

the authors of the Report of the Joint Select Committee of Parliament:—

"The scheme of Provincial autonomy, as we understand it, is one whereby each of the Governor's Provinces will possess an Executive and a Legislature having exclusive authority within the Province, in a precisely defined sphere, and, in that exclusively provincial sphere, broadly free from control by the Central Government and Legislature."*

Powers of Control &c. in the Secretary of State

There is, indeed much in the Act of 1935, which embodies the essence of Sections 2, 33, and 45 of the Act of 1919, vesting the fullest powers of superintending, directing and controlling the government of India all over the country in the Secretary of State, and, under him, in the Governor-General-in-Council.† But those provisions restrict the theoretic transfer of responsibility for the provincial administration from the British Parliament to the Provincial Legislatures only obliquely. We shall notice the substance of these indirect means of reservation or restriction of provincial autonomy in their place. Here it is enough to

*Para 48, op. cit.

†cp. Section 14 of the Act of 1935; also Chapter IX of the "Federal Structure."

"Section 54: (1) In so far as the Governor of a Province is by or under this Act required to act in his discretion or to exercise his individual judgment, he shall be under the general control of and comply with such particular directions, if any, as may from time to time be given to him by the Governor-General in his discretion, but the validity of anything done by a Governor shall not be called in question on the ground that it was done otherwise than in accordance with the provisions of this Section.

(2) Before giving any directions under this Section, the Governor-General shall satisfy himself that nothing in the directions requires the Governor to act in any manner inconsistent with any Instrument of Instructions issued to the Governor by His Majesty."

add that the Governors of the Presidencies, as well as of all other Governors' Provinces, are henceforth supposed to preside over a locally autonomous unit, with the actual Ministries responsible, within a prescribed ambit, to their own constituencies in the Provincial Parliament. Accordingly, it is thought in some quarters that all Governors should be appointed from among British public men or distinguished servants of the Crown, as, presumably, these would be more familiar with the workings of a responsible government than those moulded in the traditions of the non-responsible Bureaucracy which has prevailed in India hitherto. So long as the British connection and domination is kept intact,—as is but too clearly the case in the Act of 1935,—it is a matter of little importance to the Indian people whether these chosen to preside over Provincial administrations are sent out from Britain, or are promoted from their place in the routine administration of the country. They may be all presumed to be equally hostile to Indian Nationalist ambitions. The Governor's personal responsibility remains practically unaffected to the Governor-General and to the Secretary of State,—and, through these, to the British Parliament in the ultimate analysis. Hence it is relatively a matter of no importance to choose between public servants of the Crown in India and those from Britain.

Dominion Analogy

For the Governor to be made personally responsible for the administration of the Province to the chosen representatives of the Province involves a radical change in the very basis of the Act of 1935,

which those who have the right and the power to ordain such changes will not be willing to effect. There are, indeed, ways and means by which the appointment of Provincial Governors could be brought within the range of popular and local responsibility. If the example of the Australian Commonwealth is followed, and the person to be appointed is allowed to be designated by the Provincial Legislature or by the responsible Provincial Government; the prospects of a gubernatorial responsibility to the Provincial Legislature would be considerably improved. In the Act of 1935, there is not a trace of evidence to support the view that Indian Provincial Governors are intended or could be made to follow the Dominions analogy, in their appointment or in their constitutional behaviour.

But even if there was the slightest ground to suppose that the British Government and Parliament would countenance such a radical departure from the entire basis for the present Constitution, there are reasons which may not make the course unexceptionally desirable for India. The working of Parliamentary Democracy,—if that is the goal towards which the constitutional evolution of India is tending,—requires that the head of the executive should be free from any suspicion of party bias. The Governor, as conceived and designed in the Act of 1935, is, indeed, not a mere constitutional figurehead. He is given definite powers and special responsibilities, which will keep his rôle far more active than that of the British King; and to bring him within range of political partisanship, which cannot but make the present method of appointment occasionally unwelcome to the peoples

of the Province. Nevertheless, to turn the Provincial Governors frankly into Party chiefs or nominees,—as American States' Governors are,—would presuppose a scheme of constitutional government wholly different from the lines on which India has been allowed to progress hitherto. A revolutionary change in all our conceptions of the constitutional practice as applied to governors may, in course of time, dispense altogether with such a fifth wheel to the coach of administration. But so long as the constitutional progress of India follows the evolutionary trend, it would be inadvisable to convert the Governorship into an elective office, directly responsible to the electors.

Traditions, Psychology, and Environment of Governors

In actual practice, besides the definite powers, functions and responsibilities entrusted by law to the Governors, much will depend upon the personality of the Governor, the traditions of his office, and the environment surrounding him. The Governor's personality must needs vary with each individual officer; and so no general remark can be made in that connection. All that we can say, in this regard, is: that the influence of the personal character, likes or dislikes of the Governor will extend at most of his immediate entourage; and that it is, even so, very closely restricted by the Act, as well as by the rules and conventions governing the Governor's dealings with his official collaborators and subordinates.

His personal influence upon the general life of the province will be an unknown quantity, which would, however, be generally exaggerated by the common human weakness in such matters. If Governors of

Indian provinces learn, in the future, to resist the temptation of lending their names to any fad of the moment,—however laudable it may seem on the surface; and of giving a permanent, abiding shape to all their own ideals in government, they would confer a benefit proportionate to the eminence they enjoy in the scheme of Indian administration.

Traditions of the Governor's Office

The traditions of the Governor's office, have hitherto made him a social as well as a political chief of the Province, its representative and spokesman in all official matters. The social leadership of the Governor may remain so long as we maintain a stratified society, and continue its system of undisguised snobbery. It is to be hoped, however, that the realisation, in a daily increasing volume, of the true task of government in a country like India, will diminish the importance of the so-called "Society" or social functions; and make the Governor more and more busy with the execution of the laws embodying the policies that his government have sponsored.

Imitation of Britain

The imitation or reproduction of English ideals or methods in India, which comes naturally to Britishers familiar with their own problems,—whether they have been directly sent down by the British Government to administer Indian Provinces, or have been promoted from the Indian Services to the post,—must also be discontinued, if the actual government of the land is to be in harmony with the desire of the people and the conditions of their environment. The practice, likewise, of what Curzon once called "Departmental-

ism", must also be modified, if a degree of elasticity is to be imparted to this Constitution, which, by its actual wording, tends to be excessively rigid. The government of a living and growing people can never be achieved satisfactorily by a rigid constitution. Hence, pending its radical modification, the responsibility would lie heavy on those who have the duty to administer it, and who call upon the people to aid in working it, even though it is admittedly defective and generally unacceptable, to impart as much elasticity as is possible within the letter or the spirit of the Constitution, and the traditions of constitutionalism. The Bureaucratic mind has long since been acknowledged to be rigid, formal, inaccessible to new ideas, delighting in routine, and preferring the beaten track. That, if continued under the new regime, would spell the death beyond redemption of the slightest hope that any reasonable person might entertain of making anything at all acceptable out of this Constitution.

Environment of the Governor

The environment of the Governor, consisting, as it has hitherto done, of sundried bureaucrats in the shape of Secretaries and Councillors, will now be modified,—only in so far as Ministers responsible to popular opinion, as reflected in the Legislature, will form the chief advisers of the Governor. The Councillors will disappear; and with them will vanish the most important of the bureaucratic element in the Governor's immediate entourage. The Private Secretary will, of course, still continue to be derived mainly from the Civil Service; but he will not have the same opportunities for infusing the bureaucratic spirit,

even in the Presidency Governor's outlook, as he had when the Executive Councillors represented the most experienced (?) and the most rigid elements of the Civil Service. Even the Departmental Secretaries, though continuing to be in the main Civilian, will not have the same opportunities of access to the Governor,—except in regard to those items which are matters of his "Special Responsibilities"; or those in which by law he is required to exercise "his individual judgment."* In these ways the preponderant influence of the exclusively bureaucratic elements will diminish,—though it cannot altogether disappear in the scheme of Constitution as at present devised. Even when the Indian element comes to replace the present preponderant British element in the superior ranks of the Civil Service, the traditions of the bureaucrat will die a hard death. Hence the Governor's environment will continue to reflect the views and outlook of the permanent Public Servants,—in other words, of the Bureaucracy,—for a long while to come.

Position of the Indian Element around the Governor

The Indian,—and particularly, the popular,—element surrounding a Provincial Governor will, in the initial years at least, suffer from several handicaps. They will be aware of their own ignorance of the mysteries of administration, and so will labour under an Inferiority Complex, which they will be unable to rid themselves of for years to come. The Governor, it is true, is required, by his Instrument of Instructions,† so to conduct the work of his Government, as to pro-

*Cp. Section 59 (4) p. 79.

†Cp. Section 53 of the Act of 1935 and Appendix to this Chapter.

mote a sense of parliamentary as well as collective responsibility. But while his new Ministers lack knowledge of the working of the administrative machine, or even of general policy, he, the Governor, will have marvellous opportunities to be a *de facto* as well as *de jure* head of the executive Government of his Province, unless, indeed, he too is unfamiliar with the traditions of Government in India.

Besides lack of experience and knowledge, the Indians surrounding the Governor,—or ordinarily coming into contact with him,—are likely to be imbued with a degree of snobbishness, which will make them imitate slavishly where they are naturally afraid to originate boldly. Their education and general upbringing is such that things British or European have a clear preponderance in their scale of values. This may prove detrimental to the growth of native talent or capacity.

There is much, therefore, in the environment of the Governor,—Indian or British,—which will maintain, for years to come, standards of administration, canons of public propriety, forms and methods of constitutional procedure, or rules of social intercourse, which must inevitably give heavy odds in favour of the present system being maintained in all its essentials.

The Scope and Nature of Executive Authority

The Provincial Executive is divided into two main parts: the Governor, and his Council of Ministers. There may be such officials, as, like the Advocate General, may be specially appointed by the Go-

vernor to advise the Government.* But there are, in the Provinces, no officers comparable to the Financial Adviser or other Counsellors of the Governor-General;† and there are no Reserved Departments, such as Defence, Foreign Affairs &c., as in the Federal Government. Section 49 defines the scope of the Provincial Executive as follows:—

“(1) The executive authority of a Province shall be exercised on behalf of His Majesty by the Governor, either directly or through officers subordinate to him, but nothing in this Section shall prevent the Federal or the Provincial Legislature from conferring functions upon subordinate authorities, or be deemed to transfer to the Governor any functions conferred by any existing Indian law on any Court, Judge, or officer or any local or other authority.

(2) Subject to the provisions of this Act, the executive authority of each Province extends to the matters with respect to which the Legislature of the Province has power to make laws.”

The distinctive feature of the Act of 1919,—Dyarchy,—has been abolished, but the generally sweeping

- *55.—(1) The Governor of each Province shall appoint a person, being a person qualified to be appointed a Judge of a High Court, to be Advocate General for the Province.
- (2) It shall be the duty of the Advocate General to give advice to the Provincial Government upon such legal matters, and to perform such other duties of a legal character, as may from time to time be referred or assigned to him by the Governor.
- (3) The Advocate General shall hold office during the pleasure of the Governor, and shall receive such remuneration as the Governor may determine.
- (4) In exercising his powers with respect to the appointment and dismissal of the Advocate General and with respect to the determination of his remuneration, the Governor shall exercise his individual judgment.

†Cp. Sections 11 and 15 of the Act of 1935.

wording of this Section does not automatically abrogate existing Indian laws, which confer specific powers or functions upon specified authorities. At the same time, it is made possible for the Federal or the Provincial Legislature to enact laws which may confer such functions upon subordinate authorities, for the sake probably of convenience in administration.

The executive authority is to be exercised by the Governor in the name of the King-Emperor, either directly, or through officers subordinate to him.* This authority is to be exercised, according to the next following section, by the Governor on the advice of his Council of Ministers,—who are to have a collective responsibility in such matters,—except in cases

*59.—(1) All executive action of the Government of a Province shall be expressed to be taken in the name of the Governor.

(2) Orders and other instruments made and executed in the name of the Governor shall be authenticated in such manner as may be specified in rules to be made by the Governor, 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.

(3) The Governor shall make rules for the more convenient transaction of the business of the Provincial 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 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 all such information with respect to the business of the Provincial Government as may be specified in the rules, or as the Governor may otherwise require to be so transmitted, and in particular requiring a minister to bring to the notice of the Governor and the appropriate secretary to bring to the notice of the minister concerned and of the Governor, any matter under consideration by him which involves, or appears to him likely to involve, any special responsibility of the Governor.

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

where he has to act "in his discretion," or exercise "his individual judgment." Says Section 50:—

- "(1) There shall be a Council of Ministers to aid and advise the Governor 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 from exercising his individual judgment in any case where by or under this Act he is required so to do.

- (2) The Governor 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 is by or under this Act required to act in his discretion or to exercise his individual judgment, the decision of the Governor in his discretion shall be final, and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have exercised his individual judgment."

The difference between a Governor "acting in his discretion" and "exercising his individual judgment" lies in this: that while in the former case the Governor need not consult at all his Ministers, in the latter he may consult them, but is not bound by their advice. In both cases the Ministers' opinion is ineffective, either because it is not invited at all, or because, though invited, is expressly made not binding upon the Governor. There can be, moreover, no question as to whether a matter was within the Gov-

ernor's sole discretion, or was one in which he could exercise his individual judgment, i.e. consult his Ministers, but not necessarily follow their advice; for the mere decision or declaration by the Governor, *in his discretion*, i.e. without consulting his Ministers at all, that it was a matter exactly of the kind that he had treated it to be, would be final under the Section.*

Kinds of Executive Action

There are thus three distinct grades, or kinds, of the executive action of the Provincial Governor:—

- (1) Governor acting on the advice of His Ministers;

- (2) Governor acting *in his individual judgment*, in which he may have consulted the Ministers, but if he cannot view the matter as his Ministers view it, he

*Cp. Section 50 (3).

Says the Report of the Joint Select Committee of Parliament, considering the Act of 1935 when it was still a Bill before Parliament: "We agree that it is desirable that the Governor's special responsibilities, *over and above the matters which are committed to his sole discretion*, (Black ours) should be laid down in the Act itself, rather than that they should be left to be enumerated hereafter in the Instrument of Instructions (para 74).

We do not understand the declaration of a special responsibility with respect to a particular matter to mean or even to suggest that on every occasion when a question relating to that matter comes up for decision, the decision is to be that of the Governor to the exclusion of the Ministers. In no sense does it define the sphere from which the action of Ministers is excluded. In our view, it does no more than indicate the sphere of actions in which it would be constitutionally proper for the Governor, after receiving ministerial advice, to signify his dissent from it and even to act in opposition to it, if in his own unfettered judgment, he is of opinion that the circumstances of the case so require. Nor do we anticipate that the occasions on which the Governor will find it necessary so to dissent or to act in opposition to the advice given to him are in normal circumstances likely to be numerous; and certainly they will not be, as some appear to think, of daily occurrence. We leave for later consideration the list of special responsibilities themselves, and the manner in which they are defined; but if we have rightly appreciated their place in the Constitution, it appears to us undesirable to seek to define them with meticulous accuracy, though we consider that the general scope and purpose should be set out with sufficient precision. Para 75 Op. Cit.

can act on his own opinion, if necessary in opposition to the opinion of his Ministers;

and (3) Governor acting *in his sole discretion*, i.e., matters in which he need not consult his Ministers at all.*

Limits of Executive Authority

Let us proceed next to consider what are the limits of these three divisions of the executive functions of the provincial Governments.

Numerically, perhaps, the widest section will be of those functions of government, in which the Governor must act on the advice of his Ministers. But these matters will, essentially speaking, be of routine character in the administrative mechanism; and will have little scope for any initiative, or change in fundamental policy. The real scope for the Ministers will be in those matters in which the Provincial Legislature is entitled to legislate, either exclusively, or concurrently with the Federal Legislature. Executive action will needs follow legislation, to enforce the legislation. But even here there are safeguards in the shape of subordination of the Governor to the Governor-General;† and in the right of the Governor to grant or withhold sanction to the introduction or

*There is, apparently, under Section 59, a fourth class of actions, in which the Governor is to act in his discretion *after consultation with his Ministers*. These functions relate to the making of rules by the Governor for the division of work among his Ministers, for the authentication of orders and other instruments of Government, and for the supply of information to the Governor, especially on any question of provincial administration which may involve his special responsibility. Similarly, in making rules to regulate procedure in the Legislature, in certain matters, the Governor must consult the President of the Chamber affected, cp. Section 84, (1) proviso.

†Compare Sec. 54 above. See post Chapter VI.

discussion of certain classes of Bills in the Legislature, to recommend other Bills, to make Ordinances and promulgate Acts;* or in the shape of his veto over a Bill passed by a Provincial Legislature, as also in his power to reserve a Bill for the signifying of His Majesty's pleasure thereon. We shall discuss these safeguards, reservations or restrictions more fully when we come to deal with the Provincial Legislatures. Here we may repeat that however extensive in appearance the field assigned to the Constitutional advisers of the Governor, it is rigidly enclosed in a barbed wire fence, and contains very little grounds for any fruitful experiment for the political advance or economic emancipation of the Indian people.

*88.—(1) If at any time when the Legislature of a Province is not in session the Governor 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—

- (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 or the Governor-General's previous sanction to the introduction thereof into the Legislature; and
 - (b) shall not without instructions from the Governor-General, acting in his discretion, promulgate any such ordinance if a Bill containing the same provisions would under this Act have required the Governor-General's previous sanction for the introduction thereof into the Legislature, or if he would have deemed it necessary to reserve a Bill containing the same provisions for the consideration of the Governor-General.
- (2) An ordinance promulgated under this section shall have the same force and effect as an Act of the Provincial Legislature assented to by the Governor, but every such ordinance—
- (a) shall be laid before the Provincial Legislature and shall cease to operate at the expiration of six weeks from the reassembly of the Legislature, or, if a resolution disapproving it is passed by the Legislative Council, if any, upon the passing of the resolution or, as the case may be, on the resolution being agreed to by the Council;
 - (b) shall be subject to the provisions of this Act relating to the powers of His Majesty to disallow Acts as if it were an Act of the Provincial Legislature assented to by the Governor; and

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Discretionary Powers and Functions of the Governor.

Mainly because the Constitution contained in the Act of 1935 is an experiment and an instalment, the executive authority of the Governor is buttressed by:

(a) certain powers and functions to be exercised on his sole discretion, i.e. without any consultation with

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(c) may be withdrawn at any time by the Governor.

(3) If and so far as an ordinance under this section makes any provision which would not be valid if enacted in an Act of the Provincial Legislature assented to by the Governor, it shall be void.

89.—(1) If at any time the Governor of a Province 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 Provincial Legislature assented to by the Governor, 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 Provincial Legislature;

(b) may be withdrawn at any time by the Governor; and

(c) if it is an ordinance extending a previous ordinance for a further period, shall be communicated forthwith through the Governor-General 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 would not be valid if enacted in an Act of the Provincial Legislature, it shall be void:

Provided that for the purposes of the provisions of this Act relating to the effect of an Act of a Provincial Legislature which is repugnant to an Act of the Federal Legislature, an ordinance promulgated under this section shall be deemed to be an Act of the Provincial Legislature which has been reserved for the consideration of the Governor-General and assented to by him.

(5) The functions of the Governor under this section shall be exercised by him in his discretion but he shall not exercise any of his powers thereunder except with the concurrence of the Governor-General in his discretion.

Provided that if it appears to the Governor that it is impracticable to obtain in time the concurrence of the Governor-General, he may promulgate an ordinance without the concurrence of the Governor-General, but in that case the Governor-General in his discretion may direct the Governor to withdraw the ordinance and the ordinance shall be withdrawn accordingly.

his Ministers; (b) certain other powers and functions, which he is to exercise in his individual judgment, i.e., those in which he may consult his Ministers, but is not bound by their advice; e.g. certain specified "special responsibilities", in the discharge of which he may consult his Ministers, but is, if he things it necessary to do so, entitled to overrule their advice; (c) certain concurrent powers of legislation,* apart from the rights to grant his previous consent to the introduction of certain Bills in the Legislature, or to recommend certain other Bills, to withhold his assent to a Bill passed by the Legislature, to reserve it for consideration by the Governor-General, or for consideration by His Majesty; and (d) certain overriding powers including the suspension of the entire Constitution in the Province.

*Cp. Section 90 of the Act.

90.—(1) If at any time it appears to the Governor 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 the Chamber or Chambers of the Legislature explain the circumstances which in his opinion render legislation essential, and either (a) enact forthwith as a Governor'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) Where the Governor 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's Act, the Bill proposed by him to the Chamber or 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 the Chamber or either of the Chambers with reference to the Bill or to amendments suggested to be made therein.

(3) A Governor's Act shall have the same force and effect, and shall be subject to disallowance in the same manner, as an Act of the Provincial Legislature assented to by the Governor and, if and so far as it makes any provision which would not be valid if enacted in an Act of that Legislature, shall be void: Provided that, for the purposes of

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By Section 54 of the Act of the 1935, the Governor is placed under the general control of the Governor-General in all matters in which he is required to act in his discretion, or in his individual judgment.*

Section 53 lays down the procedure for the issue of these Instruments of Instructions to the Provincial Governors.† The general nature of the Instrument of Instructions to the Provincial Governor may best be gauged from the following observations of the Report of the Joint Select Committee of Parliament on the Government of India Bill, 1935: (Para 73.)

"The Instrument of Instructions might direct the Governor to be guided generally by the advice which he receives from his Ministers, but reserve to himself a very wide discretion to act upon his own responsibility when the circumstances seemed so to require..... Or the Instrument might specify certain particular matters with regard to which the Governor might exercise his discretion, whatever the advice of his Ministers might be."

As regards the matters which by the Act are left to the sole discretion of the Governor, the fol-

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the provisions of this Act relating to the effect of an Act of the Provincial Legislature which is repugnant to an Act of the Federal Legislature, a Governor's Act shall be deemed to be an Act reserved for the consideration of the Governor-General and assented to by him.

- (4) Every Governor's Act shall be communicated forthwith through the Governor-General to the Secretary of State and shall be laid by him before each House of Parliament.
- (5) The functions of the Governor under this section shall be exercised by him in his discretion; but he shall not exercise any of his powers thereunder except with the concurrence of the Governor-General in his discretion.

*Cp. ante P. 71.

†The text of an Instrument of Instructions to a Provincial Governor is given in the Appendix to this Chapter.

lowing list, compiled from the various sections of the Act, is, if not exhaustive, sufficiently illustrative to indicate the scope and nature of the absolute discretionary powers given to the Governor.

The Governor is authorised to act in his discretion in the following cases:

- (1) Under Section 50: he may preside at meetings of the Council of his Ministers;
- (2) Decide any question whether any matter is, or is not, one in which the Governor is required to act in his discretion, or to exercise his individual judgment.
- (3) Under Section 51 (5): choose, summon, or dismiss his Ministers, and determine their salaries, until the same are fixed by an Act of the local legislature.
- (4) In order to combat crimes of violence committed with a view to overthrow the Government as by law established, the Governor may direct that some of his specified functions shall be exercised by him in his discretion. During the currency of such directions, he may authorise any official to speak and take part in the proceedings of the Legislature, or the joint sitting of the Chambers, as the case may be.
- (5) Under Section 58: to make rules for securing that no records or information relating to the sources from which information has been or may be obtained, with regard to the operations of persons committing or conspiring to commit crimes of violence intended to overthrow the Government as by law established, shall be disclosed by any member of any Police Force in presence of another member of that force except under directions of the Inspector General or Commissioner of Police; or to any other person (including, pre-

sumably, the Minister in charge of the Police), except in accordance with the directions of the Governor.

(6) Under Section 59: to make rules: (a) for the authentication of the Orders and other instruments of Governments; (b) for the more convenient transaction of the business of the Provincial Government; (c) for the distribution of the work amongst the Ministers, except such business as is entrusted to the Governor to be transacted in his discretion; (d) to include provisions in these rules requiring Ministers and Secretaries to Government to transmit to the Governor all information regarding the Provincial Government as may be mentioned in the rules, or as the Governor may otherwise require to be transmitted to him; and, in particular, requiring the Minister to bring to the notice of the Governor, and the appropriate Secretary to bring to the notice of the Minister concerned and of the Governor, any matter under consideration by him which involves or appears to him likely to involve any special responsibility of the Governor.

(7) Under Section 62: To summon or prorogue the Legislature, or to dissolve the Legislative Assembly;

(8) Under Section 63: To address the Legislative Assembly or either Chamber thereof in a Bicameral Legislature, and to require the attendance of the members.

(9) To send messages to the Chamber or Chambers of the Provincial Legislature in regard to a Bill pending before that body or for any other purpose.

(10) Under Section 69: To remove certain disqualifications for a person to be a member of the Provincial Legislative Assembly or Council.

(11) Under Section 74: To summon the two Chambers of a Bicameral Legislature to a joint sitting for the purpose of deliberating and voting on a Bill which it appears to the Governor relates to Finance, or affects the discharge of any of his special responsibilities, even though twelve months have not passed before the Bill was passed by the Legislative Assembly, but not presented to the Governor for his assent.

(12) Under Section 75: To assent to any Bill passed by the Provincial Legislature and presented to him for the purpose, or to withhold assent thereto, or to reserve the Bill for consideration by the Governor-General; or to return the Bill together with a message requesting that the Legislature will reconsider the Bill, or any specified portion thereof, and also to consider the desirability of introducing any such amendments as the Governor may recommend in his message.

(13) Under Section 78: To decide any dispute whether any proposed expenditure falls within a class of expenditure charged on the revenues of the Provinces, which is not subject to the vote of the Provincial Legislature.

(14) Under Section 84: To make rules, after consultation with the Speaker, or the President, for regulating the procedure of and the conduct of business in the Legislature.

(a) as regards any matter which affects the discharge of any functions of the Governor to be exercised in his discretion, or in his individual judgment;

(b) to complete in time the financial business of the Legislature;

(c) to prohibit the discussion or the asking of any questions on any matter connected with an Indian State, unless the Governor is satisfied that the

matter affects the interests of the Provincial Government, or of a British subject ordinarily resident in the province, and so consents to the matter being discussed, or the question being asked;

(d) to prohibit the discussion of or asking questions on any matter connected with the relations between His Majesty, or the Governor-General and any foreign State or Prince, unless the Governor in his discretion consents to such discussion.

(e) or the discussion, except as regards estimates of expenditure, of any matter connected with the tribal areas, or arising out of or affecting the administration of an excluded area, or asking questions on the same;

(f) or the discussion of the personal conduct of the Ruler of any Indian State, or of a member of the ruling family thereof; or asking questions on the same.

It must be noted that if a rule made by the Governor in these behalf is inconsistent with any rule by the Chamber, the Governor's rule prevails;

(g) to make rules for the procedure to be followed at joint meetings of the two Chambers in relation to the preceding purposes.

(15) Under Section 86: To direct that no further proceedings should be taken with reference to a Bill, Clause, or Amendment, in relation to which the Governor-General certifies that the discussion of the Bill introduced or proposed to be introduced in the Provincial Legislature, or of any Clause or Amendment thereof, would affect the discharge of his special responsibility in regard to the prevention of any grave menace to the peace

or tranquillity of the Province or any part thereof.

(16) Under Section 89: To promulgate Ordinances when he 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 entrusted to his sole discretion or regarding which he has to exercise his individual judgment.*

(17) Under Section 90: To enact Governor's Acts, or to suggest a Draft for the Governor's Act to be passed by the Legislature, if at any time it appears to him that for the purpose of enabling him satisfactorily to discharge the functions entrusted to his sole discretion, or on which he has to exercise his individual judgment, provision should be made by legislation.

(18) Under Section 92: To make regulations for the peace and good government of an excluded or partially excluded area in a Province.

(19) Under Section 93: To make a Proclamation, when the situation so requires, that his functions as Governor will be exercised by him in his discretion to such extent as is specified in the Proclamation. Such a Proclamation may contain all incidental or consequential provisions, which appear to the Governor to be necessary or desirable to give effect to the objects of the Proclamation; and such provisions may suspend wholly or partially the operation of any provisions of this Act relating to a Provincial body or authority, except the functions of a High Court.

*This is apparently different from the power under section 88 to promulgate ordinances when the Legislature is not in session; whereas section 89 seems to apply whether or not the Legislature is in session. Ordinances under section 88 may accordingly be such as are advised by the Ministers. Again Ordinances under section 89 are only in regard to his discretionary powers or those concerning his individual judgment; while those under 88 are in respect of the whole field of the Provincial executive authority.

(This means the suspension of the whole Constitution, except the portion regarding a High Court and including the power to make laws for the Province). No such Proclamation shall be made by a Governor without the concurrence of the Governor-General in his discretion, and must be submitted to the Secretary of State.

(20) Under Section 108: Unless his previous sanction is given, no Bill or amendment can be introduced or moved in the Provincial Legislature which repeals, amends or is repugnant to any Governor's Act or Ordinance promulgated in his discretion by the Governor; or any Act relating to any Police Force.

(21) Under Section 111: The suspension of sub-section (1) prohibiting discrimination against any British subject domiciled in the United Kingdom, in the event of the Governor's certifying, by public notification, that, for the prevention of any grave menace to the peace or tranquillity of any part of the Province, or for the purpose of combating crimes of violence intended to overthrow the Government, it is expedient that the operation of Sub-section (1) of Section 111 should be wholly or partially suspended.

(22) Under Section 119: No Bill or amendment which prescribes professional or technical qualifications, or imposes any disability, restriction or condition in regard to the practising of any profession or carrying on any occupation, trade or business, or the holding of any office in British India, shall be introduced or moved in the provincial legislature without the previous sanction of the Governor, and the sanction of the Governor for such introduction or moving is given in his discretion.

(23) Under Section 123: To carry out the directions of the Governor-General in relation to defence, external affairs, or ecclesiastical affairs.

(24) Under Section 226: No Bill or Amendment could be introduced granting a High Court Original Jurisdiction regarding the collection of revenue according to the usage and practice of the country, without the previous sanction of the Governor granted in his discretion.

(25) Under Section 242: As regards the application of the Sections concerning the recruitment and conditions of the Service, so far as the High Court in the Province is concerned, the Governor may in his discretion direct that no person not already attached to the Court shall be appointed to any office connected with the Court, save after consultation with the Provincial Public Service Commission.

(26) Under Section 265: The appointment of the Chairman and other members of the Provincial Public Service Commission, the regulations regarding the number of members of the Commission, their tenure of office, and conditions of service; as also provision regarding their staff.

(27) Under Section 266: To make regulations—general or particular—making it unnecessary to consult with the Public Service Commission in making certain appointments.

(28) Under Section 267: No Bill or Amendment for the purpose of granting additional functions to be exercised by the Provincial Public Service Commission should be introduced or moved, without the previous sanction of the Governor to be granted in his discretion.

(29) Under Section 270: No civil or criminal proceedings can be instituted against any person in respect of any act done as a servant of the Crown in the Province except with the consent of the Governor of the Province, to be granted in his discretion.

(30) Under Section 271: No Bill or Amendment to abolish or restrict the protection accorded to certain servants of the Crown in India, by Section 197 of the Indian Code of Criminal Procedure, or by Sections 80-82 of the Indian Code of Civil Procedure, shall be introduced or moved in the Provincial Legislature without the previous sanction of the Governor in his discretion.

(31) Under Section 305: The appointment, salaries, allowances, office accommodation and other facilities for his Secretarial staff.

(32) Under Section 308: As regards certain permissible amendments to the Government of India Act, 1935, the effect of the proposed amendments upon the interests of any particular minorities in the Province, must be reported upon to the Secretary of State by the Governor acting in his discretion.

Critique of the Governor's Discretionary Powers

Taken collectively, the effect of all these powers and functions, to be exercised by the Governor in his discretion, is that: **substantially the most important part of the executive work is removed from the sphere of the Governor's Constitutional Advisers.** Even as regards the legislative work, effective powers of initiative and control are reserved to the Governor, in addition to the numerous safeguards contained in the right to recommend Bills, to reserve them when passed for consideration by the Governor-General, or by the King-Emperor. From the moment of its being summoned to its dissolution, the Governor dominates the Legislature by his powers of initiation, direction, and regulating procedure. No act of the Legislature is complete without the Governor's assent; but no Governor's Act needs the concurrence of the Legislature, to be binding.

The Governor is thus not merely the ornamental chief of the Government; he is also its effective controlling and dominating head. The Ministers are his nominees, to be called into meeting when he chooses, to deliberate under rules made by him, and to administer departments assigned to them by the Governor.

The Ministerial subordinates and departmental secretaries are entitled to direct access to the real head of all departments of the Government, to whom they must supply all information required by the Governor; while the latter is not bound to disclose the information, or even the sources of his information, in certain subjects to his Ministers.* The officers working under the Ministers are under no disciplinary subordination to the Ministers; and in the event of any disciplinary action by a Minister, are entitled to appeal to the Governor. If under these conditions, the new Constitution claims to provide a real measure of self-government to the people of the Province, they would need a highpower microscope to discover it when they come to work the Constitution.

Powers and Functions of the Governor to be exercised in his Individual Judgment

In contrast with these, there are relatively fewer sections under which the Governor is empowered to

*Says the Joint Select Committee of Parliament: (Para 95, page 53 of the Report).

"We, therefore, recommend that the Instrument of Instructions of the Governors should specifically require them to give directions that no records relating to intelligence affecting terrorism, should be disclosed to anyone other than such persons within the Provincial Police Force as the Inspector General may direct, or such other public officers outside that Force, as the Governor may direct. We further recommend that the Constitution Act should contain provisions giving legal sanction for directions to this effect in the Instrument of Instructions."