

Governor-General's powers in this behalf are irrespective of popular opinion in this country. He is a champion of British vested interests, not a constitutional head of the executive in India.

Power of Veto over Legislation

It may be added that, under the law, the mere fact that previous sanction has been accorded to a class of measure which requires it, does not preclude the Governor-General from subsequently withholding assent to such measures when the Legislature has duly passed the same. The presence of this double power,—of initial blocking, and of subsequent veto,—is an astute form of Constitutional obstruction from above, a deliberate device of political distrust, and a calculated measure of Imperialist safeguard. For, given this power of initial blockade, intensification of sentiment might be nipped in the blood, especially if,—as is commonly assumed in Imperialist circles,—Indian politicians are still too much lacking in self-confidence to insist on a line of policy which could be thus prevented from materialising *ab initio*. In proportion as Indian politicians learn the full measure of the confidence reposed in them by their constituents; in proportion as they realise the havoc wrought by such vested interests upon the general well-being of their country; and in proportion as they appreciate the tactics necessary to counteract such devices of Imperialist diplomacy, provisions of the Constitution like those instanced above are likely to cause the gravest and the most frequent impasse.

Power to recommend Legislation

(iv) The Governor-General's power to recommend certain classes of Bills to the Legislature, and insist

that his recommendations be accepted and adopted by the Legislature, applies principally to Finance Bills says.

37.—(1) A 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,

shall not be introduced or moved except on the recommendation of the Governor-General, and a Bill making such provision shall not be introduced in the Council of State.

(2) A Bill or amendment shall not be deemed to make provision for any of the purposes aforesaid by reason only that it provides for the imposition of fines or other pecuniary penalties, or for the demand or payment of fees for licences or fees for services rendered.

(3) A Bill which, if enacted and brought into operation, would involve expenditure from the revenues of the Federation shall not be passed by either Chamber unless the Governor-General has recommended to that Chamber the consideration of the Bill.

Authenticated Schedule of Expenditure

Under Section 34 (4) no demand for a grant for any item of public expenditure can be made in the Legislature "except on the recommendation of the Governor-General."

Under Sections 35 and 36,—the most considerable powers are granted to the Governor-General for overriding the Legislative Assembly in matters of Finance. By the device of an "Authenticated Schedule of authorised Expenditure,"—certified as such by the Governor-General,—any item of expenditure, whether of the class which the Assembly is entitled to

vote or not, may be required to be granted by the Assembly upto the amount originally specified in the Financial Statement laid before the Assembly under Section 33. If the Assembly declines to adopt that recommendation of the Governor-General, the amount will nevertheless be granted lawfully, and defrayed as originally provided for in the Financial Statement. Says,

35.—(1) The Governor-General shall authenticate by his signature a schedule specifying—

- (a) the grants made by the Chambers under the last preceding section;
- (b) the several sums required to meet the expenditure charged on the revenues of the Federation but not exceeding, in the case of any sum, the sum shown in the statement previously laid before the Legislature:

Provided that, if the Chambers have not assented to any demand for a grant or have assented subject to a reduction of the amount specified therein, the Governor-General may, if in his opinion the refusal or reduction would affect the due discharge of any of his special responsibilities, include in the schedule such additional amount, if any, not exceeding the amount of the rejected demand or the reduction, as the case may be, as appears to him necessary in order to enable him to discharge that responsibility.

(2) The schedule so authenticated shall be laid before both Chambers but shall not be open to discussion or vote therein.

(3) Subject to the provisions of the next succeeding section, no expenditure from the revenues of the Federation shall be deemed to be duly authorised unless it is specified in the schedule so authenticated.

This applies, it is true, to cases where any of the Governor-General's Special Responsibilities are involved. But reading this provision along with the injunction of Section 12 (1) (b) and Section 12 (1) (h),

it is evident that almost any item of Public Expenditure can be so authorised and included in the certified schedule by the Governor-General over the head of, or in spite of, the Legislative Assembly. The corresponding power in the Constitution of 1919 was at least a little more guarded. For, under the terms of Sections 67-A (7) and (8), the Governor-General is obliged formally to declare that the grant withheld or reduced by the Assembly was essential to the discharge of his responsibilities; or that a given expenditure, authorised by him in an emergency was necessary for the safety or tranquillity of British India. No such certificate or declaration is apparently needed under the provision of the Act of 1935 quoted above. Section 36, permits an unlimited amount of Supplementary Expenditure, without even the qualifying condition of a national emergency, or the endangering of the safety and tranquillity of India, added to restrain the Governor-General, or to make him and his Counsellors moderate in regard to the exercise of such extraordinary powers granted to the executive head of the Government in matters financial. With such powers in reserve, held by the practically non-responsible chief executive, it would be no surprise, if the Legislature, and the Ministers responsible to that body, acquire little sense of responsibility in framing their financial policy.

A list of the other Bills which the Governor-General may recommend to the Legislature, and which must be passed in the form recommended, will be found in the lists of his discretionary powers, and of the functions to be exercised in his individual judgment.

Communications with the Legislature

(v) Sending of Messages, addressing the Chambers of the Legislature, ordering,—for that purpose,—the attendance of the members of both Chambers in one of these, and addressing the Chambers on lines of policy, are practices which may seem to be borrowed from the British model. In Britain, however, most of these devices are utilised to emphasise solemn occasions,—such as the accession of a new King, or his or her marriage, or request to make provision for the Royal Family, as each succeeding King takes the place of his predecessor. In this country, on the other hand, messages from the Governor-General have dictatorial air and purport in a number of instances provided for in the Constitution, or under the rules made thereunder.

As for addressing the two Chambers of the Legislature, the practice in England is for the Ministers to prepare the Speech from the Throne at each new sessions of Parliament, which would review the policy of the Cabinet during the period elapsed since the last such occasion, and outline the proposal for legislation the Ministers may have in contemplation. In India, Lord Willingdon, as Governor-General, did try to follow this model. But even in his case, the speech was prepared by his non-responsible, bureaucratic colleagues, which, instead of the usual programme of proposed measures for public welfare in a speech from the Throne in Britain, more often than not breathed fire and sword to those who had the misfortune not to see eye to eye with His Excellency in regard to the repressive policy so characteristic of his regime, and the reaction in all political and eco-

nomie fields which was the undisguised order of the day in those years. In the years to come, when Federation is an accomplished fact,—if it ever is so,—one cannot say if that practice will be followed literally; whether the speech of the Governor-General to the Legislators will be confined only to those departments of the State on which the Legislature has any control, or whether it would be a review of the policy pursued and measures contemplated. Section 20 of the Act imposes no limit on the discretion of the Governor-General in such matters.

20.—(1) The Governor-General may in his discretion address either Chamber of the Federal Legislature or both Chambers assembled together, and for that purpose require the attendance of members.

(2) The Governor-General may in his discretion send messages to either Chamber of the Federal Legislature whether with respect to a Bill then pending in the Legislature or otherwise, and a Chamber to whom any message is so sent shall with all convenient dispatch consider any matter which they are required by the message to take into consideration.

Even if similar in form to the British practice, this is, in spirit, not at all like its model. The British Parliament has always maintained the tradition of looking to the people's grievances before the proposals of the Executive are attended. "Redress of grievances before the voting of supplies" is a maxim of Constitutional practice, which finds expression even to-day in the formal motion, before the debate on the Speech from the Throne commences, to take into consideration some matter of popular importance. In India, under this section, there may be no such recognition of the redress of popular grievances proceeding the voting of supplies, or consideration of the other proposals placed before the Legislature by the message or the Address

of the Governor-General. The Legislature shall take into consideration forthwith any matter which the message of the Governor-General orders them to attend to. This makes the position of the Legislature,—and, consequently, that of the Ministry which holds power simply as the leaders of the Legislature,—distinctly subordinate to that of the Governor-General.

Under Section 40 (2):—

"If the Governor-General in his discretion certifies that the discussion of a Bill introduced or proposed to be introduced in the Federal Legislature, or of any specified clause of a Bill, or of any amendment moved or proposed to be moved to a Bill, would affect the discharge of his Special Responsibility for the prevention of any grave menace to the peace or tranquillity of India or any part thereof, he may in his discretion direct that no proceedings, or no further proceedings, shall be taken in relation to the Bill, clause or amendment, and effect shall be given to the direction."

This, along with the provision of Sections 35 and 36, regarding an Authenticated Schedule of Authorised Expenditure, as also regarding Supplementary Estimates of Expenditure, make up the three most important instances in which the Legislature must, without further discussion or vote, give effect to the mandate of the Governor-General.

The Instructions given in regard to the stay of proceedings in the Legislature provide that:—

"The power vested by the said Act in Our Governor-General to stay proceedings upon a Bill, clause or amendment in the Federal Legislature, in the discharge of his Special Responsibility for the prevention of grave menace to peace and tranquillity shall not be exercised unless, in his judgment, the public discussion of the Bill, clause or amendment would itself endanger peace and tranquillity.*"

*Article XXIX of the Instrument of Instructions.

The Governor-General is not only made the sole judge as to whether or not, in a given situation, there is a serious menace to the peace and tranquillity of India; he is also made the exclusive authority in deciding whether or not a particular measure pending before the Legislature would endanger the Country's peace and tranquillity. No definition, or indication, is given as to what class of measures this provision is intended to apply to. Ordinarily, one might think communal tension is the principal objective of such safeguards. But it is not inconceivable that even industrial disputes, and political sentiment mixed up with proposals for radical, social or economic reforms, might be interpreted by an overcautious Governor-General as likely to contain a menace to the country's peace and tranquillity. But, whether this is intended to guard against communal tension reaching an undesirable height, or economic and political matters coming to a crisis, the point may well be urged: How does the Governor-General judge the situation, and decide correctly that it contains elements of danger against which he has been vested with special powers? After all, he is not in touch with the people, as his Ministers, through their fellow members in the Legislature, and the latter through their constituents, may well claim to be. He is, again, very likely a foreigner, unfamiliar with the local language, unacquainted with local customs and sentiments. Nevertheless the Governor-General,—an utter outsider,—is invested with powers of judging a situation, and guarding against, overriding the Legislature and the Ministry, which, the latter, if they are worth their salt, and at all know their responsibilities, would be far better able to appreciate correctly and remedy effectively!

Messages under Section 44 are frankly extraordinary, and will be touched upon in their proper place.

Summon Joint Sessions

(vi) The power to summon Joint Sittings of the two Chambers of the Federal Legislature is contained in Section 31 which says:—

31.—(1) 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 Chambers have finally disagreed as to the amendments to be made in the Bill; or
- (c) more than six months elapse from the date of the reception of the Bill by the other Chamber without the Bill being presented to the Governor-General for his assent,

the Governor-General may, unless the Bill has lapsed by reason of a dissolution of the Assembly, notify to the Chambers, by message if they are sitting or by public notification if they are not sitting, his intention to summon them to meet in a joint sitting for the purpose of deliberating and voting on the Bill:

Provided that, if it appears to the Governor-General that the Bill relates to finance or to any matter which affects the discharge of his functions in so far as he is by or under this Act required to act in his discretion or to exercise his individual judgment, he may so notify the Chambers notwithstanding that there has been no rejection of or final disagreement as to the Bill and notwithstanding that the said period of six months has not elapsed, if he is satisfied that there is no reasonable prospect of the Bill being presented to him for his assent without undue delay.

In reckoning any such period of six months as is referred to in this sub-section, no account shall be taken of any time during which the Legislature is prorogued or during which both Chambers are adjourned for more than four days.

(2) Where the Governor-General has notified his intention of summoning the Chambers to meet in a joint sitting, neither Chamber shall proceed further with the Bill, but the Governor-General may at any time in the

next session after the expiration of six months from the date of his notification summon the Chambers to meet in a joint sitting for the purpose specified in his notification and, if he does so, the Chambers shall meet accordingly:

Provided that if it appears to the Governor-General that the Bill is such a Bill as is mentioned in the proviso to sub-Section (1) of this Section, he may summon the Chambers to meet in a joint sitting for the purpose aforesaid at any date, whether in the same session or in the next session.

(3) The functions of the Governor-General under the provisos to the two last preceding sub-sections shall be exercised by him in his discretion.

(4) If at the joint sitting of the two Chambers the Bill, with such amendments, if any, as are agreed to in joint sitting, is passed by a majority of the total number of members of both Chambers present and voting, it shall be deemed for the purposes of this Act to have been passed by both Chambers: Provided that at a joint sitting—(a) if the Bill, having been passed by one Chamber, has not been passed by the other Chamber with amendments and returned to the Chamber in which it originated, no amendments shall be proposed to the Bill other than such amendments (if any) as are made necessary by the delay in the passage of the Bill; (b) if the Bill has been so passed and returned, only such amendments as aforesaid shall be proposed to the Bill and such other amendments as are relevant to the matters with respect to which the Chambers have not agreed, and the decision of the person presiding as to the amendments which are admissible under this sub-section shall be final.

(5) A joint sitting may be held under this section and a Bill passed thereat notwithstanding that a dissolution of the Assembly has intervened since the Governor-General notified his intention to summon the Chambers to meet therein.

This device of a Joint Sessions of the two Chambers is, without any disguise, a means to make the will of the executive head prevail over that of his Responsible Ministers, and the representatives of the Indian people, without recourse to frankly unconstitutional methods, or extraordinary powers. We shall see, when we consider the composition of the Federal Legislature, what hidden safeguards are provided for the maintenance

of the British Imperialist hold over India, in the very composition of the Federal Legislature. While the Assembly,—the so-called Lower House,—is to be elected by indirect election and proportional voting,—so that all the groups and cross divisions in the Local Legislatures might be mirrored in the National Legislative Assembly,—the Upper House, with 250 members, as regards British Indian representatives is elected in a manner which is bound to give the greatest influence to the Governor-General, especially through the hundred odd representatives of the Indian Princes joining the Federation. In a Joint Sitting, the maximum membership would be 635, out of which the States would have at the most 229 members; 6 more could be, at most, nominated by the Governor-General. We may take it that, in any conceivable crisis, these 235 members would stand solid behind the Governor-General. The Representatives of the Indian Provinces,—both in the Assembly and in the Council of State,—will, however, scarcely ever be united to such a degree, in questions of policy that might lead to a crisis and demand a joint sitting, as would override these instruments of the will of the Governor-General. To carry a point against the Governor-General in a joint sitting of the Federal Legislature, his opponents would need an aggregate voting strength of 320. Though the elected Representatives of British India total 400, it may be readily assumed that, in such a crisis as is herein contemplated, they would themselves be divided, so that the 85 votes needed to swamp the opposition to the Governor-General could be easily obtained at a pinch.

Under Section 34 (3) it is compulsory on the Governor-General to summon a joint sitting if the two

Chambers have disagreed as to any demand for a grant of money; and the decision of the majority at such joint sitting shall prevail. This means, that even in financial matters, the Assembly is not final, nor exclusive.

Power of Assent or Veto

(vii) The power of the Governor-General to assent to a Bill passed by the Legislature, or to withhold assent, or to reserve it for the consideration of His Majesty is no dead letter. Says Section 32 of the Act of 1935:—

32.—(1) When a Bill has been passed by the Chambers, it shall be presented to the Governor-General, and the Governor-General shall in his discretion declare either that he assents in His Majesty's name to the Bill, or that he withholds assent therefrom, or that he reserves the Bill for the signification of His Majesty's pleasure:

Provided that the Governor-General may in his discretion return the Bill to the Chambers with a message requesting that they will reconsider the Bill or any specified provisions thereof and, in particular, will consider the desirability of introducing any such amendments as he may recommend in his message, and the Chambers shall reconsider the Bill accordingly.

(2) A Bill reserved for the signification of His Majesty's pleasure shall not become an Act of the Federal Legislature unless and until, within twelve months from the day on which it was presented to the Governor-General, the Governor-General makes known by public notification that His Majesty has assented thereto.

(3) 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, and where any Act is so disallowed the Governor-General shall forthwith make the disallowance known by public notification, and as from the date of the notification the Act shall become void.

Under these provisions, five several kinds of fate may befall measures passed by the Indian Legislature:

- (a) A Bill passed by the Legislature may be assented to by the Governor-General; or
- (b) assent may be withheld; or

- (c) the Bill may be reserved for consideration by the King-Emperor;* or
- (d) the Bill may be returned to be reconsidered, with amendments or modifications suggested by the Governor-General, which must be considered by the Legislature; or
- (e) the Bill, even after being assented to by the Governor-General, may be disallowed by the King-Emperor, not by any positive act, but by simple silence on a Bill reserved for the significance of His Majesty's pleasure for more than a year.† The

*Says Clause XXVII of the Instructions (draft) to the Governor-General: "Our Governor-General shall not assent in our name to, but shall reserve for the signification of our pleasure, any Bill of any of the classes herein specified, that is to say:—

- (a) any Bill the provisions of which would repeal or be repugnant to provisions of any Act of Parliament extending to British India;
- (b) any Bill which in his opinion would, if it became law, so derogate from the powers of the High Court of any Province as to endanger the position of which these Courts are by the said Act designed to fill;
- (c) any Bill passed by a Provincial Legislature, and reserved for his consideration which would alter the character of the Permanent Settlement;
- (d) any Bill, regarding which he feels doubt whether it does, or does not, offend against the purposes of Chapter III, Part V of the said Act.

†Says Prof. A. B. Keith, in his Constitutional Law of the British Dominions:—

"While reservation of Bills (passed by the Dominion Legislatures) was, at the time when the Conference of 1926 met, an essential element of the Dominion Constitutions, the power of disallowance, though provided for in all cases save the most recent Constitution, that of the Irish Free State, had long been a dead letter." (p. 22). The learned writer mentions instances, such as a Bill severing the connection of a Dominion with the British Commonwealth, as one in which disallowance, on the advice of the Imperial British Cabinet, and against the advice of the Dominion Ministry, may properly be ordered by the King. But he also mentions that, in the case of the Australian States, though the power to disallow local Acts of the States has been expressly given to the King, the King has never exercised that power on the advice of the Commonwealth Ministry. Would the same precedent be followed in regard to the Provincial Legislation from India? The power to disallow Indian Acts,—whether Federal or Provincial, will not, it may be apprehended, be a dead-letter,—whether as regards Indian Loans, or for any of the purposes on which the Imperial British interests may be in conflict with the immediate Indian interests.

existing Constitution seems liberal in comparison to the Act of 1935, in this regard. In the former case, a Bill passed by the Indian Legislature and assented to by the Governor-General could be disallowed by a positive act of the King-in-Council, and not by simple silence, as in this instance.*

This five-fold power of the executive chief over the Legislature, in regard to its most important business, will effectually tie the Federal Legislature to the apron strings of the Governor-General. The power of veto, disallowance, compulsory reconsideration, are all either unknown in the Constitutions of other Dominions, or practically dead for want of use.

Ordinances and Governor-General's Acts

(viii & ix) The direct Legislative powers of the Governor-General, viz., passing Ordinances, either on the advice of his Ministers, or in his discretion; and passing the so-called Governor-General's Acts, are provided for in Section 42-44 of the Act. These are extraordinary laws, but have the same validity as any ordinary act of the Indian Legislature, and are subject to the same supervision, or disallowance by the King, as apply to ordinary legislation. The provision to submit certain Ordinances to the Federal Legislature is of only a nominal safeguard of the authority of the Legislature, since the disapproving resolutions of the Legislature, even if passed, will not have retrospective effect; and, for the time that the Ordinance is

*Compare the language of Sections 68 and 69 of the Government of India Act, 1919, and that of Section 32 quoted above, or with that of Sections 76 and 77 as regards Provincial Legislation.

in operation, it will be as good as any law of the land. Even this safeguard does not avail in case of the Ordinances passed under Section 43, which relate to the Governor-General's extraordinary powers; and they do not apply at all to the Governor-General's Acts. For the rest, the actual terms of the three Sections are more eloquent than any comment we can offer.

42.—(1) 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:

Provided that the Governor-General—

- (a) shall exercise his individual judgment as respects the promulgation of any ordinance under this section if a Bill containing the same provisions would under this Act have required his previous sanction to the introduction thereof into the Legislature; and
 - (b) shall not, without instructions from His Majesty, promulgate any such ordinance if he would have deemed it necessary to reserve a Bill containing the same provisions for the consideration of His Majesty's pleasure thereon.
- (2) An ordinance promulgated under this section shall have the same force and effect as an Act of the Federal Legislature assented to by the Governor-General, but every such ordinance—
- (a) 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 it are passed by both Chambers, upon the passing of the second of those resolutions;
 - (b) shall be subject to the provisions of this Act relating to the power of His Majesty to disallow Acts as if it were an Act of the Federal Legislature assented to by the Governor-General; and
 - (c) may be withdrawn at any time by the Governor-General.

(3) If and so far as an ordinance under this section makes any provision which the Federal Legislature would not under this Act be competent to enact, it shall be void.

43.—(1) If at any time the Governor-General is satisfied that circumstances exist which render it necessary for him to take immediate action for the purpose of enabling him satisfactorily to discharge his functions in so far as he is by or under this Act required in the exercise thereof to act in his discretion or to exercise his individual judgment, he may promulgate such ordinances as in his opinion the circumstances of the case require.

(2) An ordinance promulgated under this section, shall continue in operation for such period not exceeding six months as may be specified therein, but may by a subsequent ordinance be extended for a further period not exceeding six months.

(3) An ordinance promulgated under this section shall have the same force and effect as an Act of the Federal Legislature assented to by the Governor-General, but every such ordinance—

- (a) shall be subject to the provisions of this Act relating to the power of His Majesty to disallow Acts as if it were an Act of the Federal Legislature assented to by the Governor-General;
 - (b) may be withdrawn at any time by the Governor-General; and
 - (c) if it is an ordinance extending a previous ordinance for a further period, shall be communicated forthwith to the Secretary of State and shall be laid by him before each House of Parliament.
- (4) If and so far as an ordinance under this section makes any provision which the Federal Legislature would not under this Act be competent to enact, it shall be void.
- (5) The functions of the Governor-General under this section shall be exercised by him in his discretion.

44.—(1) If at any time it appears to the Governor-General that for the purpose of enabling him satisfactorily to discharge his functions in so far as he is by or under this Act required in the exercise thereof to act in his discretion or to exercise his individual judgment, it is essential that provision should be made by legislation, he may by message to both Chambers of the Legislature explain the

circumstances which in his opinion render legislation essential and either—

(a) enact forthwith, as a Governor-General's Act, a Bill containing such provisions as he considers necessary; or

(b) attach to his message a draft of the Bill which he considers necessary.

(2) When the Governor-General takes such action as is mentioned in paragraph (b) of the preceding sub-section, he may at any time after the expiration of one month, enact, as a Governor-General's Act, the Bill proposed by him to the Chambers either in the form of the draft communicated to them or with such amendments as he deems necessary, but before so doing he shall consider any address which may have been presented to him within the said period by either Chamber with reference to the Bill or to amendments suggested to be made therein.

(3) A Governor-General's Act shall have the same force and effect, and shall be subject to disallowance in the same manner, as an Act of the Federal Legislature assented to by the Governor-General and, if and in so far as a Governor-General's Act makes any provision which the Federal Legislature would not under this Act be competent to enact, it shall be void.

(4) Every Governor-General's Act shall be communicated forthwith to the Secretary of State and shall be laid by him before each House of Parliament.

(5) The functions of the Governor-General under this section shall be exercised by him in his discretion.

Power to suspend the Constitution

(x) But the most considerable power over the Legislature is given to the Governor-General by Section 45. It permits him practically to suspend the entire constitution, if in his opinion an emergency has arisen necessitating such a course. The emergency herein contemplated is a purely political impasse, such as was reached at the time Provincial Autonomy was introduced under this Act,* and not one in which the entire country's security was endangered.

*Contrast, for this purpose, the language of Section 192, and that of Sections 45 or 93.

45.—(1) 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 functions 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,

and any such Proclamation may contain such incidental and consequential provisions as may appear to him to be necessary or desirable for giving effect to the objects of the Proclamation, including provisions for suspending in whole or in part the operation of any provisions of this Act relating to any Federal body or authority:

Provided that nothing in this sub-section shall authorise the Governor-General to assume to himself any of the powers vested in or exercisable by the Federal Court or to suspend, either in whole or in part, the operation of any provision of this Act relating to the Federal Court.

(2) Any such Proclamation may be revoked or varied by a subsequent Proclamation.

(3) A Proclamation issued under this section—

(a) shall be communicated forthwith to the Secretary of State and shall be laid by him before each House of Parliament;

(b) unless it is a Proclamation revoking a previous Proclamation, shall cease to operate at the expiration of six months:

Provided that, if and so often as a resolution approving the continuance in force of such a Proclamation is passed by both Houses of Parliament, the Proclamation shall, unless revoked, continue in force for a further period of twelve months from the date on which under this sub-section it would otherwise have ceased to operate.

(4) If at any time the Government of the Federation has for a continuous period of three years been carried on under and by virtue of a Proclamation issued under this section, then, at the expiration of that period, the Proclamation shall cease to have effect and the Government of the Federation shall be carried on in accordance with the other provisions of this Act, subject to any amendment thereof which Parliament may deem it necessary to make,

but nothing in this sub-section shall be construed as extending the power of Parliament to make amendments in this Act without affecting the accession of a State.

(5) If the Governor-General, by a Proclamation under this section, assumes to himself any power of the Federal Legislature to make laws, any law made by him in the exercise of that power shall, subject to the terms thereof, continue 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 appropriate Legislature, and any reference in this Act to Federal Acts, Federal laws, or Acts or laws of the Federal Legislature shall be construed as including a reference to such a law.

(6) The functions of the Governor-General under this section shall be exercised by him in his discretion.

V-(a) The Governor-General's Powers over the Provincial Governments

The immense field of the Governor-General's discretionary powers and functions, and those to be exercised in his individual judgment, is perhaps, nowhere so vividly illustrated as in his controlling, supervisory, and even directive powers over the Provincial Governors, or Governments, including the Provincial Legislatures. The bare list of the sections under which these powers have been assigned to the Chief Executive Officer in India will serve, without any commentary, to show how effective and universal is the power of the Governor-General over the Provinces, their Governors, Ministries, or Legislatures. The claim, in view of these enormous powers vested in the Governor-General, that Provincial Autonomy is a real fact of the New Indian Constitution, will, after a careful study of all these provisions, vanish into thin air, even if it does not become an insult added to the injury effected by this Constitution as a whole.

Speaking generally, these powers extend;—

(i) to the maintenance of general peace and tranquillity of India or any part thereof, including Provinces and States;

(ii) to superintendence and direction of the Provincial Governor in the latter's powers of a discretionary character, or even those to be exercised in his Individual Judgment;

(iii) to the prior sanction needed for certain classes of Bill or amendments to be introduced in the Provincial Legislature; the recommendation of specific amendments to Bills passed by the Provincial Legislature, if the Bill in question had been reserved for consideration by the Governor-General; or for the significance of His Majesty's pleasure; assenting to Provincial Bills reserved for his consideration,—or withholding assent; or reserving such Bills for the significance of His Majesty's pleasure; extraordinary Legislative Powers of Ordinances and Governor-General's Acts, as well as Emergency Legislation by the Federation;

(iv) Financial powers for the distribution of the net proceed of certain taxes, for the postponement of the period during which the agreed, or sanctioned, share of the Income-tax is to be distributed between Provinces; making of certain grants to the Provinces; and control over Provincial borrowing. This flows from the special responsibility for the maintenance of India's Credit, and the financial stability of the country;

(v) Certain Administrative powers, including the right to issue Orders to the Governors, for carrying out Federal Laws, or the Governor-General's special directions or orders; for the control of Broadcasting; for investigation of disputes as regards water-supplies;

(vi) Judicial,—including appointments of Acting Chief Justice of a Provincial High Court,—and the power of pardoning criminals;

(vii) Powers over the appointment, etc., of the High Commissioner, and the approval of the terms on which he is to do business for the Provincial Governments;

(viii) Miscellaneous.

List of Sections giving Powers to the Governor-General over the Provincial Governors or Governments

Section 7: General powers which may include Provincial Governors and Governments.

Section 12: Two items in the list of the Governor-General's Special Responsibilities,—(i) safeguarding the financial stability and credit of the Federal Government; and (ii) prevention of any grave menace to the peace or tranquillity of any part of India.

Section 33 (3) (g): Any grants for excluded areas in a Province to be charged upon the revenues of the Federation, and as such determined by the Governor-General in his discretion [cp. Section 33 (4)].

Sections 42, 43, 44, 45: Relating to Ordinances passed by the Governor-General, either in his Individual Judgment or in his Discretion, the Governor-General's Acts, and the suspension of the entire Constitution under a Proclamation of Emergency, which may undoubtedly affect the Provinces.

Section 54: General control over the Governor, with the right to issue to the latter particular directions, in regard to all matters in which the Governor is entitled to act in his discretion, or to exercise his individual judgment.

✓ This is the most direct and unequivocal power of control and direction vested in the Governor-General as against the Provincial Governors,—particularly in connection with the latter's extraordinary powers. The Governor-General is himself, for similar purposes, under the control direction and supervision of the Secretary of State for India,—as we shall see in another connection. It may be added that the

Governor-General cannot issue to a Provincial Governor directions under this section which would compel the latter to act contrary to his instructions. Opinion may differ as to what constitutes such an act; and, in the event of such a difference, the opinion of the Governor-General shall, for the time being at any rate, prevail, as the wording of the subsection (2) clearly shows.

Section 76: Assenting to, or withholding assent from, or reserving a duly passed Provincial Bill for the significance of His Majesty's pleasure; returning such a Bill (by direction to the Governor) to the Provincial Legislature, with a message for its reconsideration and for considering the desirability of introducing such amendments in the Bill as may be specified in the Message. This section applies to only those Bills of the Provincial Legislature which have been reserved for the Governor-General's consideration by the Local Governor.

N.B.—In this connection we may also note other Sections giving to the Governor-General such powers over Provincial Legislation, or Legislature.

Section 88: Right to issue Instructions to the Governor before the latter promulgates Ordinances under this section.

Section 89: Right to have certain Ordinances, promulgated under this section, to be communicated to the Governor-General, and the right to concurrence of the Governor-General, before the Governor exercises his powers under this section.

Section 90: Similar right as to communication and concurrence, as regards Governor's Acts passed under this section.

Section 92: Communication to the Governor-General of regulations made by the Governor in his discretion, for the "Peace and Good Government," of any excluded area in a Province; and assenting to the same, before they could have any effect.

Section 93: Concurrence in the issue of Proclamation by a Provincial Governor in his Province, suspending the Constitution in that Province.

N.B.—Sections 94 and 95 grant considerable powers to the Governor-General over the so-called Chief Commissioners' Provinces. As, however, these entities are directly under the Governor-General, these need not be considered as granting supervisory, directive, or controlling powers over Provincial Governors, or Governments, to the Governor-General.

Section 102: Right of the Federal Legislature to legislate for a Province on any matter in the Provincial List of subjects, if the Governor-General declares a state of national emergency by Proclamation, in stating that the security of the country is threatened by war or internal disturbance.

Section 104: The Governor-General may by his discretion empower the Federal or a Provincial Legislature to legislate on any subject not included in any of the Lists in Schedule VII, and exercise executive authority even in a Province to enforce such a law, unless the Governor-General otherwise directs.

Sections 123-128: Purely administrative matters:—

Under **Section 123**, the Governor-General may direct the Governor of any Province to discharge certain functions, as his Agent, in relation to Tribal areas, Defence, Ecclesiastical Affairs, or External Affairs.

Under **Section 124**, the Governor-General may entrust to a Provincial Government, with the latter's consent, functions regarding matters within the Executive Authority of the Federation.

Under **Section 126**, as head of the Federal Executive, the Governor-General may issue **directions** to any Provincial Government necessary for the proper exercise of the authority of the Federal Executive. Directions may likewise be given to a Province for the enforcement of any Federal law on a subject in Part II of the Concurrent List of subjects in Schedule VII,

provided that no Bill or amendment relating to the issue of such directions can be introduced in the Federal Legislature without the previous sanction of the Governor-General in his discretion. The same rule applies to the proper maintenance in a Province of means of communications declared to be of military importance. If any of these directions are not properly attended to in a Province, the Governor-General, in his discretion, may re-issue the same directions as **Orders** to the Provincial Governor concerned, or with any modifications he considers necessary. **Orders** may be issued by the Governor-General at any time as regards the exercise of the executive authority in the Province concerned, to prevent any grave menace to the peace or tranquillity of any part of India,—the issue of **Orders** being always a matter of the Governor-General's discretion.

Under **Section 127**, the Federal Executive may require a Province to acquire land for any purpose on which the Federal Legislature is entitled to make laws, at expense of the Federation.

Section 129: empowers the Governor-General, in his discretion, to decide questions in dispute as to whether any conditions imposed by the Federal Government upon a Province, regarding the construction and use of wireless transmitters, are unreasonable, or whether any refusal by the Federal Government to entrust such functions to a Province is unreasonable. The special responsibility of the Governor-General regarding the prevention of any grave menace to the peace or tranquillity of any part of India, through the transmission by wireless is particularly safeguarded and reserved.

Sections 130-131: entitle the Governor-General in his discretion to receive complaints from Provincial Governments regarding the prejudice to their right to water from a natural source, to have the matter investigated by a Commission, and to issue orders on the report of such a Commission.

Section 132: extends this power to water-supplies for the Chief Commissioner's Provinces.

Section 137: authorises the Federation to levy and collect taxes on succession to non-agricultural property, stamp duties mentioned in the Federal Legislative List, Terminal Taxes on goods and passengers carried by railway or air, and taxes on railway fares and freights, for distribution of the net proceeds among the Provinces according to the principles of distribution laid down in a Federal Act. This is a most insidious right of controlling the Provincial Governments, since its full effects are not visible on the surface. Not only is the Federal right to a surcharge on these source of taxation reserved; the rates of each such tax, and the rules for distributing the proceeds are entirely within the powers of the Federal Government. The Provinces can not only not benefit to the full extent of their taxable capacity in such matters; they will always be liable to an indirect mulcting by the Federal Government by way of a surcharge,—and possibly by way of new taxation on these sources of wealth or taxable capacity. We have included this in the list of powers of the Governor-General, even though, in terms the section gives this power to the Federal Government, because the Governor-General is vested with a Special Responsibility for the maintenance of the financial stability and credit of India as a whole; and, in virtue of this responsibility, he has considerable reserve powers that may very easily affect the use of these sources of revenue for Provinces.

Section 138: Relates to the distribution, by stated periods, of a share of Income-Tax among the Provinces, with discretion to the Governor-General to modify the pace of the period for such distribution. Having already commented at length in another work on this section, it is unnecessary to explain it here further.

Section 140: Gives power to distribute, if an Act of the Federal Legislature so provides, part or whole of the net proceeds of the duty on salt, federal excises,

and export duties among Provinces, provided that half or more of the net proceeds of the Jute Export duty must be distributed among the jute-growing Province.

Section 141: Requires previous sanction of the Governor-General to any Bill or amendment imposing any tax or duty in which Provinces are interested, or the principles of distribution of the net proceeds of some taxes or duties in the Provinces, or varying the meaning of Agricultural Income, or the imposition of any Federal Surcharge. Not only is this sanction given **in his discretion**; the Governor-General is forbidden to accord such sanction unless he is satisfied that all practicable economies in Federal expenditure have been effected, and that no other means remains to add to the Federal Revenues.

Section 142 (Not to be included): Imposes on the Federal Government the duty to make certain grants to Provinces,—to be charged on the Federal Revenues, and, as such, non-votable.

Section 150: This is another of the two or three insidious provisions in this Constitution, which, innocent-looking on the surface, in reality undo altogether any hope of real power for the good of the country in the hands of its chosen representatives. In terms, the section seems to prohibit the imposition of any burden on Federal, or Provincial, revenues "except for the purposes of India or any part of India." This exception is of the utmost significance, especially if one studies sub-section (2) of the same section, which permits "the Federation or a Province (to) make grants for any purpose, notwithstanding that the purpose is not one with respect to which the Federal or the Provincial Legislature, as the case may be, may make laws". Having studied the immense field for the Governor-General's discretionary powers and overriding authority, this tremendous scope assigned to possible grants from Federal or Provincial funds, for any purpose, whether within or outside the scope of the Provincial or Federal Legislatures, necessarily must

frighten any one anxious for the full growth of constitutional responsibilities among the Rulers of India.

Section 163: Vests the right to decide disputes between the Federal and the Provincial Governments regarding the conditions to be imposed by the former on the latter's borrowing, or guaranteeing Loans, in the Governor-General, acting in his discretion.

Section 175: Requires the concurrence, given in his discretion, of the Governor-General for the sale or modification of the use of any building used as a Government House, or official residence in the Provinces. This means that any hope of retrenchment to be effected in the Household Allowance charges of the Provincial Governors, due to palatial buildings having to be maintained as official residences, is entirely at the mercy of the Governor-General.

Section 222: Gives power to make the temporary or acting appointment to the Chief Justiceship of a Provincial High Court, or Additional Judges in such courts to the Governor-General in his discretion.

Section 226: Requires the previous sanction of the Governor-General to the introduction of any Bill or Amendment in the Federal Legislature which would grant any original jurisdiction to a Provincial High Court in Revenue matters.

Section 295: Grants the Governor-General the power to pardon criminals, conditionally or freely, and the power to suspend, remit, or commute a death sentence,—the power to be exercised in his discretion.

Section 302: The High Commissioner for India may do business for a Provincial Government in London, on terms to be approved by the Governor-General.

Section 313: Even during the transition period between the coming into operation of Provincial Autonomy and the establishment of the Federation, the Governor-General is entitled to use his discretionary

authority as regards granting previous sanction to certain classes of Bills in Provincial Legislatures, as also regarding Broadcasting and the Civil Services recruited by the Secretary of State serving in a Province.

The Governor-General and the Federated States

The powers of the Governor-General in connection with the Indian States have been glanced at in a previous Chapter, while dealing with the accession of the States to the Federation of India, and their place in the new Constitutional Government. So far as the powers specially given to the Governor-General by the terms of his Commission, or as representative of the Crown in its dealings with the Indian States are concerned, the Constitution is not directly concerned. Except for the sections, 128-135, dealing with administrative details for the enforcement of Federal Laws in the Federated States; Broadcasting; disputes as regards water-supplies; and except for sections in the Financial Chapter of the Constitution, whereby the net proceeds of certain taxes and duties are made distributable among the States in whom these duties are levied and collected by the Federation, compensation to the States concerned, under Section 147 and 149 for the loss of certain rights, privileges or immunities, as incidental to the accession to the Federation,—there are no great matters in which the Governor-General's directive, supervisory or controlling authority, the Chief Executive of the Federation of India, differs materially from that in the Provinces. His special responsibility in connection with the prevention of any grave menace to the peace and tranquillity of India, or any part of that country, applies as much to the Federated States as to the Provinces,—not to mention the non-Federated

States if any. And though his special responsibility to maintain and protect the rights and dignity of an Indian Prince, or the members of a Ruling Family, seem to be peculiar to the States only; this is no great departure from the existing practice in that behalf. On the whole, the States who join the Federation will be little better than Provinces, or Provincial Governors, *vis-a-vis* the Governor-General, even as regards the internal administration of their own territories. And they might be much worse off, perhaps, than the Provinces, in so far as the latter can, at pinch, urge the name and will of their people, should they desire a line of policy or executive action other than that recommended or enforced by the Governor-General. The States can never allege this excuse to shield themselves in any conflict with the Federal Executive or the Governor-General.

Constitutional Powers of the Governor-General

The powers of the Governor-General, as the chief Executive Officer of the Federation of India, considered in the last two or three sections are what might be called his extraordinary powers given by the Constitution to that officer. The normal Constitutional powers,—i.e., those which he is to exercise on the advice of his Ministers,—would, by elimination, shrink almost into nothing. We shall, however, consider these in detail in the next Chapter dealing with the Council of Ministers.

Reaction of the Powers of the Governor-General

Let us here sum up the reaction of these vast and all but innumerable powers vested in the Governor-General, under one pretext or another, upon (a) his

Council of Ministers; (b) the Provincial Governments; and (c) the Federated States. Because of the immense margin of **discretionary** powers left to the Governor-General,—in which, if he so chooses, he need not consult his Ministers at all,—comparatively very little is left to those Ministers to exercise their discretion in, and to show their concern for the welfare of the people they represent in some concrete form. At every step they take to promote that well-being in some definite shape, the Governor-General is in a position to block them, to circumvent them, to frustrate them. Whether in actual practice he would do so or not is besides the point here discussed. The fact remains that he is armed with constitutional powers, which enable him, if he is so minded, to render his Ministers utterly futile, and the promises of the Federal Legislators to their constituents were mind.

As though the Discretionary Powers of the Governor-General were not enough, he is given other powers, **to be exercised in his Individual Judgment**. In these, even though he may consult his Ministers, he is not bound always to follow their advice. This is adding insult to injury, so far as the Ministers are concerned. The Governor-General is in a position, not only to prevent them from taking any credit to themselves, in such matters, for any concrete service to the public; he can simply ignore them by not following the line they recommend. The Ministers, in the face of such powers in the hands of the Governor-General, will never realise their own responsibility, nor learn to act as responsible rulers of a great country, for the simple reason that they have no assurance that even in the sphere of activity left to them by the Constitution,—a most

narrow and limited sphere, in all conscience,—they would be free to develop national policies as they think proper.

So far as the Provinces are concerned, the full bloom of Provincial Autonomy is considerably tarnished by the possession of extraordinary powers by the Provincial Executive chief,—the Governor. As though that was not enough, the Governor-General is entrusted with certain overriding, directive, controlling powers, in every field of Provincial Government, which cannot but materially reduce the real field for Self-Government by the people in the Provinces. Provincial Autonomy, under the Constitution of 1935, is not a mere name; it is much less, and much worse. It is the shadow of a ghost, which needs must frighten to their death those unfamiliar with such unholy, unhappy spirits. It is a cloak for the refusal on the part of British Imperialism to part with any substance of power to the people of India in the management of their own concerns. It is an apology for a flagrant deception.

In the Federated States,—if and when Federation is an accomplished fact,—the reaction of such powers in the hands of the Governor-General would be, still more undesirable. The Indian States are still living in the Middle Ages, so far as any conception of popular responsibility in the Government of country is concerned. The admission of these anachronisms into a progressive, democratic Federation might, at first sight, seem to beckon them towards a more enlightened and responsible administration. The possession, however, of these immense discretionary and extraordinary powers by the Governor-General is calculated to

prevent the consummation of the vision of a fully united, homogeneous India, governed on truly democratic lines, with a full sense of popular responsibility among all those set in authority in that country. The Princes can always look to the Governor-General for the full protection of all their obsolete rights and unmeaning dignities; they can even obtain compensation, at the expense of India as a whole, for some of their rights, immunities or privileges, so long as the same do not offend the needs and requirements of British Imperialism in India. Their persons and families might be assured the exceptional position they have occupied so far, in regard to any just criticism of their actions or antics in the public. But did any of them but dream to defeat the aims of British Imperialism, neither their birth nor their services would protect them against any penalty, imposition, or sacrifice.