

CHAPTER IV

THE GOVERNOR-GENERAL

The Governor-General is appointed, under Section 3 of the Act of 1935, by a *Commission* under the Royal Warrant. Says the Section:—

3 (1) The Governor-General of India is appointed by His Majesty by a Commission under the Royal Sign Manual and has—

(a) all such powers and duties as are conferred or imposed on him by or under this Act; and

(b) such other powers of His Majesty, not being powers connected with the exercise of the functions of the Crown in its relations with Indian States, as His Majesty may be pleased to assign to him.

(2) His Majesty's representative for the exercise of the functions of the Crown in its relations with Indian States is appointed by His Majesty in like manner and has such powers and duties in connection with the exercise of those functions (not being powers or duties conferred or imposed by or under this Act on the Governor-General) as His Majesty may be pleased to assign to him.

(3) It shall be lawful for His Majesty to appoint one person to fill both the said offices.

The distinction in the appointment by a *Warrant* under the Royal Sign Manual, and by a *Commission* under the same, is a nicety of the mysteries of the British Constitution with which we need not trouble ourselves. It may be pointed out, however, that whereas the Governors and the Governor-General are, for instance, appointed by Commission under the Royal Sign Manual,* the Commander-in-Chief is appointed

*cp. Sections 3 and 48: by Section 34 of the Government of India Act, 1919, the appointment used to be by warrant under the R.S.M.

by a mere *Warrant* under the Royal Sign Manual.* The office is constituted by Letters Patent† and the appointment by Commission under Royal Sign Manual, it may be added, is accompanied by special Instructions, which are issued under the Royal Prerogative, though the issue of these Instructions, in the case of the Governor-General and the Provincial Governors, is provided for by specific Sections of this Act.‡

History of the Office of the Governor-General

We need not dwell at length upon the evolution of the office of the Governor-General, and of his powers. Every school-boy knows, of the charter to the East India Company, and its 3 Presidencies; of the Regulating Act, and the appointment of Warren Hastings as the first Governor-General of Bengal having a sort of supremacy over the Presidency Governors of Madras and Bombay. These last were co-equal and independent authorities before the passing of the Regulating Act; and even after that enactment, as well as after Pitt's India Act, 1783, they continued to enjoy an independence of, and claimed an equality with, the Governor-General of Bengal, which often caused grave complications and endless troubles. Similarly, the Governor-General was given a Council, which, under the Regulating Act, had an equality of power and status that Pitt's India Act considerably modified. After the appointment of Lord Cornwallis, the Governor-General was secured an ascendancy over his

*cp. Sections 4, 200; etc.

†For the Letter Patent constituting the office of the Governor-General, cp. the Gazette of India Extraordinary, April, 1937.

‡cp. Sections 13 and 53. These documents, however, cannot be enforced in a Court of Law.

colleagues in the Council, which has continued till this day.*

The Governor-General of Bengal was converted, after over 50 years from Pitt's India Act, into the Governor-General of India (1834), though continuing at the same time to be Governor of Bengal. The Province of Bengal was separated from the immediate charge of the Governor-General in 1853. When the Government of India was transferred from the East India Company (abolished) to the British Crown direct, the Governor-General also became the Viceroy. The distinction between the Governor-General as the chief civil executive officer; and the Viceroy, as the representative of the Crown, particularly in the exercise of certain Royal Prerogatives (*e.g.*, pardoning criminals or the conferment of titles), and in conducting the relations with the Indian States, was not always maintained in daily parlance. It is needless now to dwell upon the relations between the Governor-General and the Secretary of State. The latter was unquestionably the superior officer, being responsible directly to Parliament. The Governor-General was by law enjoined to obey him in all matters relating to the Government of India which the Secretary of State was empowered to supervise direct and control.

Under the Act of 1935, the two offices of the Governor-General and the Viceroy are, by express provisions, made distinct. Even now, it is lawful, however, for His Majesty to appoint one and the same individual to hold both the offices and to authorise him to exercise their combined functions. The distinction in the dual capacity is necessitated, more than

**cp.* Section 41 of the Government of India Act, 1919, and Section 9 of the Act of 1935.

ever before, by the proposal to establish a Federation of India, in which Indian States may be united with the British Provinces. But even after the Federation comes into being, the use of Royal Prerogative and Paramount authority in relations with the Indian States will not be discontinued. Hence the need by law to emphasise the distinction between the two offices.

The two sets of duties are so closely connected, and have such an intimate bearing, one upon the other, that the combination of the two offices in one and the same individual seems unavoidable, at least for years to come. It is true the establishment of the Federation will make the distinction of something more than merely ceremonial or academic importance. But, even under the Federal system, the two sets of duties would interact and mutually influence, if not condition, one another.

It must be noted that the salary is provided for, in the Act (Schedule III) for only one office, *i.e.*, for the Governor-General. Hence, if and when the two offices are placed in two different hands, fresh and additional provision will have to be made, not only by way of salary to the Representative of the Crown, or the Viceroy proper, dealing with the Indian States so far as the exercise of Paramountcy functions is concerned; but also to enable that officer to maintain his position and dignity, and to discharge his duties with convenience.*

**cp.* Section 145, under which sums required by His Majesty's representatives for the conduct of his relations with Indian States have to be paid to that officer, and charged upon the revenues of the Federation under Section 33 (3) (f). It may be doubted, however, whether this will be sufficient authority by executive action, or even by an Act of the Federal Legislature, to fix a salary for the Representative of the Crown. The safer course would be a new, special Act of Parliament for this purpose.

Appointment of Governor-General

The Governor-General of India is appointed on the advice of the British Prime Minister (not on that of the Secretary of State for India), and will, presumably continue to be so appointed even when he becomes the executive head of the Federation of India. This practice is in marked contrast with that in the leading Dominions, where now the Governor-General is appointed, and is removable, on the advice of the Dominion Prime Minister. The formal appointment is by the King, under Letters Patent; but the King acts exclusively on the advice of His Dominion Ministers concerned; and the British (Imperial) Ministers may have no knowledge of the act.* Indian Ministers are not only not consulted; but there seems to be no provision for their being consulted hereafter, when the Federation comes into being, simply because the Statute of Westminster does not apply to this country; and because it is not a Dominion of the same status and function as Canada or Australia, let alone the Union of South Africa or the Irish Free State. Besides the internal conditions of this country, and particularly the peculiar situation caused by the presence of so many Indian States,† reasons of Imperial policy will prevent Britain for a long time to come from acquiescing in the appointment of the Governor-General of the Federation of India being advised by the Indian Ministers. It must be admitted, however, that there is nothing in the Constitution to prohibit Indian Federal

*cp. A. B. Keith, *Constitutional Law of the British Dominions*, p. 16-18.

†Native Tribes are to be found in Australia, Africa, as well as New Zealand; and these may seem to suggest a parallel with the protected Indian Princes. But India is not a Dominion, and so such analogies from acknowledged Dominions will not be allowed to apply to the Indian parallel.

Ministers from offering such an advice when the occasion arises.

Qualifications

The British Prime Minister, when advising the appointment of a Governor-General of India, has no definite rules to guide him. Usually, it is frankly a conferment of a party favour, even though the convention is loudly proclaimed by the British statesmen that Indian affairs are outside Party politics in Britain. The men who have been chosen to fill the post, ever since the Government of India passed directly to the British Crown, have been distinguished public men, or high placed servants of the British Empire, sometimes drawn from the ranks of similar satraps in the Dominions, sometimes from the leading lights of British Diplomacy; sometimes from merely successful, promising, or inconvenient politicians at home. But none of these three categories guarantee the possession of any special qualification for the supreme executive office in India; and it is not utterly unjust to add that any special knowledge or experience of India might even be considered a disqualification in an aspirant for this post.* Even experi-

*Says the Historian of Lord Curzon:—

"Reduced to a simple formula, their contention is that the less a Viceroy-elect knows about India, the better Ruler he would make, provided he has an open mind and a balanced sense of judgment. The proposition hardly bears a serious examination, but it is typical of a certain school of British thought. No one maintains that a man would be a better admiral, or a better general, or a better surgeon, if he was entirely without learning or special knowledge; but the task of steering the Government of India through the vast and complex issues which constantly beset it is supposed by these publicists to be best accomplished by an unprepared man with a cross-bench mind. India cannot be properly governed upon such theories in these stormy days. It is a mistake to think of the Viceroy as a judicial referee, surrounded by men necessarily more competent than himself. A good Viceroy will initiate as well as adjudge."

This was written about 30 years ago; but the British policy regarding the choice of a Viceroy for India remains in the same undefined, muddling stage in which it has always been. In the atmosphere in which they live, and under the conditions in which they work, every Viceroy flatters himself to be a success, and no Viceroy is ever more than a puppet of the Home Government.

ence as Secretary of State for India might be regarded as a disqualification; while having been a member of the Civil Service of the Crown in India is distinctly not welcome, since the one solitary experiment of Sir John Lawrence in the early years of the direct government under the Crown.*

This is, indeed, not wholly objectionable. Officers of that exalted station are best without the preconceived prejudices, or prepossessions, which previous experience due to service in the country might imply. On the other hand, if and when Federation with its concomitant of responsible government comes into being, the qualities required in this officer would rather be those of a politician accustomed to work representative institutions, and to deal with Ministers responsible to the Legislature, than of an experienced official well versed in the details of administrative routine, or a trained diplomat, or even a departmental expert. So far as knowledge and experience of the administrative problems and routine is concerned, such officers always command the services of experts in each line; and provided they have the normal intelligence of an adult, they need not fear for the usual success in their office merely because of lack of personal knowledge.

On the other hand, so long as the Indian Ministers are not entitled to offer advice to the King in the choice of this officer; or so long as Indians themselves are not appointed to this post, the chances of the appointment being made rather on Party grounds than on any other are too many to be neglected. Even if the British

*The case of Lord Willingdon, Governor-General between 1931-36, stands on a different footing. He had previously served as Governor in two of the leading Provinces; but there he had been appointed as a promising British politician; while to the Governor-Generalship he was appointed after serving a term as the corresponding officer in the Dominion of Canada.

advisers of the King make their choice from among Britishers who have made a success as Dominion satraps, there is no guarantee that the same individual, who proved a success, let us say, in Africa, would prove equally a success as the Governor-General of India. If the choice is made as Party favour in the British political world, the danger may be still greater, especially if an unwritten convention requires,—as it does to-day,—that the individual chosen as the Governor-General of India should be a scion of the British titled aristocracy. The social status of the Governor-General is considered to be more important in India than in any other Dominion, even though Society in India is yet not so thoroughly westernised as to appreciate fully such snobbishness. The daughter of a Railway contractor, or of a Chicago meat-packer, would in India command the same respect as Vicereine as the daughter of a hundred earls; and an ex-stock broker would carry the same weight as Viceroy as a Lands-down or a Curzon. Nevertheless, the exigencies of dealing with Indian Princes on a footing of social equality has led to this unwritten law of choice, that the Viceroy and Governor-General should be selected from the highest social circles in Britain.

In those classes, however, sympathy for popular institutions,—and particularly for the nationalist aspirations of what have hitherto been regarded as backward peoples,—is conspicuous by its rarity, if not by its complete absence. Men like Curzon or Linlithgow may be peers of the Indian Princes by right of birth; but there is no guarantee that all individuals drawn from the British aristocracy would be similarly endowed intellectually, and so make something more than mere rubberstamps for the Secretaries to affix

to official documents, figure-heads to decorate official Parties, or mouthpieces of the British Imperial Government.

In the volume dealing with Provincial Autonomy, we have already discussed the suggestion,—now, happily, not very commonly heard,—of choosing the Provincial Governor from the British Royal Family. The dangers and drawbacks of a Royal Governor-General are even greater than those of a Royal Governor. Even if the post of the Governor-General is separated from that of the Viceroy, the appointment of the latter from the British Royal Family will have the same objection, notwithstanding the precedent of the Duke of Connaught in Canada, or of the Earl of Athlone in Africa.

Personality of the Governor-General

The personality of a Governor-General, is not a matter of utter indifference to the weal or woe of India. So long as India does not enjoy a full and complete system of self-Government,—within or outside the British Empire,—the personal equation will have the utmost bearing upon the commonweal in this country. Even under the Federal system proposed in the Act of 1935, the Governor-General will continue to have immense powers of direct administration in several departments; and of exclusive discretion in those departments of the State also, which are by law apparently made over to the charge of Responsible Ministers. Given these powers; given the peculiar circumstances of India, with its Minorities, its Princes and guaranteed classes of exploiters; given the relative lack of experience in the Responsible Ministers drawn from the leaders of the Indian people, and the known antagonism of the severely entrenched Public Services

to India's popular ideals and the Nationalist urge; given finally, the needs and requirements of a foreign garrison in India, the personality, the sympathy or idiosyncracies of the Governor-General are bound to have an immense importance on the day-to-day administration of the country, and the general well-being of its people. Indians must, therefore, not be considered to be exigent, or needlessly suspicious of the methods and motives of British Government in India, if they demand that the choice of the supreme executive officer should hereafter be made on the advice of the Indian Ministers; and that, as far as possible, it must be confined to Indians born and bred, Princes or commoners, preferably latter.

Governor-General as Supreme Executive

In the Dominions, the Governor-General, as representative of the King, is also the Commander-in-Chief of the Defence forces.* In India, though the Governor-General is the Chief Executive head of the governmental machinery, who controls also the Department of Defence, the Commander-in-Chief is a distinct entity, provided for as such by the Constitution.

"4—There shall be a Commander-in-Chief of His Majesty's Forces in India appointed by Warrant under the Royal Sign Manual."

The Office being thus distinctly established, it is not provided, as is provided by Section (3) for the Viceroyalty, that it shall be open to the King to combine the two offices into one and the same person.

Cost of the Governor-General to India

We have reproduced in the volume on Provincial Autonomy, Schedule III to the Act of 1935, which

* Constitutionally, of course, the Crown is the head of the various forces throughout the Empire, but the practice or law is to grant to the Governor-General the title of Commander-in-Chief. Keith, Constitutional Law of the British Dominions, p. 414.

prescribes the salaries payable to the Governor-General, and lays down the general principles of other allowances. The Order in Council referred to in that Schedule has yet to be issued with regard to the Governor-General of the Federation of India. The aggregate cost of this exalted office to India is budgeted, in the Budget for 1937-38, at Rs. 15,54,000 distributed as follows:—

	Rs.
Salary	2,50,800
Sumptuary Allowance of the G.-G. ..	40,000
Expenditure from Contract Allowance ..	1,44,300
State Conveyance & Motor cars ..	43,000
Private Secretary & Department ..	2,63,800
Military Secretary & Department ..	3,22,400
Tour Expenses,—Special Trains etc. ..	4,70,700
Total ..	15,54,000

This, however, does not include the charges for the Band and Bodyguard, included in the Military Budget, and costing, in the Budget for 1937-38, an aggregate sum of Rs. 1,84,600. Nor does it provide for the cost of maintaining Viceregal residences, Leave allowance to the Governor-General,—which is now regularly taken once in the period of office; or Outfit and Equipment Allowance when first appointed of £5,000. If these were added, the annual average cost of the Governor-General, his office and its maintenance would be over Rs. 17,62,000. Compared to the pay and allowance granted to the other Chief Executives in the British Empire, or in other countries, like France or the U.S.A.,—and viewed particularly in correlation with the ability of the Indian people who have to bear such burdens,—this seems too excessive to be in any way defensible.

CHAPTER V

THE FEDERAL EXECUTIVE

The Federal Executive is composed of:

- (i) the Governor-General;
- (ii) the Council of Federal Ministers; and,

(iii) if we include the Departmental heads, the administrative services. In this last category we might comprise all the Superior Services; but, as these have very little scope to determine the policy of Government; and as they are mainly Ministerial officers, it might not be strictly correct to include these in a description of the Indian Federal Executive. Similarly, it would be equally open to objection to include the special Counsellors to the Governor-General in the Reserved or Excluded Departments, since they have no executive responsibility placed upon them by the Constitution.

The Executive Government of a country must needs include Civil as well as Military branches. Though the Governor-General is in charge of the Department of Defence, it is nevertheless not so clearly brought within the constitutional ambit as to justify the belief that a description of the executive functions would necessarily include and exhaust and military side of the Indian Administration. A separate Chapter will, accordingly, be devoted to the consideration of the constitutional aspect of our national defence; including the consideration of the position of the various Arms of Defence, of the Commander-in-Chief, and of the Defence Services and problems in general.