government or for declaring any expenditure to be expenditure charged on the revenues of the Federation shall be introduced first in the Federal Assembly only and shall not be moved except on the recommendation of the Governor-General. (*Vide* S. 37).

Money bills to originate in the Lower House and only on the recommendation of the Governor-General.

Each chamber of the Federal Legislature may make rules for regulating its procedure and the conduct of its business. The Governor-General may also, after consulting the President or the Speaker, make rules regulating the procedure of and conduct of business in, the chamber in relation to any matter, which affects the discharge of his functions in so far as he is required to act in his discretion or to exercise his individual judgment. He may also make rules for securing the timely completion of financial business. He is further empowered to make rules for prohibiting, save with his previous consent, the discussion or asking of questions regarding :—

Rules making power of the Legislature and the Governor-General.

Restrictions on discussion and asking of questions.

- (i) any matter connected with relations between His Majesty or the Governor-General and any foreign state or prince ;
- (ii) any matter connected with the tribal areas or the administration of any excluded area ;
- (iii) any action taken in his discretion by the Governor-General in relation to the affairs of a Province ; or
- (iv) the personal conduct of the Ruler of any Indian State or any member of the Ruling family.

As regard joint sitting of the chambers the Governor-General shall make rules after consultation with both the President of the Council of State and

Rules regarding joint sittings of Chambers.

the Speaker of the Legislative Assembly. At a joint sitting the President of the Council of State, or in his absence such person as may be determined by rules of procedure, shall preside. (*Vide S. 38*).

English to be used in Federal Legislature.

All proceedings in the Federal Legislature shall be conducted in the English language. But the rules of the chambers shall provide for enabling persons unacquainted with the English language to use another language. (*Vide S. 39*).

Court not to inquire into the proceedings of the Legislature.

No court shall inquire into the proceedings of the Legislature regarding any alleged irregularity. Similarly no officer of the legislature in whom powers are vested 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 these powers. (*Vide S. 41*).

Speaker cannot declare any member's seat vacant.

The question whether a member has incurred disqualification and his seat in consequence has become vacant is not a point of order for the Speaker (4 F.L.J. 8; 4 F.L.J. 128). But when a member has been declared disqualified by Court the declaration that his seat is vacant and his exclusion from the House is a point of order. (*Ibid.*)

Federal Subjects

The Federal Legislature may make laws for the whole or any part of British India or for any Federated State with respect to any of the matters enumerated in list I in the seventh schedule of the Act. The said list is called "Federal Legislative List" and is reproduced below: -

1. Naval, Military and Air Forces; Central Intelligence Bureau; Preventive detention in British India.
2. Naval, Military and Air Force works; Local Self-Government in Cantonment areas.
3. External affairs, the implementing of treaties and agreement with other countries, extradition.

4. Ecclesiastical affairs.
5. Currency, coinage and legal tender.
6. Public Debt of the Federation.
7. Posts and telegraphs, including telephones, wireless, broadcasting, and other like forms of communications; Post Office Saving Banks.
8. Federal Public Services and Federal Public Service Commission.
9. Federal pensions.
10. Works, lands and buildings vested in His Majesty for the purposes of Federation.
11. The Imperial Library, Indian Museum, the Imperial War Museum, the Victoria Memorial, and any similar institutions controlled or financed by the Federation.
12. Federal agencies and institutes for research, professional or technical training or for the promotion of special studies.
13. The Benares Hindu University and the Aligarh Muslim University.
14. The Surveys of India.
15. Ancient and Historical monuments.
16. Census.
17. Immigration, Emigration and expulsion of foreigners.
18. Post quarantine.
19. Import and export across customs frontiers as defined by the Federal Government.
20. Federal railways.
21. Maritime shipping and navigation.
22. Major ports.
23. Fishing and fisheries beyond territorial waters.
24. Aircraft and air navigation.

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25. Light-houses.
26. Carriage of passengers and goods by sea or by air.
27. Copy-right, inventions, designs, trade-marks.
28. Cheques, bills of exchange, promissory notes and other like instruments.
29. Arms, firearms, ammunitions.
30. Explosives.
31. Opium.
32. Petroleum and other dangerously inflammable substances
33. Trading corporations.
34. Development of industries.
35. Regulation of labour and safety in mines and oilfields.
36. Regulation of mines and oilfield.
37. The Law of Insurance.
38. Banking.
39. Extensions of powers and jurisdiction of members of police force.
40. Elections to the Federal Legislature.
41. Salaries of the Federal Ministers, President, and Vice-President of the Council of State. Speaker and Deputy Speaker of the Federal Assembly and Members of the Federal Legislature.
42. Offences against laws with respect to any of the matters in this list.
43. Inquiries and statistics for the purposes of any of the matters of this list.
44. Customs duties.
45. Excise duties on tobacco and other goods manufactured or produced in India except —
 - (a) alcoholic liquor for human consumption;
 - (b) opium, Indian hemp and other narcotic drugs; non-narcotic drugs;
 - (c) medicinal and toilet preparations.
46. Corporation tax.
47. Salt.
48. State lotteries.

49. Naturalisation.
50. Migration within India.
51. Establishment of standard of weight.
52. Ranchi European Mental Hospital.
53. Jurisdiction and powers of all Courts, except the Federal Court, with respect to any of the matters in this list; the enlargement of the appellate jurisdiction of the Federal Court and conferring thereon of supplemental powers.
54. Taxes on income other than agricultural income.
55. Taxes on the capital value of the assets, exclusive of agricultural land, of individuals and companies; taxes on the capital of companies.
56. Duties in respect of succession to property other than agricultural land.
57. The rates of stamp duty in respect of bills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, proxies and receipts.
58. Terminal taxes.
59. Fees in respect of any of the matters in this list, but not including fees taken in any Court.

A Provincial Legislature has no power to make laws with respect to any of the matters enumerated in the above list.

The Federal Legislature shall not make laws for a Federated State otherwise than in accordance with the Instrument of Accession of that State and any limitations contained therein. (*Vide* S. 101).

Both the Federal and the Provincial Legislatures have, however, power to make laws with respect to any of the matters enumerated in list III of the 7th Schedule. The said list is called "Concurrent Legislative List" and is reproduced below:—

Part I

1. Criminal law, excluding offences against laws with respect to the matters specified in list I or II.

2. Criminal Procedure.
3. Removal of prisoners from one unit to another unit.
4. Civil Procedure, including the law of limitation.
5. Evidence and oaths.
6. Marriage and divorce, infants and minors, adoption.
7. Wills, intestacy and succession save as regards agricultural land.
8. Transfer of property other than agricultural land, registration of deeds and documents.
9. Trusts and trustees.
10. Contracts, except these relating to agricultural land.
11. Arbitration.
13. Bankruptcy and insolvency.
12. Stamp duties (non-judicial), but not including rates of stamp duty.
14. Actionable wrongs, other than those in respect of matters enumerated in list I or II of 7th Schedule.
15. Jurisdiction and powers of all Courts except the Federal Court with respect to any of the matters in this list.
16. Legal, medical and other professions.
17. Newspapers, books and printing presses.
18. Lunacy.
19. Mechanically propelled vehicles.
20. Poisons and dangerous drugs.
21. Boilers.
22. Prevention of cruelty to animals.
23. European vagrancy ; criminal tribes.
24. Inquiries and statistics for any of the matters in this part of this list.
25. Fees in respect of the matters in this part of this list, except fees taken in any Court.

PART II

26. Factories.
27. Welfare of labour.
28. Unemployment, Insurance.
29. Trade Unions.
30. The prevention of the extension of infectious or contagious diseases.
31. Electricity.
32. Shipping and navigation on inland water ways.
33. Sanctioning of cinematographs films for exhibition.
34. Persons subjected to preventive detention under Federal authority.
35. Inquiries and statistics for any of the matters of this part of this list.
36. Fees in respect of any of the matters in this part of this list, but not including fees taken in any Court.

**Restrictions on the Powers of the Federal
Legislature**

Unless the Governor-General in his discretion thinks fit to give his previous sanction, there shall not be introduced into either chamber of the Federal Legislature any Bill which -

- (a) repeals, amends or is repugnant to any provisions of any Act of Parliament extending to British India ;
- (b) repeals, amends or is repugnant to any Governor-General's or Governors's Act or any ordinance promulgated in his discretion by the Governor-General or a

**Sanction of Governor-General required for certain legislative proposals :
Conditional restrictions.**

- (c) affects matters regarding which the Governor-General is required to act in his discretion ;
- (d) repeals or amends any act relating to any police force ;
- (e) affect the procedure for trial of European British subject ;
- (f) subjects persons not resident in British India to greater taxation than those resident in British India ;
- (g) affects the grant of relief from any Federal tax on income in respect of income taxed or taxable in the United Kingdom.

(Vide S. 108).

But the said requirement as to previous sanction shall be regarded as a matter of procedure only and no Act of the Federal Legislature shall be invalid by mere want of the said sanction if assent to that Act was given by the Governor-General or by His Majesty.

(Vide S. 109).

Absolute restrictions.

The following are, however, absolute restrictions on the powers of the Federal Legislature.

- (a) The power of the Parliament to legislate for British India shall remain unaffected;
- (b) The Federal Legislature shall not make any law—
 - (i) Affecting the sovereign or the Royal Family or the succession to the Crown or the sovereignty, dominion or suzerainty of the Crown in any part of India, or the law of British Nationality or the Army Act, the Air Force Act, the Naval Discipline Act, or the law of Prize or Prize Courts;
 - (ii) amending any provision of this Act or any order in Council made thereunder

or any rules made under the Act by the Secretary of State or by the Governor-General or a Governor in his discretion, or in the exercise of his individual judgment, except in so far as is expressly permitted by any provisions of this Act ,

- (iii) derogating from any prerogative right of His Majesty to grant special leave to appeal from any Court, except in so far as is expressly permitted by the Act.

CHAPTER IV

Legislative Powers of Governor-General

(a) During the recess of the Federal Legislature (i. e., when it is not in session) the Governor-General may, if he is satisfied that immediate action is necessary under the existing circumstances, promulgate such ordinances (with the advice of his ministers) as he thinks necessary and every ordinance so promulgated shall have the force of an Act of the Federal Legislature. But every such ordinance shall be laid before the Federal Legislature and shall cease to operate at the expiration of six weeks from the reassembly of the Legislature or, if before that period resolutions disapproving it by both the chambers are passed, upon the passing of the second of those resolutions.

Power of Governor-General to promulgate ordinances.

The said ordinance may be withdrawn by the Governor-General or cancelled by His Majesty at any time. (Vide S. 42)

(b) The Governor-General may also promulgate ordinances whenever he is satisfied that immediate action is necessary for the due discharge of his functions in which he is required to act in his discretion or to exercise his individual judgment. Every such

ordinance shall continue for such period, not exceeding six months, as may be specified therein. It may, however, be extended for a further period not exceeding six months.

The said ordinance may be withdrawn by the Governor-General or cancelled by His Majesty at any time.

Every ordinance which is extended for any period shall, however, be communicated forthwith to the Secretary of State and laid before each House of Parliament. (Vide S 43).

No ordinance shall be valid if it exceeds the powers of the Federal Legislature
(Vide Ss 42 and 43).

Power of Governor-General in certain circumstances to enact Acts

The Governor-General may also for the purpose of satisfactorily discharging his functions in so far as he is required under the Act to exercise his discretion or individual judgment, forthwith enact an Act (called Governor-General's Act) which shall have the same force and effect as an Act of the Federal Legislature. But such an Act must not be outside the scope of the Federal powers and shall be communicated forthwith to the Secretary of State and shall be laid by him before each house of Parliament. (Vide S 44)

Governor-General's power in case of failure of constitutional machinery

Power of Governor-General to issue proclamations.

In case of breakdown of the constitutional machinery, the Governor-General is vested with plenary authority to assume to himself all or any of the powers exercisable by any Federal body or authority except the powers exercisable by the Federal Court. A proclamation issued to the said effect may be revoked or varied by a subsequent proclamation. It must be communicated forthwith to the Secretary of State and shall be laid by him before both Houses of Parliament. It shall cease

to operate at the expiration of six months. If, however, both Houses of Parliament approve it shall continue to remain in force for a further period of twelve months. If the Federal Government by Proclamation has continued for a period of three years the constitution shall be restored with such amendments as the Parliament shall deem it necessary.

Any law made by the Governor-General during the said period shall remain in force until two years have elapsed from the date on which the Proclamation ceases to have effect. (Vide S. 45)

The above contingency may happen if the ministers commanding a majority in the Legislature have resigned and the Governor-General has been unable to form an alternative ministry commanding a majority in the Legislature.

CHAPTER VI

Federal Judiciary

A Federal Judicial authority has been created by the Act by the establishment of a Federal Court for the purpose of interpreting the constitution in cases of conflict, to delimit the respective spheres of authority of the Federal Government and the Federated units and to prevent them from ever acting upon one another.

Establishment and Constitution of Federal Court

The Federal Court shall consist of a Chief Justice of India and such number of other Judges as His Majesty may deem necessary.

Every Judge of the Federal Court shall be appointed by His Majesty and shall hold office until the age of sixty-five years. But he may resign his office earlier or be removed from his office by His Majesty on the ground of misbehaviour or of infirmity of mind or body, on the report being made by the Privy Council to the said effect.

Qualifications of the Judges of Federal Court

A Judge of the Federal Court must be a Barrister of England or Northern Ireland or a member of the Faculty of Advocates in Scotland or a pleader of a High Court in British India or in a Federated state of atleast ten years standing or must have been a Judge of a High Court in British India or in a Federated State for atleast five years. But the Chief Justice of India must be a barrister, member of the Faculty of Advocate or a pleader of atleast fifteen years standing instead of ten years standing as in the case of other judges. (Vide S. 200).

Salaries of the Judges

The Judges of the Federal Court shall be entitled to such salaries and allowances as may be fixed by His Majesty in Council. (Vide S. 201)

Temporary appointment of acting Chief Justice and other Judges.

Any vacancy caused in the office of the Chief Justice or any other Judge of the Federal Court the same may be temporarily filled by the Governor-General. (Vide S. 202).

Seat of Federal Court

The Federal Court shall be a Court of record and shall sit at Delhi or at such other place as the chief justice may, with the approval of the Governor-General, from time to time appoint. (Vide S. 203).

Jurisdiction of Federal Court

The Jurisdiction of the Federal Court shall be (i) original (ii) appellate and (iii) advisory.

Original Jurisdiction

The Federal Court shall have exclusive original jurisdiction in any dispute arising between the Federation, Provinces or Federated States regarding any legal right.

But where a state is a party the said jurisdiction shall be limited only to the following disputes : -

- (i) concerning the interpretation of the Act or of an Order-in-Council made thereunder or the legislative or executive authority vested in the Federation by virtue of the Instrument of Accession of that state; or
- (ii) arising under an agreement made between

the Governor-General and the Ruler of a State in relation to the administration to the State of a law of the Federal Legislature or otherwise concerning any matter with respect to which the Federal Legislature has power to make laws, or

- (iii) arising under an agreement made between the State and the Federation or a Province, which expressly provides that the said jurisdiction shall extend to such a dispute. (Vide S. 204)

An appeal shall lie to the Federal Court from any judgment, decree or final order of a High Court in British India if the High Court certifies that case involves a substantial question of law as to the interpretation of this Act or any Order-in-Council made thereunder on the following grounds :—

Appellate
Jurisdiction
in appeals
from High
Courts in
British India

- (i) that the question of interpretation of the Act etc. has been wrongly decided;
- (ii) on any ground on which the party could have appealed to the Privy Council if no such certificate had been given; and
- (iii) on any other ground with the leave of the Federal Court. (Vide S. 205)

If the High Court has refused to give a certificate no appeal or revision can lie in the Federal Court from the order refusing to grant the same (A. I. R. 1940 F. C. 4; 1941 F. C. J. 33, even if the High Court has acted perversely or maliciously in withholding the certificate. (1941 F. L. J. 33). The Federal Court has no power to entertain an application even for special leave to appeal. (A. I. R. 1939 F. C. 42).

The Federal Legislature may be Act enlarge the appellate Jurisdiction of the Federal Court and

Power of
Federal Leg

islature to
enlarge appe
llate jurisdic
tion of Fede-
ral Court in
certain speci
fied civil
cases.

empower it to hear appeals in Civil cases from judgment, decrees as final orders of a High Court in British India without any such certificate as aforesaid provided—

- (a) the amount or value of the subject matter of the dispute both in the Court of first instance and on appeal was and is not less than fifty thousand rupees or a such other sum not less than fifteen thousand rupees as may be specified in the Act; or
- (b) the Federal Court has given special leave to appeal.

On enlargement of the appellate jurisdiction of the Federal Court as aforesaid, consequential provision may also be made by the Federal Legislature for the abolition in whole or in part of direct appeals in civil cases to His Majesty in Council.

A Bill for an enlargement of the appellate jurisdiction of the Federal Court as aforesaid shall not be moved in either chamber without the previous sanction of the Governor-General. (Vide S. 206)

Appellate
Jurisdiction
of Federal
Court in
appeals from
High Courts
in Federated
States

An appeal shall also lie to the Federal Court from a High Court in a Federated State where the question involves the interpretation of the Act (i. e. Government of India Act, 1935) or an Order in Council made thereunder or the Instrument of Accession of the State or an agreement made in relation to the administration in that State of a law of the Federal Legislature. Such an appeal shall be by way of case stated. (Vide S. 207).

Enforcement
of orders etc.
of Federal
Court

The Federal Court may make such orders as any High Court may make as respect the territory within its jurisdiction.

All order of the Federal Court shall be executed by the Courts as if they were orders made by the Highest Court in the territory.

The Federal Court may also from time to time, with the approval of the Governor-General, make rules of Court for regulating generally the practice and procedure of the Court.

An appeal shall lie to His Majesty in Council from a judgment of the Federal Court given in the exercise of its original jurisdiction in any dispute concerning interpretation of the Act or an Order in Council made thereunder or the Instrument of Accession of a State or an agreement made in relation to the administration in any state of the law of the Federal Legislature.

Appeals to Privy Council from decisions of Federal Court

An appeal may also lie to the Privy Council in any other case by leave of the Federal Court or of the Privy Council. (Vide S. 208)

The law declared by the Federal Court and the Privy Council shall be binding on all Courts in British India. It shall also be binding on all Courts in a Federated State in so far as it relates to the interpretation of the Act or any Order in Council made thereunder or any matter with respect to which the Federal Legislature has power to make laws in relation to the State. (S. 212)

Decisions of the Federal Court and Privy Council to be binding on all Courts

The Governor-General may refer any question of law, on which he thinks it desirable and expedient to obtain the opinion of the Federal Court, to that Court for opinion. The Federal Court shall, thereupon, give its opinion in open Court with the concurrence of the majority of the judges present at the hearing of the case. (Vide S. 213)

Power of Governor-General to consult Federal Court

CHAPTER V

The Provinces

There shall be the following Governor's Provinces in British India under the Act, that is to say, Madras, Bengal, United Provinces, the Panjab, Bihar, the Central Provinces and Berar, Assam, North-West Frontier Province, Orissa, Sindh and

Governor's Provinces

such other Province as may be created under the Act.

Burma shall, however, cease to be part of India. (Vide S 46)

Provisions as to Berar

Though Berar is under the sovereignty of His Exalted Highness the Nizam of Hyderabad, it has since 1853 been under the British administration and in 1902 was made the subject of a perpetual lease granted by His Exalted Highness. It has been administered with, but not as part of, the Central Provinces. An arrangement has now been made between the Government of India and His Exalted Highness whereby, without derogation from His Exalted Highness's sovereignty, the Berar shall be administered as part of a new Governor's Province known as the Central Provinces and Berar. (Vide S. 47 and Joint Committee's report).

CHAPTER VII

Provincial Executive

Executive authority of a Province

The executive authority of a Province shall be exercised by the Governor either directly or through officers subordinate to him (Vide S. 49)

The ministers are only the Governor's advisers and are not vested with any executive functions under the Act. Ministers, chosen from the elected representatives of the people and empowered, within prescribed limits, to dictate the policy of the executive Government, cannot be described as "officers subordinate" to the Governor. (1938 F. L. J. 121 ; 1939 F. L. J. 55)

The executive authority of each Province extend to the matters with respect to which the Legislature of the Province has power to make laws.

Appointment of Governors

The Governor is appointed by His Majesty without the intervention of the Governor-General.

The salaries of the Governors differ with the size and importance of the Provinces and have been fixed by the Act as follows :—

Salaries and allowances of Governors

The Governor of Madras	}	120,000
The Governor of Bombay		
The Governor of Bengal		
The Governor of the United Provinces		
		rupees
		(annually)
The Governor of the Panjab	}	100,000
The Governor of Bihar		
		rupees
		(annually)
The Governor of the Central Provinces and Berar ...		72,0 0 rupees
		(annually)
The Governor of Assam	}	66,000 rupees
The Governor of North-West Frontier Province		
The Governor of Orissa		
The Governor of Sindh		
		(annually)

There shall be paid to the Governors such allowances for expenses in respect of equipment and travelling upon appointment and such allowances during their terms of office as may from time to time be fixed by His Majesty in Council.

(Vide Schedule Third)

Every Governor's Province has a council of ministers to aid and advise the Governor in the exercise of his functions except in so far as he is required by the Act to act in his discretion or exercise his individual judgment.

Council of Ministers.

The Governor's have been instructed that in all matters within the scope of the executive authority of the Province, save in relation to functions which he is required by the Act to exercise in his discretion, he shall be guided by the advice of his ministers, unless in his opinion to be so guided would be

inconsistent with the fulfilment of any of the special responsibilities which are by the Act committed to him or with the proper discharge of any of the function which he is otherwise by the Act required to exercise in his individual judgment. In all such cases the Governor shall notwithstanding his ministers' advice, act in the exercise of the powers conferred upon him in such manner as to his individual judgment seems requisite for the due discharge of his special responsibilities and functions as aforesaid. But he shall be studious so to exercise his powers as not to enable his ministers to rely upon his special responsibilities in order to relieve themselves of responsibilities which are properly their own. (Vide Para IX, Instrument of Instructions).

If any question arises whether any matter is or is not a matter as respects which the Governor is required by the Act to act in his discretion or to exercise his individual judgment, the decision of the Governor in his discretion shall be (Vide S. 50)

The Governor in his discretion may preside at the meetings of the ministers.

Salaries of Ministers.

The Ministers' salaries shall be determined by an Act of the Provincial Legislature, shall not be submitted to the vote of the Legislature when the annual budget is presented and shall not be varied during their terms of office.

Appointment of Ministers.

The Ministers shall be appointed by the Governor and hold office during his pleasure. A person who is not a member of the Provincial Legislature may be appointed a Minister, but he cannot hold office for a longer period than six months without becoming a member of the Legislature (Vide S. 51).

In making appointments to his council of Ministers the Governor shall use his best endeavours to select his ministers in the following manner, that is to say, in consultation with the person who in his judg-

ment is likely to command a stable majority in the Legislature to appoint those persons (including so far as practicable members of important minority communities) who will best be in a position to command the confidence of the Legislature. But in so acting, he shall bear constantly in mind the need for fostering a sense of joint responsibility among his ministers. (Vide Para VIII, Instrument of Instructions).

In exercise of his functions the Governor has the following special responsibilities :—

Special responsibilities of Governor

- (a) the prevention of any grave menace to the peace and tranquility of the Province or any part thereof ;
- (b) the safeguarding of the legitimate interests of the minorities ;
- (c) the securing to and to the dependents of persons who are or have been members of public services of any rights provided or preserved for them by the Act, and the safeguarding of their legitimate interests ;
- (d) the securing in the sphere of executive action the powers which are reserved in the Governor's discretion in the Legislative sphere ;
- (e) the securing of the peace and good Government of the areas which are declared by the Act to be excluded areas ;
- (f) the protection of the rights of an Indian State and the rights and dignity of the Ruler thereof ;
- (g) the securing of the execution of orders and directions lawfully issued by the Governor General in his discretion.

The Governor shall exercise his individual judgment as to the action to be taken with regard to any special responsibility. (Vide S. 52)

Interpretation of special responsibilities according to Instrument of Instructions.

The Governor shall interpret his special responsibility for the safeguarding of the legitimate interests of the minorities as requiring him to secure, in general, that those racial or religious communities for the members of which special representation is accorded in the Legislative and those classes of people committed to his charge who, whether on account of the smallness of their number or their lack of educational or material advantages or from any other cause, cannot as yet fully, rely for their welfare upon joint political action in the Legislature shall not suffer, or have reasonable cause to fear, neglect or oppression. But he shall not regard as entitled to his protection anybody of persons by reason only that they shall a view on a particular question which has not found favour with the majority.

The Governors are also instructed to interpret the said special responsibility as requiring them to secure a due proportion of appointments in the services to the several communities. (Vide Para X, Instrument of Instructions).

The Governors are further instructed to see that no action is taken by the Ministers and no Bill of the Provincial Legislature becomes law, which would imperil the economic life of any State, or affect prejudicially any recognized right of any State, not being a right appertaining to a matter with respect to which, in virtue of the Ruler's Instrument of Accession, the Federal Legislature may make law for his State and his subjects. (Vide Para XIII, Instrument of Instructions).

Special Powers of the Governor

Though the department of law and order is in

the purview of responsible ministers, very wide discretionary powers have been conferred on the Governor for the suppression of crimes of violence intended to overthrow the Government. This if it appears to a Governor that the peace and tranquility of a Province is threatened by the operations of any persons committing or conspiring, preparing or attempting to commit, crimes of violence intended to overthrow the Government as by law established, the Governor may direct that his functions shall, to such extent as may be specified in the direction, be exercised by him in his discretion for the purpose of combating those operations.

Discretionary powers of the Governor for suppression of violence intended to overthrow Government

While any such direction is in force, he may authorize an official to speak and take part in the proceedings of the Legislature, but such official shall not be entitled to vote.

The said special power has been conferred on the Governor independent of his special responsibility for the prevention of any grave menace to the peace and tranquility of the Province or any part thereof. It is restricted to crimes of 'violence' and does not extend to other crimes intended to overthrow the Government. It is to be exercised only if the ministers and the Legislature are unwilling or unable to take effective action and the Governor thinks that it is necessary under the circumstances to take over the control of law and order without bringing to an end the whole constitutional machinery of the Provincial Government.

The Governor is also empowered to make rules to secure that no sources of information relating to committing or conspiracy of political crimes are disclosed by any member of the police force to another member of that force except in accordance with the directions of the Inspector General of Police or the Commissioner of Police or by any other person in the service of the Crown to any person except in

Governor empowered to make rules to secure that sources of information of political crimes are not disclosed

accordance with the directions of the Governor. Under these rules even the ministers in charge of law and order may be denied any information regarding a political crime, either after it has been committed or when a conspiracy has been unearthed. (Vide S. 58)

Powers of Governor to make rules for conduct of business of Provincial Government and for allocation of portfolios to ministers

All executive action of the Government of a Province shall be expressed to be taken in the name of the Governor.

The Governor shall make rules for the conduct of business of the Provincial Government and for the allocation among ministers of the said business.

In the discharge of his said functions the Governor shall act in his discretion after consultation with his ministers. (Vide S. 59)

Power of Governor to make and amend police rules

The Governor is further empowered to make and amend rules for the regulation and maintenance of discipline of the Police force, whether civil or military. (Vide S. 56)

Governors' power to appoint, dismiss and fix remuneration of Advocate-General

The Governor shall appoint a person, who has the qualification for the appointment of a High Court Judge, to be Advocate General for the Province, who shall give advice to the Provincial Government upon such legal matters and to perform such other duties of legal character, as may be referred or assigned to him by the Governor.

The Advocate General shall hold office during the Governor's pleasure and shall receive such remuneration as the Governor may determine.

The Governor shall exercise his individual judgment in appointing, dismissing or fixing remuneration of the Advocate General. (Vide S. 55)

Superintendence of Governor-General

In so far as the Governor is required to act in his discretion or to exercise his individual judgment, he shall be under the general control of the Governor-General and comply with such particular directions as may from time to time be given to him

before giving any directions to a Governor, the Governor-General shall take care to satisfy himself that they are not inconsistent with any Instrument of Instructions issued to the Governor by his Majesty.

The validity, however, of any thing done by a Governor shall not be called in question in any Court on the ground that the Governor has acted otherwise than in accordance with any directions issued to him by the Governor-General or any Instrument of Instructions issued to him by His Majesty. (Vide Secs. 53 and 54).

CHAPTER VIII

Provincial Legislature

Every Governor's Province shall have a Legislature consisting of His Majesty represented by the Governor and

Constitution of Provincial Legislature.

- (a) in the Provinces, of Madras, Bombay, Bengal, the United Provinces, Bihar and Assam, two chambers,
- (b) in other Provinces, one chamber.

When there are two chambers, the Upper House is known as Legislative Council and the Lower House as the Legislative Assembly and when there is only one chamber, it shall be named as Legislative Assembly. (Vide S. 60).

Chambers of Provincial Legislature: Legislative Council and Legislative Assembly

The composition of the chambers are different for different Provinces.

The upper chamber a Legislative Council is a permanent body not subject to dissolution, but one-third of its members retire every third year in accordance with the rules. The Legislative Assembly, however, continues only for five years

unless sooner dissolved. The expiration of five years from the date of its first meeting operates as a dissolution of the Assembly and its life can not be further prolonged. (Vide S. 61).

The second chamber acts as a check against any party legislation of the Lower House, though it is an expensive luxury and drain on the poor resources of the country.

Right of Governor to address and send message to chambers.

The chambers of the Provincial Legislatures shall meet at least once in every year. But the Governor may summon any chamber or chambers to meet at such time and place as he thinks fit, prorogue the chambers or dissolve the Legislative Assembly.

The Governor may in his discretion address any chamber of the Province or both chambers assembled together and require the attendance of members. He may also send messages to any chamber of the Legislature, whether with respect to a Bill pending there or otherwise and the chamber to whom any message is so sent shall, without unnecessary delay, take that matter into consideration. (Vide S. 63).

Rights of Advocate General and ministers as respect chambers

Every minister and the Advocate-General shall have the right to speak in and otherwise take part in the proceedings of either chamber of the Legislature or in a committee of the Legislature of which he may be named a member. But the Advocate General shall not be entitled to vote and the minister too shall be entitled to vote only in the chamber of which he is the member. A Legislative Assembly shall choose two of its members to be respectively speaker and deputy speaker thereof. The speaker or deputy speaker may at any time resign his office or be removed from office by a resolution of the Assembly moved on giving fourteen days' previous notice.

In the absence of the speaker the deputy speaker shall act as speaker.

The speaker and deputy speaker shall be paid such salaries as may be fixed by Act of the Provincial Legislature.

In the case of a Province having a Legislative Council also the above provisions shall apply in relation to that chamber with the substitution of "President" and "Deputy President" for "Speaker" and "Deputy Speaker" respectively.

President and Deputy President of the Legislative Council

All questions in the legislature shall be determined by a majority of votes of the members present, other than the Speaker or President. The President or Speaker shall not vote in the first instance but shall have a casting vote in case of an equality of votes.

Voting in chambers and quorum.

The quorum of the meeting of Legislative Assembly shall be one-sixth of the total number of members, while that of the Legislative Council shall be ten members. The President of the Council presides over a joint session of both the Chambers.

Privileges and Disqualifications of Members

There shall be freedom of speech in every Provincial Legislature subject to such restrictions as may be imposed by rules and standing orders, no member shall be liable to any proceedings in any Court in respect of anything said or any vote given by him in the Legislature.

Privileges etc. of members.

No provincial law can confer on any chamber the status of a Court or any punitive or disciplinary powers other than the power to remove or exclude persons infringing the rules or standing orders or otherwise behaving in a disorderly manner. Provisions may, however, be made by an Act of the Provincial Legislature for the punishment, on conviction by a Court, of persons who refuse to give

evidence or produce documents before a committee of a chamber when duly required by the chairman of the committee to do so. But the Governor may make rules for regulating the attendance of servants of the Crown before such committees and safeguarding confidential matters from disclosure.

The conduct of a High Court Judge or Federal Court Judge cannot be discussed in the Legislature and the Governor may stop any discussion if he thinks that such discussion will affect his special responsibilities.

Vocation of
seats of
members.

No person shall be a member of both chambers of the Provincial Legislature or both of the Federal Legislature and the Provincial Legislature. If a person has been elected to both the Federal and the Provincial Legislature and does not resign his seat from the former, his seat in the Provincial Legislature shall become vacant.

A member's seat shall also become vacant in the following cases :—

- (a) if he is disqualified from remaining a member under S. 69 of the Act ;
- (b) if he resigns his seat by writing addressed to the Governor;
- (c) if for sixty days he is absent from all meetings of the chamber without permission of the chamber. (Vide S. 68).

Disqualifica-
tions for
membership.

A person shall be disqualified from being chosen as, and for being a member of either chamber of the Provincial Legislature :—

- (a) if he holds any office of profit under the Crown in India, other than an office declared by Act of the Provincial Legislature not to disqualify its holder (a per-

son shall not be deemed to hold an office of profit by reason only that he is a minister either for the Federation or for a Province) ;

- (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 has been convicted or found guilty of any offence or corrupt or illegal practice relating to elections, unless such period has elapsed as may be specified in that behalf ;
- (e) if he has been convicted of any other offence by a Court and sentenced to transportation for life or imprisonment for not less than two years, unless a period of five years or such less period, as the Governor may allow in any particular case, has elapsed since his release ;
- (f) if he has failed to lodge a return of election expenses within the required time and in the prescribed manner, unless five years have elapsed from the date by which the return ought to have been lodged ; but the Governor may remove this disqualification.

A person shall also be incapable of being chosen a member of a chamber while he is serving a sentence of transportation or of imprisonment for a criminal offence.

If a person sits or votes as a member of the Provincial Legislature when he is not qualified or is disqualified for membership thereof, he is liable to a fine of five hundred rupees for each day he so sits or votes. (Vide S. 70).

Penalty for sitting or voting when not qualified or disqualified.

Salaries and allowances of members

The members of either chamber shall receive such salaries and allowances as may be determined by Act of the Provincial Legislature. (Vide S. 72).

Legislative Procedure**Introduction of Bills.**

Any Bill, other than a money Bill, may originate in either Chamber of the Provincial Legislature. A Bill pending in the Legislature shall not lapse by reason of prorogation of either chamber.

A bill pending in the Legislative Council which has not been passed by the Legislative Assembly shall not lapse on a dissolution of the Assembly; but a bill which is pending in the Legislative Assembly or which has been passed by the Legislative Assembly and pending in the Legislative Council shall lapse on a dissolution of the Assembly. The object of this provision is to safeguard that an Assembly which has nearly completed its term does not make a hasty law which in all fairness should be left for the new Assembly to consider. (Vide S. 73).

Passing of Bills in Bicameral Provinces.

A bill shall not be presented to the Governor for assent unless it has been passed by both the chambers (where there are two) either without amendments or with such amendments as are agreed to by both the chambers. If there be a deadlock between the chambers over the passage of a bill the Governor shall summon a joint sitting of both the chamber for the purpose of deliberating and voting on the Bill which, on being passed by a majority of the members present and voting there, shall be deemed to have been passed by both the chambers of the Legislature. (Vide S. 74).

Assent to Bills presented to the Governor and his

A Bill which has been passed by the Legislative Assembly or by both the chambers where there are two shall be presented to the Governor, who may in his discretion assent to the same or withhold his

assent therefrom or reserve the same for the consideration of the Governor-General. The Governor may also in his discretion return the Bill for re-consideration of the chamber or chambers, suggesting amendments therein as he thinks necessary and the chambers are bound to reconsider the Bill accordingly. But the Governor may still withhold his assent from the Bill even if it is again passed by the Legislature rejecting amendments suggested by the Governor by an overwhelming majority. The Governor has thus an absolute vote over the Bills passed by the Legislature. (Vide S. 75).

executive
veto.

The Governors are instructed not to assent to but to reserve for consideration of the Governor-General the following classes of Bills :—

- (a) any Bill the provisions of which would repeal or be repugnant to the provisions of any Act of Parliament extending to British India :
- (b) any Bill which in the Governor's opinion would, if become law, so derogate from the powers of the High Court as to endanger the position which that Court is designed to fill ;
- (c) any Bill which would alter the character of the Permanent Settlement,
- (d) any Bill regarding which the Governor feels doubt whether it does or does not, offend against the purposes of Chapter III of Part V of the Act i. e., provisions with respect to discrimination etc. (Vide Para XVIII, Instrument of Instructions)

When a Bill is reserved by the Governor for the consideration of the Governor-General, the Governor-General may either assent thereto or withhold his assent therefrom or may reserve the

Bill reserved
for considera-
tion of the
Governor-
General.

Bill for the signification of His Majesty's pleasure thereon. He may also return the Bill for reconsideration, suggesting such amendments therein as he may think necessary and the chambers are bound to reconsider the Bill accordingly and if it is again passed by them with or without amendments it shall be presented again to the Governor-General.

A Bill reserved for the signification of His Majesty's pleasure shall lapse if His Majesty does not assent to it within twelve months from the day on which it was presented to the Governor. (Vide S. 76).

A provincial bill assented to by the Governor or the Governor-General may be disallowed by His Majesty within twelve months from the date of the assent. (Vide S. 77).

Crown's
veto.

Thus there are three executive vetoes, on the Provincial Bill. viz., the Governor's veto, the Governor General's veto and the Crown's veto.

Procedure in Financial matters

The Governor shall in respect of every financial year cause to be laid before the chamber or chambers of the Legislature a statement of the estimated receipts and expenditure of the Province for that year. The said annual financial statement shall show separately—

Annual
Financial
statement.

- (a) the sums required to meet expenditure described by this Act as expenditure charged upon the revenues of the Province; and
- (b) the sums required to meet other expenditure proposed to be made from the revenues of the Province.

PROVINCIAL LEGISLATURE

The following expenditure shall be expenditure charged on the revenues of each Province :—

- (i) the salary and allowances of the Governor and other expenditure relating to his office as provided by Order in Council ;
- (ii) debt charges for which the Province is liable ;
- (iii) the salaries and allowances of the Ministers and Advocate-General ;
- (iv) the salaries and allowances of the Judges of the High Court ;
- (v) expenditure regarding administration of excluded areas ;
- (vi) any sums required to satisfy any judgment decree or award of any Court or tribunal ;
- (vii) any other expenditure declared by this Act or any act of the Provincial Legislature to be so charged.

Any question whether any proposed expenditure is within the category of the charged expenditure or not shall be decided by the Governor in his discretion. (Vide S. 78).

The expenditure described above as charged on the revenues of the Province shall not be submitted to the vote of the Legislature though the same may be discussed by the Legislature except item (i) above.

Charged expenditure not open to discussion vote of the Legislature.

Estimates of the expenditure, other than the charged ones, shall be submitted, in the form of demands for grants, to the Legislature Assembly, which shall have power to assent, or to refuse to assent, to any demand or to assent to a demand subject to

a specified reduction.

No demand for a grant shall be made except on the recommendation of the Governor. (Vide S. 79).

Authentica-
tion of
Schedule of
authorized
expenditure

The Governor shall authenticate by his signature a schedule specifying the grants made by the Assembly and the charged expenditure.

Where, however, the Governor is of opinion that a refusal or reduction of a demand by the Assembly would affect the due discharge of his special responsibilities he may also include in the schedule such additional amount, not exceeding the amount of the rejected or reduced demand, as appears to him necessary.

The said authenticated schedule shall be laid before the Assembly but shall not be open to discussion or vote thereon. (Vide S. 80).

Special pro-
visions as to
Financial
Bills.

A Bill (i) imposing or increasing any tax or (ii) regulating the borrowing of money or the giving of any guarantee by the Province or (iii) for declaring any expenditure to be expenditure charged on the revenues of the Province, shall not be introduced or moved except on the recommendation of the Governor and must first be introduced in the Legislative Assembly. (Vide S. 82).

Procedure Generally

Rules of
Procedure.

A Chamber of the Provincial Legislature may make rules for regulating its procedure and the conduct of its business. But the Governor has also power to make rules after consultation with the speaker or the President—

- (a) for regulating the procedure of and the conduct of business in the Chamber in relation to any matter which affects the

discharge of his functions in so far as he is required to act in his discretion or exercise his individual judgment ;

- (b) for securing the timely completion of financial business;
- (c) for prohibiting the discussion of or asking of questions on, any matter connected with any Indian State ;
- (d) for prohibiting the discussion of or the asking of questions on—
 - (i) any matter connected with relations between His Majesty or the Governor-General and any foreign Prince or State ;
 - (ii) any matter connected with the tribal areas or the administration of excluded areas ;
 - (iii) the personal conduct of a Ruler of any Indian State or any member of the Ruling family.

The Governor may also, with consultation with the speaker and the President make rules as to the procedure with respect to joint sittings of the chambers.

At a joint sitting of the chambers the President of the Legislative Council and in his absence such person as may be determined by rules of procedure shall preside. (Vide S. 84).

All proceedings of the Provincial Legislature shall be conducted in the English language. But the rules of the Chamber or Chambers shall provide for enabling persons unacquainted with the English language to use another language. (Vide S. 85).

English to be used in Provincial Legislature.

CHAPTER IX

Legislative Powers of Governor

The Governor has power to promulgate the following two types of ordinances which shall have the same force as Acts of the Legislature :—

Power of Governor to promulgate ordinances at any time

- (a) The Governor may at any time, if satisfied that circumstances exist which render it necessary for him to take immediate action for the discharge of his functions in respect of which he is required by the Act to act in his discretion or exercise his individual judgment, promulgate, without consulting his ministers but with the concurrence of the Governor-General, such ordinances as he thinks fit. Such an ordinance shall continue in operation only for a period of six months but may be extended for a further period of six months by a subsequent ordinance. If it is an ordinance extending a previous ordinance for a further period, it shall be communicated forthwith through the Governor-General to the Secretary of State and shall be laid before each House of Parliament. (Vide S. 87).

Power of Governor to promulgate ordinances during recess of Legislature.

- (b) The Governor may also promulgate any ordinance with the advice of his ministers when the Legislature is not in session and circumstances exist which render it necessary for him to take immediate action regarding subjects in respect of which he is not required by the Act to act in his

discretion or exercise his individual judgment ; provided that the advice of the ministers shall not be sought but the Governor shall exercise his individual judgment in cases where—

- (i) A Bill containing the same provision would have required his or the Governor-General's previous sanction to the introduction thereof into the Legislature ; or
- (ii) an Act of the Legislature containing the same provision would have required the assent of the Governor-General or of His Majesty.

Provided also that an ordinance of the said type shall not be issued without instructions from the Governor-General if :—

- (i) a Bill containing the same provision would have required the previous sanction of the Governor-General for its introduction into the Legislature ; or
- (ii) an Act containing the same provision would have required the assent of the Governor-General.

An ordinance of the said type shall be laid before the Legislature and remain in operation only for a period of six weeks from the reassembly thereof. If the Legislative Assembly passes a resolution disapproving the ordinance and the Legislative Council concurs therein, the ordinance shall cease to operate on the passing of the second resolution. (Vide S. 88).

An ordinance of the Governor may be withdrawn by him or disallowed by His Majesty.

An ordinance shall be void if an Act containing the same provisions would have been invalid. (Vide

● Ss. 88 and 89).

Power of
Governor to
enact Acts.

The Governor may also at any time, with the concurrence of the Governor-General, enact an Act (instead of an ordinance for a limited statutory period) when he thinks that it is necessary for him to do so for the purpose of enabling him satisfactorily to discharge his functions in respect of which he is required by the Act to act in his discretion or exercise his individual judgment. This he may do either forthwith, sending a message to the chamber or chambers explaining the circumstances which renders the said special legislation necessary or he may send a draft of the Bill along with the message to the chamber or chambers and may, after the expiration of one month after considering any address which may have been presented to him by either chamber, enact, as a Governor's Act, the Bill proposed by him.

The said Acts of the Governor shall have the same force and effect as an Act of the Provincial Legislature.

Every such Act shall be communicated forthwith to the Secretary of State through the Governor General and shall be laid before both Houses of the Parliament.

Provision in case of Failure of Constitutional Machinery

Power of the Governor to issue proclamation in case of break down of constitutional machinery caused by resignation or dismissal of ministers.

If at any time the Governor of a Province is satisfied that a situation has arisen in which the Government of the Province cannot be carried on in accordance with the provisions of this Act, he may by Proclamation, with the concurrence of the Governor General, assume to himself all or any of the powers vested in or exercisable by any Provincial body or authority except the High Court. This contingency may happen on two occasions, firstly, in case the ministers commanding a majority in the Legis-

lature have resigned for some cause, and secondly, when in pursuance of a disagreement between the Governor and his ministers over an issue of special responsibility the minister have been dismissed from office and even after a dissolution the Governor has been unable to form an alternative ministry commanding a majority in the Legislature.

The first kind of contingency happened on the outbreak of the Great War (1939 - 1945) when the Congress ministries resigned in seven Provinces over the issue of India's participation in the said war. The Governor of the said Provinces suspended the constitutional machinery by proclamations and carried on the Government with the aid of advisors. The ministries and the Legislatures no longer functioned there.

A proclamation to suspend the constitution may, be revoked or varied by a subsequent proclamation.

It must, however, be communicated forthwith to the Secretary of State and shall be laid before each House of Parliament. The said proclamation shall cease to operate at the expiration of six months, unless both Houses of Parliament approve of the same in which case it shall continue for a further period of twelve months. After the expiry of this period both Houses of Parliament will again consider the Proclamation and if they again approve it will continue in force for another period of twelve months. But the Proclamation shall in no case remain in force for more than three years, after which the constitution shall be restored with such amendments as may be considered necessary by the Parliament.

Powers of the Parliament to continue the Proclamation for three years.

Any law made by the Governor during the period of Government by Proclamation shall con-

Law made during period of Proclamation to continue for two years.

to have effect until two years have elapsed from the date on which the Proclamation ceases to have effect, unless sooner repealed or re-enacted by Act of the Provincial Legislature. (Vide S. 93).

CHAPTER X

Provincial Subjects

Power of Provincial Legislature to make laws.

A Provincial Legislature may make laws for the Province or any part thereof with respect to the matters enumerated in Lists III and II in the 7th Schedule of the Act. With respect to matters enumerated in the List II (called the "Provincial Legislature List") the Provincial Legislature has exclusive jurisdiction to make laws while those enumerated in the List III (called the "Concurrent Legislature List") both the Federal and Provincial Legislatures have power to make laws. The concurrent Legislature List has been reproduced on pages 47—49, while the List II (Provincial Legislature List) is reproduced below :—

1. Public order (not including the use of His Majesty's naval, military or air forces in aid of the Civil power) ; the administration of justice ; constitution and organization of all Courts except the Federal Court.
2. Jurisdiction and powers of all Courts, except the Federal Court, with respect to any of the matters in this list.
3. Police.
4. Prisons and other institutions of a like nature.
5. Public debt of the Province.
6. Provincial Public Services.

7. Provincial pensions.
8. Works, lands and buildings vested in His Majesty for the purposes of the Province.
9. Compulsory acquisition of land.
10. Libraries, museums and similar other institutions controlled or financed by the Province.
11. Elections to the Provincial Legislature.
12. The salaries of the ministers, speaker, president, members etc., of the Provincial Legislature.
13. Local Government.
14. Public health and sanitation, hospitals and dispensaries, registration of births and deaths.
15. Pilgrimages and places in India.
16. Burials.
17. Education.
18. Communications (not specified in List I).
19. Water supplies; irrigation and canals; drainage and water power.
20. Agriculture.
21. Land, that is to say, rights in or over land, land tenures, including the relationship of landlord and tenant and the collection of rents; transfer, alienation and devolution of agricultural land; land improvement and agricultural loans; colonization and Court of Wards; Encumbered and attached estates; treasure trove.
22. Forests.
23. Regulation of mines and oilfields subject

to the provisions of List I with respect to regulations under Federal control.

24. Fisheries.
25. Protection of wild birds and wild animals.
26. Gas and gas works.
27. Trade and commerce within the Province, markets and fairs ; money lending and money lenders.
28. Inns and Innkeepers.
29. Production, supply and distribution of goods; industrial development subject to the provisions of List I with respect to the development of certain industries under Federal control.
30. Adulteration of foodstuffs and other goods; weights and measures.
31. Intoxicating liquors and narcotic drugs subject to the provisions of List I with respect to opium and of List III with respect to poison and dangerous drugs.
32. Relief of the poor ; unemployment.
33. Corporations (other than those specified in List I) ; unincorporated societies and associations ; co-operative societies.
34. Charities and Charitable institutions.
35. Theatres, dramatic performances and cinemas but not including the sanction of cinematograph films for exhibition.
36. Betting and gambling.
37. Offences against laws with respect to any of the matters in this list.
38. Inquiries and statistics for the purpose of any of the matters in this list.

39. Land revenue and land records.
40. Duties of excise on the following goods :—
 - (a) alcoholic liquors for human consumption ;
 - (b) opium, Indian hemp and other narcotics;
 - (c) medicinal and toilet preparations containing substances stated in the above sub-paragraphs (a) and (b).
41. Taxes on agricultural income.
42. Taxes on lands and buildings, hearths and windows.
43. Duties in respect of succession to agricultural land.
44. Taxes on mineral rights.
45. Capitation taxes.
46. Taxes on professions, trade, callings and employments.
47. Taxes on animals and boats.
48. Taxes on sale of goods and on advertisements.
- 48-A. Taxes on vehicles.
- 48-B. Taxes on consumption or sale of electricity.
49. Cesses on the entry of goods into a local area for consumption, use or sale therein.
50. Taxes on luxuries.
51. Rates of stamp duty in respect of documents other than those specified in List I.
52. Dues on passengers and goods carried on inland waterways.
53. Tolls.
54. Fees in respect of any of the matters in this list, but not including fees taken in any Court.

Though the Provincial Legislature is vested with exclusive jurisdiction to make laws with respect to matters enumerated in List II (Provincial Legislature List), in case of a Proclamation made by the Governor-General that a grave emergency has arisen whereby the security of India is threatened, whether by war or internal disturbance, the Federal Legislature shall have power to make laws for a Province or any part thereof with respect to any of the matters enumerated in the Provincial Legislative List. Provided that no Bill for the aforesaid purpose shall be introduced without the previous sanction of the Governor-General.

Power of Federal Legislature to legislate regarding matters enumerated in the Provincial Legislative List in case of Proclamation of Emergency by the Governor-General.

In case of inconsistency between a Provincial law and a Federal law (made for the aforesaid purpose) the latter shall prevail.

A Proclamation of Emergency made by the Governor-General may be revoked by him at any time. It shall be communicated forthwith to the Secretary of State and shall be laid before each House of Parliament. It shall cease to operate at the expiration of six months unless before the expiry of the said period it has been approved by both Houses of Parliament.

A law made by the Federal Legislature under the said Proclamation of Emergency shall cease to have effect on the expiration of a period of six months after the Proclamation has ceased to operate (Vide S. 102).

The Federal Legislature may also make laws for two or more Provinces with respect to the matters enumerated in the Provincial Legislature List if resolutions to that effect are passed by all the chambers of the Legislatures of those Provinces. But any Act passed as aforesaid may be amended or repealed by the Provincial Legislature. (Vide S. 103).

Power of Federal Legislature to legislate for two or more Provinces by consent.

The Governor-General may, in his discretion, by public notification empower either the Federal or the Provincial Legislature to enact a law with respect to any matter not enumerated in any of the Lists of the seventh Schedule to the Act. (Vide S. 104).

Residuary power of legislation.

If any provision of a law of a Provincial Legislature in respect of any matter enumerated in the Concurrent Legislative List (No. III) is repugnant to any provision of a Federal law or to any provision of an existing Indian law, then the Federal law or the existing Indian law shall prevail and the Provincial law shall to the extent of the repugnancy be void. Similarly the Federal law shall prevail over the law of a Federated State.

Inconsistency between Federal and Provincial law or law of a Federated State

But no Bill or amendment for making any provision repugnant to any Provincial law, which having been reserved for the consideration of the Governor-General or the signification of His Majesty's pleasure has received the assent of the Governor-General or of His Majesty, shall be introduced or moved in the Federal Legislature without the previous sanction of the Governor-General in his discretion. (Vide S. 107).

When the question is whether a Provincial Legislation is repugnant to an existing Indian law, the onus of showing its repugnancy should be on the party attacking its validity. There ought to be presumption in favour of its validity and every effort should be made to reconcile them and construe both so as to avoid their being repugnant to each other and care should be taken to see whether the two did not really operate in different fields without encroachment. (2 F. L. J. 183).

Onus of showing repugnancy is on the party attacking the validity of Provincial law.

Restrictions on Legislative Power

Unless the Governor-General thinks fit to give his previous sanction, there shall not be introduced

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into either chamber of a Provincial Legislature any Bill which :—

- (a) repeals, amends or is repugnant to any provisions of an Act of Parliament extending to British India ;
- (b) repeals, amends or is repugnant to any Governor-Generals' Act or any ordinance promulgated by him ;
- (c) affects matters in which the Governor-General is required to Act in his discretion ;
- (d) affects the procedure for criminal proceedings in which European British subjects are concerned ;

and unless the Governor of the Province thinks fit to give his previous sanction, there shall not be introduced any Bill which :—

- (i) repeals, amends or is repugnant to any Governor's Act, or any ordinance promulgated by him ;
- (ii) repeals, amends or affects any Act relating to any police force. (Vide S. 108).

The giving of previous sanction by the Governor as aforesaid shall not preclude him from withholding the assent subsequently.

No Act of the Provincial Legislature shall be invalid by reason only that previous sanction to the same was not given if assent to the same has been subsequently given by the Governor or the Governor General as the case may be or by His Majesty. (Vide S. 109).

The following are, however, absolute restrictions on the powers of the Provisional Legislature :—

- (a) the power of the Parliament to legislate

for India shall remain unaffected.

(b) the Provincial Legislature shall not make laws :—

- (i) affecting the Sovereign or the Royal Family or the succession to the Crown or the sovereignty, dominion or suzerainty of the Crown in any part of India or the law of British Nationality or the Army Act, the Air Force Act, the Naval Discipline Act, or the law of Prize or Prize Courts ;
- (ii) amending any provision of this Act or any Order in Council made thereunder or any rule made under the Act by the Secretary of State or by the Governor-General or a Governor in his discretion, or in the exercise of his individual judgment, except in so far as is expressly permitted by any provision of this Act ;
- (iii) derogating from any prerogative right of His Majesty to grant special leave to appeal from any Court, except in so far as is expressly permitted by the Act. (Vide S. 110).

CHAPTER XI

Provincial Judiciary

There are at present the following ten High Courts in British India :—The High Courts of Calcutta, Bombay, Madras, Allahabad, Lahore, Patna, Nagpur, the Chief Court of Oudh, the Judicial Commissioner's Court in the North-West Frontier Province and Sindh. New High Courts

**High Courts
of British
India.**

may also be created by His Majesty by Letters Patent. (Vide S. 219).

Constitution of High Courts.

Every High Court is a Court of record and consists of a Chief Justice and such other Judges as His Majesty may from time to time determine.

Every Judge of a High Court shall be appointed by His Majesty and shall hold office until he attain the age of sixty years. But he may resign his post earlier or may be removed from office by His Majesty on the ground of misbehaviour or of infirmity of body or mind, if the Judicial Committee of the Privy Council, on reference being made to them by His Majesty, report that he ought on any such ground be removed.

Qualifications of a Judge of a High Court.

In order that a person may be appointed a judge of a High Court he must be :—

- (a) a Barrister of England or North Ireland or a member of Faculty of Advocates in Scotland, of atleast ten years standing ; or
- (b) a member of the Indian Civil Service of atleast ten years standing, who has for atleast three years served as a District Judge ; or
- (c) a Judicial Officer in British India, who has for atleast five years served as a District Judge or a Subordinate Judge or a Judge of a Small Casue Court ; or
- (d) a pleader of a High Court of atleast ten years standing.

Qualifications of a Chief Justice

But a person shall not, unless he is, or where first appointed to Judicial Office was, a barrister, a member of the Faculty of Advacates or a pleader, be qualified for appointment as Chief Justice until

he has served for atleast three years as a Judge of a High Court. (Vide S. 220).

The maximum number of Judges in the several Courts shall be as given below :—

Maximum number of High Court Judges.

Court	Maximum number of Judges
Calcutta	19
Bombay	12
Madras	15
Allahabad	12
Lahore	15
Patna	11
Nagpur	7
Oudh Chief Court	5

Judicial Commissioner's Court	Maximum Number of Judicial Assistant Commissioners.
N. W. Frontier Province	2
Sindh	5

N. W. Frontier Province

2

Sindh

5

(Vide the Government of India Order, 1937)

The salaries, allowances, and rights in respect of leave and pensions of a High Court Judge shall be determined by His Majesty in Council ; provided that the same shall not be varied to his disadvantage after his appointment. (Vide S. 221).

Salaries allowances etc. of High Court Judge

All administrative expenses of the High Court shall be charged upon the revenues of the Province and will, therefore, be non-votable. The Governor in fixing the amount in respect of it will exercise his individual judgment. (Vide S. 228).

If the Office of a High Court Judge becomes vacant by reason of death, retirement, absence etc. the Governor-General may in his discretion appoint temporarily a Person, duly qualified for appointment as a Judge, to act as a Judge of that Court

Power of Governor General to fill temporary vacancies.

until some person appointed by His Majesty to the vacant office has entered on the duties thereof or until the permanent Judge has resumed his duties. The Governor-General may also appoint additional judges for a period not exceeding two years in case of temporary increase in the business of any High Court. (Vide S. 222).

Original and appellate Jurisdiction of High Courts.

The High Courts have both ordinary and extraordinary original civil jurisdiction as defined by the Letters Patent constituting the same.

The Jurisdiction of High Court to hear appeals from decrees of Subordinate Courts is provided by various Acts in the different Provinces, and by S. 100 of the Code of Civil Procedure. Appeals to the High Court from decrees or orders of its Single Judge are further provided by the Letters Patent constituting the High Court.

Administrative function of High Courts.

Under the present Act (i. e., Government of India Act, 1935) every High Court has superintendence over the subordinate Courts and may do any of the following things, that is to say,—

- (a) call for returns ;
- (b) make and issue general rules and prescribe forms for regulating the practice and proceedings of such Courts ;
- (c) prescribe forms in which books, entries and amounts shall be kept by the officers of any such Courts ; and
- (d) settle table of fees to be allowed to the sheriff, attorney, and all clerks and officers of Courts.

The said rules, forms etc. shall require the previous approval of the Governor and shall not be inconsistent with the provisions of any law for the time being in force.

The High Court has now no jurisdiction to question any judgment of any inferior Court which is not otherwise subject to appeal or revision. (Vide S. 224).

High Court not empowered to interfere with judgment of lower Court except by way of appeal or revision.

Under the old Act of 1919 the powers of the High Courts were not only administrative but also Judicial so that they had power under S. 107 of the said Act to interfere with the Judicial orders of the lower Courts. But under the present Act the High Court has no such power. (1938 Lah. 80 ; 1938 Lah. 442 ; 1938 All. 639).

The powers of revision which the High Court may otherwise possess are not, however, affected by S. 224 of the present Act. (1938 Mad. 634).

A High Court may, of its own motion or on the application of a party, transfer to itself for trial any case pending in the subordinate Court. (Vide S. 24 C. P. C. and S. 526 Cr. P. C.)

Power of High Court to transfer cases to itself for trial.

This power is to be exercised by a High Court in its discretion for the ends of Justice.

Under S. 225 of the present Act, however, an obligation is imposed on the High Court to transfer a case to itself, upon the application by the Advocate General for the Federation or by the Advocate General of a Province as the case may be, if it is satisfied that the case involves the question of the validity of any Federal or Provincial Act.

No High Court shall have any original jurisdiction in any matter concerning the revenue, or concerning any act ordered or done in the collection thereof according to the law and practice of the country. But such jurisdiction may be conferred by an Act of the appropriate Legislature provided that the Bill has been previously approved by the Governor-General or Governor, as the case may be. (Vide S. 226).

Jurisdiction of High Courts in revenue matters.

Thus proceedings taken and acts done in the collection of income-tax cannot be questioned in the High Court. (1936 Mad. 398).

English to be language of High Court.

All proceedings in every High Court shall be in the English language. (S. 227).

Power of His Majesty to constitute or reconstitute High Court by Letters Patent.

His Majesty may, on the presentation of an address by the chamber or chambers of the Legislature to the Governor of the Province for submission to His Majesty, constitute or reconstitute a High Court for the Province by Letters Patent. (Vide S. 229).

His Majesty in Council may, if satisfied that an agreement in that behalf has been made between the Governments concerned, extend the jurisdiction of a High Court in any Province to any area in British India not forming part of that Province. (Vide S. 230).

CHAPTER XII

The Chief Commissioners' Provinces

Chief Commissioner's Provinces.

The following shall be the Chief Commissioners' Provinces :—

- (1) British Baluchistan ;
- (2) Delhi ;
- (3) Ajmer-Merwara ;
- (4) Coorg ;
- (5) Andaman and Nicobar Islands ;
- (6) Panth Piploda ;
- (7) Such other Chief Commissioner's Provinces as may be created under the Act. (Vide S. 94).

Aden shall cease to be part of India. (*Ibid*).

A Chief Commissioner's Province shall be administered by the Governor-General acting, through such extent as he thinks fit, through a Chief Commissioner. (*Ibid*).

A Chief Commissioner shall be appointed by the Governor-General in his discretion. (*Ibid*).

In the administration of Chief Commissioner's Provinces the Governor General will act on the advice of Federal ministers. But he shall act in his discretion :—

- (a) in appointing a Chief Commissioner ;
- (b) in directing and controlling the administration of British Baluchistan ;
- (c) in making regulations for the peace and good government of British Baluchistan and Andeman and Nicobar Islands ; any regulation so made may repeal or amend any Act of the Federal Legislature which is for the time being applicable to the Province,

No Act of the Federal Legislature shall apply to British Baluchistan unless the Governor-General in his discretion by Public notification so directs.

The Governor-General in giving such a direction with respect to any Act may direct that the Act shall, in its application to the Province or to any specified part thereof, have effect subject to such exception and modifications as he thinks fit.

The executive authority of the Federation shall, however, extend to British Baluchistan as it extends to other Chief Commissioner's Provinces. (Vide S. 95 and 96).

CHAPTER XIII

Provision with respect to Discrimination etc

British subjects domiciled in the United Kingdom.

British subjects domiciled in the United Kingdom shall not by any Federal or Provincial law be prevented from entering British India or residing or holding property or public office in it or carrying on of any occupation, trade, business or profession, provided British subjects domiciled in India are by the law of the United Kingdom not subject to a similar restriction. (Vide S. 111).

Taxation

No Federal or Provincial law shall impose a tax on British subjects domiciled in the United Kingdom or Burma or companies incorporated therein different from that imposed on British subjects domiciled in India or companies incorporated therein. (Vide S. 112).

Companies

There shall be no discrimination by any Indian law against the share holders, directors or other persons connected with the companies incorporated in England and carrying on business in British India so long as there is no like restriction by the law of the United Kingdom on the share holders direction or other persons connected with the companies incorporated in British India and carrying on business in the United Kingdom. (Vide S. 113).

There shall also be no discrimination in British India against companies incorporated in British India with British capital and British directors ; provided there is no similar restriction by the law of the United Kingdom on companies incorporated in the United Kingdom with the Indian capital and Indian

directors. (Vide S. 114).

No ship or aircraft registered in the United Kingdom shall be subjected to any differential treatment in British India so long as ships, aircrafts registered in British India are not subject to a similar restriction by the law of the United Kingdom. (Vide S. 115).

Ships and aircrafts.

Companies incorporated in the United Kingdom and carrying on business in British India shall be eligible for any grant, bounty or subsidy payable out of the revenues of the Federation or of a Province for the encouragement of any trade or industry to the same extent as companies incorporated in British India are eligible therefor; provided that they are engaged as the industry, proposed to be encouraged, at the time when subsidy act is passed and that there is no similar restriction imposed by the law of the United Kingdom on the companies incorporated in British India. (Vide S. 116).

Subsidies for the encouragement of trade or industry.

The aforesaid reciprocal treatments may be secured by a convention between His Majesty's Government in the United Kingdom and the Federal Government and the statutory safeguards may be suspended by order in Council. (S. 118).

Power to secure reciprocal treatment by convention.

No Bill prescribing professional or technical qualification requisite for the purpose of practising any profession or the carrying on of any occupation, trade or business or holding any office in British India shall be introduced in the Legislature without the previous sanction of the Governor-General or the Governor as the case may be. The said sanction shall not be given unless he is satisfied that the proposed legislation is so framed as to secure that no new restriction regarding the same are imposed except in so far as may be necessary in the interests of public.

Medical qualifications.

from the United Kingdom shall not be excluded from practising medicine, surgery or midwifery in British India except on the ground that the diploma does not furnish a sufficient guarantee of the possession of the requisite knowledge and skill for the practice of the said profession, and shall only be excluded on that ground so long as the law of Indian Legislature makes provision for enabling any question as to the sufficiency of that diploma to be referred to and decided by the Privy Council. The said restrictions on the Indian Legislature shall apply only if a similar provision is made by the law of the United Kingdom regarding persons holding diploma from British India and practising medical profession in the United Kingdom. (Vide S. 120).

The basis of the said provision of law is to secure reciprocity between the medical council of Great Britain and of India.

Officers of
Indian
Medical
Service etc.

A person who holds a commission from His Majesty as a medical officer in the Indian Medical Service or any other branch of His Majesty's forces and is on the active list shall be deemed to be qualified to practise the profession in British India, and be entitled to be registered in British India as so qualified. (Vide S. 121).

CHAPTER XIV

Administrative Relations between Federation, Provinces and States

Obligations
of units and
Federation.

The executive authority of every Province and Federated State shall be so exercised as to secure respect for the laws of the Federal Legislature which apply in that Province or State. (S. 122).

The object of the said provision is to promote unity without sacrificing the autonomy of the Federal units. The Federal authority, while exercising executive authority over the Provinces or a Federal States must take into consideration the interests of that Province or State.

The Governor-General may direct the Governor of any Province to discharge as his agent such functions in relation to tribal areas, defence, external affairs or ecclesiastical affairs as may be specified in the direction. (S. 123).

Governor
act as agent
of Governor
General in
certain cases

The Governor-General may, with the consent of a Province or the Ruler of a Federated State, entrust to the Government or the Ruler or officers thereof functions in relation to any matter to which the executive authority of the Federation extends.

Power of
Federation
to confer
powers and
duties on
Provinces
and States
in certain
cases.

An Act of the Federal Legislature which extends to a Province or a Federated State may confer powers and impose duties upon the Province or the State or officers thereof.

Where such powers and duties have been conferred there shall be paid by the Federation to the Province or 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. (Vide S. 124).

In respect of administration of Federal laws in Federated States, agreement may be made between the Governor-General and the Ruler of a Federated State for the exercise by the latter of functions in relation to the administration in his state of any law of the Federal Legislature which applies therein, provided that any such agreement, if made, shall also provide for enabling the Governor-General to satisfy himself by inspection or otherwise that the administration of law to which the agreement relates is carried out in accordance with the policy of the

Administra-
tion of
Federal laws
in Indian
States.

Federal Government and if he is not satisfied the Governor-General may issue such directions to the Ruler as he thinks fit.

All Courts shall take judicial notice of all such agreements. (Vide S. 125).

Control of Federation over Provinces in certain cases.

The executive authority of every Province shall be so exercised as not to impede or prejudice the exercise of the executive authority of the Federation and the Federal Government may give such directions to a Province as it thinks necessary for that purpose. The Federation may also give direction to a Province as to the carrying into execution therein of any Act of the Federal Legislature relating to a matter specified in the Concurrent Legislature List. It may also give directions as to the construction and maintenance of means of communication declared to be of military importance, without restricting its own power to construct and maintain them as part of its functions with respect to naval, military and airforce works.

The Governor-General in his discretion may at any time issue instructions to the Governor of a Province as to the manner in which the executive authority thereof is to be exercised for the purpose of preventing any grave menace to the peace and tranquility of India or any part thereof. (Vide S. 126).

Duty of Ruler of a State with respect to Federal subjects.

Similarly as the Provinces, the executive authority of every Federated State shall be so exercised as not to impede or prejudice the exercise of the executive authority of the Federation so far as it is exercisable in the State by virtue of a law of the Federal Legislature applicable to it. If it appears to the Governor-General that the Ruler of a Federated State has failed to fulfil his said obligation, he may, after considering any representation made to him by the Ruler, issue such directions to the Ruler as it thinks fit. But if any question arises as to the ex-

tent of the executive authority of the Federation exercisable in a State, the Ruler or the Federation may refer it to the Federal Court for determination by it in the exercise of its original jurisdiction. (Vide S. 128).

Though broadcasting is a Federal subject the Federal Government shall not unreasonably refuse to entrust the Government of any Province or the Ruler of a Federated State such functions with respect to broadcasting as may be necessary to enable that Government or the Ruler to construct and use transmitters in the Province or State or to regulate and impose fees for the construction and use of transmitters and of receiving apparatus in the Province or State. But this does not mean that the Federal Government is required to entrust to any Provincial Government or a Ruler any control over the use of transmitters constructed or maintained by the Federal Government. (Vide S. 129).

Broadcasting

The Federation may acquire any land situate in a Province for any purpose connected with a matter with respect to which the Federal Legislature has power to make laws. It may require the Province to acquire the same on its behalf and at its expense or if it belongs to the Province, to transfer it on such terms as may be agreed, or, in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of India. (Vide S. 127)

**Acquisition
of land by
Federation.**

Interference with Water Supplies

If it appears to the Government of any Province or to the Ruler of a Federated State that the interest of the Province or the State or of the inhabitants thereof, in the water from any natural source of supply, have been or are likely to be affected prejudicially by any executive action or legislation or by the failure of any authority to exercise any of their powers, the Government or the Ruler may complain to the Governor-General. (Vide S. 130).

**Complaints
as to inter-
ference with
water
supplies.**

Decision of complaints.

If the Governor-General is of opinion that the issues involved are of sufficient importance he may appoint a commission consisting of persons having special knowledge of and experience in irrigation, engineering, administration, finance or law and request the commission to investigate and report on such matters as he may refer to them. After considering the said report the Governor-General shall give his decision and make such orders as he may deem proper, provided that, if before his decision the Provincial Government or the Ruler request him so to do, he shall refer the matter to His Majesty in Council who may make such order as he deems proper.

The order made by the Governor-General or His Majesty in Council with respect to expenses and costs awarded to any party may be enforced as if it were an order made by the Federal Court (Vide S. 131).

Rules of State may exclude application of provisions as to water supply.

The aforesaid procedure is not obligatory on the States. They are at liberty either to accept it or not in their Instrument of Accession. If they do not so accept the said water supply disputes shall be decided by the Paramount Power as is done at present. (Vide S. 134).

Jurisdiction of Courts excluded.

No Court shall have jurisdiction to entertain any action or suit with respect to said water supply disputes. (Vide S 133).

Inter-Provincial Co-operation**Provisions with respect to an inter-provincial Council.**

His Majesty in Council may, on representation made to him by the Governor-General, establish an Inter-Provincial Council charged with the duty of :—

- (a) inquiring into and advising upon disputes which may have arisen between Provinces;

- (b) investigating and discussing subjects in which some or all of the Provinces, or the Federation and one or more of the Provinces have a common interest ;
- (c) making recommendations upon any subject and in particular for the better co-ordination of policy and action with respect to that subject,

Provision may also be made for the participation of Indian States in the work of the said Council. (Vide S. 135).

CHAPTER XV

Finance

In any Federation the problem of the allocation of resources is necessarily one of difficulty, since two different authorities (the Federal Government and the Government of the Federal Units), each with independent powers, are raising money from the same body of tax-payers. The constitutional problem is simplified if it is possible to allocate separate fields of taxation to the two authorities. The scheme of allocation under the present Act is as follows :—

Problem of allocation of revenues.

- (a) Duties in respect of the following items shall be levied and collected by the Federation but, except where the Legislature has imposed a surcharge for Federal purpose, the net proceeds (other than those attributable to Chief Commissioners' Provinces) in any financial year shall be assigned to the Units of the Federation within which the duty or tax is leviable in that year :—

Duties levied by Federation and assigned to the units.

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- (i) duties in respect of succession to property other than agricultural land ;
- (ii) stamp duties mentioned in the Federal Legislature List, i e., in respect of bills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, proxies and receipts ;
- (iii) terminal taxes on goods or passengers carried by railway or air ; and
- (iv) taxes on railway fares and freights.

Where, however, a surcharge is levied for Federal purposes the whole proceeds of any such surcharge shall form part of the revenues of the Federation. (Vide S. 137).

Salt, excise
and export
duties. +

Duties on the following items shall be levied and collected by the Federation, but, if an Act of the Federal Legislature so provides, shall be assigned whole or in part to the Federal Units and distributed among there in accordance with the Federal Act :—

(i) Salt ;

(ii) Federal duties of excise, i. e., all excise duties except on alcohol and narcotic drugs ; and

(iii) Export duties.

Regarding export duties on Jutes and Jute products atleast 50 per cent. is compulsorily assignable to the producing Units. (Vide S. 140).

Taxes on
income other
than agricul-
tural income
to be levied
by Federa-

Taxes on income other than agricultural income shall be levied and collected by the Federation, but a prescribed percentage of the net proceeds in any financial year shall be assigned to the Federal Units and distributed in such manner as may be

prescribed by His Majesty in Council (Vide S. 138).

tion but a prescribed percentage to be assigned to units.

The percentage of revenue derived from taxes on income to be assigned to the Provinces is 50 and this is redistributed by the Order in Council, dated 3rd July, 1936 as follows :—

Order in Council dated 3-7-36 fixing the percentage of assigned revenue as so.

Bombay	...	20	per cent.
Bengal	...	20	”
Madras	...	15	”
The United Provinces	...	15	”
The Punjab	...	8	”
Behar	...	10	”
The Central Provinces and Berar	...	5	”
Assam	...	2	”
The N. W. F. Province	...	1	”
Orissa	...	2	”
Sindh	...	2	”

The per cent. originally prescribed for the Provinces shall not be increased by any subsequent Order in Council.

But the Federal Legislature may at any time increase the said taxes by a surcharge for Federal purposes and the whole proceeds of any such surcharge shall form part of the revenues of the Federation.

Out of the sums so assigned to the Provinces the Federal Government is entitled to retain an amount as may be prescribed, which shall be reduced every year, power being reserved to the Governor General to suspend these reductions, if circumstance make it necessary to do so. (Vide S. 138).

The Federal Legislature will have power to

**Corporation,
tax.**

impose corporation tax (i. e., any tax on so much of the income of companies as does not represent agricultural income) in any Unit of the Federation. But the corporation tax shall not be levied by the Federation in any Federated State until ten years have elapsed from the establishment of the Federation and even after ten years the Ruler of a Federated State may, instead of levying of the said tax, pay contribution as near as may be equivalent to the estimated amount of the tax if it were levied in the State.

If the Ruler is dissatisfied with as to the amount of contribution payable by the State in lieu of the corporation tax, he may appeal to the Federal Court, which may, if the amount is found to be excessive, reduce the same accordingly and no further appeal shall lie from the decision of the said Court. (Vide S. 139).

The following Bills shall not be introduced in the Federal Legislature without the previous sanction of the Governor-General :—

Prior sanction of Governor General required to Bills effecting taxation in which Provinces are interested or imposing Federal surcharge.

- (i) a Bill imposing or varying any tax or duty in which Provinces are interested ;
- (ii) a Bill varying the meaning of the expression agricultural income as defined for the purposes of the enactments relating to Indian Income-tax ;
- (iii) a Bill which affects the principles governing the distribution of revenues to the Federal Units ;
- (iv) a Bill imposing any Federal surcharge.

The Governor-General shall not give his sanction to a Bill of the class (iv) above unless he is satisfied that all practicable measures for otherwise increasing the Federal taxation would not result in

the balancing of Federal receipts and expenditure on revenue account in any year. (Vide S. 141).

His Majesty in Council may prescribe sums to be charged on the revenues of the Federation in each year as grants in aid of the revenues of such Provinces as His Majesty may determine to be in need of assistance. But no grant once fixed shall be increased by a subsequent order, except in the case of N. W. F. Province, unless an address has been presented to the Governor-General by both Chambers of the Federal Legislature for submission to His Majesty praying that the increase may be made. (Vide S. 142).

Grants from Federation to certain Provinces as prescribed by His Majesty in Council.

The Distribution of Revenues Order, dated 3rd July, 1936, provides the following grants-in aid to the revenues of Provinces :-

United Provinces	...	25 lakhs of rupees yearly for the first five years.
Assam	...	30 lakhs of rupees per year.
N W. F. Province	...	100 lakhs of rupees per year.
Orissa	...	47 lakhs of rupees per year.
Sindh	...	110 lakhs of rupees in the first year; 105 lakhs in each of the next nine years; 65 lakhs in each of the next five years; 60 lakhs in each of the next five years; and 55 lakhs in each of the next five years.

No Provincial law relating to taxes for the bene.

Taxes on professions, trades, callings and employments.

fit of a Province or of a Municipality, District 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; provided that the total amount payable by any one person to the Province or to any one Local Authority in respect of such taxes shall not exceed fifty rupees after 31st March, 1939. (Vide S. 142-A).

Any taxes or duties which were being levied by any Provincial Government or Local Authority for its own purposes under a law in force on 1st January, 1935, may, notwithstanding that these taxes are mentioned in the Federal Legislature List, continue to be levied and to be applied to the same purposes until provision to the contrary is made by the Federal Legislature. (Vide S. 143).

The Crown and the States

Expenses of the Crown in connection with Indian States to be paid by Federation. Remission of State Contributions by His Majesty in case of Federated States.

The Federation shall pay to His Majesty each year the sums stated by His Majesty's Representative to be required for the exercise of the functions of the Crown in relations with Indian States. (Vide S. 145).

His Majesty may, while signifying acceptance of the Instrument of Accession of a State, remit for a period not exceeding twenty years any cash contributions or tributes payable by it.

His Majesty may also, while signifying acceptance of the Instrument of Accession of a State, which has ceded territories before the passing of this Act in return for specific military guarantee or in return for the discharge of the State from obligations to provide military assistance, direct such sums to be paid to it as in the opinion of His Majesty ought to be paid in respect of any such cession as aforesaid. (Vide S. 147).

The reason for the remission of cash contributions and payment of compensation in respect of ceded territories is this. All states which will come into Federation will receive precisely the same kind of generalised protection from the Federation. It is not conceivable that a State which has either ceded territory or has paid for a period a tribute, should be willing to enter into a Federation and bring into that Federation certain contributions which other States or Provinces are not bringing in. It is essential that some kind of parity should be reached in respect of the Financial contributions of the various States and Provinces entering in the Federation and in order to ensure that parity it is clearly necessary that concessions should be made in connection with ceded territories and tributes paid.

Agreements relating to remission of cash contributions or payment of compensation shall be subject to the following limitations :—

- (1) No contribution shall be remitted so far as it exceeds the value of any privilege or immunity enjoyed by the State, and in fixing the amount of any payments in respect of ceded territories, account shall be taken of the value of any such privilege or immunity.
- (2) No such remission or payment shall be made until the Provinces have begun to receive monies from taxes on income.
- (3) In the case of a remission, it shall be complete before the expiration of twenty years from the date of accession of the State to the Federation. (Vide S. 147).

Limitation regarding remission of cash contributions.

Miscellaneous Financial Provisions

No burden shall be imposed on the revenues of

Expenditure defrayable out of Indian revenues.

the Federation or the Provinces except for the purposes of India or some part thereof. But the Federation or a Province may make grants for any purpose though it is not one with respect to which the Federal or the Provincial Legislature, as the case may be, may make laws. (Vide S. 150).

Exercise by Governor-General of certain powers with respect to Reserve Bank.

The Governor-General and the Governor may make rules for the purpose of securing the safe custody of all public monies of the Federation or the Province as the case may be. (Vide S. 150).

The Governor-General, may in his discretion exercise the following powers :—

- (a) appoint or remove from office the Governor or Deputy Governor of the Reserve Bank of India, fix their salaries and allowances and terms of office ;
- (b) appoint an officiating Governor or Deputy Governor of the Bank ;
- (c) supersede the Central Board of the Bank and any action consequent thereon ; and
- (d) liquidate the Bank.

The Governor-General shall also exercise his individual judgment in nominating directors of the Reserve Bank of India and in removing from office any director nominated by him. (Vide S. 152).

Previous sanction of the Governor-General necessary to legislation with respect to Reserve Bank currency and coinage.

No Bill which affects the coinage or currency of the Federation or the constitution of the Reserve Bank of India shall be introduced in either chamber without the previous sanction of the Governor-General. (Vide S. 153).

Except where otherwise provided by any Federal law, property vested in His Majesty for the purposes

of the Federal Government shall be exempted from all taxes imposed by any Provincial Authority.
(Vide S. 154).

Exemption of certain public property from taxation.

Except where otherwise provided by any Federal law no tax shall be imposed on the consumption or sale of electricity which is :—

- (a) consumed by the Federal Government ; or
- (b) consumed in the construction, maintenance or operation of a Federal Railway.
(Vide S. 154-A).

A Provincial Government and the Ruler of a Federated State shall not be liable to Federal taxation in respect of lands and buildings situated in British India or in respect of income accruing in British India, except, however, where a trade or business of any kind is carried on in any part of British India by the Ruler or by the Provincial Government outside its limits. A Ruler shall not be exempt from Federal tax in respect of personal property or income.

Exemption of Provincial Governments and Rulers of Federated States in respect of Federal taxation.

The Federation and every Province shall supply sufficient funds to the Secretary of State to enable him to make payments in respect of any liability which falls to be met out of the Federal or Provincial revenues as the case may be.

Duty of Federation and Provinces to supply Secretary of State with funds.

They shall also supply funds to the Secretary of State and the High Commissioner sufficient to enable payment to be made of all pensions payable out of the revenues of the Federation or the Province, as the case may be, in the United Kingdom or through officers accounting to the Secretary of State or to the High Commissioner. (Vide S. 157).

CHAPTER XVI

Borrowing and Audit

Cessation of borrowing by Secretary of State.

All powers of the Secretary of State in Council of borrowing on the security of the revenues of India shall cease except in certain cases during the transitional period, i. e., till the formation of Federation. (Vide S. 161).

Borrowing by Federal Government.

The Federal Government may borrow money upon the security of the revenues of the Federation within such limits as may be fixed by Act of the Federal Legislature. Similarly a Provincial Government may borrow upon the security of the revenues of the Province within such limits as may be fixed by Act of the Provincial Legislature.

Borrowing by Provincial Government,

The Federation may make loans to any Province within the prescribed limits. It may also give guarantee in respect of loans raised by the latter.

But a Province may not borrow outside India without the consent of the Federation. It shall also not raise any loan without the like consent if there is still outstanding any part of a loan made to the Province by the Federation, Governor-General in Council or in respect of which a guarantee has been given by the Federation or the Governor General in Council. The aforesaid consent shall not, however, be unreasonably withheld and nor shall the Federation refuse, if sufficient cause is shown, to make a loan to a Province or give guarantee for a loan raised by it. If any dispute arises as to whether a refusal of consent, or refusal to make a loan or to give a guarantee, or any con-

dition insisted upon, is or is not justifiable, the matter shall be referred to the Governor-General whose decision shall be final. (Vide Ss. 162 and 163).

The Governor-General and the Governors have no independent power of borrowing. They can only do so on the advice of their ministers and subject to any restrictions imposed by Act of the Legislature, Federal or Provincial, as the case may be. But when they are acting in their individual judgment in connection with their special responsibilities, they may borrow without the advice of their ministers and take any action which is open to the Federal or Provincial Government, as the case may be. Besides, the Governor-General may also take action and borrow on his own account for safeguarding the stability and credit of the Federal Government.

The Federation may also make loans to any Federated State or give guarantee in respect of loans raised by it within such limits as may be fixed by Act of Federal Legislature. (Vide S. 104).

**Loans by
Federal
Government
to Federated
States.**

The provisions of the Colonial Stock Acts, 1877 to 1900, shall apply to stocks issued by the Federation. (Vide S. 145).

Audit and Accounts

There shall be an Auditor-General of India who shall be appointed by His Majesty and may be removed from the office by His Majesty by warrant under the Royal Sign Manual on the ground of misbehaviour or of infirmity of mind or body, if the Judicial Committee of the Privy Council, on reference being made to them by His Majesty, report that he ought on any such ground to be removed.

**Auditor
General of
India.**

The conditions of service of the Auditor-General

shall be such as may be prescribed by His Majesty in Council, provided that neither his salary nor his rights in respect of leave of absence or pension shall be varied to his disadvantage.

The Auditor General shall perform such duties and exercise such powers in relation to the accounts of the Federation and of the Provinces as may be prescribed by an Order of His Majesty in Council, or by any subsequent Acts of the Federal Legislature varying or extending such an Order ; provided that no Bill or amendment for this purpose shall be introduced or moved without the previous sanction of the Governor-General in his discretion.

The salary, allowances and pension payable to the Auditor-General shall be charged on the revenues of the Federation and those payable to his staff shall be paid out of those revenues. (Vide S. 166).

His Majesty may also appoint an Auditor-General of a Province to perform the same duties and to exercise the same power as would be performed and exercised by the Auditor-General of India, provided an Act is passed by the Provincial Legislature charging the salary of an Auditor-General for that province on the revenues of the province and three years have elapsed since the date of that Act. (Vide S. 167).

The accounts of the Federation and the Provinces shall be kept in such form as the Auditor-General of India may prescribe with the approval of the Governor-General. (Vide S. 168).

The report of the Auditor-General of India or of the Auditor-General of a Province shall be submitted to the Governor-General or the Governor, as the case may be, who shall cause the same to be laid before the Federal or the Provincial Legislature as the case may be. (Vide S. 169).

The Governor General in Council may appoint in his discretion an Auditor of Indian Home Accounts and prescribe his conditions of service ; provided that his salary or rights in respect of leave of absence or pension or age of retirement shall not be varied to his disadvantage after his appointment.

**Auditor of
Indian
Home
Accounts.**

The Auditor of Indian Home Accounts shall perform such duties and exercise such powers in relation to transactions in the United Kingdom affecting the revenues of the Federation, Federal Railway Authority or any Province, as may be prescribed by rules made under an Order of His Majesty in Council, or by an Act of the Federal Legislature varying or extending such an Order.

The report of the Auditor of Indian Home Accounts shall be submitted to the Auditor General of India or the Auditor General of the Province, as the case may be, who shall include the same in his report which he is required to submit to the Governor-General or the Governor, as the case may be.

The Auditor of Indian Home Accounts shall be subject to the General Superintendence of the Auditor-General of India and his salary etc. shall be charged on the revenues of the Federation.

The Auditor of Indian Home Accounts shall only be removed from office in like manner and on like grounds as the Auditor-General of India.

The accounts relating to the discharge of the functions of the Crown in relation with Indian States shall be audited by the Auditor-General of India, or, in so far as those accounts concern transactions in the United Kingdom, by the Auditor of Indian Home Accounts acting on his behalf and the Auditor-General of India shall make to the Secretary of State annual reports on the accounts so audited by him or on his behalf. (Vide S. 171)

**Audit of
Accounts
relating to
the dis-
charge of
the functions
of the Crown
in relation
to Indian
States.**

CHAPTER XVII

Property, Contracts, Liabilities, and Suits

**Vesting of
lands and
buildings**

All lands and buildings situate in a Province now vest in His Majesty for the purposes of the Government of the Province, unless they were, immediately before the commencement of the provisions relating to Governor's Provinces, used for Federal purposes or intended to be so used. Other lands and buildings, i. e., those not situate in a Province or not used for the purposes of the Government of the Province, shall vest in His Majesty for the purposes of the Government of the Federation. But all lands and buildings, which were situate outside India (except those situate in Burma or Aden) and were used for the department of the Secretary of State for India, have vested in His Majesty for the purposes of His Majesty's Government in the United Kingdom. (Vide S. 173)

**Property
accruing by
escheat,
lapse, or as
bona vacantia**

Any property accruing to His Majesty by escheat or lapse, or as bona vacantia for want of rightful owner, shall vest in His Majesty for the purposes of the Province in which it is situate. If the same is not situate in a Province or was, at the date when it accrued to His Majesty, in the possession or under the control of the Federal Government, for its own purposes it shall vest in His Majesty for the purposes of the Federal Government. (Vide S. 174).

**Power of
Federation
and Provin-
cial Govern-**

The Federal Government or a Provincial Government may grant, sell, dispose of or mortgage any property vested in His Majesty for the purpo-

ses of the Government of the Federation or of the Provinces as the case may be. It may also purchase or acquire any property on behalf of His Majesty for the said purposes or make any contract.

ment to acquire property and to make contracts.

Provided that any land or building used as an official residence of the Governor-General or a Governor shall not be sold or any change effected on it without the concurrence of the Governor-General or the Governor, as the case may be.

All property acquired for the purposes of the Federation or of a Province or of the exercise of the functions of the Crown in its relations with Indian States shall vest in His Majesty for those purposes.

All contracts made in the exercise of the executive authority of the Federation or of a Province shall be expressed to be made by the Governor-General or by the Governor of the Province, as the case may be, and all such contracts made in the exercise of that authority shall be executed on behalf of the Governor-General or Governor by such persons and in such manner as he may direct or authorize.

Neither the Governor-General, nor the Governor of a Province, nor the Secretary of State shall be personally liable in respect of any contract made for the purposes of this Act and nor shall any person making or executing any such contract on behalf of any of them shall be personally liable in respect thereof. (Vide S. 175).

The Federal Government may sue or be sued in the name of the Federation of India and Provincial Government may sue or be sued in the name of the Province. Before the establishment of Federation, however, the Central Government

Suits by or against the Crown to be by the name of Federation or Pro-

may sue or be sued by the name of the Governor-General in Council.

vince case
in which the
Federation
or Province
can be sued

The Federation or a Provincial Government may sue or be sued in relation to their respective affairs in the like cases as the Secretary of State in Council might have sued or been sued if this Act had not been passed. (Vide S. 176).

Thus the test to see if a suit lies against the Crown is whether, in the circumstances of the case a suit would have lain against the Secretary of State for India in Council, if the Government of India Act, 1935 had not been passed. For this S. 32 of the Government of India Act, 1935, must be seen, which provides :—

“Every person shall have the same remedies against the Secretary of State in Council as he might have had against the East India Company if the Government of India Act, 1858, and this Act had not been passed.”

The above sub-section corresponds to the following provision in S. 65 of the Government of India Act, 1858 conferring the right of suit against the Government :—

“.....all persons and bodies politic shall and may have and take the same suits, remedies and proceedings legal and equitable, against the Secretary of State in Council of India as they could have done against the said Company.” (the East India Company).

The East India Company was engaged in transactions partly on the exercise of sovereign powers delegated to it by the Crown and partly on its own account, which without delegation of sovereign powers might be carried on by private individuals. (1 Cal. 11). In so far as a person was aggrieved

by an act done in the exercise of the sovereign rights, the East India Company was liable in the same way as the Crown upon a petition of right. The liabilities of the Crown upon a petition of right extend to detention of land, chattels or money of the subject and to breach of contract. It follows that the Crown in India is also liable in respect of all such acts, that is, detention of land, chattels or money and breach of contract. (37 Mad. 55).

But in respect of torts by its servants in the exercise of sovereign powers, the Company was not, and the Crown in India will not be, liable unless it had ordered or ratified the tortious act. (37 Mad. 55; 143 P. R. 1919; 28 Mad. 314; 39 Mad. 351; 33 Cal. 669). The reason is that the doctrine of principal and agent can apply when the acts done by the officers of the Government are done in the performance of duties imposed by the Legislature, though the officers themselves are appointed by the Government and in exercising or exceeding such authority they cannot be considered to have been the agents of the appointing authority so as to render the latter liable. (Vide the said authorities.)

Existing contracts made by Secretary of State in Council shall be construed as having been made by the Federation or the Provincial Government, as the case may be, having regard to the purpose for which it was effected. But this rule does not apply in relation to contract made solely in connection with the affairs of Burma and Aden or for purposes in connection with the exercise of the functions of the Crown in its relation with Indian States. Any contract made with the functions of the Crown in its relation with Indian States shall have effect as if it had been made on behalf of His Majesty. (Vide S. 177).

**Existing
contracts
of Secretary
of State.**

CHAPTER XVIII

The Federal Railway Authority

Executive authority in respect of railways to be exercised by Federal Railway Authority.

The executive authority of the Federation in respect of the construction, maintenance and operation of the Railways in India shall be exercised by a Federal Railway Authority. But the Federal Government or its officers shall perform such functions for securing the safety of the public and of the persons operating the railways as in the opinion of the Federal Government should be performed by persons independent of the authority. (Vide S. 181).

It is the primary duty of the railway administration to see that passengers are carried safely, but an additional duty is imposed on the Federal Government to insist upon proper precautions being taken.

Not less than three-sevenths of the members of the authority shall be persons appointed by Governor-General in his discretion. The Governor-General shall also appoint a member of the authority to be the President thereof.

The Federal Railway Authority shall be a body corporate by, and may sue or be sued in that name. It shall consist of 7 members to be appointed by the Governor-General.

A person shall not be qualified to be appointed or to be a member of the authority—

- (a) unless he has had experience in commerce, industry, agricultural finance, or administration ; or

- (b) if he is, or within twelve months last preceding has been—
- (i) a member of the Federal or any Provincial Legislature ; or
 - (ii) in the service of the Crown in India or
 - (iii) a railway official in India.

A member of the authority shall be appointed for five years and shall at the expiration of that term be eligible for re-appointment for a further term not exceeding five years.

But the Governor-General, exercising his individual judgment, may terminate the appointment of any member if satisfied that that member for any reason is unable or unfit to continue to perform the duties of his office.

A member of the authority shall be entitled to receive such salary and allowances as the Governor-General, exercising his individual judgment, may determine, provided that the emoluments of a member shall not be reduced during his term of office.

At the head of the executive staff of the authority, there shall be a Chief Railway Commissioner to be appointed by the Governor-General exercising his individual judgment.

The Chief Commissioner shall be assisted in the performance of his duties by a Financial Commissioner to be appointed by the Governor-General.

The Authority shall not be liable to pay income-tax or super tax on any of its income profits or gains. (Vide Schedule VIII).

The said rules mentioned in Schedule VIII of

GOVERNMENT OF INDIA ACT, 1935

the Act, relating to the Federal Railway Authority, may be supplemented or amended by an Act of the Federal Legislature, a Bill relating to the same not to be moved without the previous sanction of the Governor-General in his discretion. (Vide S. 182).

The Railway Authority shall act on business principles in discharging their functions and shall be guided by such instructions on questions of policy as may be given to them by the Federal Government. (Vide S. 183).

The Governor-General exercising his individual judgment, may make rules, after consultation with the authority, for the more convenient transaction of business arising out of the relations between the Federal Government and the authority.
(Vide S. 184).

Except in cases provided for by the Federal Government, the Authority shall not acquire or dispose of any land, and when it is necessary for the Authority to acquire compulsorily any land for the purposes of their functions, the Federal Government shall cause that land to be acquired on their behalf and at their expense.

Contracts made by or on behalf of the authority shall be enforceable by or against the authority and not by or against the Federation.

The Authority may sue or be sued in the like manner and in like cases as a company operating a railway may sue or be sued. (Vide S. 185).

The Authority shall establish, maintain and control a fund, known as "Railway Fund", and all money received by the Authority shall be paid into that Fund, and all expenditure required for the discharge of their functions shall be paid out of that Fund.

The Authority shall repay to the Federation any sums defrayed out of the revenues of the Federation in respect of any debt, damages, costs or expenses in connection with any proceedings brought or continued by or against the Federation or against the Secretary of State in respect of railways in India.

The Authority shall also pay to any Province or Indian State such expenses as may be incurred by that Province or State in the provision of Police required for the maintenance of order on Federal Railway Premises. (Vide S. 187).

The Governor-General may appoint a Railway Rates Committee to give advice to the Authority in connection with disputes between persons using, or desiring to use, a railway and the Authority as to rates and traffic facilities. He may require the Authority to refer such disputes to the Railway Rates Committee and to obtain its decision thereon. (S. 191).

All Bills regulating the rates or fares to be charged on any railway shall not be introduced in either chamber of the Federal Legislature except on the recommendation of the Governor-General.

(Vide S. 192).

The Railway Authority and Federated States shall be bound to afford mutual traffic facilities and to avoid unfair discrimination between one railway system and another and unfair or uneconomic competition. Any complaint by either party against the other on the ground of unfair discrimination and uneconomic competition shall be made to and determined by the Tribunal under the Act, known as "The Railway Tribunal."

Obligations of Railway Authority and Federated States to afford mutual traffic facilities and to avoid unfair discrimination etc.

Thus if the Railway Authority gives to a Federated State any direction on rates and fares, station and service, terminal charges or the interchange of

Appeal by State to Railway Tribunal

from certain directions of Railway Authority.

traffic it may complain to the Railway Tribunal.

Governor General may frame rules for construction and reconstruction of Railways.

The Governor-General may frame rules requiring the authority and the Federated State to give notice of any proposal to build a new line or to alter the alignment or gauge of a railway. Such plans will have to be deposited to him. These rules shall contain provisions enabling objections to be lodged by the Authority or by a Federated State on the ground that the line if built will result in unfair or uneconomic competition. If an objection so lodged is not withdrawn within a prescribed time, the Governor-General shall refer to the Railway Tribunal the question whether the construction of the proposed new line should be done and the proposal shall not be proceeded with save in accordance with the decision of the tribunal.

Composition of the Railway Tribunal.

The "Railway Tribunal" will consist of a President and two other persons to be selected by the Governor-General in his discretion from a panel of eight persons, having railway administrative or business experience. These eight persons will also be appointed by the Governor-General in his discretion. The President of the Tribunal will be a Judge of the Federal Court and will be appointed by the Governor-General after consultation with the Chief Justice of India. The President will hold office for five years and shall be eligible for reappointment for a further period of five years or any less period.

Powers of the Tribunal

The Tribunal may make such orders, including interim orders varying or discharging a direction or order of the Authority. It may also order the payment of compensation or damages and costs and can demand the production of documents and the attendance of witnesses as the circumstances of the case may require.

An appeal shall lie to the Federal Court from any decision of the Railway Tribunal on a question of law and the decision of the Federal Court shall be final, i. e., there shall not be any further appeal to the Privy Council. No Court shall have any jurisdiction with respect to any matter with respect to which the Railway Tribunal has jurisdiction except that an appeal shall lie to the Federal Court from its decision as stated above.

The Governor-General shall exercise his individual judgment as to the amount to be included in respect of the administration expenses of the Railway Tribunal in any estimates of expenditure laid by him before the Chambers of the Federal Legislature. (Vide S. 195).

The establishment of the Railway Tribunal has improved the position of the States by removing their existing disabilities in the following respects :—

- (1) A quasi judicial machinery is provided for the settlement of railway disputes between the States and the Government of India which were decided *exparte* by the latter.
- (2) An important right has been granted to the States which they did not possess before, viz, the right to question the construction of the new lines in the British Indian Territory on the ground that it may lead to unfair competition. Not only can it question the construction but can also take the matter before the Tribunal for impartial decision.
- (3) The States will be able to undertake railway development in their own country provided that it does not lead to unfair or uneconomic competition with the British Indian Railways, and the question

whether the competition tends to be come unfair or uneconomic will be decided by the Tribunal and not by an executive decision of the Government of India.

Thus the states definitely stand to gain by the establishment of the Railway Tribunal. But this advantage will be available only to the Federated States. In the non-Federal sphere the authority over the lines passing through the states who have not acceded to the Federation will not be exercised by the State themselves, but by the Crown under extra territorial powers.

His Majestys' representative may entrust to the Authority the performance of any function in relation to railways in a non-federated state, and when soentrusted, tho Authority shall undertake the performance of those functions. (Vipe S. 198).

The powers of the Secretary of State in Council, with respect to the appointment of Directors and Deputy Directors of Indian Railway Companies, shall be exercised by the Governor-General in his discretion after consultation with the Authority. (Vide S. 199).

CHAPTER XIX

The Services of the Crown in India

A.—Defence Services

Commander
in-Chief

There shall be a Commander-in-Chief of His Majestys' Forces in India appointed by Warrant under the Royal Sign Manual. (S. 4). His pay and allowances and other conditions of his service shall be such as His Majesty in Council may direct. (Vide S. 232).

His Majesty in Council may require that appointment to such offices connected with the defence as he may specify shall be made by him or in such manner as he may direct. (Vide S. 233).

Control of His Majesty as to defence appointments.

His Majesty may himself or authorize any person to grant commissions in any naval, military or air forces raised in India. Such commission may be granted to any person who might be or has been lawfully enlisted in that force. (Vide S. 234).

The Governor-General is authorized by Letters Patent to grant on behalf of His Majesty Commissions in naval, land and air forces of India.

The Secretary of State may require that certain rules and regulations affecting the conditions of service of His Majesty's forces in India shall be made only with his previous approval. (Vide S. 235).

Control of Secretary of State with respect to conditions of service.

Pay, allowances etc., of members of His Majesty's forces shall be charged on the revenues of the Federation.

B.—Civil Services

The Indian Civil Service is the steel frame of the Indian administration. The Government established by law acts through human agency, and Civil Service is its principal agency for the administration of the country in times of peace.

Position of the I. C. S.

Appointment to the Civil Services, known as Indian Civil Service, Indian Medical Service (Civil) and the Indian Police Service are made by the Secretary of State. The Secretary of State is required to lay before the Parliament a statement of the appointments made every year and the vacancies therein. The conditions of service of all persons appointed to a Civil Service by the Secretary of State, as respects pay, leave and pensions, and general rights in regard to medical attendance, may

Appointment and conditions of service of the I. C. S.

be prescribed by rules made by the Secretary of State. (Vide S. 244).

Besides the above services (I. C. S., I. M. S. and I. P.), the Secretary of State shall make appointment for the following services :—

- (1) Appointments in the Foreign and Political Department.
- (2) Appointments in the Ecclesiastical Department, viz., the establishment of Chaplains
- (3) Appointments to any Civil Service concerned with irrigation if in the interests of efficiency in irrigation in any Province, the Secretary of State should deem it necessary.

Appoint-
ments to
and condi-
tions of
other Civil
services.

Appointments to other Civil Services shall be made by the Governor-General or the Governor, as the case may be, or by any such person as he may direct.

Their conditions of service shall be such as may be prescribed by rules made by the Governor-General or the Governor, as the case may be, or by any person or persons authorised by him to make rules for the purpose. The said rules shall secure that every person serving His Majesty in a civil capacity in India shall have at least one right of appeal against any order which—

- (i) punishes or formally censures him ;
- (ii) alters or interprets to his disadvantage any rule by which his conditions of service are regulated ; or
- (iii) terminates his appointment otherwise than upon his reaching the age fixed for superannuation. (Vide S. 241).

Members of a civil service or persons holding any civil post under the Crown in India hold office during His Majesty's pleasure, except in the case of Judges of the Federal Court and the High Court, the Auditor-General of India and the Auditor-General of Home Accounts. No member of a Civil Service shall be dismissed from the service by any authority subordinate to that by which he is appointed and no such person shall be dismissed 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. But he may be dismissed without such opportunity being given if he is convicted on a criminal charge and is dismissed or reduced in rank on that account. Similarly no such opportunity may be given if the authority is satisfied that it is not reasonably practicable to give the same to that person. (Vide S. 240).

Tenure of office of persons employed in Civil capacity in India

S. 240 above is for the benefit of the members of a public service and to protect them against arbitrary action by the Government. The section limits the power of the Crown to dismiss any public servant at pleasure. The Secretary of State cannot therefore, remove a person from the Indian Civil Service if the enquiries are illegal. (A.I.R. 1944 Lah. 240 = I.L.R. 1944 Lah. 325). Whether opportunity was given to a servant or not is to be considered by the Court alone and not by enquiry officer. It would be a violation of natural justice if servant has not been given an opportunity to explain his conduct. (*Ibid*). A further enquiry is not illegal and can be ordered. (*Ibid*). An enquiry is defective if the servant is deprived of his right to defend himself as given to him under the said section. (*Ibid*).

Civil appointment being during His Majesty's pleasure no suit will lie against the Crown for wrongful dismissal. In such a case the remedy of

the person aggrieved is by way of an official appeal. (A.I.R. 1941 Cal. 553).

Rights in respect of complaints, appeals, etc. of persons appointed by the Secretary of State.

If any person appointed to a Civil Service or a civil post by the Secretary of State is aggrieved by an order affecting the conditions of his service and on due application to the person by whom the order was made does not receive the redress which he considers himself entitled, he may complain to the Governor-General if he is serving in connection with the affairs of the Federation and to Governor if he serving in connection with the affairs of the Province, and the Governor-General or the Governor, as the case may be, shall examine the complaint and cause such action to be taken thereon as appears to him to be just and equitable in the exercise of his individual judgment.

No order which punishes or censures any such person as aforesaid, or affects adversely his emoluments or rights in respect of pension or decides adversely to him the subject matter of any memorial shall be made, except if he is serving in connection with the affairs of the Federation, by the Governor-General, or if he is serving in connection with the affairs of a Province, by the Governor of that Province.

Any person appointed to a Civil Service or civil post by the Secretary of State may appeal to the Secretary of State against any order made by any authority in India which punishes or formally censures him, or alters, or interprets to his disadvantage any rule by which his conditions of services are regulated. (Vide S. 248).

Compensation to members of I.C.S

If by any reason the condition of service of any person appointed to a Civil Service or to a Civil post by the Secretary of State has been adversely affected or for any other reason it appears to the Secretary of State that compensation ought to be

granted to any such person, he or his representative shall be entitled to receive from the revenues of the Federation or a Province, as the case may be, such compensation as the Secretary of State may consider just and equitable. Any sum so payable shall be charged on the revenues of the Federation or the Province, as the case may be. (Vide S. 249).

In the discharge of his special responsibility for the securing to members of the public services of any right provided for them by or under the said Act and the safeguarding of their legitimate interests the Governor-General or the Governor, as the case may, shall be careful to safeguard the members of the Civil Services not only in any right provided for them by or under this Act or any other law for the time being in force, but also against any action which, in his judgment, would be inequitable. (Vide Instruments of Instructions Paragraphs XII and XI respectively). This provision makes it difficult for Minister to deal effectively with an erring member of the Civil Service.

Special Provisions as to Judicial Officers

The rule of tenure during His Majesty's pleasure does not apply to Judges of the Federal Court or of any High Court.

For rules regarding the appointment, salaries, tenure of office, etc., of the Judges of the Federal Court see Chapter V and for those of a High Court see Chapter XI.

Appointments, posting and promotion of District Judges in a Province are made by the Governor of that Province, exercising his individual judgment.

But the High Court shall be consulted before a recommendation as to the making of any such appointment is submitted to the Governor.

Appoint-
ments etc. of
Federal
Court and
High Court
Judges.

Appoint-
ments of
District
Judges etc.

GOVERNMENT OF INDIA ACT. 1935

A person who is not already in the service of His Majesty shall not be appointed a District Judge unless he is barrister, a member of the Faculty of Advocates in Scotland or a Pleader of not less than five years standing and is recommended by the High Court for the appointment.

The same rule applies to the appointment of Additional District Judge, Joint District Judge, Assistant District Judge, Chief Judge of a Small Cause Court, Chief Presidency Magistrate, Sessions Judge, Additional Sessions Judge and Assistant Sessions Judge. (Vide S. 254).

The Governor of each Province shall, after consultation with the Provincial Public Service Commission and with the High Court, make rules defining the standard of qualifications to be attained by persons desirous of entering the subordinate Civil Judicial Service (i.e. Civil Judicial post inferior to that of District Judge) of a Province.

The Provincial Public Service Commission for each Province, after holding such examinations, if any, as the Governor may think necessary, shall make a list of persons whom they consider fit for appointment to the subordinate judicial civil service, and appointments to that service shall be made by the Governor from the said list in accordance with the regulations made by him as to the number of persons in the said service who are to belong to different communities in the Province. But the posting and promotion of and the grant of leave to persons belonging to the subordinate Judicial Civil Service shall be in the hands of the High Court. (Vide S. 255). He has, however, right of appeal to the Governor and the High Court shall not deal with him otherwise than in accordance with the prescribed conditions of his service. (*Ibid*).

No recommendation shall be made for the grant or withdrawal of magistrerial powers save after consultation with the District Magistrate of the

District or the Chief Presidency Magistrate, as the case may be.

Miscellaneous

In making appointments, etc., the Secretary of State shall not exercise his powers without the concurrence of his advisors. (Vide S 251).

Secretary of State to act in concurrence with advisors.

The Ruler or a subject of an Indian State or a native of a tribal area or territory adjacent to India be eligible to hold office under the Crown in India, if the Secretary of State, Governor-General or the Governor, as the case may be, has declared him to be so eligible by general or special order.

Eligibility for office of persons who are not British subjects.

C—Public Service Commission

Wherever democratic institutions exist, experience has shown that to secure an efficient civil service it is essential to protect it as far as possible from political or personal influences, and to give it that position of stability and security which is vital to its successful working as the impartial and efficient instrument by which Government of whatever political complexions may give effect to their policies.

Necessity of Public Service Commissions

Control over public services in England is placed in the hands of the Civil Service Commissioners and in the Dominions in the hands of the Public Service Commissions, in respect of recruitment, promotion, postings and in matters of disciplinary action.

This Act makes provision for the establishment of Public Service Commissions, one for the Federation and others for the Provinces. Two or more Provinces may also jointly have a Public Service Commission by mutual agreement. (Vide S. 264).

Establishments of Public Service Commissions

The Chairman of the Federal Public Service Commission and its Members are appointed by the Governor-General while those of a Provincial

Appointment and tenure of the chairman

and members of the Federal and Provincial Public Service Commission

Public Service Commission by the Governor.

The Governor-General or the Governor, as the case may be, may make rules to —

- (i) determine the number of members of the Commission, their tenure of office and their conditions of service ; and
- (ii) make provisions with respect to the number of staff of the Commission and their conditions of service.

On ceasing to hold office the Chairman of the Federal Public Service Commission shall be ineligible for further employment under the Crown in India ; but Chairman of a Provincial Public Service Commission shall be eligible as Chairman of the Federal Public Service Commission or of another Provincial Commission, but not for any other employment under the Crown in India. No other member of the Federal or Provincial Commission shall be eligible for any other appointment under the Crown in India without the approval of the Governor-General or the Governor ; as the case may. (Vide S. 265).

Function of Public Service Commission

The functions of the Public Service Commission are only advisory and not executive. It is their duty to conduct examinations for appointments to services of the Federation and the Province ; but they have no power to make appointments. They shall, however, be consulted :—

- (a) on all matters relating to methods of recruitment to public services ;
- (b) on the principles to be followed in making appointments to Civil Services and in making promotions and transfers from one service to another ;

- (c) on all disciplinary matters affecting a public servant ;
- (d) on any claim of a public servant against the Federation or a Local Government in respect of costs incurred by him in defending legal proceedings instituted against him in respect of acts done in the discharge of his duty ;
- (e) on any claim for the award of injuries sustained by a public servant and any question as to the amount of any such award.

The Public Service Commissions will not, however, be consulted as respects the manner in which appointments are to be allocated as between the various communities and nor it shall be consulted as respects the appointments to the subordinate ranks of the various police forces in India.

The advice tendered by the Public Service Commission upon said consultations are in no way mandatory and the Governor-General or the Governors are free to disregard them. The danger of giving mandatory powers to the Public Service Commission is that in that case there will be set up two Governments in a Province and two at the centre and there is everything to be said against such a procedure.

Advice not mandatory.

The Federal Legislature or the Provincial Legislature, as the case may be; may extend the powers of Public Service Commission ; but no such bill shall be introduced without the previous sanction of the Governor-General or the Governor, as the case may. (Vide S. 267).

Power to extend functions of Public Service Commission

The expenses of Public Service Commissions shall be charged on the revenues of the Federation or the Province, as the case may be. (Vide S. 268)

Expenses of Public Service Commission

D—Chaplains

**Chaplains
and their
origin.**

There may be an establishment of chaplains to minister in India to be appointed by the Secretary of State and provisions relating to civil services (to which appointments are made by the Secretary of State) shall apply to them. (Vide S. 269).

The origin of the Ecclesiastical Department is to be found on the obligation imposed by the Charters of the East India Company to provide chaplains on their ships and at their stations; and since 1858, when the rights and obligations of the East India Company finally passed to the Crown, the Government of India have rightly regarded it as their duty to provide for the spiritual needs of British troops stationed in India and, so far as circumstances admit, of the European members of the Civil Services. The Secretary of State has established for this purpose a cadre of official chaplains and has authorized grants-in-aid out of Indian revenues for the maintenance of churches and of a certain number of non-official chaplains, the present annual expenditure of the Department being about 40 lacs.

General

**Indemnity
for past acts
of servants
of the
Crown.**

No proceedings, civil or criminal, shall be instituted against any person in respect of any act done or purporting to be done by a servant of the Crown in India or Burma before the Government of the Federation or the provisions relating to Governors' Provinces, without the consent of the Governor-General or the Governor, as the case may be. Such proceedings shall be dismissed unless the Court is satisfied that the act complained of was not done in good faith and all costs incurred by the defendant official in such proceedings shall, if not recoverable from the plaintiff be charged on the revenues of the Federation or the Province, as the

case may be. (Vide S. 270).

Where consent as required above was not obtained before the institution of proceedings subsequent productions of consent, even though it was obtained before the commencement of the trial, was not held to validate the proceedings. (A. I. R. 1939 Lah 479).

Protection
of public
servants
against
prosecutions
and suits.

Omission and negligent acts can purport to be or be in execution of duty (A. I. R. 1944 Nag. 337). Where a servant of the Crown employed about the affairs of the Government of India and of the Federation acts in his official capacity under orders of his superior officers, he will be protected as he will be deemed to be acting or purporting to act in the execution of his duty even if his act is not justified or authorised by law. (*Ibid*).

Before S. 270 of the Act can apply it must be shown that the act complained of was official. Case of a public servant taking bribe does not come under S. 270 as he cannot be said to be acting in execution of his duty in taking the bribe. (23 Pat. 517 = A. I. R. 1944 F. C. 66).

No Bill shall be introduced in any Legislature to abolish or restrict the protection afforded to public servants by S. 197 Cr. P. C. (relating to sanctioning of prosecution etc.) or Ss. 80 to 82 C. P. C. (relating to the giving of previous notices in writing etc.) without the previous sanction of the Governor-General or the Governor, as the case may be, in his discretion.

The powers conferred upon a Local Government by the said S. 197 Cr. P. C., with respect to the sanctioning of prosecutions and the determination of the Court before which, the person by whom and the manner in which a public servant is to be tried, shall be exercisable only by the Gover-

nor-General or the Governor, as the case may, exercising his individual judgment.

In case of any civil suit instituted against a public servant in respect of any act done or purporting to be done by him to his official capacity, all costs and damages incurred and paid by him may be ordered by the Governor-General or the Governor, exercising his individual judgment, to be paid out of the revenues of the Federation or the Province, as the case may be. (Vide S. 271).

Rules for appointment and dismissal of Government servants have all along provided that certain class of officers can be dismissed only by or with the sanction of the Local Government and it is this class of officers that the Legislature must have intended to limit the protection given by S. 197, Cr. P. C. Hence no sanction under S. 197 is necessary for the prosecution of a sub-inspector or an assistant sub-inspector of police or an excise inspector, who are removable from office under the statutory rules by the Deputy Inspector General of Police and the Excise Commissioner respectively for an offence alleged to have been committed by them while acting or purporting to act in the discharge of their official duty. (A. I. R. 1943 F. C. 18).

**Exemption
of certain
pensions
from taxation
in India**

In the case of persons residing permanently outside India pensions are exempt from Indian taxation and are payable on behalf of the Federation or the Province, as the case may be, by or in accordance with arrangements made with the Secretary of State. (Vide S. 272).

Family pension funds are subscribed by persons in civil and military services to which they are entitled on retirement or in the event of their death widows and other beneficiaries get the money. The said funds may be transferred from the Govern

ment of India to authorities in England if so desired by the subscribers and beneficiaries. Such a transfer must be effected within 3 years and no extension of the period can be made except by an Order of Council, requiring a resolution of both Houses of Parliament. (Vide S. 273).

Provisions as to family pension funds.

A person shall not be disqualified by sex from being appointed to an civil service under the Crown in India other than such a service as may be specified by any general or special order made by the Governor-General, Governor or the Secretary of State, as the case may be. (Vide S. 275).

Sex no bar to civil service.

CHAPTER XX

Position and Powers of the Parliament, the Crown and the Secretary of State

A.—Control of the Parliament

Ss. 13 and 53 of the Act provide for issue of Instrument of Instruction by His Majesty to the Governor-General and the Governors respectively.

Parliamentary control through Instrument of Instructions.

But every such Instrument of Instructions has to be approved by both Houses of Parliament. The draft relating to the same is to be laid before both Houses of Parliament by the Secretary of State and the Parliament may thereafter hold debates over them and the Instrument of Instructions will be issued by His Majesty only when the Parliament has signified its approval by presenting an address to His Majesty praying that the same may be issued.

An Instrument of Instructions as issued above is an executive instruction by the Crown. It cannot be enforced by Judicial process. It has, however, to be issued within the terms and spirit of the Act

and cannot override its provisions.

Parliamentary control through Orders-in-Council.

Important control is exercised by the Parliament over the details of the Indian administration also through its power of approving Orders-in-Council, the draft of which must be laid before the Parliament and no further proceedings can be taken thereon except in pursuance of an address presented to His Majesty by both Houses of Parliament praying that the order may be made. Emergency Orders-in-Council may, however, be issued during the recess of the Parliament but that Order shall cease to have effect at the expiration of 28 days from the date on which the House of Commons first sits after the making of the Order unless within that period resolutions approving the making of the Order are passed by both Houses of Parliament. (Vide S. 309) The most important of the subjects over which such control through Order-in-Council can be exercised are the allocation of revenues between the Federal Centre and the Provinces, alternation of Provincial boundaries, the amendment of the constitution on the proposal of the Federal or Provincial Legislatures etc.

Parliamentary control through the requirement that Ordinances and Proclamations should be laid before it.

The Parliament also exercises control over the special powers of the Governor-General and the Governors by requiring them to forward forthwith any ordinance promulgated by them extending a previous ordinance to the Secretary of State to be laid before each House of Parliament. (Vide Ss. 43 and 89).

A proclamation issued by the Governor-General or a Governor on the breakdown of constitutional machinery is also required to be communicated forthwith to the Secretary of State to be laid before each House of Parliament. (Vide Ss. 45 and 93). Without obtaining the approval of the Parliament such proclamation cannot continue in force for more than six months. (*Ibid*).

B.—Powers of the Crown

The rights of the Crown may be described either as prerogative or extra-legal rights and statutory rights. The prerogative rights of the Crown include the right to grant pardon, reprieve, respites or remissions of punishments to persons convicted of criminal offences, even where a sentence of death has been passed by the Highest Judicial Tribunal. (Vide S. 295). The Crown has delegated this right to the Governor-General. His Majesty has also Prerogative right to grant special leave to appeal from any Court. (Vide S. 110). The statutory rights of the Crown are various and defined in this Act. Thus he alone has power :—

Prerogative
rights of
the Crown.

Statutory
rights of the
Crown.

- (i) to appoint the Governor-General of India and the Governors (Ss. 3 and 48) ;
- (ii) to appoint His Majesty's Representative for the exercise of the functions of the Crown in its relations with Indian States (S. 3);
- (iii) to appoint Commander-in-Chief of His Majesty's Forces in India (S. 4) ;
- (iv) to issue proclamation of Federation of India (S. 5) ;
- (v) to signify acceptance of an Instrument of Accession executed by the Ruler of a Federated State (S. 6) ;
- (vi) to assent to or disallow Bills passed by the Indian Legislatures and reserved for the signification of His Majesty's pleasure (Ss. 32 and 76) ;
- (vii) to disallow Acts passed by the Indian Legislatures and assented to by the Governor-General or a Governor within twelve months of the date of the assent. (Ss. 32 and 77) ;

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- (viii) to disallow Acts passed by the Governor-General or a Governor (Ss. 44 and 90) ;
- (ix) to disallow Ordinances passed by the Governor-General or a Governor (Ss. 42, 88 and 89) ;
- (x) to issue Instruments of Instructions to the Governor-General and the Governors on address being presented to His Majesty by both Houses of Parliament praying the same to be done (Ss. 13 and 53) ;
- (xi) to appoint an Auditor General of India (S. 166) ;
- (xii) to appoint judges of the Federal Court and of the High Courts in India and to remove them from office under certain circumstances (Ss. 200 and 220) ;
- (xiii) to constitute or reconstitute High Courts by Letters Patent (S. 229) ;
- (xiv) to grant commissions in any naval, military or air forces raised in India (S. 234) ; and
- (xv) to dismiss a member of a civil service at pleasure (except Judges of Federal Court and High Courts, the Auditor General of India and the Auditor General of Home Accounts who are removable only under certain circumstances) [S. 240) ;

C. Powers of His Majesty in Council

Powers of His Majesty in Council under the Act.

Powers of His Majesty in Council has the following powers under the Act exercisable by Orders in Council :—

- (i) to fix salaries and conditions of service of Councillors of the Governor-General (S. 11) ;
- (ii) to establish an Inter-Provincial Council

(S. 135) ;

- (iii) to distribute Revenues assigned to the Provinces by the Federation (S. 138) ;
- (iv) to make provisions for defining and regulating the relations between the monetary systems of India and Burma (S. 158) ;
- (v) to make provision for the grant of relief from any Federal tax on income in respect of income taxed or taxable in Burma (S. 159) ;
- (vi) to make provisions as to custom duties on India-Burma trade (S. 160) ;
- (vii) to fix the maximum number of judges of any High Court in India (S. 220) ;
- (viii) to fix salaries etc. of judges of the Federal Court and of the High Courts (Ss. 201 and 221) ;
- (ix) to extend jurisdiction of a High Court in any Province to any area in British India not forming part of that Province (S. 230)
- (x) to make directions as to the pay and allowances of the Commander-in-Chief and the other conditions of his service (S. 232) ;
- (xi) to require that appointments to certain defence offices shall be made by him or in such manner as he may direct (S. 233) ;
- (xii) to make provisions as to family pension funds (S. 273) ;
- (xiii) to appoint date from which Aden shall be separated from British India and to make provision for the Government thereof (S. 288) ;

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- (xiv) to appoint dates for the separation of Sindh and Orissa and for the defining of the boundaries of the said new Provinces (S. 289) ;
- (xv) to create a new Province, increase the area of any Province, diminish the area of any Province or alter the boundaries of any Province (S. 290) ;
- (xvi) to make provision with respect to franchise and elections (S. 291) ;
- (xvii) to make provision for adaptation of existing Indian laws etc. (S. 293) ;
- (xviii) to make provisions to remove difficulties arising in relation to the transition from the provisions of the old Act to the provisions of this Act and in relation to the transition from the provisions of Part XIII (relating to transitional provisions) of this Act to the provisions of Part II (relating to Federation of India) of the Act (S. 310)

D. Powers and Position of the Secretary of State

Advisors of
the Secretary
of State.

The Council of India which existed previously has been dissolved by virtue of S. 278 of the Act and now the Secretary of State exercises his functions with the consultation of his advisors. As regards service questions it is obligatory on him to consult his advisors and their concurrence has to be obtained. (Vide S. 261). He shall also not give any direction to the Governor-General in Council with respect to any grant or appropriation of any part of the revenues of the Governor-General in Council except with the concurrence of his advisors. (S. 214). As regards other matter, however, he is at liberty to decide on what subjects he consults them and may even not act in accordance with the ad-

advice given to him by them. (Vide S. 228).

The advisers to the Secretary of State shall be appointed by him. Their number shall not be less than three nor more than six, as the Secretary of State may from time to time determine. Any such advisers shall hold office for a period of five years and shall not be eligible for reappointment. (*Ibid*).

The salary of the Secretary of State and the expenses of his department, which were previously paid out of the Indian revenues, are now met from the British revenues. The Government of India now contributes towards the cost of India Office only in respect of agency functions performed by the India Office for the Government of India. (S. 280).

Expenses of
India Office
to be met
out of
British
revenues.

The following are the powers of the Secretary of State under this Act :—

Powers of
the Secret-
ary of State

- (i) to exercise general superintendence and control over the Governor-General in matters in which he is required to act in his direction or exercise his individual judgment (Ss. 14 and 314) ;
- (ii) to make appointments (until Parliament otherwise determines) to the civil services known as the Indian Civil Service, the Indian Medical Service and the Indian Police Service and to any civil posts in connection with the discharge of any functions of the Governor-General required by the Act to be discharged in his discretion (S. 244) ;
- (iii) to appoint (until Parliament otherwise determines) persons to any civil service in India concerned with irrigation (S. 245) ;
- (iv) to make appointments and postings to the

posts, known as " reserved posts " and making rules specifying their number and character (S. 246) ;

- (v) to prescribe rules for conditions of service, pensions, etc. of persons recruited by him (S. 247) ;
- (vi) to hear appeals in case of persons appointed by him (S. 248) ;
- (vii) to direct compensation to be granted to any person appointed by him to a civil service or to his legal representatives (S. 249) ; and
- (viii) to establish chaplains to minister in India (S. 269).

The Secretary of State remains responsible to the Parliament in respect of anything done regarding the Indian administration. But he can no longer sue or be sued. The Federation or the Provinces, as the case may, will under sue or be sued in respect of any of their civil liabilities.

E.—Powers and Position of the Governor-General

The Governor-General of India has :—

- (a) all such powers and duties as are conferred or imposed on him under this Act ; and
- (b) such other powers of His Majesty, not being powers connected with exercise of the functions of the Crown in its relations with Indian States, as His Majesty may be pleased to assign to him.

But the person appointed as the Governor-General may also be appointed as Crown Representative as regards relations with Indian States

(S. 3).

The following are the powers of the Governor-General under the Act :—

Powers
of Governor-General

- (1) to exercise executive authority of the Federation on behalf of His Majesty, either directly or through officers subordinate to him, with the aid and advice of council of ministers except in certain cases (S. 7) ;
- (2) to preside in his discretion at meetings of the council of ministers (S. 9) ;
- (3) to summon and choose ministers and to dismiss them from office in his discretion (S. 10) ;
- (4) to exercise in his discretion functions in relation to defence, ecclesiastical affairs, external affairs and tribal areas (S. 11) ;
- (5) to appoint councillors, not exceeding three in number, to assist him in the exercise of the function described above in (iv) above and to prescribe their salaries and conditions of service (S. 11) ;
- (6) to exercise individual judgment in the discharge of his special responsibilities regarding prevention of grave menace to the peace or tranquility of India etc. enumerated on page 33 (S. 12);
- (7) to appoint a person to be his financial advisor to assist him in the discharge of his special responsibility for safeguarding the financial stability and credit of the Government (S. 15) ;
- (8) to appoint in the exercise of his individual judgment a person to be Advocate-General for the Federation and to fix his remuneration (S. 16) ;

- (9) to represent His Majesty in the constitution of the Federal Legislature (S. 18) ;
- (10) to assent to the Bills of the Federal Legislature, to withhold assent therefrom or reserve the same for signification of His Majesty's pleasure (S. 32) ;
- (11) to lay before the chambers the annual finance statement and supplementary statement of expenditure (S. 33 and 30) ;
- (12) to authenticate the schedule of authorized expenditure (S. 35) ;
- (13) to recommend financial Bills (S. 37) ;
- (14) to make rules for joint sittings of the chambers (S. 3E) ;
- (15) to stop discussions of a Bill which might be a menace to peace and tranquility of India (S. 40) ;
- (16) to promulgate in the exercise of his individual judgment ordinances during recess of Legislature (S. 42) ;
- (17) to promulgate in his discretion ordinances at any time with respect to certain subjects (S. 43) ;
- (18) to enact in his discretion Acts under certain circumstances (S. 44) ;
- (19) to issue in his discretion proclamations in case of failure of constitutional machinery (S. 45) ;
- (20) to exercise general control over and in his discretion issue directions from time to time to the Governors (S. 54) ;
- (21) to assent in his discretion to Bills reserved by a Governor for his consideration or to withhold assent therefrom or to reserve the same for signification of His Majesty's

- pleasure or to direct the Bill to be returned for reconsideration (S. 76) ;
- (22) to restrict the introduction of certain Bills in the Legislatures (S. 108) ;
 - (23) to issue directions to the Ruler of a Federated State to fulfil obligations regarding Federal subjects (S. 128) ;
 - (24) to decide complaints regarding interference with water supplies (Ss. 130 and 131) ;
 - (25) to make rules regarding custody of public monies and exercise certain powers with respect to the Reserve Bank (Ss. 151 and 152) ;
 - (26) to appoint Auditor of Indian Home Accounts staff of the same (S. 170) ;
 - (27) to execute or direct the execution of contracts made in the exercise of the executive authority of the Federation (S. 175) ;
 - (28) to appoint in his discretion atleast three seventh of the members of the Federal Railway Authority and a member of the authority to be president thereof (S. 182) ;
 - (29) to make exercising his individual judgment rules for the more convenient transaction of business arising out of the relations between the Federal Government and the Authority (S. 184) ;
 - (30) to appoint from time to time Railway Rates Committee (S. 191) ;
 - (31) to make rules regarding the construction of railway on giving previous notice (S. 195) ;
 - (32) to appoint a Railway Tribunal (S. 196) ;
 - (33) to make in his discretion temporary appointments of acting chief justice and any

- other judge of the Federal Court (S. 202) ;
- (34) to consult Federal Court on a question of law (S. 213) ;
- (35) to make temporary appointment of chief justice and any other judge of a High Court ; (S. 222) ;
- (36) to appoint in his discretion additional judges of a High Court for a period not exceeding two years (S. 222) ;
- (37) to make appointments regarding services of the Federation and his own secretarial staff, the I. C. S., I. M. S., and I. P. S. (Ss. 241 and 305) ;
- (38) to hear complaints of members of civil service and cause action to be taken thereon exercising his individual judgment (S. 248) ;
- (39) to appoint High Commissioner for India and staff of the same ; (Ss. 251 and 302) ;
- (40) to suspend, remit or commute sentence of any person sentenced to death in any Province.

E. Powers of the Governors

The Governors have the following powers under the Act :—

**Powers of
the
Governors.**

- (1) to exercise on behalf of His Majesty the executive authority of the Province either directly or through officers subordinate to him with the aid and advice of council of ministers, except in certain cases (S. 49) ;
- (2) to preside at meetings of council of ministers (S. 50) ;

- (3) to chose and summon his ministers and to dismiss them in his discretion (S. 51) ;
- (4) to exercise his individual judgment in the discharge of his special responsibilities regarding (i) prevention of any grave menace to the peace and tranquility of the Province, (ii) safeguarding of the legitimate interests of minorities and (iii) member of public services (iv) the securing of the peace and good Government of partially excluded area (v) the probation of the rights of Indian State and of the Ruler thereof and (vi) securing of the orders issued by the Governor-General in his discretion (S. 52) ;
- (5) to appoint a person to be Advocate-General of the Province (S. 55) ;
- (6) to exercise in his discretion functions for the purposes of combating operations regarding cases of crimes of violence intended to overthrow the Government (S. 57);
- (7) to make rules securing the secrecy of sources of information relating to crimes of violence intended to overthrow the Government (S. 58) ;
- (8) to make rules for the authentication of orders and other instruments issued by him (S. 59) ;
- (9) to make rules for the more convenient transaction of business of the Provincial Government and for the allocation among ministers of the said business (S. 59) ;
- (10) to represent His Majesty in the constitution of the Provincial Legislature (S. 60) ;
- (11) to address and send messages to the chambers (S. 63) ;

- (12) to assent to the Bills of the Provincial Legislature, to withhold assent therefrom or to reserve the Bill for the consideration of the Governor-General (S. 25) ;
- (13) to lay before the chambers an annual financial statement and supplementary statement of expenditure (Ss. 78 and 81) ;
- (14) to authenticate the schedule of authorized expenditure (S. 80) ;
- (15) to recommend financial Bills (S. 82) ;
- (16) to make rules for regulating the procedure of the chambers in relation to any matter which affects the discharge of his functions to be exercised by him in his discretion or in the exercise of his individual judgment (S. 84) ;
- (17) to make rules for prohibiting discussions on certain matters (S. 84) ;
- (18) to promulgate ordinances during recess of the Legislature (S. 88) ;
- (19) to promulgate ordinances at any time with respect to certain subjects (S. 89) ;
- (20) to enact Acts under certain circumstances (S. 90) ;
- (21) to make regulations for the peace and good Government of excluded or partially excluded areas (S. 92) ;
- (22) to issue proclamations in case of failure of constitutional machinery (S. 93) ;
- (23) to restrict the introduction of certain Bills in the Legislature (S. 108) ;
- (24) to execute or direct the execution of contracts made to the exercise of the executive authority of the Province (S. 175) ;
- (25) to make appointments regarding services

of the Province and his own secretarial staff, except the I. C. S., I. M. S., and I. P. S. (Ss. 240 and 305) ;

- (26) to constitute a special tribunal for hearing appeals in revenue matters until some other provision is made by the Provincial Legislature (S. 296).
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CHAPTER XXI

Miscellaneous and General

A.—Provisions as to certain legal matters

All the law in force in British India immediately before the operation of provisions relating to Governors' Provinces shall continue in force in British India until altered or repealed or amended by a competent Legislature or other competent authority. (S. 292).

The effect of the above said S. 292 is that the existing law of India continues to operate and, therefore, the Code of Civil Procedure continues in force subject to alteration, repeal or amendment. (I. L. R. 1942 Mad. 376=A. I. R. 1942 Mad. 614). Thus so long as Ss. 5, 28 and 29, Cr. P. C., have not been repealed or altered by a competent Legislature, they must govern every criminal proceeding both as regards the tribunal by which a crime is to be tried and as to the procedure to be followed. (A. I. R. 1943 F. C. 36). The said section, however, does not curtail the power of the Indian Legislature or other competent authority to decide in what manner a new law should operate as against the existing rights and causes of action (A. I. R. 1941 Pat. 413). In other words there is no bar for a new Act to repeal or amend the previous law with a retrospective effect. (A. I. R. 1941 F. C. 16).

**Adaptation
of existing
Indian law
etc.**

His Majesty may by order in council provide that from a specified date the existing Indian law shall, until repealed by a competent authority, have effect subject to such adaptations and modifications as may be necessary from bringing the provisions of that law into accord with the provisions of this Act. (S. 293).

All that the said section (S. 293) enacts is a power given to His Majesty in Council to adapt Acts already in force to bring them into accord with the provisions of this Act and what is contemplated is formal or consequential amendments arising in the Acts due to the passing of this Act. S. 293 does not mean that if His Majesty has made any Act the subject of an Adaptation Order, then that Act *ipso facto* becomes valid even though its provisions conflict with the provisions of this Act. (A. I. R. 1941 Lah. 182, F. B ; I. L. R. 1943 Lah. 461 = A. I. R. 1943 Lah. 233). Thus S. 293 cannot override the provisions of S 293 of the Act which alters Punjab Alienation of Land Act, 1900. (I. L. R. 1943 Lah. 461 ; A. I. R. 1942 Lah. 243).

**Foreign
jurisdiction**

The power of the Federal executive or the Federal Legislature shall not extend to any area in a Federated State regarding which full jurisdiction has been exercised by the Crown and His Majesty in signifying his acceptance of the Instrument of Accession of that state may declare to be so excluded, for example, such areas as Quetta, the civil and military station of Bangalore and cantonments such as Secunderabad and Mhow. Such areas must be excluded from the state for the purposes of Federal powers. In the event, however, of the Crown deciding to relinquish jurisdiction over such an area, the powers relinquished are to be replaced through a Supplementary Instrument of Accession by Federal powers (S. 294).

The Governor-General may in his discretion suspend, remit or commute a sentence of death

passed on any person in a Province. But except in the case of death sentence no authority in India outside a Province shall have any power to suspend, remit or commute the sentence of any person convicted in the Province, In other words the Provincial Councils shall be final authority to deal with commutation, remission or suspension of any sentence other than death sentence. But this leaves unaffected the Prerogative of His Majesty to grant pardon or remission of punishment (S. 295).

Provisions as to suspension, remission or commutation of sentences.

No member of the Federal or a Provincial Legislature shall be a member of any tribunal in British India having jurisdiction to entertain appeals in revenue cases. The Governor of a Province shall set up a special tribunal for the said purpose until otherwise provided by the Provincial Legislature (S. 296).

Governors' power to set up emergency tribunal to hear appeals in revenue matter.

Previously appeals etc. in revenue matters were in effect dealt with by the Executive, but that was not a proper permanent procedure especially when now the executive is wholly dependent on the Legislature.

A Provincial Legislature shall not legislate so as to stop the free circulation of trade in India. No Provincial Legislature or Government shall prohibit or restrict the entry into or export from the Province of goods of any class or description and nor it shall impose differential taxation, discriminating between goods manufactured in the Province and similar goods not so manufactured. (S. 297),

Prohibition of certain restrictions on internal trade.

But the said prohibition relates only to the Provincial authorities and not to the powers of the Federal Government. Thus Federal Legislature can, under S. 102, legislate a prohibiting export or import in a Province. (I. L R, 1944 Bom. 429). But the Defence of India Act, in so far as it purports to invest the Provincial Government with powers to authorize certain officers to fix the prices of com-

modities is not invalid as contravening the provisions of the said section (23 Pat. 135 = A. I. R. 1944 Pat. 205).

The law which is open to objection under S. 297 of the Act is a law made by Provincial Legislature substantially by virtue of the entry relating to trade and commerce or by virtue of the entry relating to production, supply and distribution of commodities. And if a law is made substantially by virtue of the entry relating to agriculture or of entry relating to development of industry such as the U. P. Sugar Factories Control Act, 1938, it is not open to objection under this section. Further, the law contemplated by this section is a law which prohibits or restricts entry into or export from the Province of goods directly and a law which does not deal directly and in substance with prohibition or restriction of export or import of goods but which deals with other needs of the Province and provides for them, though incidentally the effect of provision is that in some measure export or import is restricted, such law is not within the meaning of this section. (I. L. R. 1942 All. 302 = A. I. R. 1942 All. 156).

Intoxicating liquors and narcotic drugs are excluded from the operation of S. 297.

S. 297 of the Act only refers to legislation with respect to entry No. 27 and entry No. 29 in the Provincial Legislative List, it has no application to legislation with respect to anything in entry No. 31 (A. I. R. 1942 F. C. 17). Intoxicating liquors and narcotic drugs are not ordinarily regarded as the legitimate subject matter of trade or commerce and are not usually dealt with as ordinary commodities or articles of merchandise (21 Pat. 178 = A. I. R. 1942 Pat. 351).

Persons not to be subjected to disability by reason of race religion etc.

No subject of His Majesty domiciled in India shall on grounds only of religion, place of birth, descent, colour or any of them be (i) ineligible for office under the Crown in India, (ii) be prohibited from acquiring, holding or disposing of property,

(iii) carrying on any occupation, business or profession in India, (iv) but nothing as aforesaid shall affect the operation of any law which :—

- (a) prohibits absolutely or subject to exceptions, dispositions of agricultural land situate in any particular area and owned by a person belonging to some class recognized by the law as being a class of persons engaged in or connected with agriculture in that area or as being an aboriginal tribe, in favour or for the benefit of any person not belonging to that class,
- (b) recognises the existence of some right, privilege or disability attaching to members of a community by virtue of some personal law or custom having the force of law ; and
- (c) provides special responsibility of the Governor-General or of a Governor for the safe-guarding of the legitimate interests of minorities,

“ Agricultural land”, as aforesaid, includes all such property and rights in or over property as are included in the expressed “ land ” as defined for the purposes of the law the operation of which is to any extent saved by the provisions of clause (a) above. (S. 298).

Previously only sales and mortgages of agricultural land were excepted under clause (a) above. Other forms of alienation such as leases, exchange, gift or will were not protected. But now by virtue of an amendment made in the Act in 1942 all dispositions of property are protected under clause (a) above and the rulings reported as A. I. R. 1942 F. C. 38 and A. I. R. 1941 Lah. 182 (F. B.) are no longer good law. The term “ agricultural land ” has also been nearly defined. Previously the said

Law as stood previous to amendment of 1942.

term was not defined and hence was interpreted in the ordinary dictionary sense. But now its scope is widened as stated above. Thus now in the Punjab the said term has the same meaning as the word "land" defined in the Punjab Alienation of Land Act, 1900.

S. 298 prohibits only certain future transactions.

S. 298 prohibits only certain transactions to take place subsequent to the passing of the Act. The word prohibit in the said section cannot include an attempt to re-open or set aside transactions already completed or to vacate titles already acquired (A. I. R. 1942 F. C. 38 = I. L. R. 1942 Lah. 643).

S. 298 does not invalidate right of pre-emption based on relationship with the vendor

S. 298 of the Act does not operate to render invalid a right of pre-emption based upon relationship with the vendor. (A. I. R. 1945 F. C. 8). Punjab Pre-emption Act is a substantive law for the Punjab and cannot be said to be merely a recognition of existence of right of pre-emption according to the customary law of the Province so as to come within the safeguards provided by S. 298 of the Constitution Act. (I. L. R. 1943 Lah. 461 = A. I. R. 1943 Lah. 233).

Punjab Restitution of mortgaged Lands Act not ultra vires.

Punjab Restitution of Mortgaged Lands Act, 1938 too cannot be impeached as contravening S. 298 of this Act. (A. I. R. 1942 F. C. 27 = I. L. R. 1942 Lah. 623).

No person shall be deprived of his property in British India save by authority of law. (S. 299).

The Federal or a Provincial Legislature shall not make any law authorising the compulsory acquisition for public purposes of any immovable property or any commercial or industrial undertaking, unless the law provides for the payment of compensation for the property acquired and either fixes the amount of compensation or specifies the principle on which, and the manner in which, it is to be determined. (*Ibid*).

Bills providing for the acquisition of land shall not be introduced in either chamber of a Legislature without the previous sanction of the Governor-General or the Governor, as the case may be. (*Ibid*).

The mere increase of revenue does not mean acquisition of land or any right in or over immovable property. Acquisition is an actual transference of the land or rights. When the land revenue is increased there is no transference to the Provincial Government or any other person of any land or right therein. In such a case possession and ownership remain with the persons as before. Such a case cannot, therefore, come within the scope of S. 299 above. (A. I. R. 1944 F. C. 62).

Mere increase of revenue not acquisition of land.

The executive authority of the Federation or of a Province shall not be exercised, save on an order of the Governor-General or Governor, as the case may be, in the exercise of his individual judgment, so as to derogate from any grant or confirmation of title to land or of any right or privilege in respect of land or land revenue if the said grant or confirmation was made before the 1st January, 1870 or after that date for services rendered.

Protection for certain rights, privileges and pensions

Similarly no pension granted or customarily payable before the commencement of provisions relating to Governors' Provinces, by the Governor-General in Council or any Local Government on political considerations or compassionate grounds shall be discontinued or reduced otherwise than in accordance with any grant or order regulating the payment thereof, save on an order of the Governor-General or the Governor as the case may be, in the exercise of his individual judgment. (S. 300).

This Act shall repeal S. 18 of the East India Company Act, 1780 and S. 12 of the East India Act, 1797, being obsolete enactments containing savings for native law and custom (S. 301).

Repeal of Section 18 of 21 Geo. 3, c 70 and Section 12 of 37 Geo. 3, c. 142.

B.—High Commissioner

High Commissioner for India.

The Governor-General shall, exercising his individual judgment, appoint a High Commissioner for India and prescribe his salary and conditions of service. The High Commissioner shall perform on behalf of the Federation such functions in connection with the business of the Federation and, in particular in relation to the making contracts as the Governor-General may from time to time direct.

The High Commissioner may also, with the approval of the Governor-General, perform similar functions on behalf of a Province or a Federated State (S. 302).

C. New Provinces and alterations of boundaries of Provinces

Creation of new provinces and alteration of boundaries.

Two new Provinces of Sindh and Orissa have been created under the Act by Order in Council.

The Act further empowers His Majesty in Council to :—

- (a) create a new Province ;
- (b) increase the area of any Province ;
- (c) diminish the area of any Province ;
- (d) alter the boundaries of any Province.

Provided that before the draft of any such order is laid before the Parliament, the Secretary of State shall ascertain the views of the Federal Government and the Federal Legislature and the views of the Provincial Government and the Provincial Legislature affected thereby. (S. 290).

Powers of His Majesty to make provision with respect to franchise and election

D.—Franchise

His Majesty in Council may from time to time make provisions with respect to the following matters :—

- (a) delimitation of territorial constituencies for the purposes of elections ;
- (b) the qualifications entitling persons to vote in territorial or other constituencies at such elections and the preparation of electoral rol's ;
- (c) the qualifications for being elected at such elections as a member of legislative body ;
- (d) the filling of casual vacancies in any such body ;
- (e) the conduct of elections and the method of voting threat ;
- (f) the expenses of candidates at such elections ;
- (g) corrupt practices and other offences in connection with the elections ;
- (h) the decision of disputes in connection with the elections ;
- (i) matters aucillary to any of the aforesaid matters. (S. 291).

For rules made under this section see Schedules 1st, 5th and 6th of the Act reproduced in the end of this book.

E. — General Provisions

The Governor-General and every Governor shall have his own secretarial staff to be appointed by him in his discretion. The salaries and allowances of persons so appointed shall be such as the Governor General or the Governor, as the case may be, may determine. (S. 305).

Secretarial staff of Governor-General and Governor.

No proceedings whatsoever shall lie in, and no process whatsoever shall issue from, any Court in India against the Governor-General or a Governor or the Secretary of State or His Majesty's Representative (for the exercise of the functions of the

Protection of Governor General, Governor or Secretary of State.

Crown in relations with Indian States), whether in personal capacity or otherwise ; and except with the sanction of His Majesty in Council, no proceedings whatsoever shall lie in any Court in India against any person who has been the Governor-General, a Governor or the Secretary of State or His Majesty's Representative in respect of anything done or omitted to be done by any of them during his term of office in performance or purported performance of the duties thereof. (S. 306).

But, as provided in S. 176 of the Act, the Federation or a Provincial Government may be sued in the name of the Federation or the Province as the case may be, in relation to its affairs (*Ibid*). Similarly, as provided by S 180 of the Act, the Secretary of State may be sued in respect of breach of any contract made on behalf of His Majesty solely in connection with the exercise of the functions of the Crown in relation with Indian States. (*Ibid*).

The exemption given by S. 306 of this Act to the Governor-General, Governor and the Secretary of State is much more comprehensive than the probation formerly afforded by S. 110 of the previous Act. It, however, no longer extends to the Executive Councillors and ministers.

Court can grant injunction against the Provincial Government.

In a suit against the Provincial Government the Court can grant injunction against the Provincial Government and this section i. e., 306 is no bar to the same. (A. I. L. R. 1943 Lah, 617=A. I. R. 1943 Lah, 41 F. B.).

No protection to servants acting under illegal orders of Governor-General etc.

Though the Governor-General, the Governor and the Secretary of State are immune from the Jurisdiction of the Court, whether in their personal or official capacity, no protection is any longer given to acts done by servants of the Crown under their orders. The common law principle that the

king is not amenable to the jurisdiction of the Court but his officers are, is now well established in India, taking the Governor-General and the Governor to be to the position of the king. The fact that no proceedings can be taken against the Governor and others for setting aside any illegal order passed by them is no longer any ground for refusing relief to the subject against execution of such orders by servants of the Crown. (48 C. W. N. 766).

CHAPTER XXII

Transitional Provisions

Till the formation of Federation the powers conferred on the Governor-General and the Federal Government under this Act shall be exercisable by the Governor-General in Council, except as regards matters with respect to which the Governor-General is required to act in his discretion. (Vide S. 313) Any requirement in this Act that the Governor-General shall exercise his individual judgment with respect to any matter shall not come into force with the establishment of the Federation. (*Ibid*).

Federal
executive.

Till the establishment of Federation the powers conferred on the Federal Legislature by this Act shall be exercisable by the Indian Legislature. (Vide S. 316). But the Indian Legislature shall have no power to impose limits on the power of the Governor-General in Council to borrow money, (*Ibid*).

Federal
Legislature.

Certain provisions of the old Government of India Act (relating to the Governor-General Commander-in-Chief, the Governor-Generals' Executive Council and the Indian Legislature and provisions supplemented to those provisions) shall, subject to such amendments as set out in the ninth Schedule of the Act, continue to have effect till the

Continuance
of certain
provisions
of the old
Government
of India
Act till the
establishment
of
Federation.

establishment of the Federation. (Vide S. 317).

Provisions as to Federal Court and certain others Federal authorities.

But even though the Federation has not yet been established, the Federal Court, the Federal Public Service Commission and the Federal Railway Authority shall come into existence and known by those names and perform in relation to British India all the functions required to be exercised under this Act from such date as His Majesty in Council may fix. (Vide S. 31)

Rights and liabilities of Governor-General in Council to continue in force after the Federation.

All rights acquired and liabilities incurred by or on behalf of the Governor-General in Council or the Governor-General before the establishment of Federation shall, after the establishment thereof, be rights and liabilities of the Federation. Similarly any legal proceedings pending by or against the Governor-General in Council or the Governor-General shall, after the establishment of the Federation, be continued by or against the Federation. (Vide S. 319).

Though the Government of India Act, 1919, is repealed by the present Act, 1935, all appointments made under the old Act shall have effect as if made under this Act (Vide S. 321). Thus appointment to Indian Civil Service made under the Act of 1919 would be deemed to have been made under this Act. (I. L. R. 1944 Lah. 325=A. I. R. 1944 Lah. 246). Similarly a Governor appointed under the the old Act can continue to function though not duly appointed under the new Act. (A. I. R. 1937 Cal. 13=I. L. R. 1937 Cal. 509).

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