

*Structure of the Federal Legislature.*

The Federal Legislature will consist of two Chambers. The upper chamber will be called Council of State and the lower chamber Federal Assembly. The Council of State will be a permanent body, in the sense that it will not be subject to dissolution, though one-third of its members will retire every third year, in a manner that every member will, after the first six years, retain his seat for nine years at a stretch. The Federal Assembly will have a life of 5 years, though the Governor General will be entitled to dissolve it earlier.

The Council of State will consist of 150 representatives of the Provinces, and not more than 104 representatives of the States. The Federal Assembly will have 250 members from the Provinces, and not more than 125 from the States.

The election of members representing the Provinces in the Council of State will be direct, but the franchise, based on high property qualifications and the holding of some prescribed status or titles, will be so restricted as to include only about 150,000 people in the electoral roll for the whole of British India. The British Indian members of the Federal Assembly will be elected indirectly, that is, by the Provincial Legislatures acting as electoral colleges. In both the Chambers, seats will be allotted to each State or each group of States, and the manner of filling these seats will be decided by the Rulers themselves.

The principle of communal representation through separate electorates will apply to both the Houses. The total seats in the Council of State as well as in the Federal Assembly will be divided into General seats, composed of representatives of Hindus and such other elements as will not have any separate representation, and seats reserved for communal minorities, namely, Mohammedans, Sikhs, Scheduled castes, Indian Christians, Anglo-Indians and Europeans. There will be some seats

reserved for special interests, such as Women, Commerce and Industry, Labour and Landholders.

For purposes of election to the Council of State, the entire electorate will be split up into territorial constituencies on a communal basis, and no one included in the electoral roll for Muslim, Sikh, Anglo-Indian, European and Indian Christian constituencies will be entitled to vote for a General seat. The representatives of Scheduled castes in the Council of State will be elected by the members of the Provincial Legislature belonging to those castes; the same rule will apply to Women representatives. Of the 150 seats allocated to British India, 75 will be filled from General constituencies, 6 from Scheduled caste constituencies, 4 from Sikh constituencies, 49 from Muhammadan constituencies and 6 from special constituencies for Women.

Members of the Federal Assembly will be elected from constituencies, each composed of the representatives of one community in a provincial Legislative Assembly. Each communal group will vote for and elect its representative independently of the other communal groups. Thus, all the Muslim members of any Legislative Assembly will form one constituency; similarly will the Sikh, Indian Christian, Anglo-Indian and European members of that Assembly constitute themselves into separate constituencies. Of the 250 seats allocated to British India in the Federal Assembly, 105 will be General seats including 19 reserved for the Scheduled castes, 6 will be reserved for Sikhs, 82 for Muslims, 4 for Anglo-Indians, 8 for Europeans and 8 for Indian Christians. Of the remaining seats, 11 will be assigned to Commerce and Industry, 7 to Land-holders, 10 to Labour and 9 to Women.

As between the Provinces the total seats allocated to British India in the Federal Legislature will be distributed as follows:—

Province	Seats allocated in the Council of State	Seats allocated in the Federal Assembly.
Madras .. ..	20	37
Bombay .. ..	16	30
Bengal .. ..	20	37
United Provinces	20	37
Punjab .. ..	16	30
Bihar .. ..	16	30
C. P. and Berar ..	8	15
Assam .. ..	5	10
North-West Frontier Province ..	5	5
Orissa .. ..	5	5
Sind .. ..	5	5
British Baluchistan	1	1
Delhi .. ..	1	2
Ajmer-Merwara	1	1
Coorg .. ..	1	1
Non-Provincial Seats ..	10	4
<b>TOTAL ..</b>	<b>150</b>	<b>250</b>

Four important features of the structure of Federal Legislature deserve notice; first, the bicameral character of the Legislature with an Upper House elected on a very restricted property franchise; secondly, the disproportionately high representation given to the States; thirdly, the splitting up of the entire Legislature into permanent communal groups returned through separate communal electorates, and lastly indirect election to the

Lower House. These, it may be noted, are only a few of the several devices adopted by the framers of the Constitution to keep the Federal Legislature as far removed from being amenable to popular pressure and control as possible.

It is now universally recognised by all shades of progressive political thought that an Upper House, representing big propertied interests, can have no legitimate place in a scheme of democratic government, since it must inevitably serve as a drag on the popular urge to progress.

The usual theoretical justification for an Upper House, namely, that it checks hasty or rash legislation, and exercises a moderating influence on legislative activity generally, cannot be seriously entertained today, when parliamentary procedure has become so elaborate as to subject every bill to thorough scrutiny and analysis in the Lower House, and when, above all, material and social conditions are changing so rapidly, that what is needed is not a slow moving legislative machinery but one which can keep pace with the growing tempo of social movements. In reality, however, Upper Houses have been the political fortresses of propertied interests, from where they have dominated and controlled the State. In India, British Imperialism needs a variety of checks and balances in the constitutional system in order to safeguard its dictatorship, and for this purpose it has created an Upper House, which would consolidate and harness in its support the influence and power of the Indian propertied classes. The undue importance given to the States in the Federal Legislature is inspired by similar motives. As we have already observed, British Imperialism, having thoroughly discredited itself in the eyes of the overwhelming majority of Indian people, is seeking at this critical moment, when its dominance is being seriously threatened by the rapid onslaught of anti-imperialist forces, to enlist the fullest cooperation and support of all the autocratic remnants

of Indian Feudalism.

Communal representation through separate electorates, which is merely an extension into the legislatures of the old imperialist policy of divide and rule, is one of those features of Indian constitution which have been most consistently and jealously safeguarded by the British Parliament. Communal representation tends to foster and to divert attention to sectional rather than national issues in political life, and to place communal feelings and propaganda at a premium in electioneering contests. It is obvious, that a Legislature split up into various communal groups, each composed mainly of persons returned on a religious or sectional appeal to the electorate, will be so full of internal contradictions and conflict as to make any united progressive move on the part of its members difficult. The Governor General with the open support of the representatives of the States and other big vested interests, and with a little political manoeuvring will be in a position to play off these groups against each other, in order to secure a reactionary majority on important issues.

Lastly, what deserves notice is perhaps one of the strangest and most anomalous provisions of the Government of India Act, namely, that while the Upper House, i.e., the Council of State, which stands for the interests of the propertied classes, will be elected directly, the Lower House, i.e., the Federal Assembly, which represents more popular elements, will be elected indirectly. The Joint Parliamentary Committee, which examined the proposals of the White Paper, decided in favour of indirect election to the Federal Assembly, on the ground that a system of direct election would create huge constituencies, which would not enable any representative to keep in touch with his constituents. This argument, however plausible it may appear, conceals the real motive behind the scheme of indirect electorates. It is obvious, that a direct vote of the people would lead to a very strong representation or even a

majority of the Congress in the Federal Assembly. If there is an open mass contest for seats between the Congress and the reactionary groups, the former with its predominant influence over the masses, would come out more successful, but if the voting is confined to a few hundred members of the Provincial Assemblies, swayed by communal and other sectional loyalties, the reactionary elements would be able to manoeuvre successfully to get a much larger representation than they would have got if the election had been direct. British Imperialism is afraid of the will of the Indian masses. It has been obliged by popular pressure to concede direct election in the case of Provincial Assemblies but it wants, at any cost, to safeguard the Federal Legislature from the growing influence of the anti-imperialist movement in the country.

#### *Powers of the Federal Legislature.*

In spite of the fact that the Federal Legislature as constituted under the above mentioned provisions, will be almost permanently dominated by a reactionary majority, British Imperialism has not considered it safe to entrust it with any effective legislative or financial powers. Section 99 of the Act confers on the Federal Legislature the general authority to legislate. It says, "Subject to the provisions of this Act, the Federal Legislature may make laws for the whole or any part of British India or for any Federal State, and a Provincial Legislature may make laws for the Province or for any part thereof." This general authority is however restricted in a variety of ways in the succeeding sections. Three types of restrictions are imposed. In certain matters, the Legislature is not permitted under any condition to pass any measure. In certain other matters, the Legislature is not allowed to act without the previous sanction of the Governor General. Thirdly, the Governor General is not only empowered to make laws



and issue ordinances quite independently of the Federal Legislature, but is also entitled to veto any and every Bill passed by the two Houses.

According to Section 110 of the Act, it will not be open to the Federal Legislature to propose or pass any measure "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, or the Naval Discipline Act, or the law of Prize or Prize Courts." Besides, under Sections 111-118, the Federal Legislature will not be entitled to make any law which discriminates against British industrial, trading or shipping interests in India or which imposes any restriction on British subjects domiciled in the United Kingdom in regard to, their right of entry into India, the holding or disposal of property, or the carrying on of any occupation, trade, business or profession.

It may be noted here, that the Departments of Defence, External Affairs, Ecclesiastical Affairs and Tribal Areas will be completely outside the authority of the Federal Legislature. They will be administered, not by ministers responsible to the Legislature, but by the Governor General himself or by persons appointed by him in his discretion. Section 11 of the Act says "the functions of the Governor General with respect to defence and ecclesiastical affairs and with respect to external affairs, except the relations between the Federation and any part of his Majesty's dominions shall be exercised by him in his discretion and his functions in or in relation to the tribal areas shall be similarly exercised."

Section 108 of the Act provides that the previous sanction of the Governor General shall be required for introducing or moving in either Chamber of the Federal Legislature any Bill or amendment which—

"(a) repeals, amends or is repugnant to any provi-

sions of any Act of Parliament extending to British India; or

(b) repeals, amends or is repugnant to any Governor General's Act, or any ordinance promulgated in his discretion by the Governor General or a Governor; or

(c) affects matters as respects which the Governor General is, by or under this Act, required to act in his discretion; or

(d) repeals, amends or affects any Act relating to any police force; or

(e) affects the procedure for criminal proceedings in which European British Subjects are concerned; or

(f) Subjects persons not resident in British India to greater taxation than persons resident in British India or subjects companies not wholly controlled and managed in British India to greater taxation than companies wholly controlled and managed therein; or

(g) affects the grant of relief from any Federal tax on income in respect of income taxed or taxable in the United Kingdom."

In addition to all these restrictions imposed on the powers of the Legislature, the Governor General will have, on the one hand, the right to issue Ordinances and make laws independently of the Legislature, and on the other hand, to veto any measure passed by the Legislature. No Bill shall become law unless it has received the assent of the Governor General, who in this respect will be entitled to act entirely in his own discretion.

The impotence of the Federal Legislature is most strikingly brought into relief where its financial powers are concerned. Section 33 divides the annual Federal expenditure into 2 parts, namely, (1) expenditure charged upon the revenues of the Federation, and (2) expenditure proposed to be made from the revenues of the Federation. The former will not be votable by the Federal Legislature and will include the following:

(a) the salary and allowances of the Governor General and other expenditure relating to his office for which provision is required to be made by Order in Council;

(b) debt charges for which the Federation is liable;

(c) the salaries and allowances of Ministers, of Counsellors, of the Financial Advisor, of the Advocate General, of Chief Commissioners, and of the Staff of the Financial Advisor;

(d) the salaries, allowances and pensions payable to Judges of the Federal Court, and the pensions payable to Judges of any High Court;

(e) expenditure for the purpose of the discharge by the Governor General of his functions with respect to Defence, External Affairs, Ecclesiastical Affairs, Excluded Areas, and the administration of any territory in the direction and control of which he is required to act in his discretion;

(f) the sums payable out of the revenues of the Federation in respect of the expenses incurred in discharging the functions of the Crown in its relations with Indian States;

(g) any sums required to satisfy any judgment, decree or award of any court or arbitral tribunal;

(h) any other expenditure declared by this Act or any Act of the Federal Legislature to be charged on the revenues of the Federation.

The other category of expenditure, namely, that proposed to be made from the revenues of the Federation, will be votable by the Legislature, though the Governor General will be entitled to sanction any expenditure and to restore any grant reduced or rejected by the Legislature. Besides, any question whether a proposed expenditure falls within a class of expenditure charged on the revenues of the Federation will be decided by the Governor General in his discretion.

What is noteworthy here is the fact that the non-votable part of the Federal budget will cover about 80

per cent of the total annual expenditure, and that the Governor will be free to interfere and override any decision of the Legislature even in respect of the remaining 20 per cent, which will be votable.

The financial powers of the Legislature are further reduced by several devices. Under Section 15 of the Act, the Governor General will be empowered to appoint a Financial Advisor to help him in maintaining the financial stability and credit of the Federal Government. The Advisor will be completely independent of the Ministers or the Federal Legislature, and will in practice exercise a great deal of control over the financial policy of the Federation. The right of the Governor General to frame rules of procedure for financial business in the Legislature to be completed in time, will serve as an additional restriction on the independence of the Legislature in financial matters. Then again, no demand for a grant shall be made except on the recommendation of the Governor General who will, before the budget is finally passed, authenticate by his signature the schedule of Authorised Expenditure. The schedule so authenticated will be laid before both Chambers, but shall not be open to discussion or vote therein. The Governor General will be further empowered, under Section 36, to authorise any Supplementary Expenditure not provided for in the Annual Financial Statement. Furthermore, the previous sanction of the Governor General shall be necessary for introducing in the Federal Assembly any Bill or Amendment making provision—

(a) for imposing or increasing any tax; or

(b) for regulating the borrowing of money or the giving of any guarantee by the Federal Government, or for amending the law with respect to any financial obligations undertaken or to be undertaken by the Federal Government; or

(c) for declaring any expenditure to be expenditure charged on the revenues of the Federation, or for increasing the amount of any such expenditure.

The Legislature will not be entitled to pass a Bill, which if enacted and brought into operation involves expenditure from the revenues of the Federation, unless the Governor General has recommended the consideration of the Bill. Over and above all this, Section 12 (1) (b) imposes a Special Responsibility on the Governor General to safeguard the financial stability and credit of the Federal Government and in the discharge of this responsibility the Governor General will be entitled to decide in his individual judgment as to the action to be taken. He will be in a position, under this section to arrogate to himself full dictatorial powers over Federal Finances.

The powers of the Federal Legislature are specially circumscribed by statutory enactments in respect of legislation concerning trade and industry. Chapter III of part V of the Act will make it impossible for the Federal Legislature to grant any special concessions to Indian trade and industry, if similar concessions are not granted at the same time to British trading and industrial interests in India. Thus, it will not be open to the Federal Legislature to pass any measure which—

(a) imposes any restriction on British subjects domiciled in the United Kingdom in regard to their right of entry into British India or travel, residence, the acquisition, holding or disposal of property, the holding of public office or the carrying on of any occupation, trade, business or profession;

(b) discriminates against any British subject domiciled in the United Kingdom or any Company incorporated in the United Kingdom in respect of taxation in India;

(c) discriminates against ships registered in the United Kingdom, their crew, passengers, cargo etc.,

(d) discriminates against Companies incorporated under the laws of United Kingdom and carrying on business in India, in respect of any grant, bounty or subsidy payable out of the revenues of the Federation.

Due provision has been made to keep the Banking system and the Railways of India, the two most important fields of investment for British capital, virtually outside the control of the Federal Legislature. The Governor General will, in his own discretion, appoint and remove from office the Governor and the Deputy Governors of the Reserve Bank. He will also be entitled to take any action whatever for the supersession of the Central Board, and the liquidation of the Bank. The Railways will be under the immediate control of a special body called the Federal Railway Authority, which will be the executive authority of the Federation in respect of the regulation and the construction, maintenance and operation of railways. No less than three-sevenths of the members of the Authority, will be appointed by the Governor General in his discretion. The Governor General will also, in his discretion, nominate the President, make rules regarding the transaction of business between the Federal Government and the Authority, and issue to the Authority such directions as he may deem necessary regarding any matter which appears to him to involve any of his special responsibilities. It will be obligatory on the Authority to give effect to any direction issued by the Governor General, and the powers vested in the Governor General in respect of his Special Responsibilities shall apply as regards all matters entrusted to the Railway Authority.

All these provisions are, obviously, meant to keep intact the present stranglehold of British finance capital over India. Their real significance can be appreciated only in the light of the magnitude of British vested interests in India. The total British capital investments in India amount to over Rs. 1300 crores. The number of British Companies doing business in India were 911 in 1931-32, with a paid up capital of £756 million or Rs. 1008 crores. It is estimated that over Rs. 160 crores are transferred annually from India to Great Britain as interest on British capital investments and profits of



British Companies. The oceanic trade of India is carried on principally by British vessels; Indian ships carry hardly 2 per cent of the trade. It is noteworthy that British capital not only dominates the economic resources of India, but openly discriminates against Indian business interests, and manipulates the fiscal policy of the Government of India in a manner as to keep the country economically backward and undeveloped.

It would, thus, be obvious that the Federal Legislature will be a powerless body dominated in almost every aspect of its activity by the special powers of the Governor General. Not only will it be ultra vires for it to touch the basic political relationship between India and Great Britain, but the previous sanction of the Governor General will be required for introducing almost every measure of importance. Defence and External Affairs will be outside its control; it will have no power to grant preferential treatment to Indian trade and industry as against British vested interests in the country; the Banking system and the Railways will be virtually independent of its authority: it will have no say whatever in the determination of over 80 per cent of the annual Federal expenditure, and above all no measure passed by it will become law without the assent of the Governor General.

Never has a Federal Constitution possessed a Legislature so shackled and ineffective.

#### *Legislative Procedure.*

A Bill may originate in either Chamber of the Federal Legislature, but no Bill will be deemed to have been passed by the Legislature unless it has been agreed to by both the Chambers.

If the two Chambers disagree on any Bill, the Governor General may summon a joint sitting of the Chambers for the purpose of deliberating and voting on the Bill. If at a joint sitting, the Bill is passed

by a majority of the total number of members of both Chambers present and voting, it will be deemed to have been passed by both Chambers.

When a Bill has been passed by the Chambers, it shall be presented to the Governor General, who shall, in his discretion, grant or refuse his assent to the Bill, or withhold his assent, or reserve the Bill for the signification of the King. The Governor General may, in his discretion, return the Bill to the Chambers for reconsideration, specifying if necessary, the desirability of introducing such amendments as he may recommend.

A Bill reserved for the signification of the King will not become law unless the Governor General makes it publicly known, within twelve months from the day on which it was presented to him, that the King has given his assent to it.

Any Act assented to by the Governor General may be disallowed by the King within twelve months from the day of the Governor General's assent.

The Governor General, will in his discretion after consultation with the President or the Speaker, make for each Chamber rules regulating the procedure and conduct of business in relation to all those matters, which involve the exercise of his discretion or individual judgment. He will also make rules for securing the timely completion of financial business, for prohibiting the discussion of, or the asking of questions on, any matter connected with any Indian State, other than a matter with respect to which the Federal Legislature has the power to make laws for that State, and for prohibiting discussion of any matter which concerns the following subjects:—

- (a) relations between the King or the Governor General and any foreign State or Prince;
- (b) administration of Excluded or Tribal areas;
- (c) any action taken by the Governor General in his discretion in relation to the affairs of a Province;
- (d) personal conduct of the Ruler of any Indian

State, or of a member of the ruling family thereof;

The Governor General will also make rules as to the procedure with respect to joint sitting of and communications between the two Chambers.

No discussion will be allowed in the Federal Legislature with respect to the conduct of any judge of the Federal Court or High Court in the discharge of his duties.

The Governor General will be entitled in his discretion to stop all proceedings concerning a Bill or any amendment thereof, if he certifies that the discussion of the Bill or the amendment would affect the discharge of his special responsibility for the prevention of any grave menace to the peace or tranquillity of India.

All proceedings in the Federal Legislature shall be conducted in the English language.

The procedure in respect of financial matters will be as follows:—

An annual financial statement showing the estimated receipts and expenditure of the Federation for the year will be laid before both Chambers. The estimate of expenditure will show separately, the expenditure "charged upon the revenues of the Federation," and the expenditure "proposed to be made from the revenues of the Federation." The former category of expenditure will not be submitted to the vote of the Legislature though discussion on it will be allowed; the latter category will be submitted in the form of grants to the Federal Assembly, and then to the Council of State. Each Chamber will have the power to accept or reject any demand. If the Federal Assembly refuses to assent to any demand, that demand shall not be submitted to the Council of State, unless the Governor General so directs. If the two Chambers differ with respect to any demand the Governor General shall summon a joint sitting of the Chambers for the purpose of deliberating and voting on the demand, and the decision of the majority of the members of both Chambers present will be deemed to be the

decision of the two Chambers. No demand for a grant shall be considered valid unless made on the recommendation of the Governor General. When all the demands have been voted upon, whether singly by each Chamber or jointly by both Chambers, the Governor General shall authenticate by his signature a Schedule of Authorised Expenditure, and in this Schedule he will be entitled to restore any grant rejected by the Chambers. The Schedule will be laid before both Chambers but will neither be discussed nor voted upon by them.

The above provisions will show that every important aspect of the legislative procedure will be determined directly by the Governor General in his own discretion. This will reduce the independence and effectiveness of the Legislature still further, and will reinforce its subservience to the Executive.

#### *Responsibility of Ministers to the Federal Legislature.*

The direct responsibility of the ministers to the Federal Legislature is nowhere expressly embodied in the Act. In fact, strictly according to the letter of the Act, even an indirect responsibility seems to be rather illusive.

The Federal Legislature will have no choice in the appointment or dismissal of the ministers; the Governor General acting in his own discretion, will select the ministers, assign them their portfolios, regulate their relations with their departments, and whenever necessary dismiss them. The Legislature will have no means by which it can show its disapproval of the choice of the Governor General, except by a vote of no confidence in the ministry, though there is nothing in the Act which obliges the ministry to resign if a no-confidence motion is passed against it. The Governor General may disregard such a motion and retain the ministry in office. The Governor General is, no doubt, instructed in his Instrument of Instruction to appoint as First Minister a person who is



supported by a majority in the Legislature, but the appointment is to be in any case a matter for the sole discretion of the Governor General. Besides, the Governor General is instructed to include the representatives of the Federated States and important minorities in the ministries, and these representatives need not necessarily belong to the majority party. In case they do not, then the ministry as a whole will not have the confidence of the majority.

The only section of the Act, which in some way connects the ministry with the Federal Legislature is Section 10 (2) which says, "a minister who for any period of six consecutive months is not a member of either Chamber of the Federal Legislature shall at the expiration of that period cease to be a minister". This is merely a general safeguard against outsiders, who command no support in the legislature, being kept as ministers for long periods of time; it does not in any way imply ministerial responsibility to the Legislature. The right of the Legislature under Section 10 (3) to vote the salaries of ministers, which could have served as a useful weapon to enforce responsibility upon ministers, is rendered meaningless by the provisions that the salaries will be voted by a solemn Act of the Legislature, and will not be subject to an annual vote; nor will the salaries be varied during the term of office of the ministers. In the annual budget these salaries will be included in the "expenditure charged on the revenues of the Federation," i.e., non-votable expenditure.

Obviously, under these conditions the Legislature will not be in a position to exercise any effective control over the Federal ministry, which will be formed, controlled and dismissed by the Governor General acting entirely in his own discretion.

#### *The Federal Executive.*

The Federal Executive will formally be of a dyarchical nature. Four departments, namely, Defence,

External Affairs, Ecclesiastical Affairs and Excluded Areas will be controlled and administered by the Governor General entirely in his own discretion; the rest of the departments will be entrusted to a Council of Federal Ministers. The Governor General may, under Section 11 (2), appoint Counsellors, not exceeding three in number, for assisting and advising him in matters concerning the four departments directly placed in his charge. These Counsellors need not be members of the Federal Legislature; and will not owe any responsibility to the Legislature. In addition to them, there will be a Commander-in-Chief appointed by Warrant under the Royal Sign Manual to help the Governor General in the management of the department of Defence. The Commander-in-Chief will not be a member of the Governor General's Council as he was under the Act of 1919, but the Instrument of Instruction advises the Governor General to obtain his views in any matter which affects the discharge of his duties and to transmit his opinion to the Secretary of State whenever he so requests. The number of ministers constituting the Council of Ministers will not exceed ten. A minister will have to be a member of either Chamber; if he is not a member at the time of his appointment he will have to get elected within six months of his appointment, otherwise he will have to resign. The appointment and dismissal of ministers will be a matter for the sole discretion of the Governor General. The Ministers and the Governor General's Counsellors will not deliberate and work together in a common cabinet; the former will constitute a separate Council of Ministers presided over by the Governor General, while the latter will form the Governor General's Council.

The distinction between the departments directly placed in the charge of the Governor General and those entrusted to the Ministers does not imply that the Governor General will have no say in the administration of the latter. On the contrary, the Governor General as the

head of the Federal Executive will be entitled to exercise unlimited powers of superintendence and control in the case of every department of the Federal Government. Therefore, though formally the Federal Executive will be composed of the Governor General and the Council of Minister, in reality, the latter will be merely an ornamental appendage to the head of the Executive, devoid of any real authority.

This will be seen on an examination of the multifarious and unlimited executive powers of the Governor General. There will be certain powers and function exercisable by the Governor General in relation to the departments placed directly in his charge; there will be several other powers and functions relating to the rest of the administration, which he will exercise in his discretion, and yet others which he will exercise in his individual judgment. Then, he will enjoy, in his capacity as the head of the Executive, certain extraordinary powers in respect of legislation, superintendence over Provincial Governments and the affairs of Indian States. In addition to all this, he will exercise in his capacity as the representative of the Crown in India certain powers, functions and prerogatives which belong to the latter, particularly with regard to question affecting Paramountcy, relations with Indian States etc.

The powers of the Governor General in respect of the Reserved Department will be absolute. He need not consult the Ministers or the Legislature on questions affecting these departments, and the Counsellors appointed by him will be mere advisors. Section 11 of the Act lays down that "the functions of the Governor General with respect to defence and ecclesiastical affairs and with respect to external affairs, except the relations between the Federation and any part of his Majesty's dominions, shall be exercised by him in his discretion, and his functions in or in relations to the tribal areas shall be similarly exercised."

Aside from the complete exclusion of the above noted

departments from ministerial control, the Governor General will be entitled to act in his discretion in respect of a large variety of executive functions. There are no less than 94 sections of the Act conferring discretionary powers on the Governor General. The following are some of the important matters in respect of which the Governor General will be entitled to act in his discretion:—

1. Disallowance or assent to Bills, withholding of assent or reserving Bills for the King's consideration. (Section 32)
2. Returning of Bills to the Legislature for reconsideration. (Section 32).
3. Prohibition of discussion or further proceedings on any Bill or Amendment on the ground that it affects the Governor General's Special Responsibility for the maintenance of peace and tranquillity in the country. (Section 40).
4. Giving previous sanction for the introduction of certain Bills. (Section 108).
5. Making of Ordinances. (Section 43).
6. Enactment of Governor General Acts. (Section 44).
7. Suspension of the Constitution. (Section 45)
8. Summoning of the Federal Legislature, its proroguing and dissolution. (Section 19)
9. Summoning of Joint meetings of the two Chambers. (Section 31).
10. Appointment or dismissal of Ministers and the Financial Advisor to the Governor General. (Section 10 and 15).
11. Decision as to whether any expenditure is votable or non-votable by the Legislature. (Section 33)
12. Making of rules of procedure for the Legislature as regards question which involve Governor General's discretionary powers, or which affect the timely completion of financial business, or which involve the discussion of affairs in the Indian States or in a Foreign

State, or the personal conduct of an Indian or Foreign Ruler or any member of a Ruling Family. (Section 38)

13. Granting or withholding assent to Provincial Bills reserved for the Governor General's assent. (Section 76)

14. Issuing instructions to Provincial Governors for promulgation of Ordinances and concurring in the Enactment of Governor's Acts and Emergency Proclamations by Governors in the Provinces suspending the Constitution. (Sections 88, 89, 90).

15. Instructing Governors to discharge certain functions as Governor General's agents. (Section 123)

16. Making rules for the Police regarding crimes of violence calculated to overthrow the Government. (Section 98).

17. The use of armed forces in connection with the function of the Crown in relation to Indian States. (Section 286).

The above are only a few of the large number of discretionary powers vested in the Governor General. What is noteworthy is the fact that the Governor General acting in his own discretion will decide whether any matter comes within the purview of his discretionary authority or not. Section 9 (3) provides that "the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in his discretion or ought or ought not to have exercised his individual judgment."

The Act, further, confers on the Governor General a number of powers which he will exercise in his individual judgment. The distinction between these two sets of powers is not clearly defined in the Act, but it can be inferred from Section 9 that the Governor General need not at all consult the ministers in respect of those powers which he will exercise in his discretion, while in respect of those which he will exercise in his individual judgment he may consult the ministers, though he will not in any case be bound to accept the latter's

opinion. No less than 32 sections of the Act provide for powers to be exercised by the Governor General in his individual judgment. The most important of these relate to the Special Responsibilities of the Governor General, which, as defined in Section 12 are as follows:—

1. The prevention of any grave menace to the peace or tranquillity of India or any part thereof;

2. the safeguarding of the financial stability and credit of the Federal Government.

3. the safeguarding of the legitimate interests of minorities.

4. the securing to, and to the dependants of persons who are or have been members of the public services of any rights provided or preserved for them by or under this Act and the safeguarding of their legitimate interests;

5. the securing in the sphere of executive action of the enforcement of provisions embodied in chapter III of Part V of the Act, relating to discrimination against persons of British nationality or British industrial and trading interests in India.

6. the prevention of any discrimination against goods imported from the United Kingdom or Burma into India.

7. the protection of the rights of any Indian State and the rights and dignity of the Rulers.

8. the securing of due facilities for the discharge of all those functions in respect of which Governor-General is entitled to act in his discretion or to exercise his individual judgment.

We have already noted how extensive and complete the authority of the Governor General will be over the Legislature. We have observed, for example, that the Governor General alone will have the right to summon, prorogue or dismiss the Legislature, to make rules of procedure for regulating almost every important business in either Chamber, to forbid the asking of questions and discussion on certain subjects, to accord previous sanction to the introduction of certain types of



Bills, to send messages to the Legislature and order joint sittings of the two Chambers, to assent to or to withhold assent from the Bills passed by the Legislature, to recommend financial grants and authenticate authorised expenditure, and above all to suspend the Constitution.

In addition to all this, the Governor General will have, under Sections 42-44, certain direct legislative powers; that is, the power to pass Ordinances and the so-called Governor-General's Acts. The laws thus passed, though formally considered extraordinary, will have the same validity as any ordinary law made by the Legislature. Section 42 says, "If at any time when the Federal Legislature is not in Session the Governor General is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such ordinances as the circumstances appear to him to require." These ordinances shall be laid before the Federal Legislature and shall cease to operate at the expiration of six weeks from the re-assembly of the Legislature, or if before the expiration of that period resolutions disapproving the ordinances are passed by both the Chambers. This latter provision has, however, no significance because the disapproval of the Legislature would not, in any case, apply retrospectively. Section 43 goes still further and empowers the Governor General to promulgate ordinance, even while the Legislature is in Session, in respect of those functions which involve the exercise of his discretion or individual judgment. Such ordinances will not be submitted to the Legislature, and will continue in operation for a period not exceeding six months at a time, though the Governor General will be entitled to renew them for a further period of six months.

Far more important is the power vested in the Governor General to make permanent laws, independently of the Legislature. Section 44 provides that if at any time it appears to the Governor General that for

the due discharge of his functions involving the exercise of his discretion or individual judgment, it is necessary to make provision by legislation, he may forthwith enact a "Governor Generals Act" without consulting the Legislature, or send a message to the Legislature with a draft of the Bill which he considers necessary. If the latter course is adopted, then the Governor General may at any time after the expiration of one month enact the Bill proposed by him to the Chambers as a Governor General's Act. A Governor General's Act will have the same effect and force as an ordinary Act of the Federal Legislature, and in every matter concerning the enactment of such an Act, the Governor General will act in his discretion.

This is however not all. The Governor General will be entitled to suspend the entire Constitutional machinery and to arrogate to himself every power exercisable by the Federal Legislature or any other Federal body or authority. Section 45 of the Act says, "If at any time the Governor General is satisfied that a situation has arisen in which the Government of the Federation cannot be carried on in accordance with the provisions of this Act, he may by Proclamation;

- (a) declare that his function shall to such extent as may be specified in the Proclamation be exercised by him in his discretion;
- (b) assume to himself, all or any of the powers vested in or exercisable by any Federal body or authority."

The dominance of the Governor General over the entire Federation is illustrated further by his innumerable powers of superintendence and control over the Provincial Governments and the Federated States. In fact, Section 12 would justify any interference of the Governor General in Provincial matters on the ground of one or another of his Special Responsibilities. Besides, the Governor General will have the right to issue orders

to Provincial Governors for carrying out Federal Laws, to assent to or withhold assent from Provincial Bills reserved for his consideration, to issue Instructions to the Governors and to grant them permission for promulgating Governor's ordinances and the enacting of Governor's Acts, (Sections 88, 89 and 90), to sanction or disallow any rules made by the Governors for the administration of Excluded Areas, (92), to sanction the suspension of the Constitution by a Governor in his Province, to permit the Federal Legislature to make any law for the Provinces in a State of national emergency, (102), to direct the Governors to discharge certain functions as his agents in respect of matters concerning Defence, Ecclesiastical Affairs, External Affairs or Tribal areas, to determine as to how and by what stated periods the Provinces will receive their share of income tax (138), and to decide disputes between the Federal and Provincial Governments regarding the conditions under which the latter will borrow or guarantee loans (163). Incidentally, it may be observed that these provisions amply demonstrate the hollowness of the claim that the new Constitution confers Autonomy on the Provinces.

The Executive authority of the Governor General over the Federated States will also cover an extensive field. If it appears to the Governor General that any Ruler of a Federated State has in any way failed to fulfil his obligations to the Federal Government, he will be entitled, under Section 128, to issue, in his own discretion, such directions to the Ruler as he thinks fit, provided that if any question arises as to whether the executive authority of the Federation is exercisable in a State with regard to any matter or the extent to which it is exercisable, the question may, at the instance of the Ruler or the Federation, be referred to the Federal Court for determination. Besides, most of the Special Responsibilities of the Governor General will be as much applicable to the Federated States as to the Provinces, and in the discharge of functions connected with these Respon-

sibilities, the Governor General will be entitled to interfere as freely in the affairs of the States as in those of Provinces.

This bare enumeration of the Governor General's powers needs no commentary. It will be seen that there is hardly any aspect of government over which the Governor General will not wield complete dictatorial authority. Not only will the Federal Legislature be an ineffective and powerless body enchained by the innumerable discretionary powers vested in the Governor General, but the executive machinery of the Federation will also be under the complete and unquestioned sway of the Governor General. The Federal Government will thus be in reality a one man's rule, unsurpassed in many respects by oriental despotisms or modern dictatorships.

#### *The Federal Judiciary.*

The new Constitution provides for the establishment of a Federal Court consisting of a Chief Justice and six puisne judges to be appointed by the King by Warrant under the Royal Sign Manual. The number of puisne judges may be increased if the Federal Legislature makes a demand to that effect in an address presented to the Governor General for submission to the King. Every judge of the Federal Court will hold office during good behaviour until the age of 65, and unless he resigns, he will not be removed from office except by the King by Warrant under the Royal Sign Manual. The salaries and allowances of these judges will be fixed by the King in Council, and will not be varied to their advantage after their appointment.

The primary function of the Federal Court will be to settle litigation relating to Constitutional questions, and to advise the Governor General, if he so desires, on any point of law of public importance. The Court will also hear appeals relating to civil cases of a certain type.