

## APPENDIX I

## Instrument of Instructions to the Governor-General

Whereas by Letters Patent bearing even date We have made effectual and permanent provision for the Office of Governor-General of India:

And whereas by those Letters Patent and by the Act of Parliament passed on \_\_\_\_\_ and entitled the Government of India Act, 1935 (hereinafter called "the said Act"), certain powers, functions and authority for the Government of India and of Our Federation of India are declared to be vested in the Governor-General as Our Representative:

And whereas, without prejudice to the provision in the said Act that in certain regards therein specified the Governor-General shall act according to instructions received from time to time from Our Secretary of State, and to the duty of Our Governor-General to give effect to any instructions so received. We are minded to make general provision regarding the manner in which Our said Governor-General shall execute all things which, according to the said Act and said Letters Patent, belong to his Office and to the trust which we have reposed in him:

And whereas by the said Act it is provided that the draft of any such Instructions to be issued to Our Governor-General shall be laid by Our Secretary of State before both Houses of Parliament:

And whereas both Houses of Parliament, having considered the draft laid before them accordingly, have presented to Us an Address praying that Instructions may be issued to Our Governor-General in the form which hereinafter follows:

Now therefore We do by these Our Instructions under Our Sign Manual and Signet declare Our pleasure to be as follows:—

## A.—Introductory

1. Under these Our Instructions, unless the context otherwise require, the term "Governor-General" shall include every person for the time being administering the Office of Governor-General according to the provisions of Our Letter Patent constituting the said Office.

II. Our Governor-General for the time being shall, with all due solemnity, cause Our Commission under Our Sign Manual, appointing him, to be read and published in the

presence of the Chief Justice of India for the time being, or, in his absence, other Judge of the Federal Court.

III. Our said Governor-General shall take the oath of allegiance and the oath for the due execution of the Office of Our Governor-General of India, and for the due and impartial administration of justice, in the form hereto appended, which oaths the Chief Justice of India for the time being, or in his absence any Judge of Federal Court, shall, and is hereby required to, tender and administer unto him.

IV. And we do authorise and require Our Governor-General, by himself or by any other person to be authorised by him in that behalf, to administer to every person appointed by him to hold office as a member of the Council of Ministers the oaths of office and of secrecy hereto appended.

V. And we do further direct that every person who under these Instructions shall be required to take an oath may make an affirmation in place of an oath if he has any objection to making an oath.

VI. And whereas great prejudice may happen to Our service and to the security of India by the absence of Our Governor-General, he shall not quit India during his term of office without having first obtained leave from Us under Our Sign Manual or through one of Our Principal Secretaries of State.

## B.—In Regard to the Executive Authority of the Federation

VII. Our Governor-General shall do all that in him lies to maintain standards of good administration; to encourage religious toleration, co-operation and goodwill among all classes and creeds; and to promote all measures making for moral, social and economic welfare.

VIII. In making appointments to his Council of Ministers Our Governor-General shall use his best endeavours to select his Ministers in the following manner, that is to say, in consultation with the person who, in his judgment, is most likely to command a stable majority in the Legislature, to appoint those persons (including so far as practicable representatives of the Federated States and members of important minority communities) who will best be in a position collectively to command the confidence of the Legislature. But, in so acting, he shall bear constantly in mind the need for fostering a sense of joint responsibility among his Ministers.

IX. In all matters within the scope of the executive authority of the Federation, save in respect of those func-

tions which he is required by the said Act to exercise in his discretion, Our Governor-General shall in the exercise of the powers conferred upon him be guided by the advice of his Ministers, unless in his opinion so to be guided would be inconsistent with the fulfilment of any of the special responsibilities which are by the said Act committed to him, or with the proper discharge of any of the functions which he is otherwise by the said Act required to exercise on his individual judgment; in any of which cases Our Governor-General shall, notwithstanding his Ministers' advice, act in exercise of the powers by the said Act conferred upon him in such manner as to his individual judgment seems requisite for the due discharge of the responsibilities and functions aforesaid. But he shall be studious so to exercise his powers as not to enable his Ministers to rely upon his special responsibilities in order to relieve themselves of responsibilities which are properly their own.

X. It is Our will and pleasure that in the discharge of his special responsibility for safeguarding the financial stability and credit of the Federation Our Governor-General shall in particular make it his duty to see that a budgetary or borrowing policy is not pursued which would, in his judgment, seriously prejudice the credit of India in the money markets of the world, or affect the capacity of the Federation duly to discharge its financial obligations.

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

Further, Our Governor-General shall interpret the said special responsibility as requiring him to secure a due proportion of appointments in Our Services to the several communities, and he shall be guided in this regard by the accepted policy prevailing before the issue of these Our Instructions, unless he is fully satisfied that modification of that policy is essential in the interests of the communities affected or of the welfare of the public.

XII. In the discharge of his special responsibility for the securing to members of the public services of any rights

provided for them by or under the said Act and the safeguarding of their legitimate interests Our Governor-General shall be careful to safeguard the members of Our Services not only in any rights provided for them by or under the said Act or any other law for the time being in force, but also against any action which, in his judgment, would be inequitable.

XIII. The special responsibility of Our Governor-General for securing in the sphere of executive action any of the purposes which the provisions of Chapter III of Part V of the said Act are designed to secure in relation to legislation shall be construed by him as requiring him to differ from his Ministers if in his individual judgment their advice would have effects of the kind which it is the purpose of the said Chapter to prevent, even though the advice so tendered to him is not in conflict with any specific provision of the said Act.

XIV. In the discharge of his special responsibility for the prevention of measures which would subject goods of United Kingdom origin imported into India to discriminatory or penal treatment. Our Governor-General shall avoid action which would affect the competence of his Government and of the Federal Legislature to develop their own fiscal and economic policy, or would restrict their freedom to negotiate trade agreements whether with the United Kingdom or with other countries for the securing of mutual tariff concessions; and he should intervene in tariff policy or in the negotiation of tariff agreements only if in his opinion the main intention of the policy contemplated is by trade restrictions to injure the interests of the United Kingdom rather than to further the economic interests of India. And we require and charge him to regard the discriminatory or penal treatment covered by this special responsibility as including both direct discrimination (whether by means of differential tariff rates or by means of differential restrictions on imports) and indirect discrimination by means of differential treatment of various types of products: and Our Governor-General's special responsibility extends to preventing the imposition of prohibitory tariffs or restrictions, if he is satisfied that such measures are proposed with the aforesaid intention. It also extends, subject to the aforesaid intention, to measures which, though not discriminatory or penal in form would be so in fact.

At the same time in interpreting the special responsibility to which this paragraph relates, our Governor-General shall bear always in mind the partnership between India and the United Kingdom within Our Empire, which has so long subsisted, and the mutual obligations which arise therefrom.



XV. Our Governor-General shall construe his special responsibility for the protection of the rights of any Indian State as requiring him to see that no action shall be taken by his Ministers, and no Bill of the Federal Legislature shall become law, which would imperil the economic life of any State, or affect prejudicially any right of any State heretofore or hereafter recognised,\* whether derived from treaty, grant, usage, sufferance or otherwise, not being a right appertaining to a matter in respect to which, in virtue of the Ruler's Instrument of Accession, the Federal Legislature may make laws for his State and his subjects.

XVI. In the framing of rules for the regulation of the business of the Federal Government Our Governor-General shall ensure that amongst other provisions for the effective discharge of that business, due provision is made that the Minister in charge of the Finance Department shall be consulted upon any proposal by any other Minister which affects the finances of the Federation: and further that no re-appropriation within a Grant shall be made by any Minister otherwise than after consultation with the Finance Minister; and that in any case in which the Finance Minister does not concur in any such proposal, the matter shall be brought for decision before the Council of Ministers.

XVII. Although it is provided in the said Act that the Governor-General shall exercise his functions in part in his discretion and in part with the aid and advice of Ministers, nevertheless it is Our will and pleasure that Our Governor-General shall encourage the practice of joint consultation between himself, his Counsellors and his Ministers. And seeing that the Defence of India must to an increasing extent be the concern of the Indian people it is Our will in especial that Our Governor-General should have regard to this instruction in his administration of the Department of Defence; and notably that he shall bear in mind desirability of ascertaining the views of his Ministers when he shall have occasion to consider matters relating to the general policy of appointing Indian Officers to Our Indian Forces, or the employment of Our Indian Forces on Service outside India.

XVIII. Further it is Our will and pleasure that in the administration of the Department of Defence Our Governor-General shall obtain the views of Our Commander-in-Chief in any matter which will affect the discharge of latter's duties and shall transmit his opinion to Our Secretary of State whenever the Commander-in-Chief may so request

\*The procedure for the determination of the right in case of a dispute rests with the Crown's representative for the conduct of relations with the States.

on any occasion when Our Governor-General communicates with Our Secretary of State upon them.

XIX. And We desire that, although the financial control of Defence administration must be exercised by the Governor-General at his discretion, nevertheless the Federal Department of Finance shall be kept in close touch with this control by such arrangement as may prove feasible, and that the Federal Ministry and, in particular, the Finance Minister shall be brought into consultation before estimates of proposed expenditure for the service of Defence are settled and laid before the Federal Legislature.

#### C.—In Regard to Relations between the Federation, Provinces and Federated States

XX. Whereas it is expedient, for the common good of Provinces and Federated States alike, that the authority of the Federal Government and Legislature in those matters which are by law assigned to them should prevail:

And whereas at the same time it is the purpose of the said Act that on the one hand the Governments and Legislatures of the Provinces should be free in their own sphere to pursue their own policies, and on the other hand that the sovereignty of the Federated States should remain unaffected save in so far as the Rulers thereof have otherwise agreed by their Instruments of Accession:

And whereas in the interest of the harmonious co-operation of the several members of the body politic the said Act has empowered Our Governor-General to exercise at his discretion certain powers affecting the relations between the Federation and Provinces and States:

It is Our will and pleasure that Our Governor-General, in the exercise of these powers, should give unbiased consideration as well to the views of the Governments of Provinces and Federated States as to those of his own Ministers, whenever those views are in conflict and, in particular, when it falls to him to exercise his power to issue orders to the Governor of a Province, or directions to the Ruler of Federated State, for the purpose of securing that the executive authority of the Federation is not impeded or prejudiced, or his power to determine whether provincial law or federal law shall regulate a matter in the sphere in which both Legislatures have power to make laws.

XXI. It is Our desire that Our Governor-General shall by all reasonable means encourage consultation with a view to common action between the Federation, Provinces and Federated States. It is further Our will and pleasure that Our Governor-General shall endeavour to secure the

co-operation of the Governments of Provinces and Federated States in the maintenance of such federal agencies and institutions for research as may serve to assist the conduct by Provincial Governments and Federated States of their own affairs.

XXII. In particular We require our Governor-General to ascertain by the method which appear to him best suited to the circumstances of each case the views of Provinces and of Federated States upon any legislative proposals which it is proposed to introduce in the Federal Legislature for the imposition of taxes in which Provinces or Federated States are interested.

XXIII. Before granting his previous sanction to the introduction of a Bill into the Federal Legislature imposing a Federal surcharge on taxes on income, Our Governor-General shall satisfy himself that the results of all practicable economics and of all practicable measures for increasing the yield accruing to the Federation from other sources of taxation within the powers of the Federal Legislature would be inadequate to balance Federal receipts and expenditure on revenue account; and among the aforesaid measures shall be included the exercise of any powers vested in him in relation to the amount of the sum retained by the Federation out of money, assigned to the Provinces from taxes on income.

XXIV. Our Governor-General, in determining whether the Federation would or would not be justified in refusing to make a loan to a Province, or to give a guarantee in respect of a loan to be raised by a Province, or in imposing any conditions in relation to such loan or guarantee, shall be guided by the general policy of the Federation for the time being as to the extent to which it is desirable that borrowings on behalf of the Provinces should be undertaken by the Federation; but such general policy shall not in any event be deemed to prevail against the grant by the Federation of a loan to a Province or a guarantee in respect of a loan to be raised by that Province, if in the opinion of Our Governor-General a temporary financial emergency of a grave character has arisen in a Province, in which refusal by the Federation of such a grant or guarantee would leave the Province with no satisfactory means of meeting such temporary emergency.

XXV. Before granting his previous sanction to the introduction into the Federal Legislature of any Bill or amendment wherein it is proposed to authorise the Federal Government to give directions to a Province as to the carrying into execution in that Province of any Act of the Federal Legislature relating to a matter specified in Part II

of the Concurrent Legislative List appended to the said Act, it is Our will and pleasure that Our Governor-General should take care to see that the Governments of the Provinces which would be affected by any such measure have been duly consulted upon the proposal, and upon, any other proposals which may be contained in any such measure for the imposition of expenditure upon the revenues of the Provinces.

XXVI. In considering whether he shall give his assent to any Provincial law relating to a matter enumerated in the Concurrent Legislative List, which has been reserved for his consideration on the ground that it contains provisions repugnant to the provisions of a Federal law, Our Governor-General, while giving full consideration to the proposals of the Provincial Legislature, shall have due regard to the importance of preserving substantially the broad principles of those codes of law through which uniformity of legislation has hitherto been secured.

#### D.—Matters Affecting the Legislature

XXVII. Our Governor-General shall not assent in Our name to, ~~but~~ shall reserve for the significance 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 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.

XXVIII. It is further Our will and pleasure that if an Agreement is made with His Exalted Highness the Nizam of Hyderabad as contemplated in Part III of the said Act, Our Governor-General in notifying his assent in Our name to any Act of the Legislature of the Central Provinces and Berar which has been reserved for his consideration, shall declare that his assent to the Act in its application to Berar

has been given on Our behalf and in virtue of the provisions of Part III of the said Act in pursuance of the Agreement between Us and His Exalted Highness the Nizam.

XXIX. It is Our will 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.

XXX. It is Our will and pleasure that in choosing the representatives of British India for seats in the Council of State which are to be filled by Our Governor-General by nominations made in his discretion he shall so far as may be redress inequalities of representation which may have resulted from election. He shall in particular bear in mind the necessity of securing representation for Scheduled Castes and women; and in any nominations made for the purpose of redressing inequalities in relation to minority communities (not being communities to whom seats are specifically allotted in the Table in the first Part of the first Schedule to the said Act) he shall so far as seems to him just be guided by the proportion of seats allotted to such minority communities among British India representatives of the Federal Assembly.

#### E.—General

XXXI. And finally it is Our will and pleasure that our Governor-General should so exercise the trust which we have reposed in him that partnership between India and the United Kingdom within our Empire may be furthered, to the end that India may attain its due place among Our Dominions.

## CHAPTER VI

### THE COUNCIL OF FEDERAL MINISTERS

#### Powers of the Council of Ministers

With such ordinary and constitutional, as well as extraordinary and superconstitutional, executive powers and functions entrusted to the Chief Executive Officer of the Federation of India, it would need no special comment to show that the Council of Ministers will have very little real power in shaping the policy of the country, in embodying that policy in the shape of laws, or in administering these laws seeking to give effect to the basic conception or decisions of policy.

The Council of Federal Ministers seems, in the basic conception of the Act of 1935, neither the supreme executive body, nor even the principal administering authority, in the land. While the executive government is entrusted, as we have seen, very largely to the Governor-General, the actual administration of the laws and policies of government are in the hands of the permanent officials, the superior Civil Services, who are utterly outside the control or influence of Ministers.

#### Excluded Departments

Of the various Departments of the Federal Government, 3 of the most considerable, the most expensive, and the most directly influential in affecting the well-being of the country, are summarily