

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

excluded from the purview of the Council of Ministers.\* The Governor-General administers those Departments "in his discretion." This means that, in conducting their affairs, he need not necessarily make any reference to or have consultation with his Ministers. If, indeed, he is so minded, there is nothing in the Constitution to prevent his consulting with his Council of Ministers, even in regard to these excluded Departments; and to follow their advice in important questions of policy. His Instrument of Instructions from the King-Emperor specifically enjoins upon him to hold and promote joint deliberations between the Counsellors of the Governor-General for the Excluded Departments, the Financial Adviser, and the Council of Ministers.† But the Instructions of the King-Emperor do not constitute a document capable of legal enforcement; and the exercise of the Governor-General's "discretion" does not seem likely, in the existing atmosphere at any rate, to incline towards showing greater and greater confidence in the Constitutional Advisers, especially if they be derived from a Party whose declared goal of Indian aspirations is so wholly unwelcome to British Imperialists. We are, therefore, left with no option but to conclude that, in the administration of the excluded Departments, the Federal Ministers will have no direct say, and very little indirect influence. The latter, it need hardly be added, is entirely dependent on the goodwill of the Governor-General.

#### Other Departments

As for the non-excluded Departments, the nominal scope of influence assigned to the Ministers may seem

\* *cp.* Section 11.

† *cp.* Article VIII of the Instrument *ante* p. 213 also p. 228.

considerable. But when we consider the vast discretionary powers of the Governor-General; when we recall his right to exercise individual judgment in certain matters, *i.e.*, in which, though the Ministers are entitled to tender advice, the Governor-General is not bound to follow it; when we think of the innumerable privileges assured to the Services, the special safeguards and reserve authority in the hands of the Governor-General in matters financial; when we ponder over the infinite possibilities of the so-called "Special Responsibilities" of the Governor-General, on the pretext of carrying out which, he may circumvent, frustrate, or neutralise altogether the policies of his Ministers; and when, finally, we recollect the fact that, in all the non-reserved Departments, the actual government is more a concern of the Provinces, than of the Federal Government,—we cannot but conclude that the position assigned under the new Constitution to the Council of Federal Ministers is ornamental, without being useful; onerous, without ever being helpful to the people they are supposed to represent; responsibility without power, position without authority, name without any real influence.

This general summary of the actual position occupied by the Council of Ministers in the governance of the Indian Federation will be more fully understood if we consider the specific provisions of the Constitution regarding their appointment, working, and scope of authority.

Section 9 permits the Governor-General to have a Council of Ministers to aid and advise him in the

administration of the Federal Affairs. Says that section:—

9.—(1) There shall be a council of ministers, not exceeding ten in number, to aid and advise the Governor-General in the exercise of his functions, except in so far as he is by or under this Act required to exercise his functions or any of them in his discretion:

Provided that nothing in this sub-section shall be construed as preventing the Governor-General from exercising his individual judgment in any case where by or under this Act he is required so to do.

(2) The Governor-General in his discretion may preside at meetings of the council of ministers.

(3) If any question arises whether any matter is or is not a matter as respects which the Governor-General is by or under this Act required to act in his discretion or to exercise his individual judgment, the decision of the Governor-General in his discretion shall be final, and the validity of anything done by the Governor-General shall not be called in question on the ground that he ought or ought not to have acted in his discretion, or ought or ought not to have exercised his individual judgment.

#### Number and Status of Ministers

This section contrasts with the corresponding section 50, relating to the Council of Ministers in the autonomous Provinces, in only one respect. The upper limit of Federal Ministers is fixed by this provision at 10; and there is no provision about Assistant or Junior Ministers, Under Secretaries, or by whatever other name these second rank Ministers might be designated. In the Provinces, there is no such limit fixed by law. Though, even in their case, there is no express provision for the appointment of Junior Ministers, the absence of any legally prescribed maximum, as also of any gradation among the Ministers, might well be argued into the conclusion that, in this respect at any rate, the system of Responsible Government is to work

differently in the Federation from that in the Provinces. In the Federation, according to the Instructions to the Governor-General, many more interests will need to be provided for than in the Provincial Council of Ministers. For whereas in the Provinces only important minorities are required to be represented in the Ministry, in the Federation the Federated States also will claim representation. That would be an incongruous element, but in all probability it would have to be included.

The limit fixed by law is thus likely to prove embarrassing to the person entrusted with the task of forming the Federal Ministry from time to time. On the other hand, compared to the present size of the Government of India,—six Councillors, in addition to the Governor-General himself, and the Commander-in-Chief,—the limit of 10 Cabinet Ministers in the future Council of Federal Ministers, cannot be regarded as too low. There will, in addition, be the Counsellors of the Governor-General in the excluded Departments, as also the Financial Adviser; and, very likely, the Advocate-General, present at certain meetings of the Council. It would make a Cabinet of 15 including the Governor-General, his Counsellors and Adviser; and that is not too small a Cabinet for this country.

The Secretaries to the Government of India of to-day, who have certain definite functions in regard to the Council, are to have, apart from Section 17, no place in the Council of Ministers. The limit fixed by the Constitution may also be defended on the ground of economy in the overhead costs of Government, though the salaries and allowances of the Counsellors and Financial Adviser,—not to mention the Advocate-



General,—do not suggest any excessive regard for economy of this description. The popular Ministers may quite possibly so fix the scale of Ministerial salaries and allowances, that this argument in defence of the statutory limit on the size of the Cabinet has very little significance.

#### Parliamentary Secretaries

Apart from the constitutional merits, political propriety, or economic advisability, of such a limit on the number of the Ministers, it may yet be pointed out that the presence of Junior Ministers, Parliamentary or Under Secretaries has proved, in Britain herself, of immense value, not only to the Cabinet Ministers themselves, but also to the governance of the country as a whole. The possibility of such appointments is not to be regarded merely as opportunity to exercise a certain amount of patronage at the expense of the country. These appointments help to train promising young politicians, not only in the ways of democratic government, but also in the routine of administration. The division of work between Ministers and their Parliamentary assistants may be regulated by personal convenience, or specific Cabinet regulation. Whatever it is, in practice, the Junior Minister takes over the more routine work of answering minor Questions, or attending to less important details of administration, not involving grave questions of policy. The Cabinet Minister proper is thus freed to attend to the larger issues of national policy as affecting his own particular Department. All sides of the public administration and democratic tradition are thus properly, efficiently, and simultaneously attended to.

In India, however, it is no unjust reflection to say that the leading politicians in every Party are lacking in personal experience of modern administrative requirements for the conduct of a great department of State. They are, at the same time, not over familiar with the intricacies of international relations, and their reaction upon the well-being of the people they might be called on to govern. These would be more important in the Federal Government than in the Provincial. If any set of aspiring politicians ever needed skilled assistance in their parliamentary work, the conduct of departmental routine, and attending to national policy, it is the modern Indian political leader. There are available, no doubt, Civilian Secretaries in every department of government. But the belief is very general in the Indian political world that these officials are much too reactionary, by training and tradition; much too unsympathetic towards popular aspirations—and their exponents the political leaders,—by their very experience and expert knowledge, to make really acceptable and helpful aids, even if we do not question their sincerity in doing the best for the political chiefs of their department. Unable to rely completely on this available assistance, and incapacitated from seeking more suitable aid from the more ambitious talent in their own ranks, this provision of the Constitution, if interpreted as a bar upon the appointment of Parliamentary Secretaries, is bound to prove a serious impediment in the success of popular Ministries in the Federal Government.

#### Constitution and Collective Responsibility

There is, secondly, no express provision in the Constitution itself, for inculcating a sense of Collective



Responsibility among the Federal Ministers. Collective Responsibility is the essence of true Democracy on the modern, nationwide scale. It is generated and maintained by identity of political principle and outlook between representatives of the same people. In so far, however, as the Indian Federal Ministry is fundamentally incapable of developing that sense, all indirect, extra-constitutional forces to implant a sense of Collective Responsibility would be of no avail. The Governor-General is, it is true, enjoined by his Instructions to select his Ministers

"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 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 doing, he shall bear constantly in mind the need for fostering a sense of joint responsibility among his Ministers".\*

The same desire to promote a spirit of Collective Responsibility is emphasised in the next Article, which contains a general rule about the discharge of the so-called Special Responsibilities of the Governor-General. But, given the fundamental condition of the composition of this Ministry,—i.e., its selection by the Governor-General from the Majority Party, representatives of the Federated States, and of important Minorities,—it is unlikely that these mutually unsympathetic and incompatible elements should really feel or cultivate Joint Responsibility, at least in regard to fundamental national policy. The representatives of the Federated States are, in particular, unlikely to be of homogeneous political views with any Party of

\*Article VIII of the Draft Instructions.

the chosen representatives of the Indian people. Political Parties are yet not born in the States. Their representatives will, in all probability, be, therefore, merely nominees of the Rulers personally. And these Rulers may not deem it in the best interests of themselves, or their States, or even the future of the Federation itself, that their nominees should be involved in political partisanship as it is developing in British India. The States' representatives forming part of the British Indian Political Parties has possibilities for the privileges of the Rulers, and the place of the States in the Indian Polity, which no Ruler of to-day would contemplate without trepidation.\* The British Indian representatives of the people in the Federal Legislature would find the difference in the origin—one elected, the other nominated,—too great to permit of identity in policy or outlook. Hence any sense of Collective Responsibility, as between members of the same Cabinet drawn from British India and from the Federated States, would be all but unlikely. The latter would be responsible to their Rulers, who, in turn, would be implicitly answerable for the conduct of their nominees to the Imperial Government. They would, accordingly, not be liable to go out of the Cabinet,—particularly, out of the Assembly,—for the same reasons as may lead representatives of British India to resign from the Cabinet, and seek re-election on the dissolution of the Assembly, in vindication of their point of view. This fundamental difference would make it impossible for Collective Responsibility ever to be generated amongst these mutually incompatible elements.

\*The Maharaja of Dharampur, an ex-Chancellor of the Chamber of Princes, had hinted in 1936 that the States' Representatives should line up with the other vested interests in India when the Federation was accomplished; but the Maharaja of Patiala, strangely enough, disowned that notion even before he was elected Chancellor in succession to Dharampur.

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### Incompatible Elements in the Cabinet

The Instructions to the Governor-General, enjoin upon him to hold joint consultations between his Counsellors for the administration of the excluded Departments, the Financial Adviser, and the Council of Ministers, in order to enable each side of the Federal Government to see the other's viewpoint. But the very necessity to issue this Instruction shows that, basically, these elements of the Federal Government are mutually incongruous. The Responsible (Prime) Minister might be excused if he suspects, in this compulsory practice of joint deliberations between two distinct (even if unnatural) divisions of the Government, a snare for the popular element. The requirements of the great spending department of Defence, or considerations of Foreign Policy still tied to the apron-strings of British Imperialism, are bound to be represented, at such joint meetings, as paramount and irreducible; so that all economies and all concessions must be made at popular expense. This apprehension may, perhaps, not materialise in every instance; but there is ample ground for it in the past experience of our own administration hitherto.

### Presidency of Governor-General

The presence of the Governor-General as Presiding officer at Cabinet meetings is equally open to question, from the standpoint of developing collective responsibility among the Federal Ministers, and the growth of true Constitutionalism in this new system of government. It must be noted at the outset that the presence of the Governor-General at Cabinet meetings is not compulsory upon that officer, either by the letter of the law, or under his Instructions. The practice in Britain

and the Dominions is for the head of the Government to be absent from such meetings,—except on ceremonial occasions, perhaps, of no importance. This is but right and proper, since the presence of the King or the Governor-General might quite conceivably influence the individual Ministers to deviate from the settled policy to seek favour in the eyes of the head of the country. In India this danger is more to be apprehended than in Britain or any of the Dominions, since the composition of the Ministry is itself a hindrance and a bar to the growth of Collective Responsibility among the Ministers. The Governor-General not being compulsorily required by the express terms of the Act to be present at Cabinet meetings and to preside, it is not inconsistent with the letter of the law, nor incompatible with the traditions of British Constitutionalism, that the Governor-General of the Federation of India should, of his own accord, abandon the practice of being present at Cabinet meetings. This would leave his Ministers free to develop their own sense of Collective Responsibility, to settle their own internal differences, if any, and so to reach a goal, which the traditions of government in India so far might render unachievable, if merely the letter of the law were to be stressed in such matters.

### Ministers "Aid and Advice"

We have already discussed at some length the difference between the powers and functions which the Governor-General is to exercise "in his discretion"; those in which he is to exercise his "individual judgment"; and those which he is to exercise on the advice of his Ministers. The Council of Ministers is appointed expressly "to aid and advice" the Governor-General in



the performance of his executive functions. They have, therefore, no place in the actual administration, strictly speaking, of the country they represent.

#### Room for Appeal to the Country?

The Governor-General, likewise, does not become a truly constitutional head of the Government, in view of the extraordinary powers entrusted to him to control, check, and even frustrate his Ministers. Even the latter's remedy of an appeal to the country, and the vindication of their viewpoint by a verdict of the electorate, is not easy to apply, nor within their sole power to apply. For the law empowers the Governor-General, in his discretion, to summon the Councillors to their deliberations, to dissolve the Assembly, etc. Says Section 10:—

10.—(1) The Governor-General's ministers shall be chosen and summoned by him, shall be sworn as members of the council, and shall hold office during his pleasure.

(2) A minister who for any period of six consecutive months is not a member of either Chamber of the Federal Legislature shall at the expiration of that period cease to be a minister.

(3) The salaries of ministers shall be such as the Federal Legislature may from time to time by Act determine and, until the Federal Legislature so determine, shall be determined by the Governor-General:

Provided that the salary of a minister shall not be varied during his term of office.

(4) The question whether any and, if so, what advice was tendered by ministers to the Governor-General shall not be inquired into in any court.

(5) The functions of the Governor-General with respect to the choosing and summoning and the dismissal of ministers, and with respect to the determination of their salaries, shall be exercised by him in his discretion.

Under these provisions, the Governor-General has sole authority and absolute discretion to summon his

Ministers to office or to select them, in the first place, for appointment; to dismiss them, or dispense with their services; and to determine their salaries pending such determination by Act of the Federal Legislature. This clear dependence of the Ministers upon the Governor-General for being selected and removed from office,—not to mention the remuneration for work done as Minister,—must needs breed a desire to please this mighty officer, whose favour may be so materially advantageous, such a powerful aid in fulfilling ambitions. The Governor-General may not *intend* to be hostile to his Ministers developing the tradition of Joint Responsibility. But the position given him under the Constitution; his native sympathies, so long as he is a Britisher; and the powers and functions he is required to exercise, make it inevitable that his presence at Cabinet meetings, if continued as under the present regime of non-responsible Executive, would prove fundamentally inimical to the growth of Ministerial Responsibility, and true constitutional practice.

#### Contact with Individual Minister

Even if the Governor-General could be persuaded to absent himself from Cabinet meetings, the danger to the growth of Collective Responsibility is not ended. The provision in Section 10, which precludes any Court from enquiring into what advice was given to the Governor-General by any particular Minister, also makes it evident that the Act does not necessarily contemplate a system of Joint Responsibility. Given the exigencies of Federal Government, it may even encourage the practice of individual consultations between particular Ministers and the Governor-General on given questions of public administration. This, if it evolves

at all, would be fatal to any dream of true Constitutionalism ever developing in this country. Ministers cannot be barred access to the head of the Government; but it would be highly inadvisable for any one, anxious to implant proper constitutional usages and conventions in India, to practise what the law permits in this instance. Individual Ministers, even if they have full and free access to the head of the Government, must not, under a convention, speak to him on any matter of Cabinet policy, or internal differences in the Cabinet. Nor should the Governor-General encourage individual complaints against particular Ministers. To the head of the Government, the Ministry must speak in a united voice,—the voice of the people,—on all questions of Government policy. And this united voice must be settled at their Cabinet meetings, from which the Governor-General ought, by his own choice, and by accepted convention, to be excluded. Such an arrangement can be easily made, as the presence of the Governor-General is not obligatory by express provision of the Act. It is a matter in his sole discretion; and he may act in it as it seems proper to him. If, in a misconceived sense of his duty, he insists upon being present, the Ministers can render such Cabinet meetings an empty form, by just declaring through the Prime Minister, the decided policy of the Cabinet. Once a right precedent is set, or convention established, no successor in that exalted office would dare to contravene it; and then the proper growth of Constitutional conventions may be assured.

#### Cabinet Components

Though, under Section 10, the Council of Ministers is to be made up of such persons as the Governor-

General appoints to the office of a Minister of the Federation, the Cabinet will not consist only of the Ministers specifically so appointed. It might be noted, in the first place, that there is no mention of a Prime Minister in the express terms of the Act. The Instructions to the Governor-General seem to contemplate the institution of a Prime Minister when the Federation comes into being. As the Act stands to-day, however, the Governor-General may be his own Prime Minister; and, in any event, overshadow that entity, when and if it is at last evolved. The Cabinet will have in it, besides the Governor-General, (who may be present in the Federal Cabinet without being of it), the Counsellors to the Governor-General in the excluded Departments, and the Financial Adviser. We have already seen what the position of these Counsellors is likely to be under the new regime. The Financial Adviser holds, under Section 15, a somewhat unparalleled place, just as the Finance Department itself is given a particular prominence, because of the Special Responsibility of the Governor-General in that behalf.

#### Financial Adviser

Says Section 15:—

15.—(1) The Governor-General may appoint a person to be his financial adviser.

(2) It shall be the duty of the Governor-General's financial adviser to assist by his advice the Governor-General in the discharge of his special responsibility for safeguarding the financial stability and credit of the Federal Government, and also to give advice to the Federal Government upon any matter relating to finance with respect to which he may be consulted.

(3) The Governor-General's financial adviser shall hold office during the pleasure of the Governor-General, and the salary and allowances of the financial adviser

and the numbers of his staff and their conditions of service shall be such as the Governor-General may determine.

(4) **The powers of the Governor-General** with respect to the appointment and dismissal of a financial adviser, and with respect to the determination of his salary and allowances and the numbers of his staff and their conditions of service, shall be exercised by him in his discretion:

Provided that, if the Governor-General has determined to appoint a financial adviser, he shall, before making any appointment other than the first appointment, consult his ministers as to the person to be selected.

As the Financial Adviser is, under this section, to give advice on matters financial, not only to the Governor-General, but also to his Ministers if and when consulted by the latter, he has an importance in the Cabinet, which cannot be claimed by his confrères the Counsellors. Though primarily an adviser of the Governor-General, his duties will be much more numerous in advising the Ministers. His contact with the latter, therefore, is likely to be much more close. He is not responsible to the Legislature in the sense that his Ministerial colleagues are; and he would, of course, have no vote in the Cabinet, any more than the Counsellors. But his voice in support of or in opposition to any given line of policy, on grounds of financial practicability or otherwise, would have a weight which no other Counsellor's voice can have.

#### Advocate-General

Compared to the Advocate-General, appointed by the Governor-General in the exercise of his individual judgment, the Financial Adviser is not a Government Adviser in the sense that the Advocate-General would be. The latter is appointed expressly

"to give advice to the Federal Government upon such legal matters, and to perform such other duties of a legal character, as may be referred or assigned to him by the Governor-General";

while the Financial Adviser is primarily an adviser to the Governor-General appointed particularly to aid that officer in the discharge of his Special Responsibility in regard to finance. The Advocate-General is, accordingly, given a specific right of audience in all Courts in British India, and even in Courts of the Federated States where federal interests are concerned.\* The Financial Adviser, however, has no such statutory privilege of audience, even at Cabinet meetings. The Financial Adviser, again, is appointed, his remuneration and staff fixed, by the Governor-General acting in his discretion. The only limitation on that discretion is the obligation to consult his Ministers, before making any appointment to the Financial Advisorship other than the first appointment, as to the person to be appointed. The value of this privilege is less than nominal, since the first appointment is to be made without any such reference to the Ministry at all. As the terms and conditions of the appointment are in the sole discretion of the Governor-General, he may and probably will make the first appointment at least for 5 years; and possibly on a still longer lease of office provided the person appointed shows the ordinary efficiency in his job—by no means an exacting demand when no executive functions or responsibility are attached to the post. Even for subsequent appointments, the consultation with the Ministers may be of no practical value, since the final authority rests with the Governor-General in every instance. The Advocate-General, on the other hand, is appointed, his remuneration fixed, by the Governor-General exercising his individual judgment. We may

\*cp. Section 16 (2).



add that while the appointment of a Financial Adviser is optional, that of the Advocate-General is compulsory.

While there is a statutory right, in regard to the Financial Adviser's selection after the first, for the Ministers to be consulted, the appointment of the Advocate-General of the Federation is to be made in the exercise of the Governor-General's individual judgment. Ministers must be consulted as a matter of right; and, unless the Governor-General can show any very specific reason connected with his Special Responsibilities, he will have to follow the advice of his Ministers.

As the Advocate-General,—a Government Adviser,—will not probably be appointed for any specific term,—such as the Financial Adviser of the Governor-General may be,—the removal of a person already appointed by the Governor-General without consulting or accepting the advice of his Ministers, may be more easy than in the case of the Financial Adviser; and the same principle would apply on change of Ministers in the ordinary course of Constitutional vicissitudes. On the whole, Ministers may come, in practice, to have greater authority or influence over the Advocate-General; though they may find the advice and co-operation of the Financial Expert advising the Governor-General more important for the proper framing and carrying out of their own policies. That officer being beyond any control of the Cabinet is thus to the disadvantage of the Cabinet, and eloquent of the distrust and suspicion with which Indian politicians becoming Ministers of the Crown are to be treated with, at least in the initial years of the new Constitution.

### Cabinet Procedure

The Ministers' rules of business, the distribution of *portfolios*, the process of deliberation among themselves, are also to be determined by the Governor-General acting in his discretion. Under Section 17:—

17.—(1) All executive action of the Federal Government shall be expressed to be taken in the name of the Governor-General.

(2) Orders and other instruments made and executed in the name of the Governor-General shall be authenticated in such manner as may be specified in rules to be made by the Governor-General, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor-General.

(3) The Governor-General shall make rules for the more convenient transaction of the business of the Federal Government, and for the allocation among ministers of the said business in so far as it is not business with respect to which the Governor-General is by or under this Act required to act in his discretion.

(4) The rules shall include provisions requiring ministers and secretaries to Government to transmit to the Governor-General all such information with respect to the business of the Federal Government as may be specified in the rules, or as the Governor-General may otherwise require to be so transmitted, and in particular requiring a minister to bring to the notice of the Governor-General, and the appropriate secretary to bring to the notice of the minister concerned and of the Governor-General, any matter under consideration by him which involves, or appears to him likely to involve, any special responsibility of the Governor-General.

(5) In the discharge of his functions under sub-sections (2), (3) and (4) of this section the Governor-General shall act in his discretion after consultation with his ministers.

### Governor-General and Routine Business of Government

Here is another proof of the enormous *de facto* power vested in the Governor-General, even in the routine administration of the country. There is nothing in the Act to indicate that the Governor-General is to

be the nominal head of a Constitutional Government, and everything to show that he is to be the effective and absolute chief of the whole Governmental machinery. Since the rules of business are to be made by the Governor-General *in his discretion*, in selecting individual Ministers for the particular work each is entrusted with, the Governor-General may arrogate to himself powers which would render the Chief Minister, if any is recognised as such, a cipher. Parliamentary Responsible Ministers are appointed to their *portfolios*, not on any ground of specialist qualification for a given Department, but for such reasons, as the internal requirements of a Cabinet may warrant. Every English Cabinet is eloquent of this inherent right of such Ministries to shuffle posts among themselves from time to time; and the power given to the Governor-General, in his discretion may quite possibly be utilised in a manner incompatible with this right of the Ministry.

Again, what matters in the daily routine are to be placed before the Governor-General, and what need not be so submitted, is, also, a question in which the Ministers will have very little say, since the Governor-General will alone, *in his discretion*, prescribe Rules under which his Ministers have to do the business of Government. In matters which involve his Special Responsibility,—or even those which are judged by the Secretary concerned as likely to involve a Special Responsibility,—the law requires the Governor-General to be fully informed, and his attention to be drawn to the point at which, or the manner and the degree in which, his Special Responsibility might be involved in a given question. On these, of course, even if the Rules of business made in his discretion by the

Governor-General do permit individual Ministers to have some voice, and the Ministry collectively to have a say, the last word rests with the Governor-General; and he can override the collective wisdom of all his Ministers. It is difficult to conceive instances in which the reservation of such power may be considered necessary, since Ministers under a democratic regime cannot afford to displease any considerable interest, especially when such interests are so carefully protected by the Constitution. The only explanation lies in the inveterate and unshakable distrust and suspicion of the Indian politician in the mind of British Imperialists, or vested interests for whose protection and safeguard the entire Constitutional machinery seems to be motivated.

#### Special Importance of the Finance Minister

The Instrument of Instructions, it may be added, requires the Governor-General to see that the Finance Minister particularly is kept fully informed of all requirements or proposals of other Departments. Sound finance is, in all democracies, the keystone of the arch of good government. In India, given the variety of vested interests, the excluded spending Departments of State, the innumerable items charged upon the revenues of the Federation, and the incessantly conflicting demands of the Federation, the States and the Provinces, Finance would be more important than anywhere else. But the importance must be felt and recognised by every responsible Minister, and not by only one of them, if a proper sense of Collective Responsibility is to be felt by them.

### Dual Responsibility of Ministers

The stress we have levied upon some of these features is the more necessary, and justifiable, because the Ministers will have a dual,—and often mutually conflicting,—rôle to perform. The Constitution makes them, in terms, simply the “aids and advisers” of the Governor-General, who towers like a colossus over all his Ministers, dwarfs them into nothingness, and dominates all authority in the land. On the other hand, the same Constitution is supposed to make the Ministers representatives of the people, and spokesmen of their will. The basis of all Constitutional Government of the British pattern lies in the tacit acceptance of the ultimate Sovereignty of the people; that is to say, in every case of a conflict, popular verdict must in the end prevail. But, in the case of the Indian Federal Ministers, this position seems to be made almost wholly incompatible with the powers and functions entrusted to the Governor-General, who is entitled to initiate matters of policy as much as to carry out decisions in the form of laws or executive orders of Government. He is entitled to exclude his Ministers altogether from the Administration of certain specified Departments, even though the fundamental policy in relation to those departments, as well as their actual administration, may materially affect the other departments of the State, and the general well-being of the people. Thus for example, the Department of Defence is excluded from Ministerial authority altogether; and yet, not only will that Department be responsible for over 60 per cent. of the Federal Expenditure; it is concerned with much that must materially assist the industrial development of the country. Industries of vital importance

to the country are not concerned merely with the production of guns and shells, gas and cannon and bullets. These, perhaps, are only the final, visible end of a system of economy, in which every conceivable industry becomes established in the land, thanks to a system of judicious patronage, protection, and encouragement from such spending departments of the State as that of Defence. Properly handled, there is no modern industry of any importance, which the Defence Department in India could not encourage in the country itself,—and that without needless burdens on the consumer. The Governor-General, however, administering this Department in his sole discretion, may, and probably will, continue the vicious policy of keeping India wholly dependent for the essential requirements of modern defence upon supplies from “Home.” The Ministers would have no *locus standi* to offer their views, to urge their opinion that active effort should be made to make India self-sufficient in such matters.

The only matters in which India and Indians are supposed at all to be interested, as the Instructions to the Governor-General seem to suggest, is the amount of money spent, and the number of Indians employed in the grade of Commissioned Officers in their own Defence forces. Even here, there is no special obligation laid upon the Governor-General, by the Constitution or by his Instructions, to see that Indianisation of the Indian Defence forces is accomplished in a given period, or that all possible economies and retrenchment are effected in this wasteful and unproductive item of expenditure. If the Ministers on such matters offer an opinion, the Governor-General is



not bound to accept it: and if he considers it at all, it does not in the least follow that he would see it from the standpoint of Indians. If questions relating to the Department of Defence,—and all that it could possibly be made to serve in regard to the industrialisation of the country,—are ever brought before the Federal Council of Ministers, they would rather be by way of mere information to the latter than with any real desire to seek their advice, to understand their point of view on those subjects, and to enlist their real co-operation. Under those conditions, no self-respecting Indian Minister, particularly one of Nationalist sympathies, would be able to avoid a feeling of futility, a sense of frustration for himself and his country, which cannot but undermine his work and authority in other Departments.

#### Federal Ministers drawn from Indian States

In considering this aspect of the position of the Federal Ministers, we have hitherto overlooked the position of those Ministers, who, if any, are representatives of some Federated States. Being merely nominees of their own Rulers, they have not the ultimate sanction of the British Indian Ministers, who can, in the last analysis, speak of the authority of their Constituents,—the people of those regions. The Minister representing a State will have the most unenviable situation, since he may not be permitted even to resign with his colleagues,—or might be asked to return with other colleagues to office from which, only the day before, he resigned collectively with the Ministry because of a difference of views on some fundamental question of national policy. The Governor-General's Instructions enjoin upon him to include, as far as

possible, some Minister from this section of the Federal Legislature; but, if any are so included without forming part of the British Indian Political Parties, the position of such Ministers in the Cabinet and in the country would be most unenviable.

#### Ministers' Oaths of Office

We have commented, in another volume, upon the Oaths of Office the Ministers will have to take. These will emphasise the divided and conflicting allegiance these individuals will have to shoulder, without any compensating advantage of aid or encouragement from either side to which they swear or bear allegiance.\*

#### Ministerial Salaries

As for the salaries and allowances to the Ministers, they are to be fixed in the first instance, by the Governor-General in his discretion, and subsequently by Act of the Federal Legislature. Indian political opinion has long since recognised that the scale of official emoluments in this country is out of all proportion to the work done, the responsibility shouldered, or even the ability of the paymaster to bear these burdens. Nevertheless, official outlook in this matter remains wholly unchanged, as we can see from the scale of salaries accorded to the Provincial Ministers in some of the Provinces. Even the popular Legislature in these Provinces seem to have taken their cue from the decree of the Governor, as wholly erroneous notions unfortunately do prevail about the cost of dignity, and the compensation for sacrifice (?) made by leading politicians in accepting Ministerial office. It may be added,

\* The device, adopted at the National Convention in Delhi, in March 1937, of requiring every elected Provincial Legislator, to take an oath of allegiance to the people of India, is well worth a repetition in the case of Federal Legislators when elected.

that, even when the Federal Legislature comes to fix, by Act, the scale of salaries and allowances to be given to Federal Ministers, if they are fixed at a figure which the Governor-General considers too low for efficiency, integrity or reasonable compensation to the Ministers: or if he considers such salaries to throw into undesirable relief the extravagant burden borne by the Counsellors', or the Financial Adviser's salaries, he may use all his power, even that of vetoing such legislation, and influence with nominees from the Indian States to make a radical modification of those scales.

### Prospects of Cabinet-making in the Federation

The Federal Assembly being indirectly elected for the greater part,—with, at most, one-third of its personnel consisting of nominees of Indian Rulers,—the chances of forming Cabinets by the Indian Political Parties, or any of them, are difficult to estimate at this date. Much of the doubt, apprehension, or misgivings, expressed in the preceding pages regarding the actual rôle of the Federal Ministry is, of course, tacitly conditioned by the assumption that popular, Nationalist, Congress Party representatives will command a majority in the Federal Assembly, or be at least, the most numerous, the best disciplined, and the best organised Party in that body; and that they may not be viewed with the same confidence by the powers that be as Ministers drawn from Moderate Parties. The following statistics and observations based upon them, may be taken rather as a rough index of what may happen, than a prophesy of what will.

The seats in the Federal Assembly allotted to British India number 250, distributed as follows among the several Provinces:—

Province	General Seats	Muham- madan Seats	Women's Seats	Other *	
Madras	... 19 (4)	8	2	8	
Bombay	... 13 (2)	6	2	9	
Bengal	... 10 (3)	17	1	9	
United Prov.	... 19 (3)	12	1	5	
Punjab	... 6 (1)	14	6 Sikhs	3	
Bihar	... 16 (2)	9	1	4	
C. P. & Berar	... 9 (2)	3	1	2	
Assam	... 4 (1)	3	—	3	
N. W. F. Prov.	... 1	4	—	—	
Orissa	... 4 (1)	1	—	—	
Sind	... 1	3	—	1	
Delhi	... 1	1	—	—	
Br. Baluchistan	... —	1	—	—	
Ajmer-Merwara	... 1	—	—	—	
Coorg	... 1	—	—	—	
Non-Provincial Seats...	—	—	—	4	
Total	... 105	82	6	9	48

Not more than 190 seats seem to be open to election by the device of Proportional Representation, under a system of a Single Transferable Vote. Elections to the other Constituencies will be under a special procedure; and, except labour, totalling 10, we may take it, the Representatives of these interests will be on anti-Nationalist sympathies in general. Not all women, also, may be regarded as likely to be of Nationalist or Congress persuasion, not more than 5 from that group being likely to be of that Party. Of 82 Mussulman members from the various Provinces and 6 Sikhs, according to the strength of these Communities, and their

\* Others include Europeans, Anglo Indians, Indian Christians Commerce and Industry, Labour, Landholders etc.

Party affiliations in the various Provinces, it is unlikely that more than a dozen members from these two combined could be elected on the Nationalist or Congress Ticket to the Federal Assembly. Of the 105 General Seats, 19 are Scheduled Caste seats, of which, on a fair proportion, not more than a dozen may be expected to be of Congress fold. Of the remaining 86, the Congress Party would do very well if it could capture 80, all Provinces put together, while of the others, including Commerce and Industry seats, it would be very fortunate if it secures on its own ticket 10 seats in all. The maximum strength thus computed will be:

General Seats	..	..	80
Scheduled Castes	..	..	12
Sikhs and Muslims	..	..	12
Labour	..	..	10
Women	..	..	5
Other Constituencies	..	..	10

Total .. 129

or, in round terms .. 130

Granted all other allies from other constituencies, the Congress strength in the Federal Assembly will not exceed 140, so long as elections are through the Provincial Assemblies, whose complexion, or Party division, was determined at the last General Elections to the Provincial Legislatures.

In a total House of 375, including 125 (maximum) representatives from the Indian States, a single Party of 140 or even 150 will not be in a majority, unless it can combine with the Muslims, or other such considerable blocks. To combine with representatives (?) from

the Indian States is all but unthinkable for the Congress Party. Other elements, like Europeans, Anglo-Indians or Indian Christians, Landlord or Commerce Representatives, are utterly unlikely to share Congress political ideals, at least in the first years of the new regime. Nevertheless, it would be the largest single Party, best disciplined and organised, with an immense popular following in the country at large. The Governor-General cannot ignore it in forming the Federal Ministry; but he can rely on all his extraordinary powers under the Constitution, and still more considerable indirect influence, to render the Congress Ministry, if formed, impeded effectually at every step in every effort to carry out even a part of the Congress programme as ratified by the Electorate.

Summing up the entire position, it seems extremely doubtful if, under these conditions, the popular Ministers of the Federation of India will have any real opportunity to inaugurate constructive schemes of economic betterment, or social reconstruction. As would, perhaps, be better appreciated after a study of the financial side of the Administration, the necessary funds are either unavailable because ear-marked already for non-productive expenditure and lavish scale of overhead charges; or difficult to find in the absence of new taxation, proposals for which the Governor-General may not always view with favour. Additional burdens, moreover, are specially difficult in a Federation to impose; and particularly unwelcome in popular governments, no matter how urgently additional funds may be needed, and how remuneratively they may be employed.



If the financial curb upon Ministerial enthusiasm for the economic betterment of the masses does not prove quite effective, there are the enormous powers of the Governor-General, as protector and champion of foreign vested interests and Imperialist exploitation, which are bound to be employed to impede or frustrate too enthusiastic Ministers. There are, again, specific provisions of the Constitution, such as those against any discrimination against British-vested interests;\* or in protection and guarantees to the Public Services, or even in grants to Indian States under Sections 147-149, which must needs prevent the Ministers from embarking upon ambitious schemes of national reconstruction and economic re-habilitation, which the stress and strain of modern economic nationalism require in every country. Finally, the Ministers' own internal difficulties,—the want of solidarity among them because of their incongruous composition, or because of lack of sufficient appreciation of their economic policies in the masses of their countrymen,—may prevent their achieving anything by way of constructive benefits to the people, and so making Swaraj, or popular Government, a real, visible, tangible advantage.†

\*cp. Sections 111-121.

†Soon after the Congress Working Committee had authorised acceptance of Ministerial Responsibility in the Provinces where the Congress was in a majority, the President of the Congress issued a statement (July, 20th 1937) warning the people against the facile feeling that Congress Ministries would mean Congress raj, much less swaraj. Such a caution would, if anything, be more necessary as regards the Federation even if the first Federal Ministry is of Congress complexion.

## CHAPTER VII

### FEDERAL SERVICES

The actual work of Federal Administration is carried out by well organised, carefully protected, and meticulously safeguarded Public Services. These are not exclusive to any particular Department, except in regard to the Department of Defence; but specialised qualifications and experience are necessarily becoming more and more important in the recruitment, promotion, or postings in the various Departments.

The most difficult single problem of the Indian Constitution, and the one which also affects most immediately the economic side of our national development, is that in regard to the place and function of the Public Services. We shall consider in this Chapter those branches of the Public Service, and add that portion of the general reflections on the matter, which were either omitted from the volume on Provincial Autonomy, or insufficiently discussed there.

The bulk of the Public Services,—including the Indian Civil Service proper, the Police, Judicial, Engineering, Educational and Medical, work in the Provinces. We have already considered, in the volume on Provincial Autonomy, most of the problems connected with their recruitment, discipline, promotion, protection, and emoluments. In this section, therefore, of our study of the Constitution, we need say no more than that what applies in the case of Services operating in the Provinces applies with still greater force as regards the Federation, if and when that entity is established.