

act in the exercise of his individual judgment; that is to say, after consulting his Ministers, without necessarily being bound by their advice.

The most important of these relate to the so-called special responsibilities of the Governor. These are laid in Section 52:—

(1) In the exercise of his functions the Governor shall have the following special responsibilities, that is to say:

- (a) the prevention of any grave menace to the peace or tranquillity of the Province or any part thereof;
- (b) the safeguarding of the legitimate interests of minorities;
- (c) the securing to, and to the dependants of, persons who are or have been members of the public services, of any rights provided or preserved for them by or under this Act, and the safeguarding of their legitimate interests;
- (d) the securing in the sphere of executive action of the purposes which the provisions of Chapter III of Part V of this Act are designed to secure in relation to legislation;
- (e) the securing of the peace and good government of areas which by or under the provisions of this Part of this Act are declared to be partially excluded areas;
- (f) the protection of the rights of any Indian State and the rights and dignity of the Ruler thereof; and
- (g) the securing of the execution of orders or directions lawfully issued to him under Part VI of

this Act by the Governor-General in his discretion.

(2) The Governor of the Central Provinces and Berar shall also have the special responsibility of securing that a reasonable share of the revenues of the Province is expended in or for the benefit of Berar, the Governor of any Province which includes an excluded area shall also have the special responsibility of securing that the due discharge of his functions in respect of excluded areas is not prejudiced or impeded by any course of action taken with respect to any other matter, any Governor who is discharging any functions as agent for the Governor-General shall also have the special responsibility of securing that the due discharge of those functions is not prejudiced or impeded by any course of action taken with respect to any other matter, and the Governor of Sind shall also have the special responsibility of securing the proper administration of the Lloyd Barrage and Canals Scheme.

(3) If and in so far as any special responsibility of the Governor is involved, he shall, in the exercise of his functions, exercise his individual judgment as to the action to be taken.

We shall make some brief comments on the doctrine of special responsibilities later on.

Apart from these special responsibilities, the Governor exercises his individual judgment:

(1) Under Section 55, in the appointment and dismissal of the Advocate General, as also in regard to the determination of his remuneration;*

*Cp. ante p. 78.

(2) Under Section 56: Where it is proposed that the Governor of a Province should, by virtue of any powers vested in him, make or amend or approve the making or amendment of any rules, regulations or orders relating to any police force, whether civil or military, he must exercise his individual judgment with respect to the proposal, unless it appears to him that the proposal does not relate to or affect the organization or discipline of that force;

(3) Under Section 68 (2): In declaring vacant the seat in the Provincial Legislature of any person, who has been elected member both of the Federal Legislature and of a Provincial Legislature, at the expiration of such period as may be specified in the rules made by the Governor in his individual judgment.

(4) Under Section 88 (1): In promulgating Ordinances, 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: Provided that the Governor must 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 its introduction into the Legislature.

(5) Section 119 (3): All regulations made under the provisions of any Federal or Provincial law, which prescribe the professional or technical qualifications requisite for any purpose in British India, or impose by reference to any professional or tech-

nical qualification, any desirability, liability, restriction or condition in regard to the practising of any profession the carrying on of any occupation, trade or business, or the holding of any office in British India, must, not less than four months before they are expressed to come into operation, be published in such manner as may be required by general or special directions of the Governor-General, or as the case may be, the Governor. If within two months from the date of the publication complaint is made to the Governor-General or, as the case may be, the Governor, that the regulations or any of them will operate unfairly as against any class of persons affected thereby, the Governor-General or Governor, if he is of opinion that the complaint is well-founded, may at any time before the regulations are expressed to come into operation, by public notification, disallow the regulations or any of them.

(6) Under section 151 (1): Rules may be made by the Governor-General and by the Governor of a Province for the purpose of securing that all moneys received on account of the revenues of the Federation, or of the Province, as the case may be, shall, with such exceptions, if any, as may be specified in the rules, be paid into the public account of the Federation or of the Province, and the rules so made may prescribe, or authorise some person to prescribe the procedure to be followed in respect of the payment of the money therefrom, the custody of moneys therein, and any other matters connected with or ancillary to the matters aforesaid.

(7) Under Section 228 (1): The administrative expenses of a High Court, including all salaries,

allowances and pensions payable to or in respect of the officers and servants of the court, and the salaries and allowances of the judges of the court, shall be charged upon the revenues of the Province, and any fees or other moneys taken by the Court shall form part of those revenues.

The Governor must exercise his individual judgment as to the amount to be included in respect of such expenses as aforesaid in any estimates of expenditure laid by him before the Legislature.

(8) Under Section 246 (2): Appointments and postings to the reserved posts must, in the case of posts in connection with the affairs of a Province, be made by the Governor of the Province, exercising his individual judgment.

(9) Under Section 247 (2): Any promotion of any person appointed to a Civil Service or a civil post by the Secretary of State, or any order relating to leave of not less than three months of any such person or any order suspending any such person from office, must, if he is serving in connection with the affairs of a Province, be made by the Governor exercising his individual judgment.

(10) *Ibid* (3): If any such person is suspended from office, his remuneration shall not during the period of his suspension be reduced except to such extent, if any, as may be directed by the Governor exercising his individual judgment.

(11) Under Section 248 (2): No order which punishes or formally censures any such person as aforesaid, or affects adversely his emoluments, or rights in respect of his pension, or decides adversely

to him the subject matter of any memorial, shall be made except, if he is serving in connection with the affairs of a Province, by the Governor of that Province exercising his individual judgment.

(12) Under Section 258 (1): No civil post which, immediately before the commencement of Part III of this Act, was a post in or required to be held by some member of, a Central Service Class I, or II, or a Provincial Service, shall, if the abolition thereof would adversely affect any person who immediately before the said date was a member of any such service, be abolished except,—in the case of a post in connection with the affairs of a Province, by the Governor of the Province exercising his individual judgment.

(13) *Ibid* (2): No rule or order affecting adversely the pay, allowances or pensions payable to, or in respect of, a person appointed before the coming into operation of this Part of this Act to a Central Service Class I, to a Railway Service Class I, or to a Provincial Service, and no order upon a memorial submitted by any such person, shall be made except,—in the case of a person who is serving or has served in connection with the affairs of a Province, by the Governor of the Province exercising his individual judgment.

(14) Under Section 262 (2): The Governor of a Province may declare that the Ruler or any subject of a specified Indian State, or any native of a specified tribal area or territory adjacent to India, shall be eligible to hold any civil office in connection with the affairs of the Province, being an office specified

in the declaration. The same applies in essence to the temporary employment for any purpose of a non-British subject.

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.

(15) Under Section 271 (3): Where a civil suit is instituted against a public officer, within the meaning of that expression as used in the Indian Code of Civil Procedure, in respect of any act purporting to be done by him in his official capacity, the whole or any part of the costs ordered to be paid by him, shall, if the Governor exercising his individual judgment so directs in the case of a person employed in connection with the affairs of a Province, be defrayed out of and charged on revenues of the Province.

(16) Under Section 300 (1): The executive authority of a Province shall not be exercised, save on an order of the Governor, in the exercise of his individual judgment, so as to derogate from any grant or confirmation of title of or to land, or of or to any right or privilege in respect of land or land revenue, being a grant of confirmation made before the first day of January, one thousand eight hundred and seventy, or made on or after that date for services rendered.

The Effect of Special Responsibilities and Discretionary Powers upon the Constitutional Position of the Governor.

The doctrine of Special Responsibilities has been evolved to meet the special circumstances of India, under British Imperialist domination. Given the peculiar structure of the Provincial Legislatures, as also the existence of Communal fissures, it has been thought necessary, at least in the transitional stage, to give special powers to the Governor, in order to hold the scales even between the various communities, as also between the several interests that make up an Indian Province.

This justification is, however, apart from that ideal of Constitutional evolution, which consists in establishing the supremacy of the Legislature over the Executive, achieved, in practice, by making the Ministers responsible for their actions and policies to the Legislature. The responsibility is enforced by the Ministers being removable by a vote of "no confidence" in the Legislature, even though they are not appointed directly by the Legislature.

There may, indeed, be a nominal head of the Executive as well as of the Legislature, like the King in England. In theory, at least, the Governor in an Indian Province is the representative of the King in England; and, therefore, acting as the King in England would act in regard to the Government of the United Kingdom. But the presence of these special powers conferred upon the Governor, in which he need not consult his Ministers; or, having consulted

them, need not be bound by their advice, militates gravely against the development of that constitutional convention, which would make the Governor a truly constitutional executive head, with no activity apart from that advised by his responsible Minister.

It is, accordingly, not too much to read, in these powers granted to the Governor, a deliberate distrust of the growth of Constitutionalism on the English pattern in India. So long as the Governor continues to enjoy these powers, and so long as these powers are not merely nominal, but are likely to be actively employed in the daily administration of the Province, it is impossible to believe that, in the near future, the Governor would become in all respects a true Representative of the English King in India, and allow the Government of the Province to be carried on in strict accordance with constitutional usage and ideals, as prevalent in England.

Critique of the Special Responsibilities

Even if we take those powers of the Governor which he is to exercise in his individual judgment, and which relate, for the more important part, to the so-called Special Responsibilities charged upon him by the Act, we find that the nature of these Responsibilities is so vague as to make it unlikely to keep them within any specific limits. For instance, there is no definition given of what should be called **Minorities**, whose legitimate interests it is supposed to safeguard as his own special responsibility.* Nor is there, similarly, any clear definition of what is

*Cp. however, the Instrument of Instructions given in the Appendix to this Chapter.

meant by these *legitimate interests*. But the Minorities which are to-day understood to demand special attention from the Executive Government are on social or Communal lines, e.g., the so-called Depressed Classes within the Hindu fold. The line of division which keeps, at the present moment, the several communities of India apart from, and perhaps hostile to, one another, is unnatural, or at least artificial. Under the conditions of modern economic development, they are likely to become obsolete very soon. If these lines disappear or weaken, or if any such lines like those in regard to the Non-Brahmins, Depressed Classes or the Untouchables, within the Hindu fold, become coincident with the economic lines of social stratification, the Political Parties of the future may, quite possibly, wear a different aspect from that at present regarded as the most prominent. The Landlords, for instance, can always claim to be a Minority, whose legitimate interests—such as those involved in the maintenance of the Permanent Settlement,—the Governor may be called upon to treat as a Special Responsibility; and so interfere in the constitutional carrying out of a social reform, which is overdue by at least half a century. In the course of transition from the present day artificial lines of Communal division to the more real lines of economic difference, there is every likelihood of reforms being undertaken in the actual system of government, which may be opposed by groups that tend progressively to become Minorities. Their opposition may, quite plausibly, wear a Communal aspect, e.g., the Muslim opposition to the Age of Consent

Legislation. The spirit of the clause in the Lucknow Pact, already quoted, which requires a majority of the Members of a community in a Legislature to discuss any measure alleged to affect a community as such, also points in the same direction. If, however, the Governor is entitled, by special provisions of the law, to devote particular attention to the "legitimate interests of Minorities"; and if no definition is provided as to what constitutes such legitimate interests, or how many Minorities are to be thus specially protected, there is every likelihood of the danger that, on the pretext of protecting the legitimate interests of Minorities, the Governor's Special Responsibility may be exercised, in his individual judgment, in order to obstruct social reforms or economic reconstruction.

The answer given to these arguments by the Authors of the Joint Select Committee of Parliament on this Act, when it was in Bill form, is neither convincing, nor does it remove the anxiety created by such provisions in the Act.

Says the Committee: (Para 79):

"We doubt if it would be possible to define 'legitimate interests' any more precisely. The obvious intention is to secure some means by which Minorities can be reasonably assured of fair treatment, at the hands of majorities, and 'legitimate interest' seems to us a very suitable and reasonable formula. Nor do we think that any good purpose would be served by attempting to give a legal definition of 'minorities', the only effect of which would be to limit the protection which the Governor's special responsibility is intended to afford. No doubt it will be the five or six well recognised and more important minorities, in

whose interest the Governor's powers will usually be invoked; but there are certainly other well-defined sections of the population who may from time to time require protection; and we can see no justification for defining the expression for the purpose of excluding them. We need hardly say that we have not in mind a minority in the political or parliamentary sense, and no reasonable person would, we think, ever so construe the word. Nevertheless, to prevent misunderstanding, we recommend that the Instrument of Instructions should make this plan and further that this special responsibility is not intended to enable the Governor to stand in the way of social or economic reform, merely because it is resisted by a group of persons who might claim to be regarded as a minority."

The same thing may be said with regard to the very first special responsibility, namely, the prevention of any grave menace to the peace or tranquillity of the province. What is the nature of the menace against which this responsibility is intended to be exercised? The experience of the last twenty years in India shows that the present Government is inclined to look upon any agitation for the accomplishment of self-government by the Indian people themselves as a "subversive" activity, and, as such, a menace to the peace and tranquillity of the government established by law in this country. One might agree that crimes of violence, deliberately intended to terrorise Government or Public Servants into adopting a given policy, may be regarded as a menace to the peace or tranquillity of the country, though the ardent advocates of the Indian emancipation may well urge, in vindication of his own attitude, that even peace or tranquillity of a country can be pur-

chased at too great a cost to the *morale* of a people in the continued subjugation of one people to another. But when history records the extension of the doctrine of special powers necessary to defeat "subversive activities", even when they are admittedly non-violent and consist in the passive persuasion of the citizens to a particular line of action, it is impossible not to dread the infinite possibilities, in practice, of such Special Responsibilities being exercised with a view to stamp out the least ember of self-respect among the people, or their desire for political self-expression.

The Joint Select Committee hold that:

"Terrorism, subversive movements and crimes of violence are no doubt among the graver menaces to the peace or tranquillity of the Province. But they do not by any means exhaust the cases in which such a menace may occur, and we can see no logical reason for the distinction which the Joint Memorandum seeks to draw."*

Not only do these Special Responsibilities entrusted to the Governor suffer from vagueness or lack of clear definition; they are calculated in practice to subvert all discipline in the administrative services of the country, and to demoralise the Responsible Government of the Province. The Ministers would not feel any sense of responsibility in tendering their advice on questions in which they know that the Governor is not bound to follow their advice. They would, therefore, naturally be either indifferent, or reckless. Moreover, the fact that in several cases the subordinates are entitled by law to appeal to the Governor, or required not to communicate infor-

*(*op. cit.* loc. cit.).

mation to their official chiefs, namely, the Ministers, is sufficient to undo or weaken the bonds of official discipline, which are indispensable in the proper government of the country. It is universally admitted that the strength of the government in Britain, notwithstanding the changing personnel of the Ministry from time to time, depends upon the absolute loyalty of the Permanent Civil Service to their political chiefs, whoever they may be, for the time being. But it is equally true that, in India, members of the Permanent Public Service have made no secret of their hostility to the evolution of constitutionalism. Consequently, it is not too much to assume that, for years to come, high-placed public officers, especially of non-Indian birth, may be unwilling to submit themselves in loyal co-operation with their official chiefs. It is equally to be feared that when such cases of tacit refusal to collaborate with the Ministers become rank insubordination, and Ministers propose to punish them accordingly, these public servants would take shelter under the Special Responsibility of the Governor in their behalf. This does not bode well for the efficiency or the success of responsible Ministers in the provincial governments of India.

Even the constitution of the Ministry itself is a matter within the sole discretion of the Governor. He is to be instructed by his Instrument of Instructions to see to it that important Minorities are duly represented in composition of the Ministry.* Members of Minority Communities may, no doubt, be found in a political party commanding the absolute majority of votes in particular legislatures. If so, the letter

*Vide Appendix Art. vii.

of the law would be fulfilled so far as the Governor's Special Responsibility in this behalf is concerned. But even then the fact that the Governor alone in his discretion is to appoint the Ministers, to distribute the work amongst them, to summon them to meetings, to preside at their deliberations, to obtain information, if necessary, over the head of the Ministers in particular matters, from their official subordinates, and that the Governor should be entitled not to disclose what advice he received from any individual Minister in any particular instance, are calculated to weaken, if not prevent altogether, the sense of collective responsibility among the Ministers themselves, which it must be the object of true constitutionalism to develop.

Taking all these facts together, and bearing in mind that the Governor is independent of the Legislature as well as of his Ministry; that he has considerable law-making and financial powers, we cannot but feel that the actual position of the Governor in the administration of the Province will be overwhelmingly important, if not dominating. In these most important points, the Governor has special powers of his own, in that his previous consent is necessary to the introduction of certain kinds of Bills in the legislature, and that he is entitled to recommend certain other classes of bills; that he is entitled to assent to the Bill passed by the local legislature, as also to reserve any bill so passed for the significance of the pleasure of the Governor-General or of the King-Emperor. He is also entitled to pass Ordinances and certain Governors' Acts, in addition to his right to suspend the whole Constitution, when a

situation arises under which, in his opinion, the administration of the province cannot be carried on in accordance with the provisions of the Act of 1935.

As regards the financial position, the Governor is entitled to see to it that the expenditure necessary for the conduct of administration, particularly in these matters in which he has, under the law, special responsibilities, is duly provided for.

In fine, the real position of the Governor is admirably summed up in the following extract from the Report of the Joint Parliamentary Committee that considered the Constitution in Bill form:*

"It is clear that the successful working of responsible Government in the Provinces will be greatly influenced by the character and experience of the Provincial Governors. We concur with everything which has been said by the Statutory Commission on the part which the Governors have played in the working of the reforms of 1919, and we do not think that the part which they will play in the future will be any less important or valuable."

*The Constitutional impasse caused in March, 1937, on the demand of the Congress Party Ministries, in the 6 Provinces where the Congress had won majorities in the Legislature, for an assurance from the Governors that, so long as the Ministers pursued their constitutional activities, the Governor would not use his extraordinary powers, has been discussed, in its constitutional aspect, in the volume on "Federal Structure," and need not be repeated here.

For the difficult ways in which the Provincial Government (executive) can be controlled by the Governor-General, see "Federal Structure" ch. vi.

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Appendix I to Chapter IV

Instrument of Instructions to the Governors

WHEREAS by Letters Patent bearing date the day of 1937 We have made permanent provision for the Office of Governor of

AND WHEREAS by those Letters Patent and by the Act of Parliament passed on the second day of August, nineteen hundred and thirty-five and entitled the Government of India Act, 1935, (hereinafter called "the Act"), certain powers, functions and authority for the government of the province of are declared to be vested in the Governor as Our Representative:

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

AND WHEREAS a draft of these Instructions has been laid before Parliament in accordance with the provisions of sub-section (1) of section fifty-three of the Act and an Address has been presented to Us by both Houses of Parliament praying that instructions may be issued in the terms of these Instructions:

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

A.—INTRODUCTORY

I. Under these Our Instructions, unless the context otherwise require, the term "Governor" shall include every person for the time being acting as Governor according to the provisions of the Act.

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

of the Chief Justice for time being, or, in his absence, other Judge, of the High Court of the Province.

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

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

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

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

B.—IN REGARD TO THE EXECUTIVE AUTHORITY OF THE PROVINCE

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

VIII. In all matters within the scope of the executive authority of the Province, save in relation to functions which he is required by or under the Act to exercise in his discretion, Our Governor shall in the exercise of the powers conferred upon him be guided by the advice of his Ministers, unless in his opinion so to be guided would be inconsistent with the fulfilment of any of the special responsibilities which are by the Act committed to him, or with the proper discharge of any of the functions which he is otherwise

by or under the Act required to exercise in his individual judgment; in any of which cases Our Governor shall, notwithstanding his Minister's advice, act in exercise of the powers by or under the Act conferred upon him in such manner as to his individual judgment seems requisite for the due discharge of the responsibilities and functions aforesaid. But he shall be studious so to exercise his powers as not to enable his Ministers to rely upon his special responsibilities in order to relieve themselves of responsibilities which are properly their own.

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

Further, Our Governor shall interpret the said special responsibility as requiring him to secure a due proportion of appointments in Our Services to the several communities, and, so far as there may be in his Province at the date of the issue of these Our Instructions an accepted policy in this regard, he shall be guided thereby, unless he is fully satisfied that modification of that policy is essential in the interests of the communities affected or of the welfare of the public.

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

XI. The special responsibility of Our Governor for securing in the sphere of executive action any of the purposes which the provisions of Chapter III of Part V of the Act are designed to secure in relation to legislation shall be construed by him as requiring him to differ from his

Ministers if in his individual judgment their advice would have effects of the kind which it is the purpose of the said Chapter to prevent, even though the advice so tendered to him is not in conflict with any specific provision of the Act.

XII. Our Governor shall construe his special responsibility for the protection of the rights of any Indian State as requiring him to see that no action shall be taken by his Ministers which would imperil the economic life of any State, or affect prejudicially any right of any State heretofore or hereafter recognised, whether derived from treaty, grant, usage, sufferance or otherwise, and he shall refer to Our Governor-General any questions which may arise as to the existence of any such right.

XIIa. In pursuance of an Agreement made by Us and His Exalted Highness the Nizam of Hyderabad as contemplated in Part III of the Act, Our Governor shall interpret his special responsibility for the protection of the rights of any Indian State as also requiring him in the administration of Berar to have due regard to the commercial and economic interests of the State of Hyderabad.

Further, if Our Governor is at any time of opinion that the policy hitherto in force affords to him no satisfactory guidance in the interpretation of his special responsibility for securing that a reasonable share of the revenues of his Province is expended in or for the benefit of Berar, he shall, if he deems it expedient, fortify himself with the advice from a body of experienced and unbiased persons whom he may appoint for the purpose of recommending what changes in policy would be suitable and equitable.

(The foregoing paragraph will be included in the Instrument of Instructions to the Governor of the Central Provinces and Berar only.)

XIII. In the framing of rules for the regulation of the business of the Provincial Government Our Governor shall ensure that, amongst other provisions for the effective discharge of that business, due provision is made that the Finance Minister shall be consulted upon any other Minister which affects the finances of the Province; and further that no reappropriation within a Grant shall be made by any Department other than the Finance Department, except in accordance with such rules as the Finance Minister may approve; and that in any case in which the Finance Minister does not concur in any such proposal the matter shall be brought for decision before the Council of Ministers. He shall further in those rules make due provision to secure

that prompt attention is paid to any representation received by his Government from any minority.

XIV. Having regard to the powers conferred by the Act upon Our Secretary of State to appoint persons to Our service if, in his opinion, circumstances arise which render it necessary for him so to do in order to secure efficiency in irrigation, Our Governor shall make it his care to see that he is kept constantly supplied with information as to the conduct of irrigation in his Province in order that he may, if need be, place this information at the disposal of Our Governor-General.

XV. In the exercise of the powers by law conferred upon him in relation to the administration of areas declared under the Act to be Excluded or Partially Excluded Areas, or to the discharge of his special responsibility for the safeguarding of the legitimate interests of minorities, Our Governor shall, if he thinks this course would enable him the better to discharge his duties to the inhabitants of those areas or to primitive sections of the population elsewhere, appoint an officer with the duty of bringing their needs to his notice and advising him regarding measures for their welfare.

XVa. Our Governor shall bear constantly in mind the danger to India as a whole of any failure to maintain peace and security on the North-West Frontier. He shall, therefore, in the exercise of the executive authority of the Province, constantly have regard to the due discharge of his functions as Agent to Our Governor-General in respect of the tribal areas situate between the frontiers of India and the North-West Frontier Province; and he shall not hesitate to exercise his special responsibility for securing that the due discharge of his functions in respect of such tribal areas is not prejudiced or impeded by any course of action taken with respect to any other matter.

(The foregoing paragraph will be included in the Instructions to the Governor of the North-West Frontier Province only.)

C.—MATTERS AFFECTING THE LEGISLATURE

XVI. In determining whether he shall in Our name give his assent to, or withhold his assent from, any Bill, Our Governor shall, without prejudice to the generality of his power to withhold his assent on any ground which appears to him in his discretion to render such action necessary or expedient, have particular regard to the bearing of the provisions of the Bill upon any of the special responsibilities imposed upon him by the Act.

XVII. Without prejudice to the generality of his powers as to reservation of Bills, Our Governor shall not assent in Our name to, but shall reserve for the consideration of Our Governor-General, any Bill or any of the clauses herein specified, that is to say:—

- (a) any Bill the provisions of which would repeal or be repugnant to the provisions of any Act of Parliament extending to British India;
- (b) any Bill which in his opinion would, if it became law, so derogate from the powers of the High Court as to endanger the position which that Court is by the Act designed to fill;
- (c) any Bill regarding which he feels doubt whether it does, or does not, offend against the purposes of Chapter III of Part V or section 299 of the Act;
- (d) any Bill which would alter the character of the Permanent Settlement.

And in view of the provisions in this clause of these Our Instructions, it is Our will and pleasure that if his previous sanction is required under the Act to the introduction of any Bill of the last-mentioned description, Our Governor shall not withhold that sanction to the introduction of the Bill.

XVIIa. Our Governor in declaring his assent in Our name to any Bill of the Legislature of the Central Provinces and Berar applying to Berar, or in notifying Our assent to any such Bill reserved for the signification of Our pleasure, shall state that assent to the Bill in its application to Berar has been given by virtue or assent of His Exalted Highness the Nizam to the aforesaid Agreement.

(The foregoing paragraph will be included in the Instructions to the Governor of the Central Provinces and Berar only.)

XVIII. It is Our will that the power vested by the Act in Our Governor to stay proceedings upon a Bill, clause or amendment in the Provincial 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.

XIX. It is Our will and pleasure that the seats in the Legislative Council to be filled by the nomination of Our Governor shall be so apportioned as in general to redress, so far as may be, inequalities of representation which may

have resulted from election, and in particular to secure representation for women and the Scheduled Castes in that Chamber.

D.—GENERAL

XX. And generally Our Governor shall do all that in him lies to maintain standards of good administration; to promote all measures making for moral, social and economic welfare and tending to fit all classes of the population to take their due share in the public life and government of the Province; and to secure amongst all classes and creeds co-operation, goodwill and mutual respect for religious beliefs and sentiments; and he shall further have regard to this Instruction in the exercise of the powers by law conferred upon him in relation to matters whether of legislation or of executive government.

XXI. And We do hereby charge Our Governor to communicate these Our Instructions to his Ministers and to publish the same in his Province in such manner as he may think fit.

APPENDIX.

FORM OF OATH OF ALLEGIANCE

I, _____, do swear that I will be faithful and bear true allegiance to His Majesty, King George the Sixth, Emperor of India, His Heirs and Successors, according to law.

So help me God.

FORM OF OATH OF OFFICE.

I, _____, do swear that I will and truly serve Our Sovereign King, George the Sixth, Emperor of India, in the Office of _____, and that I will do right to all manner of people after the laws and usages of India without fear or favour, affection or ill-will.

So help me God.

FORM OF OATH OF SECRECY FOR MINISTERS

I, _____, do swear that I will not directly or indirectly communicate or reveal to any person or persons any matter which shall be brought under my consideration, or shall become known to me as a Minister in _____, except as may be required for the due discharge of my duties as such Minister, or as may be specially permitted by Governor in the case of any matter pertaining to function to be exercised by him in his discretion.

So help me God.

CHAPTER IV.

PROVINCIAL EXECUTIVE

The Ministry.

Legal Status

A Council of Ministers for each Governor's Province is set up under Section 50 of the Government of India Act, 1935.*

Unlike as in the British Constitution, the Cabinet of Ministers is given a legal existence and authority. The Prime Minister, however, even now continues to be unknown to the constitutional law in India,† and if one is appointed as such, or comes into being hereafter, he would owe his existence, influence, and authority to the Governor. For, under Section 51:—

- “(1) The Governor'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 the Provincial Legislature shall at the expiration of that period cease to be a minister.
- (3) The salaries of ministers shall be such as the Provincial Legislature may from time to time by Act determine, and, until the Provincial Legislature so determine, shall be determined by the Governor: Provided that the salary of a minister shall not be varied during his term of office.

*Cp. p. 80, ante for the text of the Section.

†But see Appendix to the preceding Chapter containing Instructions to the Governor, article VII.