

## **GOVERNMENT OF INDIA ACT, 1935**

**2 of 1935**

**[2nd August, 1935]**

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### **GOVERNMENT OF INDIA ACT, 1935**

**2 of 1935**

**[2nd August, 1935]**

An Act to make further provision for the Government of India. Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:-

#### PART 1

#### INTRODUCTORY

##### **1. Short title :-**

This Act may be cited as the Government of India Act, 1935.

##### **2. Government of India by the Crown :-**

(1) All rights, authority and jurisdiction heretofore belonging to His Majesty the King, Emperor of India, which appertain or are incidental to the Government of the territories in India for the time being vested in him, and all rights, authority and jurisdiction exercisable by him in or in relation to any other territories in India, are exercisable by His Majesty, except in so far as may be otherwise provided by or under this Act, or as may be otherwise directed by His Majesty: Provided that any powers connected with the exercise of the functions of the Crown in its relations with Indian States shall in India, if not exercised by His Majesty, be exercised only by, or by persons acting under the authority of, His Majesty's Representative for the exercise of those functions of the Crown.

(2) The said rights, authority and jurisdiction shall include any rights, authority or jurisdiction heretofore exercisable in or in relation to any territories in India by the Secretary of State, the Secretary of State in Council, the Governor-General, the Governor-General in Council, any Governor or any Local Government,

whether by delegation from His Majesty or otherwise.

### **3. The Governor-General of India and His Majesty's Representative as regards relations with Indian States :-**

(1) The Governor-General of India is appointed by His Majesty by a Commission under the Royal Sign Manual<sup>1</sup>[and has-

(a) all such powers and duties as are conferred or imposed on him by or under this Act; and

(b) such other powers of His Majesty, not being powers connected

(2) <sup>2</sup> [His 'Majesty's Representative for the exercise of the functions of the Crown in its relations with Indian States] is appointed by His Majesty in like manner and has such powers and duties in connection with the exercise of those functions (not being powers or duties conferred or imposed by or under this Act on the Governor-General) as His Majesty may be pleased to assign to him.

(3) It shall be lawful for His Majesty to appoint one person to fill both the said offices].

1. The words commencing from 'and' up to the end of the section were omitted by *ibid*.

2. The office was known as "Crown Representative" with effect from 1-4-1937. See notification No. 144-Fed. dated the 4th March 1937, Gazette of India, Pt. I, p. 436.

### **4. The Commander-in-Chief in India :-**

There shall be a Commander-in-Chief of His Majesty's Forces in India appointed by Warrant under the Royal Sign Manual.

## PART 2

### THE FEDERAL EXECUTIVE

## CHAPTER 1

### ESTABLISHMENT OF FEDERATION AND ACCESSION OF INDIAN STATES

### **5. Proclamation of Federation of India :-**

(1) It shall be lawful for His Majesty, if an address in that behalf has been presented to him by each House of Parliament and if the condition hereinafter mentioned is satisfied, to declare by Proclamation that as from the day therein appointed there shall be united in a Federation under the Crown, by the name of the Federation of India,-

(a) the Provinces hereinafter called Governors' Provinces; and

(b) the Indian States which have acceded or may thereafter accede to the Federation; and in the Federation so established there shall be included the Provinces hereinafter called Chief Commissioners' Provinces.

(2) The condition referred to is that States-

(a) the Rulers whereof will, in accordance with the provisions contained" in Part II of the First Schedule to this Act, be entitled to choose not less than fifty-two members of the Council of State; and

(b) the aggregate population whereof, as ascertained in accordance with the said provisions, amounts to at least one-half of the total population of the States as so ascertained, have acceded to the Federation.

## **6. Accession of Indian States :-**

(1) A State shall be deemed to have acceded to the Federation if His Majesty has signified his acceptance of an Instrument of Accession executed by the Ruler thereof, whereby the Ruler for himself, his heirs and successors-

(a) declares that he accedes to the Federation as established under this Act, with the intent that His Majesty the King, the Governor-General of India, the Federal legislature, the Federal Court and any other Federal authority established for the purposes of the Federation shall, by virtue of his Instrument of Accession, but subject always to the terms thereof, and for the purposes only of the Federation, exercise in relation to his State such functions as may be vested in them by or under this Act; and

(b) assumes the obligation of ensuring that due effect is given within his State to the 'provisions of this Act so far as they are applicable therein by virtue of his Instrument of Accession:

(2) An Instrument of Accession shall specify the matters which the Ruler accepts as matters with respect to which the Federal Legislature make laws for his State, and the limitations, if any, to which the power of the Federal Legislature to make laws for his State, and the exercise of the executive authority of the Federation in his State, are respectively to be subject.

(3) A Ruler may, by a supplementary Instrument executed by him and accepted by His Majesty, vary the Instrument of Accession of his State by extending the functions which by virtue of that

Instrument are exercisable by His Majesty or any Federal Authority in relation to his State.

(4) Nothing in this section shall be construed as requiring His Majesty to accept any Instrument of Accession or supplementary Instrument unless he considers it proper so to do, or as empowering His Majesty to accept any such Instrument if it appears to him that the terms thereof are inconsistent with the scheme of Federation embodied in this Act: Provided that after the establishment of the Federation, if any Instrument has in fact been accepted by His Majesty, the validity of that Instrument or of any of its provisions shall not be called in question and the provisions of this Act shall, in relation to the State, have effect subject to the provisions of the Instrument.

(5) It shall be a term of every Instrument of Accession that the provisions of this Act mentioned in the Second Schedule thereto, may, without affecting the accession of the State, be amended by or by authority of Parliament, but not such amendment shall, unless it is accepted by the Ruler in a supplementary Instrument, be construed as extending the functions which by virtue of the Instrument are exercisable by His Majesty or any Federal Authority in relation to the State.

(6) An Instrument of Accession or supplementary Instrument shall not be valid unless it is executed by the Ruler himself, but, subject as aforesaid, references in this Act to the Ruler of a State include references to any persons for the time being exercising the powers of the Ruler of the State, whether by reason of the Ruler's minority or for any other reason.

(7) After the establishment of the Federation the request of a Ruler that his State may be admitted to the Federation shall be transmitted to His Majesty through the Governor-General, and after the expiration of twenty years from the establishment of the Federation the Governor-General shall not transmit to His Majesty any such request until there has been presented to him by each Chamber of the Federal legislature, for submission to His Majesty, an address praying that His Majesty may be pleased to admit the State into the Federation.

(8) In this Act a State which has acceded to the Federation is referred to as a Federated State, and the Instrument by virtue of which a State has so acceded, construed together with any

supplementary Instrument executed under this section, is referred to as the Instrument of Accession of that State.

(9) As soon as may be after any Instrument of Accession or supplementary Instrument has been accepted by His Majesty under this section, copies of the Instrument, and of His Majesty's Acceptances thereof shall be laid before Parliament, and all courts shall take judicial notice of every such Instrument and Acceptance.

## CHAPTER 2

### THE FEDERAL EXECUTIVE

#### **7. Functions of Governor-General :-**

(1) Subject to the provisions of this Act, the executive authority of the <sup>1</sup>[Federation] shall be exercised on behalf of His Majesty by the Governor-General either directly or through officers subordinate to him, but nothing in this section shall prevent the <sup>1</sup>[Federal] Legislature from conferring function, upon subordinate authorities, or be deemed to transfer to the Governor-General any functions conferred by any existing Indian law on any court, judge or officer, or on any local or other authority.

(2) References in this Act to the functions of the Governor-General shall be construed as references to his powers and duties in the exercise of the executive authority of the Federation and to any other powers and duties conferred or imposed on him as Governor-General by or under this Act, <sup>3</sup> [other than powers exercisable by him by reason that they have been assigned to him by His Majesty under Part I of this Act].

(3) The provisions of the Third Schedule to this Act shall have effect with respect to the salary and allowances of the Governor-General and the provision to be made for enabling him to discharge conveniently and with dignity the duties of his office.

1. This words was substituted by the word 'Dominion', by the India (Provisional Constitution) Order, 1947.

3. These words were omitted by *ibid*.

#### **8. Extent of executive authority of the Federation :-**

(1) Subject to the provisions of this Act, the executive authority of the <sup>1</sup>[Federation] extends-

(a) to the matters with respect to which the <sup>1</sup>[Federal] Legislature has power to make laws;

(b) to the raising in British India on behalf of His Majesty of naval, military and air forces and to the governance of His Majesty's forces borne on the Indian establishment;

(c) to the exercise of such rights, authority and jurisdiction as are exercisable by His Majesty by treaty, grant, usage, sufferance, or otherwise in' and in relation to the tribal areas: Provided that-

(i) the said authority does not, save as expressly provided in this Act, extend in any Province to matters with respect to which the Provincial Legislature has power to make laws.;

(ii) the said authority does not, save as expressly provided in this Act, extend in any <sup>3</sup>[Federated] State save to matters with respect to which the <sup>1</sup>[Federal] Legislature has power to make laws for that State, and the exercise thereof in each

(iii) the said authority does not extend to the enlistment or enrolment in any forces raised in India of any person unless he is either a subject of His Majesty or a native of India or of territories adjacent to India; and

(iv) commissions in any such force shall be granted by His Majesty save in so far as he may be pleased to delegate that power by virtue of the provisions of Part I of this Act or otherwise.

(2) This executive authority of the Ruler of <sup>5</sup>[a Federated] State shall notwithstanding anything in this section, continue to be exercisable in that State with respect to matters with respect to which the <sup>6</sup>[Federal] Legislature has power to make laws for that State except in so far as the executive authority of the <sup>4</sup>[Federation] becomes exercisable in the State to the exclusion of the executive' authority of the Ruler by virtue of a <sup>4</sup> [Federal] law.

1. This words was substituted by the word 'Dominion', by the India (Provisional Constitution) Order, 1947.

3. This word was substituted by the word 'acceding', by ibid.

5. These words were substituted by the words 'an Acceding', by the India (Provisional Constitution) Order, 1947.

6. This word was substituted by the word 'Dominion', by ibid.

## **9. Council of ministers :-**

(1) There shall be a council of ministers, not exceeding ten in number, to aid and advise the Governor-General in the exercise of the functions, <sup>1</sup> [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 direction 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].

1. These words up to the end of the section were omitted, by *ibid.*

#### **10. Other provisions as to ministers :-**

(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 <sup>1</sup>[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.

#### **2**

[(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].

1. These words were omitted by *ibid*.
2. Sub-section (5) was omitted by *ibid*.

**11. Provisions as to defence, ecclesiastical affairs, external affairs and the tribal areas :-**

(1) The functions of the Governor-General with respect to defence and ecclesiastical affairs and with respect to external affairs, except the relations between the Federation and any part of His Majesty's dominions, shall be exercised by him in his discretion, and his functions in or in relation to the tribal areas shall be similarly exercised.

(2) To assist him in the exercise of those functions the Governor-General may appoint counsellors, not exceeding three in number, whose salaries and conditions of service shall be such as may be prescribed by His Majesty in Council.

**12. Special responsibilities of Governor-General :-**

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

(a) the prevention of any grave menace to the peace or tranquility of India or any part thereof;

(b) the safeguarding of the financial stability and credit of the Federal Government;

(c) the safeguarding of the legitimate interests of minorities;

(d) 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;

(e) 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;

(f) the prevention of action which would subject goods of United Kingdom or Burmese origin imported into India to discriminatory or penal treatment;

(g) the protection of the rights of any Indian State and the rights and dignity of the Ruler thereof; and

(h) the securing that the due discharge of his functions with

respect to matter with respect to which he is by or under this Act required to act in his discretion, or to exercise his individual judgment, is not prejudiced or impeded by any course of action taken with respect to any other matter.

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

### **13. Provisions as to Instrument of Instructions :-**

(1) The Secretary of State shall lay before Parliament the draft of any Instrument of Instruc-

(2) The validity of anything done by the Governor-General shall not be called in question on the ground that it was done otherwise than in accordance with any Instrument of Instructions issued to him.

### **14. Superintendence Secretary of State :-**

(1) In so far as the Governor-General 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 Secretary of State, but the validity of anything done by the Governor-General 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 Secretary of State shall satisfy himself that nothing in the directions requires the Governor-General to act in any manner inconsistent with any Instrument of Instructions issued to him by His Majesty.

### **15. Financial adviser Governor-General :-**

(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.

#### **16. Advocate-General for Federation :-**

(1) The Governor-General shall appoint a person, being a person qualified to be appointed a judge of the Federal Court, to be Advocate-General for the [Federation]<sup>1</sup>

(2) It shall be the duty of the Advocate-General to give advice to the [Federal]<sup>1</sup>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, and in the performance of his duties he shall have right of audience in all courts in British India and, in a case in which [federal]<sup>1</sup>interests are concerned, in all courts in any [Federated]<sup>4</sup> State.

(3) The Advocate-General shall hold office during the pleasure of the Governor-General, and shall receive such remuneration as the Governor-General 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-General shall exercise his individual judgment.

1. Substituted by the word 'Dominion', by *ibid.*

4. Substituted by the word 'Acceding', by *ibid.*

#### **17. Conduct of business of Federal Government :-**

(1) All executive action of the [Federal]<sup>1</sup>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]<sup>1</sup>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].<sup>3</sup>

#### **4**

(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.

#### **3**

(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.

1. Substituted by the word 'Dominion', by *ibid.*

3. The words within brackets were omitted, by *ibid.*

4. Sub-secs. (4) and (5) were omitted, by *ibid.*

### CHAPTER 3

#### THE FEDERAL LEGISLATURE.

### **18. Constitution of the Federal Legislature :-**

(1) There shall be a Federal Legislature which shall consist of His Majesty, represented by the Governor-General, and two Chambers, to be known respectively as the Council of State and the House of Assembly (in this Act referred to as "the Federal Assembly").

(2) The Council of State shall consist of one hundred and fifty-six

representatives of British India and not more than one hundred and four representatives of the Indian States, and the Federal Assembly shall consist of two hundred and fifty representatives of British India and not more than one hundred and twenty-five representatives of the Indian States.

(3) The said representatives shall be chosen in accordance with the provisions in that behalf contained in the First Schedule to this Act.

(4) The Council of State shall be a permanent body not subject to dissolution, but as near as may be one-third of the members thereof shall retire in every third year in accordance with the provisions in that behalf contained in the said First Schedule.

(5) Every Federal Assembly, unless sooner dissolved, shall continue for five years from the date appointed for their first meeting and no longer, and the expiration of the said period of five years shall operate as a dissolution of the Assembly.

### **19. Sessions of the Legislature, prorogation and dissolution**

:-

(1) The <sup>1</sup>[Chambers of the Federal] Legislature shall be summoned to meet once at least in every year, and twelve months shall not intervene between their last sitting in one session and the date appointed for their first sitting in the next session.

(2) Subject to the provisions of this section, the Governor-General may in his discretion from time to time-

(a) summon the [Chambers or either Chamber]<sup>1</sup> to meet at such time and place as he thinks fit;

(b) prorogue the Chambers;

**3**

(c) dissolve the Federal Assembly.

**2**

(3) The Chambers shall be summoned to meet for their first session on a day not later than such day as may be specified in that behalf in His Majesty's Proclamation establishing the Federation.

1. Substituted by the words 'Dominion Legislature', by *ibid.*

3. Cl. (c) of sub-sec. (2) and sub-sec. (3), (3) were omitted, by

ibid.

## **20. Right of Governor-General to address, and send messages to, Chambers :-**

(1) The Governor-General may in his discretion address <sup>1</sup>[either Chamber of] of Federal<sup>2</sup>Legislature <sup>1</sup>[or both Chambers assembled together], and for that purpose require the attendance of members.

(2) The Governor-General may <sup>1</sup>[in his discretion] send messages to <sup>1</sup>[either Chamber of] the Federal<sup>2</sup>Legislature, whether with respect to a Bill then pending in the Legislature or otherwise, and <sup>7</sup> [a Chamber to whom any message is so sent] shall with all convenient dispatch consider any matter which they are required by the message to take into consideration.

1. The words within brackets were omitted, by ibid.

2. Substituted by the word "Dominion", by ibid.

7. Substituted by the words 'the Legislature', by ibid.

## **21. Rights of ministers, counsellors and Advocate-General as respects Chambers :-**

Every minister <sup>1</sup>[every counsellor] and the Advocate-General shall have the right to speak in, and otherwise to take part in the proceedings of, <sup>2</sup> [either Chamber, any joint sitting of the Chambers, and any committee of the Legislature] of which he may be named a member, but shall not by virtue of this section be entitled to vote.

1. The words within brackets were omitted, by ibid.

2. Substituted by the words the Dominion Legislature or any committee thereof, by ibid.

## **22. Officers of Chambers :-**

**1**

(1) The Council of State shall, as soon as may be, choose two members of the Council to be respectively President and Deputy President thereof and, so often as the office of President or Deputy President becomes vacant, the Council shall choose another member to be President or Deputy President as the case may be.

**1**

(2) A member holding office as President or Deputy President of the Council of State shall vacate his office if he ceases to be a member

of the Council, 'may at any time resign his office by writing under his hand addressed to the Governor-General, and may be removed from his office by a resolution of the Council passed by a majority of all the then members of the Council; but no resolution for the purpose of this sub-section shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution.

## **1**

(3) While the office of President is vacant, the duties of the office shall be performed by the Deputy President or, if the Office of Deputy President is also vacant, by such member of the Council as the Governor-General may in his discretion appoint for the purpose, and during any absence of the President from any sitting of the Council the Deputy President or, if he is also absent, such 'person as may be determined by the rules of procedure of the Council, or, if no such person is present, such other person as may be determined by the Council, shall act as President.

(4) There shall be paid to the President <sup>4</sup>[and the Deputy President of the Council of State] such <sup>5</sup>[salaries] as may be <sup>6</sup>[respectively] fixed by Act of the Federal Legislature, and, until provision in that behalf is so made such salaries as the Governor-General may determine.

## **1**

(5) The foregoing provisions of this section shall apply in relation to the Federal Assembly as they apply in relation to the Council of State with the substitution of the titles "Speaker" and "Deputy Speaker" for the titles "President" and "Deputy President" respectively, and with the substitution of references to the Assembly for references to the Council: Provided that, without prejudice to the provisions of sub-section (2) of this section as applied by this sub-section, whenever the Assembly is dissolved, the Speaker shall not vacate his office until immediately before the first meeting of the Assembly after the dissolution.

1. Sub-secs. (1), (2), (3) and (5) of s. 22 were omitted, by *ibid.*

4. Substituted by the words 'of the Dominion Legislature', by *ibid.*

5. Substituted by the word 'salary', by *ibid.*

6. The word within brackets was omitted, by *ibid.*

**23. Voting in Chambers, power of Chambers to act notwithstanding vacancies, and quorum :-**

(1) Save as provided in the last preceding section, all questions at any sitting <sup>1</sup>[or joint sitting of the Chambers] shall be determined by a majority of votes of the members present and voting, other than the President <sup>2</sup>[or Speaker] or person acting as such. The President <sup>2</sup>[or Speaker] or person acting as such shall not vote in the first instance, but shall have and exercise a casting vote in the case of an equality of votes.

(2) <sup>4</sup>[A Chamber of] the <sup>5</sup>[Federal] Legislature shall have power to act notwithstanding any vacancy in the membership thereof and any proceedings in the Legislature shall be valid notwithstanding that it is discovered subsequently that some person who was not entitled so to do sat or voted or otherwise took part in the proceedings.

(3) If at any time during a meeting of <sup>6</sup>[a Chamber] less than one-sixth of the total number of members of <sup>5</sup>[the Chamber] are present, it shall be the duty of the President <sup>8</sup> [or Speaker] or person acting as such either to adjourn the Chamber, or to suspend the meeting until at least one-sixth of the members are present.

1. Substituted by the words of the Dominion Legislature' by *ibid*.
2. The word within brackets was omitted, by *ibid*.
4. The words within brackets were omitted, by *ibid*.
5. Substituted by the word 'Dominion', by *ibid*.
6. Substituted by the words 'the Legislature', by *ibid*.
8. The words within brackets were omitted, by *ibid*.

#### **24. Oath of members :-**

Every member of either Chamber shall, before taking his seat, make and subscribe before the Governor-General, or some person appointed by him, an oath according to that one of the forms set out in the Fourth Schedule to this Act which the member accepts as appropriate in his case.

#### **25. Vacation of seats :-**

(1) No person shall be a member of both Chambers, and rules made by the Governor-General exercising his individual judgment shall provide for the vacation by a 'person who is chosen a member of both Chambers of his seat in one Chamber or the other.

(2) If a member of either Chamber-

(a) becomes, subject to any of the disqualifications mentioned in sub-section (1) of the next succeeding section; or

(b) by writing tender his hand addressed to the Governor-General resigns his seat, his seat shall thereupon become vacant.

(3) If for sixty days a member of either Chamber is without permission of the Chamber absent from all meetings thereof, the Chamber may declare his seat vacant: Provided that in computing the said period of sixty days no account shall be taken of any period during which the Chamber is prorogued, or is adjourned for more than four consecutive days.

## **26. Disqualifications for membership :-**

(1) A person shall be disqualified for being chosen as, and for being, a member of either Chamber-

(a) if he holds any office of profit under the Crown in India, other than an office declared by Act of the Federal Legislature not to disqualify its holder;

(b) if he is of unsound mind and stands so declared by a competent Court;

(c) if he is an undischarged insolvent;

(d) if, whether before or after the establishment of the Federation, he has been convicted, or has, in proceedings for questioning the validity or regularity of an election, been found to have been guilty, of any offence or corrupt or illegal practice relating to elections which has been declared by Order in Council or by an Act of the Federal Legislature to be an offence or practice. entailing disqualification for membership of the Legislature, unless such period has elapsed as may be specified in that behalf by the provisions of that Order or Act;

(e) if, whether before or after the establishment of the Federation, he has been convicted of any other offence by a Court in British India or in a State which is a Federated State and sentenced to transportation or to imprisonment for not less than two years,

(f) if, having been nominated as a candidate for the Federal or any Provincial Legislature or having acted as an election agent of any person so nominated, he has failed to lodge a return of election expenses within the time and in the manner required by any Order in Council made under this Act or by any Act of the Federal or the Provincial Legislature, unless five years have elapsed from the date by which the return ought to have been lodged or the Governor-

General, acting in his discretion, has removed the disqualification: Provided that a disqualification under paragraph (f) of this sub-section shall not take effect until the expiration of one month from the date by which the return, ought to have been lodged or of such longer period as the Governor-General, acting in his discretion, may in any particular case allow.

(2) A person shall not be capable of being chosen a member of either Chamber while he is serving a sentence of transportation or of imprisonment for a criminal offence.

(3) Where a person who, by virtue of a conviction or a conviction and a sentence, becomes disqualified by virtue of paragraph (d) or paragraph (e) of sub-section (1) of this section is at the date of the disqualification a member of the Legislature, his seat shall, notwithstanding anything in this or the last preceding section, not become vacant by reason of the disqualification until three months have elapsed from the date thereof or, if within those three months an appeal or petition for revision is brought in respect of the conviction or the sentence, until that appeal or petition is disposed of, but during any period during which his membership is preserved by this sub-section he shall not sit or vote.

(4) For the purposes of this section a person shall not be deemed to hold an office of profit under the Crown in India by reason only that-

(a) he is a minister either for the Federation or for a Province: or

(b) while serving a State, he remains a member of one of the services of the Crown in India and retains all or any of his rights as such

### **27. Penalty for sitting and voting when not qualified, or when disqualified :-**

If a person sits or votes as a member of either Chamber when he is not qualified or is disqualified for membership thereof, or when he is prohibited from so doing by the provisions of sub-section (3) of the last preceding section, he shall be liable in respect of each day on which he so sits or votes to a penalty of five hundred rupees to be recovered as a debt due to the [Federation] <sup>1</sup>

1. Substituted by the word 'Dominion', by ibid.

### **28. Privileges and of members :-**

(1) Subject to the provisions of this Act and to the rules and standing orders regulating the procedure of the [Federal]<sup>1</sup>Legislature, there shall be freedom of speech in the Legislature, and no member of the Legislature shall be liable to any proceedings in any Court in respect of anything said or any vote given by him in the Legislature or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of <sup>2</sup>[either Chamber of] the Legislature of any report, paper, votes or proceedings.

(2) In other respects, the privileges of members of the <sup>3</sup>[Chambers,] shall be such as may from time to time be defined by Act of the [Federal Legislature]<sup>4</sup>and, until so defined, shall be such as were immediately before the establishment of the Federation enjoyed by members of the Indian Legislature.

## **5**

(3) Nothing in any existing Indian Act, and, notwithstanding anything in the foregoing provisions of this section, nothing in this Act, shall be construed as conferring, or empowering the [Federal]<sup>6</sup>Legislature to confer, on either Chamber or on both Chambers sitting together, or on any committee or officer of the Legislature, the status of the Court, or any punitive or disciplinary powers other than a power to remove or exclude persons infringing the rules or standing orders, or otherwise behaving in a disorderly manner.

## **5**

(4) Provision may be made by an Act of the [Federal]<sup>6</sup>Legislature for the punishment, on conviction before a Court, of persons who refuse to give evidence or produce documents before a committee of a Chamber when duly required by the chairman of the committee so to do: Provided that any such Act shall have effect subject to such rules for regulating the attendance before such committees of persons who are, or have been, in the service of the Crown in India, and safeguarding confidential matter from disclosure, as may be made by the Governor-General exercising his individual judgment.

(5) The provisions of sub-sections (1) and (2) of this section shall apply in relation to persons who by virtue of this Act have the right to speak in, and otherwise take part in the proceedings of, <sup>3</sup> [a

Chamber] as they apply in relation to members of the Legislature.

1. Substituted by the word 'Dominion', by *ibid*.
2. The words within brackets were omitted, by *ibid*.
3. Substituted by the words 'the Legislature', by *ibid*.
4. Substituted by the words 'Dominion Legislature', by *ibid*.
5. Sub-secs. (3) and (4) of s. 28 were omitted, by *ibid*.
6. Substituted by the word 'Dominion', by *ibid*.

**29. Salaries and allowances of members :-**

Members of <sup>1</sup>[either Chamber] shall be entitled to receive such salaries and allowances as may from time to time be determined by Act of the [Federal Legislature]<sup>1</sup>and, until provision in that respect is so made allowances at such rates and upon such conditions as were immediately before the date of the establishment of the [Federation]<sup>3</sup> applicable in the case of members of the Legislative Assembly of the Indian Legislature.

1. Substituted by the words 'Dominion Legislature', by *ibid*.
3. Substituted by the word 'Dominion', by *ibid*.

**30. Provisions as to introduction and passing of Bills :-**

(1) Subject to the special provisions of this Act with respect to financial Bills, a Bill may originate in either Chamber.

(2) Subject to the provisions of the next succeeding section, a Bill shall not be deemed to have been passed by the Chambers of the Legislature unless it has been agreed to by both Chambers, either without amendment or with such amendments only as are agreed to by both Chambers.

(3) A Bill pending in the legislature shall not lapse by reason of the prorogation of the Chambers.

(4) A Bill pending in the Council of State which has not been passed by the Federal Assembly shall not lapse on a dissolution of the Assembly.

(5) A Bill which is pending in the Federal Assembly or which having been passed by the Federal Assembly is pending in the Council of State shall, subject to the provisions of the next succeeding section, lapse on a dissolution of the Assembly.

**31. Joint sitting of both Chambers in certain cases :-**

(1) If after a Bill has been passed by one Chamber and transmitted to the other Chamber- (a) the Bill is rejected by the other

Chamber; or (b) the Chambers have finally disagreed as to the amendments to be made in the Bill; or (c) more than six months elapse from the date of the reception of the Bill by the other Chamber without the Bill being presented to the Governor-General for his assent, the Governor-General may, unless the Bill has lapsed by reason of a dissolution of the Assembly, notify to the Chambers, by message if they are sitting or by public notification if they are not sitting, his intention to summon them to meet in a joint sitting for the purpose of deliberating and voting on the Bill: Provided that, if it appears to the Governor-General that the Bill relates to finance or to any matter which affects the discharge of his functions in so far as he is by or under this Act required to act in his discretion or to exercise his individual judgment, he may so notify the Chambers notwithstanding that there has been no rejection of or final disagreement as to the Bill notwithstanding that the said period of six months has not elapsed, if he is satisfied that there is no reasonable prospect of the Bill being presented to him for his assent without undue delay. In reckoning any such period of six months as is referred to in this sub-section, no account shall be taken of any time during which the Legislature is prorogued or during which both Chambers are adjourned for more than four days.

(2) Where the Governor-General has notified his intention of summoning the Chambers to meet in a joint sitting, neither Chamber shall proceed further with the Bill, but the Governor-General may at any time in the next session after the expiration of six months from the date of his notification summon the Chambers to meet in a joint sitting for the purpose specified in his notification and, if he does so, the Chambers shall meet accordingly: Provided that, if it appears to the Governor-General that the Bill is such a Bill as is mentioned in the proviso to sub-section (1) of this section, he may summon the Chambers to meet in a joint sitting for the purpose aforesaid at any date, whether in the same session or in the next session.

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

(4) If at the joint sitting of the two Chambers the Bill, with such amendments, if any, as are agreed to in joint sitting, is passed by a majority of the total number of members of both Chambers present

and voting, it shall be deemed for the purposes of this Act to have been passed by both Chambers:

(a) if the Bill, having been passed by one Chamber, has not been passed by the other Chamber with amendments and returned to the Chamber in which it originated, no amendment shall be proposed to the Bill other than such amendments (if any) as are made necessary by the delay in the passage of the Bill;

(b) if the Bill has been so passed and returned, only such amendments as aforesaid shall be proposed to the Bill and such other amendments as are relevant to the matters with respect to which the Chambers have not agreed, and the decision of the person presiding as to the amendments which are admissible under this sub-section shall be final.

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

### **32. Assent to Bills and power of Crown to disallow Acts :-**

(1) When a Bill has been passed by the<sup>1</sup>[Chambers,] it shall be presented to the Governor-General, and the Governor-General shall in his discretion declare either that he assents in His Majesty's name to the Bill, or that he withholds assent therefrom,<sup>2</sup>[or that he reserves the Bill for the signification of His Majesty's pleasure.] Provided that the Governor-General may in his discretion return the Bill to the Chambers with a message requesting that they will reconsider the Bill or any specified provisions thereof and, in particular, will consider the desirability of introducing any such amendments as he may recommend in his message, and the Chambers shall reconsider the Bill accordingly.

### **3**

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

### **3**

(3) Any Act assented to by the Governor-General may be

disallowed by His Majesty within twelve months from the day of the Governor-General's assent, and where any Act is so disallowed the Governor-General shall forthwith make the disallowance known by public notification, and as from the date of the notification the Act shall become void.

1. Substituted by the words 'Dominion Legislature', by *ibid.*
2. The words within bracket were omitted, by *ibid.*
3. Sub-secs. (2) and (3) of s. 32 were omitted, by *ibid.*

### **33. Annual financial statement :-**

(1) The Governor-General shall in respect of every financial year cause to be laid before both Chambers of the Federal Legislature a statement of the estimated receipts and expenditure of the Federation for that year, in this Part of this Act referred to as the "annual financial statement".

(2) The estimates of expenditure embodied in the annual financial statement shall show separately-

(a) the sums required to meet 'expenditure described by this Act as expenditure charged upon the revenues of the Federation; and

(b) the sums required to meet expenditure proposed to be made from the revenues of the Federation, <sup>1</sup>[and indicate the sums, if any, which are included solely because the Governor-General has directed their inclusion as being necessary for the due discharge of any of his special responsibilities.]

(3) The following expenditure shall be' expenditure charged on the revenues of the Federation:-

(a) the salary and allowances of the Governor-General and other expenditure relating to his office for which provision is<sup>2</sup>required to be made by Order in Council];

(b) debt charges for which the Federation is liable, including interest, sinking fund charges and redemption charges, and other expenditure relating to the raising of loans and the service and redemption of debt:

(c) <sup>3</sup>the salaries and allowances of ministers, <sup>1</sup>[of counsellors, of the financial adviser], of the advocate-general, of chief commissioners, <sup>1</sup>[and of the staff of the financial adviser]

(d) the salaries, allowances and pensions payable to or in respect of

judges of the Federal Court, and the pensions payable to or in respect of judges of any High Court;

## **6**

(e) expenditure for the purpose of the discharge by the Governor-General of his functions with respect to defence and ecclesiastical affairs, his functions with respect to external affairs in so far as he is by or under this Act required in the exercise thereof to act in his discretion, his functions in or in relation to tribal areas, and his functions in relation to the administration of any territory in the direction and control of which he is under this Act required to act in his discretion: provided that the sum so charged in any year in respect of expenditure on ecclesiastical affairs shall not exceed forty-two lakhs of rupees, exclusive of pension charges;

## **4**

(f) the sums payable to His Majesty under this Act out of the revenues of the Federation in respect of the expenses incurred in discharging the functions of the Crown in its relations with Indian States;

## **4**

(g) any grants for purposes connected with the administration of any areas in a Province which are for the time being excluded areas; (h) any sums required to satisfy any judgment, decree or award of any Court or arbitral tribunal;

(i) any other expenditure declared by this Act or any Act of the Federal Legislature to be so charged.

## **4**

(4) Any question whether any proposed expenditure falls within a class of expenditure charged on the revenues of the Federation shall be decided by the Governor-General in his discretion.

1. The words within bracket were omitted, by *ibid*.
2. Substituted by the words 'made by or under the Third Schedule to the Act', by *ibid*.
3. This cl. in so far as it relates to the Advocate-General came into force on 1-4-1937, under Government of India (Commencement and Transitory Provisions) Order, 1936, paras. 3 and 11.
6. Cls. (e), (f) and (g) of sub-sec. (3) and sub-sec. (4) were omitted, by *ibid*.

### **34. Procedure in Legislature with respect to estimates :-**

(1) So much of the estimate of expenditure as relates to expenditure charged upon the revenues of the Federation shall not be submitted to the vote of the Legislature, but nothing in this sub-section shall be construed as preventing the discussion in <sup>1</sup>[either Chamber of] the Legislature of any of those estimates [or paragraph (f)] of sub-section (3) of the preceding section.

(2) So much of the said estimates as relates to other expenditure shall be submitted in the form of demands for grants to the [Federal Assembly and thereafter to the Council of State, and either Chamber] shall have power to assent or to refuse to assent to any demand, or to assent to any demand subject to a reduction of the amount specified therein: <sup>2</sup>Provided that, where the Assembly have refused to assent to any demand, that demand shall not be submitted to the Council of State, unless the Governor-General so directs and, where the Assembly have assented to a demand subject to a reduction of the amount specified therein, a demand for the reduced amount only shall be submitted to the Council of State, unless the Governor-General otherwise directs; and where, in either of the said cases, such a direction is given, the demand submitted to the Council of State shall be for such amount, not being a greater amount than that originally demanded, as may be specified in the direction.

### **2**

(3) If the Chambers differ with respect to any demand the Governor-General shall summon the two Chambers to meet in a joint sitting for the purpose of deliberating and voting on the demand as to which they disagree, and the decision of the majority of the members of both Chambers present and voting shall be deemed to be the decision of the two Chambers.

(4) No demand for a grant shall be made except on the recommendation of the Governor-General.

1. The words within bracket were omitted, by *ibid.*

2. The Proviso to sub-sec. (2) and sub-sec. (3) of s. 34 were omitted, by *ibid.*

### **35. Authentication of schedule of authorised expenditure :-**

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

(a) the grants made by the <sup>1</sup>[Chambers] under the last preceding section;

(b) the several sums required to meet the expenditure charged on the revenues of the Federation but not exceeding, in the case of any sum, the sum shown in the statement previously laid before the legislature: <sup>2</sup>Provided that, if the Chambers have not assented to any demand for a grant or have assented subject to a reduction of the amount specified therein, the Governor-General may, if in his opinion the refusal or reduction would affect the due discharge of any of his special responsibilities, include in the schedule such additional amount, if any, not exceeding the amount of the rejected demand or the reduction, as the case may be, as appears to him necessary in order to enable him to discharge that responsibility.

(2) The schedule so authenticated shall be laid before <sup>1</sup>[both Chambers] but shall not be open to discussion or vote therein.

(3) Subject to the provisions of the next succeeding section, no expenditure from the revenues of the [Federation]<sup>4</sup> shall be deemed to be duly authorised unless it is specified in the schedule so authenticated.<sup>5</sup>

1. Substituted by the word 'Legislature', by *ibid*.

2. The Proviso to s. 35 was omitted, by *ibid*.

4. Substituted by the word 'Dominion', by *ibid*.

5. The following Proviso was added to sub-sec, (3) of s. 35- Provided that expenditure from the said revenues during the period beginning with the 15th day of August 1947 and ending with the 31st day of March 1948 may be authorised or ratified by general or special order of the Governor-General.

### **36. Supplementary statements of expenditure :-**

If in respect of any financial year further expenditure from the revenues of the Federation becomes necessary over and above the expenditure heretofore authorised for that year, the Governor-General shall cause to be laid before <sup>1</sup> [both Chambers of] the [Federal] legislature a supplementary statement showing the estimated amount of that expenditure, and the provisions of the preceding sections shall have effect in relation to that statement and that expenditure as they have effect in relation to the annual financial statement and expenditure mentioned therein.

1. The words within brackets were omitted, by *ibid*.

### **37. Special provisions as to financial Bills :-**

(1) A Bill or amendment making provision-

(a) for imposing or increasing any tax; or

(b) for regulating the borrowing of money or the giving of any guarantee by the [Federal] Government, or for amending the law with respect to any financial obligations undertaken or to be undertaken by the [Federal] Government; or

(c) for declaring any expenditure to be expenditure charged on the revenues of the [Federation], or for increasing the amount of any such expenditure, shall not be introduced or moved except on the recommendation of the Governor-General, <sup>1</sup>[and a Bill making such provision shall not be introduced in the Council of State.]

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

(3) A Bill which, if enacted and brought into operation, would involve expenditure from the revenues of the [Federation] shall not be passed by <sup>2</sup>[either Chamber] unless the Governor-General has recommended to <sup>3</sup> [that Chamber the consideration of the Bill.]

1. The words within brackets were omitted, by *ibid*.

2. Substituted by the words 'the Dominion Legislature', by *ibid*.

3. Substituted by the words 'the Legislature', by *ibid*.

### **38. Rules of procedure :-**

(1) <sup>1</sup>[Each Chamber of] the [Federal] Legislature may make rules for regulating, subject to the provisions of this Act, their procedure and the conduct of their business: <sup>1</sup>[Provided that as regards each Chamber the Governor-General shall in his direction, after consultation with the President or the Speaker, as the case may be, make rules-

(a) for regulating the procedure of, and the conduct of business in, the Chamber in relation to any matter which affects the discharge of his functions in so far as he is by or under this Act required to act in his discretion or to exercise his individual judgment;

(b) for seeing" the timely completion of financial business;

(c) for prohibiting the discussion of, or the asking of question on, any matter connected with any Indian State, other than a matter with respect to which the Federal Legislature has power to make laws for that State, unless the Governor-General in his discretion is satisfied that the matter affects Federal interests or affects a British subject, and has given his consent to the matter being discussed or the question being asked;

(d) for prohibiting, save with the consent of the Governor-General in his discretion,-

(i) the discussion of, or the asking of questions on, any matter: connected with relations between His Majesty or the Governor-General and any foreign State or Prince; or

(ii) the discussion, except in relation to estimates of expenditure of, or the asking of questions on, any matter connected with the tribal areas or the administration of any excluded area; or

(iii) the discussion of, or the asking of questions on, any action taken in his discretion by the Governor-General in relation to the affairs of a Province; or

(iv) the discussion of, or the asking of questions on, the personal conduct of the Ruler of any Indian State, or of a member of the ruling family thereof; and, if and in so far as any rule so made by the Governor-General is inconsistent with any rule made by a Chamber, the rule made by the Governor-General shall prevail.]

### **3**

[(2) The Governor-General, after consultation with the President of the Council of State and the Speaker of the Legislative Assembly, may make rules as to the procedure with respect to joint sittings of, and communications between, the two Chambers. The said rules shall make such provision for the purposes specified in the proviso to the preceding sub-section as the Governor-General in his discretion may think fit.

(3) Until rules are made under this section, the rules of procedure and standing orders in force immediately before the establishment of the Federation with respect to<sup>4</sup>the Indian Legislature shall have effect in relation to the Federal Legislature subject to such modifications and adaptations as may be made therein by the<sup>5</sup>[Governor-General in his discretion].

## 2

[(4) At a joint sitting of the two Chambers the President of the Council of State, or in his absence such persons as may be determined by rules of procedure made under this section, shall preside.

1. The words within brackets were omitted, by *ibid*.
3. Sub-secs. (2) and (4) of s.38 were omitted, by *ibid*.
4. The words 'the Legislative Assembly of were inserted, by *ibid*.
5. The words 'President of that Legislature' were substituted, by *ibid*.

### **39. English to Be used in the Federal Legislature :-**

All proceedings in the Federal Legislature shall be conducted in the English language: Provided that the rules of procedure of each Chamber and the rules with respect to joint sittings shall provide for enabling persons unacquainted, or not sufficiently acquainted, with the English language to use another language.

### **40. Restrictions on discussion in the Legislature :-**

(1) No discussion shall take place in the Federal Legislature with respect to the conduct of any judge of the Federal Court or a High Court in the discharge of his duties. In this sub-section the reference to a High Court shall be construed as including a reference to any court in a Federated State which is a High Court for any of the purposes of Part IX of this Act.

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

1. Omitted, by *ibid*.

### **41. Courts not to inquire into proceedings of the Legislature**

:-

(1) The validity of any proceedings in the Federal Legislature shall not be called in question on the ground of any alleged irregularity of procedure.

(2) No officer or other member of the legislature in whom powers

are vested by or under this Act for regulating procedure or the conduct of business, or for maintaining order, in the Legislature shall be subject to the jurisdiction of any Court in respect of the exercise by him of those powers.

#### CHAPTER 4

#### LEGISLATIVE POWERS OF GOVERNOR-GENERAL

### **42. Power of Governor-General to promulgate ordinances during recess of Legislature :-**

(1) If at any time when the Federal Legislature is not in session the Governor-General is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such ordinances as the circumstances appear to him to require: Provided that the Governor-General-

(a) shall exercise his individual judgment as respects the promulgation of any ordinance under this section if a Bill containing the same provisions would under this Act have required his previous sanction to the introduction thereof into the Legislature; and

(b) shall not, without instructions from His Majesty; and such ordinance if he would have deemed it necessary to reserve a Bill containing the same provisions for the signification of His Majesty's pleasure thereon.

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

(a) shall be laid before the Federal Legislature and shall cease to operate at the expiration of six weeks from the reassembly of the Legislature, or, if before the expiration of that period resolutions disapproving it are passed by both Chambers, upon the passing of the second of those resolutions:

(b) shall be subject to the provisions of this Act relating to the power of His Majesty to disallow Acts as if it were an Act of the Federal Legislature assented to by the Governor-General; and

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

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

**43. Power of Governor-General to promulgate ordinances at any time with respect to certain subjects :-**

(1) If at any time the Governor-General is satisfied that circumstances exist which render it necessary for him to take immediate action for the purpose of enabling him satisfactorily to discharge his functions in so far as he is by or under this Act required in the exercise thereof to act in his discretion or to exercise his individual judgment, he may promulgate such ordinance 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 be a subsequent ordinance be extended for a further period not exceeding six months.

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

(a) shall be subject to the provisions of this Act relating to the power of His Majesty to disallow Acts as if it were an Act of the Federal Legislature assented to by the Governor-General;

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

(c) if it is an ordinance extending a previous ordinance for a further period, shall be communicated forthwith to the Secretary of State and shall be laid by him before each House of Parliament.

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

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

**44. Power of Governor-General in certain circumstances to enact Acts :-**

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

circumstances which in his opinion render legislation essential, and either-

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

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

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

(3) A Governor-General's Act shall have the same force and effect, and shall be subject to disallowance in the same manner, as an Act of the

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

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

#### CHAPTER 5

#### PROVISIONS IN CASE OF FAILURE OF CONSTITUTIONAL MACHINERY

#### **45. Power of Governor-General to issue Proclamations :-**

(1) If at any time the Governor-General is satisfied that a situation has arisen in which the government of the Federation cannot be carried on in accordance with the provisions of this Act, he may by Proclamation-

(a) declare that his functions shall to such extent as may be specified in the Proclamation be exercised by him in his discretion;

(b) assume to himself all or any of the powers vested in or exercisable by any Federal body or authority, and any such Proclamation may contain such incidental and consequential provisions as may appear to him to be necessary or desirable for

giving effect to the objects of the Proclamation, including provisions for suspending in whole or in part the operation of any provisions of this Act relating to any Federal body or authority: Provided that nothing in this sub-section shall authorise the Governor-General to assume to himself any of the powers vested in or exercisable by the Federal Court or to suspend, either in whole or in part, the operation of any provision of this Act relating to the Federal Court.

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

(3) A Proclamation issued under this section-

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

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

(4) If at any time the government of the Federation has for a continuous period of three years been carried on under and by virtue of a Proclamation issued under this section, then, at the expiration of that period, the Proclamation shall cease to have effect and the government of the Federation shall be carried on in accordance with the other provisions of this Act, subject to any amendment thereof which Parliament may deem it necessary to make, but nothing in this sub-section shall be construed as extending the power of Parliament to make amendments in this Act without affecting the accession of a State.

(5) If the Governor-General, by a Proclamation under this section, assumes to himself any power of the Federal Legislature to make laws, made by him in the exercise of that power shall, subject to the terms thereof, continue to have effect until two years have elapsed from the date on which the Proclamation ceases to have effect, unless sooner repealed or re-enacted by Act of the appropriate Legislature, and any reference in this Act to Federal Acts, Federal laws, or Acts or laws of the Federal Legislature shall be construed as including a reference to such a law.

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

PART 3

THE GOVERNORS PROVINCES

CHAPTER 1

THE PROVINCES

**46. Governors Provinces :-**

(1) Subject to the provisions of the next succeeding section with respect to Berar, the following shall be Governors' Provinces, that is to say, Madras, Bombay, <sup>1</sup>[Bengal, the United Provinces, the Punjab, Bihar, the Central Provinces and Berar, Assam, the North-West Frontier Province, Orissa, Sind], and such other Governors' Provinces as may be created under this Act.

**2**

(2) Burma shall cease to be part of India.

(3) In this Act the expression "Province" means, unless the context otherwise requires, a Governor's Province, and "Provincial" shall be constructed accordingly.

1. Substituted by the words 'West Bengal, the United Provinces, East Punjab, Bihar, the Central Provinces and Berar, Assam and Orissa', by *ibid*.

2. Omitted, by *ibid*.

**47. Provisions as to Berar :-**

Whereas certain territory (in the Act referred to as "Berar") is under the sovereignty of His Exalted Highness the Nizam of Hyderabad, but is at the date of the passing of this Act, by virtue of certain agreements subsisting between His Majesty and His Exalted Highness, administered together with the Central Provinces. And whereas it is in contemplation that an agreement shall be concluded between His Majesty and His Exalted Highness whereby, notwithstanding the continuance of the sovereignty of His Exalted Highness over Berar, the Central Provinces and Berar may be governed together as one Governor's Province under this Act by the name of the Central Provinces and Berar: Now, therefore-

(1) While any such agreement is in force-

(a) Berar and the Central Provinces shall, notwithstanding the continuance of the sovereignty of His Exalted Highness, be

---

(b) any reference in this Act or in any other Act to British India shall be construed as a reference to British India and Berar, and any reference in this Act to subjects of His Majesty shall, except for the purposes of any oath of allegiance, be deemed to include a reference to Berari subjects of His Exalted Highness :

(c) any provision made under this Act with respect to the qualifications of the voters for the Provincial Legislature of the Central Provinces and Berar, or the voters for the Council of State, shall be such as to give effect to any provisions with respect to those matters contained in the agreement.

(2) If no such agreement is concluded, or if such an agreement is concluded but subsequently ceases to have effect, references in this Act to the Central Provinces and Berar shall be construed as references to the Central Provinces, and His Majesty in Council may make such consequential modifications in the provisions of this Act relating to the Central Provinces as he thinks proper.

## CHAPTER 2

### THE PROVINCIAL EXECUTIVE

#### **48. Appointment of Governor :-**

(1) The Governor of a Province is appointed by His Majesty by a Commission under the Royal Sign Manual.

(2) The provisions of the Third Schedule to this Act shall have effect with respect to the salary and allowances of the Governor and the provision to be made for enabling him to discharge conveniently and with dignity the duties of his office.

#### **49. Executive authority of Province :-**

(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.

## **50. Council of Ministers :-**

(1) There shall be a council of ministers to aid and advise the Governor in the exercise of his functions, <sup>1</sup> except in so far as he is by or under this Act required to exercise his functions or any of them in his discretion:

(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 acted in his discretion, or ought or ought not to have exercised his individual judgment.]

1. The words within brackets were omitted, by *ibid*.

## **51. Other provisions as to ministers :-**

(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.

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

(5) The functions of the Governor under this section 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.

## **52. Special responsibilities of Governor :-**

(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 any 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.

### **53. Provisions as to Instrument of Instructions :-**

(1) The Secretary of State shall lay before Parliament the draft of any Instructions (including any Instructions amending or revoking Instructions previously issued) which it is proposed to recommend His Majesty to issue to the Governor of a Province, and no further proceedings shall be taken in relation thereto except in pursuance of an address presented to His Majesty by both Houses of Parliament praying that the Instructions may be issued.

(2) The validity of anything done by the Governor of a Province shall not be called in question on the ground that it was done otherwise than in accordance with any Instrument of Instructions issued to him.

### **54. Superintendence of Governor-General :-**

(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.

### **55. Advocate-General for Province :-**

(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.

## **1**

(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.

1. Omitted, by *ibid.*

### **56. Provisions as to police rules :-**

Where it is proposed that the Governor of a Province should be 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 shall exercise his individual judgment with respect to the proposal, unless it appears to him that the proposal does not relate to or affect the organisation or discipline of that force.

### **57. Provisions as to crimes of violence intended to overthrow Government :-**

(1) If it appears to the Governor of a Province that the peace or tranquillity of the Province is endangered by the operations of any persons committing, or conspiring, preparing or attempting to commit, crimes of violence which, in the opinion of the Governor, are intended to overthrow the government as by law established, the Governor may, if he thinks, that the circumstances of the case require him so to do for the purpose of combating those operations, direct that his functions shall, to such extent as may be specified in the direction, be exercised by him in his discretion and, until otherwise provided by a subsequent direction of the Governor, those functions shall to that extent be exercised by him accordingly.

(2) While any such direction is in force, the Governor may authorise an official to speak in and otherwise take part in the proceedings of the Legislature, and any official so authorised may speak and take part accordingly in the proceedings of the Chamber or Chambers of the Legislature, any joint sitting of the Chambers, and any committee of the Legislature, of which he may be named a member by the Governor, but shall not be entitled to vote.

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

(4) Nothing in this section affects the special responsibility of the

Governor for the prevention of any grave menace to the peace or tranquillity of the Province or any part thereof.

**58. Sources of certain information not to be disclosed :-**

The Governor in his discretion shall make rules for securing that no records or information relating to the sources from which information has been or may be obtained with respect to the operations of persons committing, or conspiring, preparing, or attempting to commit, such crimes as are mentioned in the last preceding section, shall be disclosed or given-

(a) by any member of any police force in the Province to another member of that force except in accordance with directions of the Inspector General of Police or Commissioner of Police, as the case may be, or to any other person except in accordance with directions of the Governor in his discretion; or

(b) by any other person in the service of the Crown in the Province to any person except in accordance with directions of the Governor in his discretion.

**59. Conduct of business of Provincial Government :-**

(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 <sup>1</sup>[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.]

**1**

(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.

## **1**

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

1. Omitted, by *ibid*.

### CHAPTER 3

#### THE PROVINCIAL LEGISLATURE

### **60. Constitution of Provincial Legislature :-**

(1) There shall for every Province be a Provincial Legislature which shall consist of His Majesty, represented by the Governor, and

(a) in the Provinces of Madras, Bombay, [Bengal]<sup>1</sup> and United Provinces, Bihar [and Assam]<sup>1</sup>, two Chambers;

(b) in other Provinces, one Chamber.

(2) Where there are two Chambers of a Provincial Legislature, they shall be known respectively as the Legislative Council and the Legislative Assembly, and where there is only one Chamber, the Chamber shall be known as the Legislative Assembly.

1. The words within brackets were omitted by the India [Provisional Constitution) Order, 1947.

### **61. Composition of Chambers of Provincial Legislature :-**

(1) The Composition of the Chamber of Chambers of the Legislature of a Province shall be such as is specified in relation to that Province in the Fifth Schedule to this Act.

(2) Every Legislative Assembly of every Province, unless sooner dissolved, shall continue for five years ^from the date appointed for their first meeting and no longer, and the expiration of the said period of five years shall operate as a dissolution of the Assembly.

(3) Every legislative Council shall be a permanent body not subject to dissolution but as near as may be one-third of the members thereof shall retire in every third year in accordance with the

provision in that behalf made in relation to the Province under the said Fifth Schedule.

## **62. Sessions of the Legislature, prorogation and dissolution**

:-

(1) The Chamber or Chambers of each Provincial Legislature shall be summoned to meet once at least in every year, and twelve months shall not intervene between their last sitting in one session and the date appointed for their first sitting in the next session.

(2) Subject to the provisions of this section, the Governor may in his discretion from time to time-

(a) summon the Chambers or either Chamber to meet at such time and place as he thinks fit;

(b) prorogue the Chamber or Chambers;

(c) dissolve the Legislative Assembly.

[(3) The Chamber or Chambers shall be summoned to meet for the first session of the Legislature on a day not later than six months after the commencement of this Part of this Act.]

## **63. Right of Governor to address and send messages to Chambers** :-

(1) The Governor may in his discretion address the Legislative Assembly or, in the case of a province having a Legislative Council, either Chamber of the Provincial Legislature or both Chambers assembled together, and may for that purpose require the attendance of members.

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

## **64. Rights of ministers and Advocate-General as respects Chambers** :-

Every minister and the Advocate-General shall have the right to speak in, and otherwise take part in the proceedings of, the Legislative Assembly of the Province or, in the case of a Province having a Legislative Council, both Chambers and any joint sitting of

the Chambers, and to speak in, and otherwise take part in the proceedings of, any committee of the Legislature of which he may be named a member, but shall not, by virtue of the section, be entitled to vote.

**65. Officers of Chambers :-**

(1) Every Provincial Legislative Assembly shall as soon as may be, choose two members of the Assembly to be respectively Speaker and Deputy Speaker thereof and, so often as the office of Speaker or Deputy Speaker becomes vacant, the Assembly shall choose another member to be Speaker or Deputy Speaker, as the case may be.

(2) A member holding office as Speaker or Deputy Speaker of an Assembly shall vacate his office if he ceases to be member of the Assembly, may at any time resign his office by writing under his hand addressed to the Governor, and may be removed from his office by a resolution of the Assembly passed by a majority of all the then members of the Assembly; but no resolution for the purpose of this sub-section shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution: Provided that, whenever the Assembly is dissolved, the Speaker shall not vacate his office until immediately before the first meeting of the Assembly after the dissolution.

(3) While the office of Speaker is vacant, the duties of the office shall be performed by the Deputy Speaker or, if the office of Deputy Speaker is also vacant, by such member of the Assembly as the Governor may in his discretion appoint for the purpose, and during any absence of the Speaker from any sitting of the Assembly the Deputy Speaker or, if he is also absent, such person as may be determined by the rules of procedure of the Assembly, or, if no such person is present, such other person as may be determined by the Assembly, shall act as Speaker.

(4) There shall be paid to the Speaker and the Deputy Speaker of the Legislative Assembly such salaries as may be respectively fixed by Act of the Provincial Legislature and, until provision in that behalf is so made, such salaries as the Governor may determine.

(5) In the case of a Province having a Legislative Council, the foregoing provisions of this section [other than the proviso to sub-section (2) thereof]<sup>1</sup> shall apply in relation to the Legislative

Council as they apply in relation to the Legislative Assembly, with the substitution of the titles "President" and "Deputy President" for the titles "Speaker" and "Deputy Speaker" respectively, and with the substitution of references to the council for references to the Assembly.

1. The words within brackets were omitted by the India (Provisional Constitution) Order, 1947.

**66. Voting in Chambers, power of Chambers to act notwithstanding vacancies and quorum :-**

(1) Save as in this Act otherwise expressly provided, all questions in a Chamber, or a joint sitting of two Chambers, of a Provincial Legislature shall be determined by a majority of votes of the members present and voting, other than the Speaker or President, or person acting as such. The Speaker or President, or person acting as such shall not vote in the first instance, but shall have and exercise a casting vote in the case of an equality of votes.

(2) A Chamber of a Provincial Legislature shall have power to act notwithstanding any vacancy in the membership thereof, and any proceedings in a Provincial Legislature shall be valid notwithstanding that it is discovered subsequently that some person who was not entitled so to do, sat or voted or otherwise took part in the proceedings.

(3) If at any time during a meeting of a Provincial Legislative Assembly less than one-sixth of the total number of members of the Chamber are present, or if at any time during a meeting of a Provincial Legislative Council less than ten members are present, it shall be the duty of the Speaker or President or person acting as such either to adjourn the Chamber, or to suspend the meeting until at least one-sixth of the members, or, as the case may be, at least ten members, are present.

**67. Oath of members :-**

Every member of a Provincial Legislative Assembly or Legislative Council shall, before taking his seat, make and subscribe before the Governor, or some person appointed by him, an oath according to that one of the forms set out in the Fourth Schedule to this Act which the member accepts as appropriate in his case.

**68. Vacation of seats :-**

(1) No person shall be a member of both Chambers of a Provincial

Legislature and rules made by the Governor exercising his individual judgment shall provide for the vacation by a person who is chosen a member of both Chambers of his seat in one Chamber or the other.

[(2) No person shall be a member both of the Federal Legislature and of a Provincial Legislature and if a person is chosen a member both of the Federal Legislature and of a Provincial Legislature, then, at the expiration of such period as may be specified in rules made by the Governor of the Province exercising his individual judgment, that person's seat in the Provincial Legislature shall become vacant, unless he has previously resigned his seat in the Federal Legislature.]<sup>1</sup>

(3) If a member of a Chamber-

(a) becomes subject to any of the disqualifications mentioned in sub-section (1) of the next succeeding section; or

(b) by writing under his hand addressed to the Governor resigns his seat, his seat shall thereupon become vacant.

(4) If for sixty days a member of a Chamber is without permission of the Chamber absent from all meetings thereof the Chamber may declare his seat vacant: Provided that in computing the said period of sixty days no account shall be taken of any period during which the Chamber is prorogued, or is adjourned for more than four consecutive days.

1. These words within brackets were omitted by the India (Provisional Constitution) Order, 1947.

### **69. Disqualifications of membership :-**

(1) A person shall be disqualified for being chosen as, and for being, a member of a Provincial Legislative Assembly or Legislative Council-

(a) if he holds any office of profit under the Crown in India, other than an office declared by Act of the Provincial Legislature not to disqualify its holder;

(b) if he is of unsound mind and stands so declared by a competent court;

(c) if he is an undischarged insolvent;

(d) if, whether before or after the commencement of this Part of

this Act, he has been convicted or has, in proceedings for questioning the validity or regularity of an election, been found to have been guilty, of any offence or corrupt or illegal practice relating to elections which has been declared by Order in Council, or by an Act of the Provincial Legislature, to be an offence or practice entailing disqualification for membership of the Legislature, unless such period has elapsed as may be specified in that behalf in the provisions of that Order or Act;

(e) if, [whether before or after the commencement of this Part of this Act]<sup>1</sup>, he has been convicted of any other offence by a Court in British India or in a State which is a Federated State]<sup>2</sup> and sentenced to transportation or to imprisonment for not less than two years, unless a period of five years, or such less period as the Governor, acting in his discretion, may allow in any particular case, has elapsed since his release;

(f) if, having been nominated as a candidate for the Federal or any Provincial Legislature or having acted as an election agent of any person so nominated, he has failed to lodge a return of election expenses within the time and in the manner required by any Order in Council made under this Act or by any Act of the [Federal]<sup>3</sup> or the Provincial Legislature, unless five years have elapsed from the date by which the return ought to have been lodged or the Governor, acting- in his discretion, has removed the disqualification; Provided that a disqualification under paragraph (f) of this sub-section shall not take effect until the expiration of one month from the date by which the return ought to have been lodged or of such longer period as the Governor, acting in his discretion, may in any particular case allow.

(2) A person shall not be capable of being chosen a member of a Chamber of a Provincial Legislature while he is serving a sentence of transportation or of imprisonment for a criminal offence.

(3) Where a person who, by virtue of a conviction or a conviction and a sentence, becomes disqualified by virtue of paragraph (d) or paragraph (e) of sub-section (1) of this section is-at the date of the disqualification a member of a Chamber, his seat shall, notwithstanding anything in this or the last preceding section, not become vacant by reason of the disqualification until three months have elapsed from the date thereof or, if within those three months an appeal or petition for revision is brought in respect of the

conviction or the sentence, until that appeal or petition is disposed of, but during any period which his membership is preserved by this sub-section, he shall not sit or vote.

(4) For the purpose of this section a person shall not be deemed to hold an office of profit under the Crown in India by reason only that he is a minister either for the Federation or for a Province.

1. These words within brackets were omitted by the India (Provisional Constitution) Order, 1947.

2. For the words within brackets, the following words were substituted, by *ibid*- "Before the date of the establishment of the Dominion by court in British India, or on or after that date by a court in a Governor's or Chief Commissioner's Province or an acceding State".

3. This word was substituted by the words 'Dominion', by *ibid*.

### **70. Penalty for sitting and voting when not qualified, or when disqualified :-**

If a person sits or votes as a member of a Provincial Legislative Assembly or Legislative Council when he is not qualified or is disqualified for membership thereof, or when he is prohibited from so doing by the provisions of sub-section (3) of the last preceding section, he shall be liable in respect of each day on which he so sits or votes to a penalty of five hundred rupees to be recovered as a debt due to the Province.

### **71. Privileges, etc., of members :-**

(1) Subject to the provisions of this Act and to rules and standing orders regulating the procedure of the Legislature, there shall be freedom of speech in every Provincial Legislature, and no members of the Legislature shall be liable to any proceeding in any Court in respect of anything said or any vote given by him in the Legislature or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of a Chamber of such a Legislature of any report, paper, votes or proceedings.

(2) In other respects the privileges of members of a Chamber of a Provincial Legislature shall be such as may from time to time be defined by Act of the Provincial Legislature, and, until so defined, shall be such as were <sup>1</sup>

(3) Nothing in any existing Indian law, and, notwithstanding anything in the foregoing provisions of this section, nothing in this Act, shall be construed as conferring, or empowering any

Legislature to confer on a Chamber thereof or on both Chambers sitting together or any committee or officer of the Legislature, the status of a court, or any punitive or disciplinary powers other than the power to remove or exclude persons infringing the rules or standing orders, or otherwise behaving in a disorderly manner.

(4) Provision may be made by an Act of the Provincial Legislature for the punishment, on conviction before a Court, of persons who refuse to give evidence or produce documents before a committee of a Chamber when duly required by the chairman of a committee so to do: Provided that any such Act shall have effect subject to such rules for regulating the attendance before such committees of persons who are, or have been, in the service of the Crown in India, and safeguarding confidential matter from disclosure, as may be made by the Governor exercising his individual judgment.

(5) The provisions of sub-sections (1) and (2) of this section shall apply in relation to persons who by virtue of this Act have the right to speak in and otherwise take part in the proceedings of a Chamber as they apply in relation to members of the Legislature.

1. For the words within brackets, the following were substituted, by *ibid.*- "Establishment of the Dominion enjoyed by members of that Chamber, or in the case of West Bengal and East Punjab, by members, of the Provincial Legislative Assemblies of Bengal and the Punjab, respectively."

## **72. Salaries and allowances of members :-**

Members of Provincial Legislative Assemblies and Legislative Councils shall be entitled to receive such salaries and allowances as may from time to time be determined by Act of the Provincial Legislature, [and until provision in that respect is so made, allowances at such rates and upon such conditions as were immediately before the commencement of this Part of this Act applicable in the case of members of the Legislative Council of the Province.]<sup>1</sup>

1. The words within brackets were omitted, by *ibid.*, and. the following Proviso was added- "Provided that until other provision is so made, members of the Legislative Assemblies of West Bengal and East Punjab shall be entitled to receive salaries and allowances at such rates and upon such conditions as were immediately before the establishment of the Dominion applicable in the case of members of the Legislative Assemblies of Bengal and the Punjab, respectively."

## **73. Introduction of Bills, etc :-**

(1) Subject to the special provisions of this Part of this Act with respect to financial Bills, a Bill may originate in either Chamber of the Legislature of a Province which has a Legislative Council.

(2) A Bill pending in the Legislature of a Province shall not lapse by reason of the prorogation of the Chamber or Chambers thereof.

(3) A Bill pending in the Legislative Council of a Province which has not been passed by the Legislative Assembly shall not lapse on a dissolution of the Assembly.

(4) A Bill which is pending in the Legislative Assembly of a Province,

#### **74. Passing -of Bills in Provinces having Legislative Councils :-**

(1) Subject to the provisions of this section, a Bill shall not be deemed to have been passed by the Chambers of the Legislature of a Province having a Legislative Council, unless it has been agreed to by both Chambers, either without amendments or with such amendments only as are agreed to by both Chambers.

(2) If a Bill which has been passed, by the Legislative Assembly and transmitted to the Legislative Council is not, before the expiration of twelve months from its reception by the Council, presented to the Governor for his assent, the Governor may summon the Chambers to meet in a joint sitting for the purpose of deliberating and voting on the Bill: Provided that, if it appears to the Governor that the Bill relates to finance [or affects the discharge of any of his special responsibilities],<sup>1</sup> he may summon the Chambers to meet in a joint sitting for the purpose aforesaid notwithstanding that the said period of twelve months has not elapsed. [The functions of the Governor under the proviso to this sub-section shall be exercised by him in his discretion.]<sup>1</sup>

(3) If at a joint sitting of the two Chambers summoned in accordance with the provisions of this section the Bill, with such amendments, if any, as are agreed to in joint sitting, is passed by a majority of the total number of members of both Chambers present and voting, it shall be deemed for the purposes of this Act to have been passed by both Chambers: Provided that at a joint sitting-

(a) unless the Bill has been passed by the Legislative Council with amendments and returned to the Legislative Assembly, no

amendment shall be proposed to the Bill other than such amendments, if any, as are made necessary by the delay in the passage of the Bill;

(b) If the Bill has been so passed and returned by the Legislative Council, only such amendments as aforesaid shall be proposed to the Bill and such other amendments as are relevant to the matters with respect to which the Chambers have not agreed, and the decision of the person presiding as to the amendments which are admissible under this sub-section shall be final.

1. The words within brackets were omitted, by *ibid*.

#### **75. Assent to Bills :-**

A Bill which has been passed by the Provincial Legislative Assembly or, in the case of a Province having a Legislative Council, has been passed by both Chambers of the Provincial Legislature, shall be presented to the Governor, and the Governor in his discretion shall declare either that he assents in His Majesty's name to the Bill, or that he withholds assent therefrom, or that he reserves the Bill for the consideration of the Governor-General: Provided that the Governor may in his discretion return the Bill together with a message requesting that the Chamber or Chambers will consider the Bill or any specified provisions thereof and, in particular, will consider the desirability of introducing any such amendments as he may recommend in his message and, when a Bill is so returned, the Chamber or Chambers shall reconsider it accordingly.

#### **76. Bills reserved for consideration :-**

(1) When a Bill is reserved by a Governor for the consideration of the Governor-General, the Governor-General shall in his discretion declare, either that he assents in His Majesty's name to the Bill, or that he withholds assent therefrom, [or that he reserves the Bill for the signification of his Majesty's pleasure thereon]<sup>1</sup>; Provided that the Governor-General may, if he in his discretion thinks fit, direct the Governor to return the Bill to the Chamber, or, as the case may be, the Chambers, of the Provincial Legislature together with such a message as is mentioned in the proviso to the last preceding section and, when a Bill is so returned, the Chamber or Chambers shall reconsider it accordingly and, if it is again passed by them with or without amendment, it shall be presented again to the Governor-General for his consideration.

[(2) A Bill reserved for the signification of His Majesty's pleasure

shall not become an Act of the Provincial Legislature unless and until, within twelve months from the day on which it was presented to the Governor, the Governor makes known by public notification that His Majesty has assented thereto.]<sup>1</sup>

1. These words within brackets were omitted, by *ibid*.

### **77. Power of Crown to disallow Acts :-**

Any Act assented to by the Governor or the Governor-General may be disallowed by His Majesty within twelve months from the date of the assent, and where any Act is so disallowed the Governor shall forthwith make the disallowance known by public notification and as from the date of the notification the Act shall become void. ]<sup>1</sup>

1. These words within brackets were omitted, by *ibid*.

### **78. Annual financial statement :-**

(1) The Governor shall in respect of every financial year cause to be laid before the Chamber or Chambers of the Legislature a statement of the estimated receipts and expenditure of the Province for that year, in this Part of this Act referred to as the "annual financial statement".

(2) The estimates of expenditure embodied in the annual financial statement shall show separately-

(a) The sums required to meet expenditure described by this Act as expenditure charged upon the revenues of the Province; and

(b) the sums required to meet other expenditure proposed to be made from the revenues of the Province, and shall distinguish expenditure on revenue account [from other expenditure, and indicate the sums, if any, which are included solely because the Governor has directed their inclusion as being necessary for the due discharge of any of his special responsibilities.]<sup>1</sup>

(3) The following expenditure shall be expenditure charged on the revenues of each Province-

(a) the salary and allowances of the Governor and other expenditure relating to his office for which provision is [required to be made by Order in Council]<sup>2</sup>

(b) debt charges for which the Province is liable, including interest, sinking fund charges and redemption charges, and other expenditure relating to the raising of loans and the service and

redemption of debt;

(c) the salaries and allowances of ministers, and of the Advocate-General :

(d) expenditure in respect of the salaries and allowances of judges of any High Court;

(f) any sums required to satisfy any judgment, decree or award of any court or arbitral tribunal;

(g) any other expenditure declared by this Act or any Act of the Provincial Legislature to be so charged.

[(4) Any question whether any proposed expenditure falls within a class of expenditure charged on the revenues of the Province shall be decided by the Governor in his discretion.]<sup>1</sup>

1. These words within brackets were omitted, by *ibid.*

2. These words were substituted by the following, by *ibid.*- "Made by or under the Third Schedule to the Act."

### **79. Procedure in Legislature with respect to estimates :-**

(1) So much of the estimates of expenditure as relates to expenditure charged upon the revenues, of a Province shall not be submitted to the vote of the Legislative Assembly, but nothing in this sub-section shall be construed as preventing the discussion in the Legislature of those estimates, other than estimates relating to expenditure referred to in paragraph (a) of sub-section (3) of the last preceding section.

(2) So much of the said estimates as relates to other expenditure shall be submitted, in the form of demands for grants, to the Legislative Assembly, and the Legislative Assembly shall have power to assent, or to refuse to assent, to any demand, or to assent to a demand subject to a reduction of the amount specified therein.

(3) No demand for a grant shall be made except on the recommendation of the Governor.

### **80. Authentication of schedule of authorised expenditure :-**

(1) The Governor shall authenticate by his signature a schedule specifying-

(a) the grants made by the Assembly under the last preceding

section;

(b) the several, sums required to meet the expenditure charged on the revenues of the Province but not exceeding, in the case of any sum, the sum shown in the statement previously laid before the Chamber or Chambers: [Provided that, if the Assembly have refused to assent to any demand for grant or have assented to such a demand subject to a reduction of the amount specified therein, the Governor may, if in his opinion the refusal or reduction would affect the due discharge of any of his special responsibilities, include in the schedule such additional amount, if any, not exceeding the amount of the- rejected demand or the reduction, as the case may be, as appears to him necessary in order to enable him to discharge that responsibility.]<sup>1</sup>

(2) The schedule so authenticated shall be laid before the Assembly but shall not be open to discussion or vote in the Legislature.

(3) Subject to the provisions of the next succeeding section, no expenditure from the revenues of the province shall be deemed to be duly authorised unless it is specified in the schedule so authenticated.<sup>2</sup>

1. The words within brackets were omitted, by *ibid*.

2. After sub-sec. (3). the following Proviso was added, by *ibid*.- "Provided that e-xoenditure from the revenues of the Province of West Bengal or East Punjab durine- the period berinning with the 15th day of August 1947 and ending with the 31st day of March 1948 may be authorised or ratified by general or special order of the Governor."

### **81. Supplementary, statements of expenditure :-**

If in respect of any financial -year further expenditure from the revenues of the Province be comes necessary over and aboVe the expenditure authorised for that year, the Governor shall cause to be laid before the Chambers a supplementary statement showing the estimated amount of the expenditure, and the provisions of the preceding sections shall have effect in relation to that statement and that expenditure as they have effect in relation to the annual financial statement and the expenditure mentioned therein.

### **82. Special provisions as to financial Bills :-**

(1) A Bill or amendment making provision.

(a) for imposing or increasing any tax; or

(b) for regulating the borrowing of money or the giving of any guarantee by the Province, or for amending the law with respect to any financial obligations undertaken or to be undertaken by the Province; or

(c) for declaring any expenditure to be expenditure charged on the revenues of the Province, or for increasing the amount of any such expenditure, shall not be introduced or moved except on the recommendation of the Governor and a Bill making such provision shall not be introduced in a Legislative Council.

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

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

**83. Provisions with respect to certain educational grants :-**

(1) If in the last complete financial year' before the commencement of this Part of this Act a grant for the benefit of the Anglo-indian and European communities or either of them was included in the grants made in any Province for education, then in each subsequent financial year, not being a year in which the Provincial Legislative Assembly otherwise resolve by a majority which includes at least three-fourths of the members of the Assembly, a grant shall be made for the benefit of the said community or communities not less in amount than the average of the grants made for its or their benefit in the ten financial years ending on the thirty first day of March, nineteen hundred and thirty-three: Provided that, if in any financial year the total grant for education in the Province is less than the average of the total grants for education in the Province in the said ten financial years, then, whatever fraction the former may be of the latter, any grant made under this sub-section in that financial year for the benefit of the said community or communities need not exceed that fraction of the average of the grants made for its or their benefit in the said ten financial years. In computing for the purposes of this sub-section the amount of any grants, grants for capital purposes shall be included.

(2) The provisions of this section shall cease to have effect in a Province if at any time the Provincial Legislative Assembly resolve by a majority which includes at least three-fourths of the members of the Assembly that those provisions shall cease to have effect.

(3) Nothing in this section affects the special responsibility of the Governor of a Province for the safeguarding of the legitimate interests of minorities] <sup>1</sup>

1. The words within brackets were omitted, by ibid.

#### **84. Rules of procedure :-**

(1) A Chamber of a Provincial Legislature may make rules for regulating, subject to the provisions of this Act, their procedure and the conduct of their business: [Provided that, as regards either a Legislative Assembly or a Legislative- Council, the Governor shall in his discretion, after consultation with the Speaker or the President, as the case may be, make rules-

(a) for regulating the procedure of, and the conduct of business in, the Chamber in relation to any matter which affects the discharge of his functions in so far as he is by or under this Act required to act in his discretion or to exercise his individual judgment;

(b) for securing the timely completion of financial business;

(c) for prohibiting the discussion of or the asking of questions on, any matter connected with any Indian State unless the Governor in his discretion is satisfied that the matter affects the interests of the Provincial Government or of a British subject ordinarily resident in the Province, and has given his consent to the matter being discussed, or to the question being asked;

(d) for prohibiting, save with the consent of the Governor in his discretion-

(i) the discussion of or the asking of questions on any matter connected with relations between His Majesty or the Governor-General and any foreign State or Prince; or

(ii) the discussion, except in relation to estimates of expenditure, of, or the asking of questions on, any matters connected with the tribal areas or arising out of or affecting the administration of an excluded area; or

(iii) the discussion of, or the asking of questions on, the personal

conduct of the Ruler of any Indian State or of a member of the ruling family thereof; and, if and in so far as any rule so made by the Governor is inconsistent with any rule made by a Chamber, the rule made by the Governor shall prevail] <sup>1</sup>

(2) In a Province having a Legislative Council the Governor, after consultation with the Speaker and the President, may make rules as to the procedure with respect to joint sittings of, and communications between, the two Chambers. The said rules shall make such provision for the purposes specified in the proviso to the preceding sub-section as the Governor in his discretion may think fit.

(3) Until rules are made under this section the rules of procedure and standing orders in force immediately before the commencement of this Part of this Act with respect to the legislative Council of the Province, shall have effect in relation to the Legislature of the Province, subject to such modifications and adaptations as may be made therein by the Governor acting in his discretion.

(4) At a joint sitting of two Chambers the President of the Legislative Council, or in his absence such person as may be determined by rules of procedure made under this section, shall preside.

1. The words within brackets were omitted, by *ibid*.

#### **85. English to be used in Provincial Legislature :-**

All proceedings in the legislature of a Province shall be conducted in the English language: Provided that the rules of procedure of the Chamber or Chambers, and the rules, if any, with respect to joint sittings, shall provide for enabling persons unacquainted, or not sufficiently acquainted, with the English language to use another language;].<sup>1</sup>

1. The words within brackets were omitted, by *ibid*.

#### **86. Restrictions on discussion in the Legislature :-**

(1) No discussion shall take place in a Provincial Legislature with respect to the conduct of any judge of the Federal Court or of a High Court in the discharge of his duties. In this sub-section the reference to a High Court shall be construed as including a reference 'to a court in a Federated State which is a High Court for any of the purposes of Part IX of this Act.

[(2) If the Governor in his discretion certifies ,that the discussion of a Bill introduced or proposed to be introduced in the Provincial Legislature, or of any specified clause of a Bill or of any amendment moved or proposed to be moved to a Bill, would affect the discharge of his special responsibility for the prevention of any grave menace to the peace or tranquillity of the Province or any part thereof, he may in his discretion direct that no proceedings, or no further proceedings, shall be taken in relation to the Bill, clause or amendment, and effect shall be given to the direction] <sup>1</sup>

1. The words within brackets were omitted, by *ibid*.

### **87. Courts to inquire into proceedings of the Legislature :-**

(1) The validity of any proceedings in a Provincial Legislature shall not be called in question on the ground of any alleged irregularity of procedure.

(2) No officer or other member of a Provincial Legislature in whom powers are vested by or under this Act for regulating procedure or the conduct of business, or for maintaining order, in the Legislature shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers.

#### CHAPTER 4

#### LEGISLATIVE POWERS OF GOVERNOR

### **88. Power of Governor to promulgate ordinances during recess of Legislature :-**

(1) It 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; <sup>1</sup>[Provided that the Governor-

(a) shall exercise his individual judgment as respects the promulgation of any ordinance under this section, if-

(i) 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; or

(ii) an Act of the Provincial Legislature containing the same provisions would under this Act have been invalid unless, having been reserved for the consideration of the Governor-General or for the signification of His Majesty's pleasure, it had received the

assent of the Governor-General or of His Majesty; and

(b) shall without instructions from the Governor-General acting in his discretion, promulgate any such ordinance if-

(i) 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

(ii) he would have deemed it necessary to reserve a Bill containing the same' provisions for the consideration of the Governor-General; or

(iii) an Act of the Provincial Legislature containing the same provisions would under this Act have been invalid unless, having been reserved for the consideration of the Governor-General or for the signification of His-Majesty's pleasure, it had received the assent of the Governor-General or of His Majesty.]

(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 Assembly and agreed to 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 power of His Majesty to disallow Acts as if it were an Act of the Provincial Legislature assented to by the Governor; and

(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.

<sup>2</sup> [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

1. Substituted by the India and Burma (Miscellaneous Amendments) Act, 1940 (3 and 4 Geo. 6, ch. 5) s. 4. This Proviso, again, was substituted by the India (Provisional Constitution) Order, 1947, as follows- "Provided that the Governor shall not,

without instructions from the Governor-General, promulgate any such Ordinance if an Act of the Provincial Legislature containing the same provisions would under this Act have been invalid unless, having been reserved for the consideration of the Governor-General, it had received assent of the Governor-General."

2. Inserted, *ibid*.

**89. Power of Governor to promulgate ordinances at any time with respect to certain subjects :-**

(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, <sup>1</sup> [or an existing Indian Law with respect to a matter enumerated in the Concurrent Legislative List], 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 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.

1. Inserted by the India and Burma (Miscellaneous Amendments) Act, 1940 (3 and 4 Geo. 6, ch.5), s.4.

**90. Power of Governor in certain circumstances to enact Acts :-**

(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 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 <sup>1</sup> [or an existing Indian Law with respect to a matter enumerated in the Concurrent Legislative List], 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.

1. Inserted by the India and Burma (Miscellaneous Amendments') Act, 1940 (3 and 4 Geo.VI, ch.5), s.4.

#### CHAPTER 5

#### EXCLUDED AREAS AND PARTIALLY EXCLUDED AREAS

### **91. Excluded areas and partially excluded areas :-**

(1) In this Act the expressions "excluded area" and "partially excluded area" His Majesty may by Order in Council<sup>1</sup> declare to be excluded areas or partially excluded areas.

(2) His Majesty may at any time by order in Council-

(a) direct that the whole or any specified part of an excluded area shall become, or become part of, a partially excluded area;

(b) direct that the whole or any specified part of a partially excluded area shall cease to be a partially excluded area or a part of such an area;

(c) alter, but only by way of rectification of boundaries, and excluded or partially excluded area;

(d) on any alteration of the boundaries of a Province, or the creation of a new Province, declare any territory not previously in any Province to be, or to form part of, an excluded area or a

partially excluded area, and any such Order may contain such incidental and consequential provision? as appear to His Majesty to be necessary and proper, but save as aforesaid the Order in Council made under sub-section (1) of this section shall not be varied by any subsequent Order.

1. See the Government of India (Excluded and Partially Excluded Areas) Order, 1936 13-3-1936].

## **92. Administration of excluded areas and partially excluded areas :-**

(1) The executive authority of a Province extends to excluded and partially excluded areas therein, but notwithstanding anything in this Act, no Act of the Federal Legislature or of the Provincial Legislature, shall apply to an excluded area or a partially excluded area, unless the Governor by public notification so directs; and the Governor in giving such a direction with respect to any Act may direct that the Act shall in its application to the areas, or to any special part thereof, have effect subject to such exceptions or modifications as he thinks fit.

(2) The Governor may make regulations for the peace and good government of any area in a Province which is for the time being an excluded area, or a partially excluded area, and any regulations so made may repeal or amend any Act of the Federal Legislature or of the Provincial Legislature, or any existing Indian law, which is for the time being applicable to the area in question. Regulations made under this sub-section shall be submitted forthwith to the Governor-General and until assented to by him in his discretion shall have no effect, [and the provisions of this Part of this Act with respect to the power of His Majesty to disallow Acts shall apply in relation to any such regulations assented to by the Governor-General as they apply in relation to Acts of a Provincial Legislature assented to by him.]<sup>1</sup>

[(3) The Governor shall, as respects any area in a Province which is for the time being an excluded area, exercise his functions in his discretion] <sup>1</sup>

1. Omitted by the India (Provisional Constitution) Order, 1947.

## CHAPTER 6

### PROVISIONS IN CASE OF FAILURE OF CONSTITUTIONAL MACHINERY

## **93. Power of Governor to issue Proclamations :-**

(1) If at any time the Governor of a Province is satisfied that a situation has arisen in which the government of the Province cannot be carried on in accordance with the provisions of this Act, he may by Proclamation-

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

(3) A Proclamation under this section-

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

(b) unless it is a Proclamation revoking a previous Proclamation, shall cease to operate at the expiration of six months; Provided that, if and so often as a resolution approving the continuance in force of such a Proclamation is passed by both Houses of Parliament, the Proclamation shall, unless revoked, continue in force for a further period of twelve months from the date on which under this sub-section it would otherwise have ceased to operate, but no such Proclamation shall in any case remain in force for more than three years'

(4) If the Governor by a Proclamation under this section, assumes to himself any power of the Provincial Legislature to make laws, any law made by him in the exercise of that power shall, subject to the terms thereof, continue to have effect until two years have elapsed from the date on which the Proclamation ceases to have effect, unless sooner repealed or re-enacted by Act of the appropriate Legislature, and any reference in this Act to Provincial Acts, Provincial laws, or Acts or laws of a Provincial Legislature shall be construed as including a reference to such a law.

(5) The functions of the Governor under this section shall be exercised by him in his discretion and no Proclamation shall be made by a Governor under this section without the concurrence of the Governor-General in his discretion.

#### PART 4

#### THE CHIEF COMMISSIONERS PROVINCES

### **94. Chief-Commissioners Provinces :-**

(1)-The following shall be the Chief Commissioners' Provinces, that is to say, the heretofore existing Chief Commissioners' Provinces of British Baluchistan],<sup>1</sup> Delhi, Ajmer-Merwara, Coorg and .the

Andaman and Nicobar Islands, the area known as Panth

[(2) Aden shall cease to be part of India] <sup>2</sup>

.

(3) A Chief Commissioner's Province shall: be administered by the Governor-General acting, to such extent as he thinks fit, through a Chief Commissioner to be appointed by him in his discretion.

1. Omitted by the India (Provisional Constitution) Order, 1947.

2. Omitted by the India (Provisional Constitution) Order, 1947.

### **95. British Baluchistan :-**

(1) In directing and controlling the administration of British Baluchistan, the Governor-General shall act in his discretion.

(2) The executive authority of the Federation extends to British Baluchistan as it extends to other Chief Commissioner's Provinces, but notwithstanding anything in this Act, no Act of the Federal Legislature shall apply to British Baluchistan unless the Governor-General in his discretion by public notification so directs, and the Governor-General in giving such a direction with respect to any Act may direct that the Act shall in its application to the Province, or to any specified part thereof, have effect subject to such exceptions or modifications as he thinks fit.

(3) The Governor-General may in his discretion make regulations for the peace and good government of British Baluchistan, and any regulations so made may repeal or amend any Act of the Federal legislature or any existing Indian law which is for the time being applicable to the Province and, when promulgated by the Governor-General, shall have the same force and effect as an Act of the Federal Legislature which applies to the Province. The provisions of Part II of this Act relating to the power of His Majesty to disallow Acts shall apply in relation to any such regulations as they apply in relation to Acts of the Federal Legislature assented to by the Governor-General.]

### **96. The Andaman and Nicobar Islands :-**

The provisions of sub-section (3) of the last preceding section shall apply in relation to the Andaman and Nicobar Islands as they apply in relation to British Baluchistan.

### **97. Coorg :-**

Until other provision is made by <sup>1</sup> [His Majesty in Council], the

constitution, powers and functions of the Coorg Legislative Council, and the arrangements with respect to revenues collected in Coorg and expenses in respect of Coorg, shall continue unchanged.

1. These words were substituted, by *ibid.*, by the words-or in accordance with a law made by the Constituent Assembly under sub-section (1) of s. 8 of the Indian Independence Act, 1947".

**98. Provisions as to police rules andc., and as to crimes of violence in- tended to werthrow the Government :-**

The provisions of Part III of this Act with respect to police rules and with respect to crimes of violence in- tended to overthrow the government, including the provisions thereof relating to the non-disclosure of certain records and information, shall apply in relation to Chief Commissioners' Provinces as they apply in relation to Governor's Provinces, with the substitution for references to the Gov- ernor and the Chamber or Chambers of the Provincial Legislature of references to the Governor-General and the Chamber of the Federal Legislature.

PART 5

LBGISLATIVE POWERS

CHAPTER 1

DISTRIBUTION OF POWERS

**99. Extent of Federal arid Provincial laws :-**

(1) Subject to the provisions of this Act, the Federal Legislature may make laws [for the whole or any part of British India or for any Federal Stater, and a Provincial Legislature may make laws for the Province or for any part thereof.

**1**

[(2) Without prejudice to the generality of the powers conferred by the preceding sub-section, no Federal law shall, on the ground that it would have extra territorial operation, be deemed to be invalid in so far as it applies-

(a) to British subjects and servants of the Crown in any part of India or

(b) to British subjects who are domiciled in any part of India wher- ever they may be; or

(c) to, or to persons on, ships or aircraft registered in British India or any Federated State wherever they may be; or

(d) in the case of a law with respect to a matter accepted in the Instrument of Accession of a Federated State as a matter with respect to which the Federal Legislature may make laws for that State, to subjects of that State wherever they may be; or

(e) in the case of a law for the regulation or discipline of a naval, military, or air force raised in British India, to members of, and persons attached to, employed with or following, that force, whenever they may be.]

1. Omitted, by *ibid.*

### **100. Subject-matter of Federal and Provincial laws :-**

(1) Notwithstanding anything in the two next succeeding sub-sections, the Federal Legislature has and a Provincial Legislature has not, power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule to this Act (hereinafter called the "Federal Legislative List").

(2) Notwithstanding anything in the next succeeding sub-section, the Federal Legislature, and, subject to the preceding sub-section, a Provincial Legislature also, have power to make laws with respect to any of the matters enumerated in List III in the said Schedule (hereinafter) called the "Concurrent Legislative List").

(3) Subject to the two preceding sub-sections the Provincial Legislature has, and the Federal Legislature has not, power to make laws for a Province or any part thereof with respect to any of the matters enumerated in List II in the said Schedule (hereinafter called the "Provincial Legislative List").

(4) The Federal Legislature has power to make laws with respect to matters enumerated in the Provincial Legislative List except for a Province or any part thereof.

### **101. Extent of power to legislate for States :-**

Nothing in this Act shall be constructed as empowering the Federal Legislature to make laws for a Federated State otherwise than in accordance with the Instrument of Accession of that State and any limitation contained therein.

### **102. Fewer of Federal Legislature to legislate if an emergency is proclaimed :-**

(1) Notwithstanding anything in the preceding sections of this

chapter, the Federal Legislature shall, if the Governor-General has in his discretion declared by Proclamation (in this Act referred to as a "Proclamation of Emergency") that a grave emergency exists whereby the security of India is threatened, whether by war or internal disturbance, have power to make laws for a Province or any part thereof with respect to any of the matters enumerated in the Provincial Legislative List <sup>1</sup>[or to make laws, whether or not, for a Province or any part thereof, with respect to any matter not enumerated in any of the lists in the Seventh Schedule to this Act.] Provided that no Bill or amendment for the purposes aforesaid shall be introduced or moved without the previous sanction of the Governor-General in his discretion, and the Governor-General shall not give his sanction unless it appears to him that the provision proposed to be made is a proper provision in view of the nature of the emergency.

(2) Nothing in this section shall restrict the power of a Provincial Legislature to make any law which under this Act it has power to make, but if any provision of a Provincial law is repugnant to any provision of a Federal law which the Federal Legislature has under this section power to make, the Federal law, whether passed before or after the Provincial law, shall prevail, and the Provincial law shall to the extent of the repugnancy, but so long only as the Federal law continues to have effect, be void.

<sup>2</sup>[(3) A Proclamation of Emergency-

(a) may be revoked by a subsequent Proclamation;

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

(c) shall cease to operate at the expiration of six months, unless before the expiration of that period it has been approved by Resolutions of both Houses of Parliament.]

(4) A law made by the Federal Legislature which that Legislature would not but for the issue of a Proclamation of Emergency have been competent to make <sup>3</sup>[shall, to the extent of the incompetency, cease to have effect] on the expiration of a period of six months after the Proclamation

**4**

[(5) A Proclamation of Emergency declaring that the security of

India is threatened by war or by internal disturbance may be made before the actual occurrence of war or of any such disturbance if the Governor-General in his discretion is satisfied that there is imminent danger thereof.]

1. Inserted by the India (Proclamations of Emergency) Act, 1946 (3 and 10 Geo. 6, Ch. 23), S. 1. The Act shall be deemed to have come into operation on the commencement of Part III of the Government of India Act. (See s. 2 of the 1946 Act).

2. For sub-sec. (3), the following was substituted, 'by the India (Provisional Constitution) Order, 1947- "A Proclamation of Emergency may be revoked by a subsequent Proclamation".

3. Section 5 of the India (Central Government and Legislature) Act, 1946 (9 and 10 Geo. VI, Ch. 39), by which these words are substituted, runs as follows:-

4. Inserted by the Government of India (Amendment) Act, 1939 (2 and 3 Geo. 6, Ch. 66), s. 1, (effective from 1-4-1937) See s. 2(2), *ibid.*

### **103. Power of Federal Legislature to legislate for two or more Provinces by consent :-**

If it appears to the Legislature of two or more Provinces to be desirable that any of the matters enumerated in the Provincial Legislative List should be regulated in those Provinces by Act of the Federal Legislature, and if resolutions to that effect are passed by all the Chambers of those Provincial Legislatures, it shall be lawful for the Federal Legislature to pass an Act for regulating that matter accordingly, but any Act so passed may, as respects any Province to which it applies, be amended or repealed by an Act of the Legislature of that Province.

### **104. Residual powers of legislation :-**

(1) The Governor-General may by public notification empower either the Federal Legislature or a Provincial Legislature to enact a law with respect to any matter not enumerated in any of the Lists in the Seventh Schedule to this Act, including, a law imposing a tax not mentioned in any such list, and the executive authority of the Federation or of the Province, as the case may be, shall extend to the administration of any law so made, unless the Governor-General otherwise directs.

**1** (2) In the discharge of his functions under this section the Governor-General shall act in his discretion.]

1. Omitted by the India (Provisional Constitution) Order, 1947.

**105. Application of Naval Discipline Act to Indian naval forces :-**

(1)<sup>1</sup> Without prejudice to the provisions' of this Act with respect to the legislative powers of the Federal Legislature, provision may be made by Act of that Legislature for applying the Naval Discipline Act to the Indian naval forces and, so long as provision for that purpose is made either by an Act of the Federal Legislature or by an existing Indian law, the Naval Discipline Act as so applied shall have effect as if references therein to His Majesty's navy and His Majesty's ships included references to His Majesty's Indian navy and the ships thereof, subject however:-

(a) in the application of the said Act to the forces and ships of the Indian navy and to the trial by court martial of officers and men belonging thereto, to such modifications and adaptations, if any, as may be, or may have been, made by the Act of the Federal or Indian Legislature to adapt the said Act to the circumstances of India, including such adaptations as may be, or may have been, so made for the purpose of authorising or requiring anything which under the said Act is to be done "A law made by the Indian Legislature whether before or after the passing of this Act, during the continuance in force of the proclamation of Emergency being a law which that Legislature would not, but for the issue of such a Proclamation, have been competent to make, shall not cease to have effect as required by sub-section (4) of section one hundred and two of the Government of India Act, 1935, except to the extent to which the said Legislature would not, but for the issue of that Proclamation, have been competent to make it, and accordingly, in the said sub-section (4) for the words "shall cease to have effect" there shall be substituted the words "shall, to the extent of the incompetency, cease to have effect."

(b) in the application of the said Act to the forces and ships of His Majesty's navy other than those of the Indian navy, to such modifications and adaptations as may be made, or may have been made under section sixty-six of the Government of India Act, by His Majesty in Council for the purpose of regulating the relations of those forces and ships to the forces and the ships of the Indian navy.

(2) Notwithstanding anything in this Act or in any Act of any Legislature in India, where any forces and ships of the Indian navy have been placed at the disposal of the Admiralty, the Naval

Discipline Act shall have effect as if references therein to His Majesty's navy and his Majesty's ships included references to His Majesty's Indian navy and the ships thereof, without any such modifications or adaptations as aforesaid.

1. Omitted by the India (Provisional Constitution) Order, 1947.

**106. Provisions as to legislation for giving effect to international agreements :-**

(1) The Federal Legislature shall not by reason only of the entry in the Federal Legislative List relating to the implementing of treaties and agreements with other countries have power to make any law for any Province except with the previous consent of the Governor, or for a Federated State except with the previous consent of the Ruler, thereof.

(2) So much of any law as is valid only by virtue of any such entry as aforesaid may be repealed by the Federal Legislature and may, on the treaty or agreement in question ceasing to have effect, be repealed as respects any Province or State by a law of that Province or State.

(3) Nothing in this section applies in relation to any law which the Federal Legislature has power to make for a Province or as the case may be, a Federated State, by virtue of any other entry in the Federal or the Concurrent Legislative List as well as by virtue of the said entry.

**107. Inconsistency between Federal laws and Provincial or State laws :-**

(1) If any provision of a Provincial law is repugnant to any provision of a Federal law which the Federal Legislature is competent to enact or to any provision of an existing Indian law with respect to one of the matters enumerated in the Concurrent Legislative List, then, subject to the provisions of this section, the Federal law, whether passed before or after the Provincial law, or as the case may be, the existing Indian law, shall prevail and the Provincial law shall, to the extent of the repugnancy, be void.

(2) Where a Provincial law with respect to one of the matters enumerated in the Concurrent Legislative List contains any provision repugnant to the provisions of an earlier Federal law or an existing Indian law with respect to that matter, then, if the

Provincial law, having been reserved for the consideration of the Governor-General [or for the signification of His Majesty's pleasure],<sup>1</sup> has received the assent of the Governor-General or of His Majesty, the Provincial law shall in that Province prevent, but nevertheless the Federal Legislature may at any time enact further legislation with respect to the same matter. Provided that no Bill or amendment for making any provision repugnant to any Provincial law, which, having been so reserved has received the assent of the Governor-General or of His Majesty, shall be introduced or moved

(3) If any provision of a law of a Federated State is repugnant to a Federal law which extends to that State, the Federal law, whether passed before or after the law of the State, shall prevail and the law of the State shall, to the extent of the repugnancy be void.

1. Omitted by *ibid*.

## CHAPTER 2

### RESTRICTIONS ON LEGISLATIVE POWERS

#### **108. Sanction of Governor-General or Governor required for certain legislative proposals :-**

(1) Unless the Governor-General in his discretion thinks fit to give previous sanction, there shall not be introduced into, or moved in, either Chamber of the Federal Legislature, any Bill or amendment which-

(a) repeals, amends or is repugnant to any provisions of any Act of Parliament extending to British India; or

(b) repeals, amends or is repugnant to any Governor-General's or Governor's Act, or any ordinance promulgated in his discretion by the Governor-General or a Governor; or

(c) affects matters as respects which the Governor-General is, by or under this Act, required to act in his discretion; or

(d) repeals, amends or affects any Act relating to any police force; or

(e) affects the procedure for criminal proceedings in which European British subjects are concerned; or

(f) subjects persons not resident in British India to greater taxation than persons resident in British India or subject companies not wholly controlled and managed in British India to greater taxation

than companies wholly controlled and managed therein; or

(g) affects the grant of relief from any Federal tax on income in respect of income taxed or taxable in the United Kingdom.

(2) Unless the Governor-General in his discretion thinks fit to give his previous sanction, there shall not be introduced into, or moved in, a Chamber of a Provincial Legislature any Bill or amendment which-

(a) repeals, amends, or is repugnant to any provisions of any Act of Parliament extending to British India; or

(b) repeals, amends or is repugnant to any Governor-General's Act, of any ordinance promulgated in his discretion by the Governor-General; or

(c) affects matters as respects which the Governor-General is by or under this Act, required to act in his discretion; or

(d) affects the procedure for criminal proceedings in which European British subjects are concerned; and unless the Governor of the Province in his discretion thinks fit to give his previous sanction, there shall not be introduced or moved any Bill or amendment which-

(i) repeals, amends or is repugnant to any Governor's Act, or any ordinance promulgated in his discretion by the Governor; or

(ii) repeals, amends or affects any Act relating to any police force.

(3) Nothing in this section affects the operation of any other provision in this Act which requires the previous sanction of the Governor-General or of a Governor to the introduction of any Bill or the moving of any amendment]

**109. Requirements as to sanctions and recommendations to be regarded as matters of procedure only :-**

(1) Where under any provision of this Act the previous sanction or recommendation of the Governor-General or of a Governor is required to the introduction or passing of a Bill or the moving of an amendment, the giving of the sanction or recommendation shall not be construed as precluding him from exercising subsequently in regard to the Bill in question any powers conferred upon him by this Act with respect to the withholding of assent to, or the reservation of, Bills.

(2) No Act of the Federal Legislature or a Provincial Legislature and no provision in any such Act, shall be invalid by reason only that some previous sanction or recommendation was not given, if assent to that Act was given-

(a) where the previous sanction or recommendation required was that of the Governor, either by the Governor, <sup>1</sup>[by the Governor-General], [or by His Majesty]<sup>2</sup> ;

(b) where the previous sanction or recommendation required was that of the Governor-General, either by Governor-General or by His Majesty.

1. The word 'or' was inserted, by *ibid.*

2. Omitted, by the India (Provisional Constitution) Order, 1947,

### **110. Savings :-**

Nothing in this Act shall be taken-

(a) to affect the power of Parliament to legislate for British India, or any part thereof; or

(b) to empower the Federal Legislature, or any Provincial Legislature-

(i) to make any law affecting the Sovereign or the Royal Family, or the Succession to the Crown, or the sovereignty, dominion or suzerainty of the Crown in any part of India, or the law of British nationality, or the Army Act, the Air Force Act, or the Naval Discipline Act, or the law of Prize courts; or

(ii) except in so far as is expressly permitted by any subsequent provisions of this Act, to make any law amending any provision of this Act, or any Order in Council made thereunder, or any rules made under this Act by the Secretary of State, or by the Governor-General or a Governor in his discretion, or in the exercise of his individual judgment; or

(iii) except in so far as is expressly permitted by any subsequent provision of this Act, to make any law derogating from any prerogative right of His Majesty to grant special leave to appeal from any court].

### **CHAPTER 3**

PROVISIONS WITH RESPECT TO DISCRIMINATION, ETC

### **111. British subjects domiciled in the United Kingdom :-**

(1) Subject to the provisions of this chapter, a British subject domiciled in the United Kingdom shall be exempt from the operation of so much of any Federal or Provincial law as-

(a) imposes any restriction on the right of entry into British India; or.

(b) imposes by reference to place of birth, race, descent, language, religion, domicile, residence or duration of residence, any disability, liability, restriction or condition in regard to travel, residence, the acquisition, holding, or disposal of property, the holding of public office, or the carrying on of any occupation, trade, business or profession: Provided that no. person shall by virtue of this sub-section be entitled to exemption from such restriction, condition, liability or disability as aforesaid if and so long as British subjects domiciled in British India are by or under the law of the United Kingdom subject in the United Kingdom to alike restriction, condition, liability, or disability imposed in regard to the same subject matter by reference to the same principle of distinction.

(2) For the purposes of the preceding sub-section, a provision, whether of the law of British India or of the law of the United Kingdom, empowering any public authority to impose quarantine regulations, or to exclude or deport individuals, wherever domiciled who appear to that authority to be undesirable persons, shall not be deemed to be a restriction on the right of entry.

(3) Notwithstanding anything in this section, if the Governor-General or, as the case may be, the Governor of any Province, by public notification certifies that for the prevention of any grave menace to the peace or tranquillity of any part of India or, as the case may be, 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 the provisions of sub-section (1) of this section should be wholly or partially suspended in relation to any law, then while the notification is in force the operation of those provisions shall be suspended accordingly. The functions of the Governor-General and a Governor under this sub-section shall be exercised by him in his discretion.

## **112. Taxation :-**

(1) No Federal or Provincial law which imposes any liability to taxation shall be such as to discriminate against British subjects domiciled in the United Kingdom or Burma or companies

incorporated, whether before or after the passing of this Act, by or under the laws of the United Kingdom or Burma, and any law passed or made in contravention of this section shall, to the extent of the contravention, be invalid.

(2) Without prejudice to the generality of the foregoing provisions, a law shall be deemed to be such as to discriminate against such persons or companies as aforesaid if it would result in any of them being liable to greater taxation than that to which they would be liable if domiciled in British India or incorporated by or under the laws of British India, as the case may be.

(3) For the purposes of this section a company incorporated before the commencement of Part III of this Act under any existing Indian law and registered thereunder in Burma shall be deemed to be a company incorporated by or under the laws of Burma.

### **113. Companies incorporated in the United Kingdom :-**

(1) Subject to the following provisions of this chapter, a company incorporated, whether before or after the passing of this Act, by or under the laws of the United Kingdom, and the members of the governing body of any such company and the holders of its shares, stock, debentures, debenture stock or bonds,

(a) the place of incorporation of a company or the situation of its registered office, or the currency in which its capital or loan capital is expressed; or

(b) the place of birth, race, descent, language, religion, domicile, residence or duration of residence of members of the governing body of a company, or of the holders of its shares, stock, debentures, debenture stock or bonds, or of, its officers, agents or servants; Provided that no company or person shall by virtue of this section, be deemed to comply with any such requirement or condition as aforesaid if and so long as a like requirement or condition is imposed by or under the law of the United Kingdom in regard to companies incorporated by or under the laws of British India and carrying on or proposing to carry on business in the United Kingdom.

(2) If and in so far as any total or partial exemption from, or preferential treatment in respect of, taxation imposed on companies by or under any Federal or Provincial law depends on compliance with conditions as to any of the matters mentioned in sub-section

(1) of this section, any company incorporated by or under the laws of the United Kingdom carrying on business in British India shall be deemed to satisfy those conditions and be entitled to the exemption or preferential treatment accordingly, so long as the taxation imposed by or under the laws of the United Kingdom on companies incorporated by or under the laws of British India and carrying on business in the United Kingdom does not depend on compliance with conditions as to any of the matters so mentioned.

**114. Companies incorporated in India :-**

(1) Subject to the following provisions of this chapter, a British subject domiciled in the United Kingdom shall be deemed to comply with so much of any Federal or Provincial law as imposes in regard to companies incorporated or proposed to be incorporated, whether before or after the passing of this Act, by or under the laws of British India, any requirements or conditions relating to, or connected with, the place of birth, race, descent, language, religion, domicile, residence or duration of residence of members of the governing body of a company, or of the holders of its shares, stock, debentures, debenture stock or bonds or of its officers, agents or servants; Provided that no person shall by virtue of this section be deemed to comply with any such requirement or condition as aforesaid if and so long as a like requirement or condition is imposed by or under the law of the United Kingdom in regard to companies incorporated or proposed to be incorporated by or under the laws of the United Kingdom on British subjects domiciled in British India.

(2) If and in so far as, in the case of any such companies as aforesaid, any total or partial exemption from, or preferential treatment in respect of, taxation imposed by or under any Federal or Provincial law depends on compliance with conditions as to any of the matters aforesaid, then, so far as regards such members of its governing body and such of the holders of its shares, stock, debentures, debenture stock or bonds, and such of its officers, agents, and servants, as are British subjects domiciled in the United Kingdom, any such company shall be deemed to satisfy those conditions and be entitled to the exemption or preferential treatment accordingly, so long

(3) For the purposes of this section, but not for the purposes of any other provision of this chapter, a company incorporated before the commencement of Part III of this Act under any existing Indian law

and registered thereunder in Burma, shall be deemed to be a company incorporated by or under the laws of British India.

**115. Ships and aircraft :-**

(1) No. ship registered in the United Kingdom shall be subjected by or under any Federal or Provincial law to any treatment affecting either the ship herself, or her master, officers, crew, passengers cargo, which is discriminatory in favour of ships registered in British India, except in so far as ships registered in British India are for the time being subjected by or under any law of the United Kingdom to treatment of a like character which is similarly discriminatory in favour of ships registered in the United Kingdom.

(2) This section shall apply in relation to aircraft as it applies in relation to ships.

(3) The provisions of this section are in addition to and not in derogation of the provisions of any of the preceding sections of this chapter.

**116. Subsidies for the encouragement of trade or industry :-**

(1) Notwithstanding anything in any Act of the Federal Legislature or of a Provincial Legislature, companies incorporated, whether before or after the passing of this Act, by or under the laws of the United Kingdom and carrying on business in India shall be eligible for any grant, bounty or subsidy payable out of the revenues of the Federation or of a Province for the encouragement of any trade or industry to the same extent as companies incorporated by or under the laws of British India are eligible therefor: Provided that this sub-section shall not apply in relation to any grant, bounty or subsidy for the encouragement of any trade or industry, if and so long as under the law of United Kingdom for the time being in force companies incorporated by or under the laws of British India and carrying on business in the United Kingdom are not equally eligible with companies incorporated by or under the laws of the United Kingdom for the benefit of any grant, bounty or subsidy payable out of public moneys in the United Kingdom for the encouragement of the same trade or industry.

(2) Notwithstanding anything in this chapter, an Act of the Federal Legislature or of a Provincial Legislature may require, in the case of a company which at the date of the passing of that Act was not

engaged in British India in that branch of trade or industry which it is the purpose of the grant, bounty or subsidy to encourage, that the company shall not be eligible 'for any grant, bounty or subsidy under the Act unless and until

(a) the company is incorporated by or under the laws of British India or, if the Act so provides, is incorporated by or under the laws of British India or of a Federal State; and

(b) such proportion, not exceeding one half, of the members of its governing body as the Act may prescribe, are British subjects domiciled in India or, if the Act so provides, are either British subjects domiciled in India or subjects of a Federated State; and

(c) the company gives such reasonable facilities as may be so prescribed for the training of British subjects domiciled in India or, if the Act so provides, of British subjects domiciled in India or subjects of a Federated State.

(3) For the purposes of this section a company incorporated by or under the laws of the United Kingdom shall be deemed to be carrying on business in India if it owns ships which habitually trade to and from ports in India.

**117. Supplemental :-**

The foregoing provisions of this chapter shall apply in relation to any ordinance, order, bye-law, rule or regulation passed or made after the passing of this Act and having by virtue of any existing Indian law, or of any law of the Federal or any Provincial legislature, the force of law as they apply in relation to Federal and Provincial laws, but, save as aforesaid, nothing in those provisions shall affect the operation of any existing Indian law.

**118. Power to secure reciprocal treatment by convention :-**

(1) If after the establishment of the Federation a convention is made between His Majesty's Government in the United Kingdom and the Federal Government whereby similarity of treatment is assured in the United Kingdom to British subjects domiciled in British India and to companies incorporated by or under the laws of British India and in British India to British subjects domiciled in the United Kingdom and to companies incorporated by or under the laws of the United Kingdom, respectively, in respect of the matters, or any of the matters, with regard to which provision is made in the preceding sections of this chapter, His Majesty may, if he is

satisfied that all necessary legislation has been enacted both in the United Kingdom and in India for the purpose of giving effect to the convention, by Order in Council declare that the purpose of those sections are to such extent as may be specified in the Order sufficiently fulfilled by that convention and legislation, and while any such Order is in force, the operation of those sections shall to that extent be suspended.

(2) An Order in Council under this section shall cease to have effect if and when the convention to which it relates expires or is terminated by either party thereto.

**119. Professional and technical qualifications in general :-**

(1) No Bill or amendment which prescribes, or empowers any authority to prescribe, the professional or technical qualifications which are to be requisite for any purpose in British India or which imposes, or empowers any authority to impose, by reference to any professional or technical qualification, and disability, 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, shall be introduced or moved in either Chamber of the Federal Legislature without the previous sanction of the Governor-General in his discretion, or in a Chamber of a Provincial Legislature without the previous sanction of the Governor in his discretion.

(2) The Governor-General or a Governor shall not give his sanction for the purposes of the preceding sub-section unless he is satisfied that the proposed legislation is so framed as to secure that no person who, immediately before the coming into operation of any disability, liability, restriction or condition to be imposed by or under that legislation, was

(3) All regulations made under the provisions of any Federal or Provincial law which prescribe the professional or technical qualifications which are to be requisite for any purpose in British India or impose, by reference to any professional or technical qualification, any disability, 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, shall, 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, and, 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. In this sub-section the expression "regulations" includes rules, bye-laws, orders and ordinances. In the discharge of his functions under this sub-section the Governor-General or a Governor shall exercise his individual judgment.

(4) If the Governor-General exercising his individual judgment by public notification directs that the provisions of the last preceding sub-section shall apply in relation to any existing Indian law, those provisions shall apply in relation to that law accordingly, and the functions which under those provisions are to be performed in relation to a Federal law by the Governor-General and in relation to a Provincial law by the Governor shall, in relation to that existing Indian law, be performed, according as may be directed by the notification, by the Governor-General exercising his individual judgment, by the Governor exercising his individual judgment or partly by the one and partly by the other of them.

### **120. Medical qualifications :-**

(1) So long as the condition set out in sub-section (3) of this section continues to be fulfilled, a British subject domiciled in the United Kingdom or India who, by virtue of a medical diploma granted to him in the United Kingdom, is, or is entitled to be, registered in the United Kingdom as a qualified medical practitioner shall not by or under any existing India law or any law of the Federal or any Provincial Legislature, be excluded from practising medicine, surgery or midwifery in British India, or in any part thereof, or from being registered as qualified so to do, on any ground other than the ground that the diploma held by him does not furnish a sufficient guarantee of his possession of the requisite knowledge and skill for the practice of medicine, surgery and midwifery, and he shall not be so excluded on that ground unless a law of the Federation or of the Province, as the case may be, makes provision for securing-

(a) that no proposal for excluding the holders of any particular

(b) that such a proposal shall not become operative or, as the case may be, shall cease to operate, if the Privy Council on an application made to them under the next succeeding sub-section determine that the diploma in question ought to be recognised as furnishing such a sufficient guarantee as aforesaid.

(2) If any University or other body in the United Kingdom which grants a medical diploma, or any British subject who holds such a diploma, is aggrieved by the proposal to exclude holders of that diploma from practice or registration in British India, that body or person may make an application to the Privy Council, and the Privy Council after giving to such authorities and persons both in British India and in the United Kingdom as they think fit an opportunity of tendering evidence or submitting representations in writing, shall determine whether the diploma in question does or does not furnish a sufficient guarantee of the possession of the requisite knowledge and skill for the practice of medicine, surgery and midwifery, and shall notify their determination to the Governor-General, who shall communicate it to such authorities, and cause it to be published in such manner, as he thinks fit.

(3) The condition referred to in sub-section (1) of this section is that British subjects domiciled in India who hold a medical diploma granted after examination in British India shall not be excluded from practising medicine, surgery or midwifery in the United Kingdom or from being registered therein as qualified medical practitioners, except on the ground that that diploma does not furnish a sufficient guarantee of the possession of the requisite knowledge and skill for the practice of medicine, surgery and midwifery, and shall only be excluded on that ground so long as the law of the United Kingdom makes provision for enabling any question as to the sufficiency of that diploma to be referred to and decided by the Privy Council.

(4) A medical practitioner entitled to practise or to be registered in British India by virtue of a diploma granted in the United Kingdom, or in the United Kingdom by virtue of a diploma granted in British India, shall not in the practice of his profession be subjected to any liability, disability, restriction or condition to which persons entitled to practise by virtue of diplomas granted in the other country are not subject.

(5) The foregoing provisions of this section shall, subject to the modifications hereinafter mentioned, apply in relation to British

subjects domiciled in Burma who, by virtue of medical diplomas granted to them in Burma or the United Kingdom, are, or are entitled to be, registered in the United Kingdom as qualified medical practitioners as they apply in relation to British subjects domiciled in the United Kingdom who, by virtue of Medical diplomas granted in the United Kingdom, are or are entitled to be, registered in the United Kingdom as qualified medical practitioners. The said modifications are as follows, that is to say,-

(a) sub-section (3) shall not apply and the reference in Sub-section (1) to the condition set out therein shall be deemed to be omitted ;

(b) any reference in sub-section (2) or sub-section (4) to the United Kingdom shall be construed as a reference to Burma.

(6) Nothing in this section shall be construed as affecting any power of any recognised authority in the United Kingdom or British India to suspend or debar any person from practice on the ground of misconduct, or to remove any person from a register on that ground.

(7) In this section the expression "diploma" includes any certificate, degree, fellowship, or other document or status granted to persons passing examinations.

### **121. Officers of Indian Medical Service, etc :-**

A person who holds a commission from His Majesty as a medical officer in the Indian Medical Service or any other branch of His Majesty's forces and is on the active list shall by virtue of that commission be deemed to be qualified to practise medicine, surgery and midwifery in British India, and be entitled to be registered in British India or any part thereof as so qualified.

#### PART 6

ADMINISTRATIVE RELATIONS BETWEEN FEDERATION, PROVINCES AND -STATES

#### PART 7

FINANCE, PROPERTY, CONTRACTS AND SUITS

#### CHAPTER 1

FINANCE

### **136. Distribution :-**

of Revenues between the Federation and the Federal Units. Meaning of "revenues of Federation" and "revenues of Province". Subject to the following provisions of this chapter with respect to the assignment of the whole or part of the net proceeds of certain

taxes and duties to Provinces and Federated States, <sup>1</sup> [and subject to the provisions of this Act with respect to the Federal Railway Authority], the expression "revenues of the Federation" includes all revenues and public moneys raised or received by the Federation, and the expression "revenues of the Province" includes all revenues and public moneys raised or received by a Province.

1. Omitted, by the India (Provisional Constitution) Order, 1947.

**137. Certain succession duties, stamp duties, terminal taxes and taxes on fares and freights :-**

Duties in respect of succession to property other than agricultural land, <sup>1</sup>estate duty in respect of property other than agricultural land, such stamp duties as are mentioned in the Federal Legislative List, terminal taxes on goods or passengers carried by railway, or air, and taxes on railway fares and freights, shall be levied and collected by the [Federation], <sup>2</sup>but the net proceeds in any financial year of any such duty or tax, except in so far as those proceeds represent proceeds attributable to Chief Commissioners' Provinces, shall not form part of the revenues of the [Federation], <sup>2</sup>but shall be assigned to the Provinces and to the [Federated]<sup>4</sup>States, if any, within which that duty or tax is leviable in that year, and shall be distributed among the Provinces and those States in accordance with such principles of distribution as may be formulated by Act of the [Federal]<sup>5</sup>Legislature: Provided that the [Federal]<sup>4</sup>Legislature may at any time increase any said duties or taxes by a surcharge for [Federal]<sup>4</sup>purposes and the whole proceeds of any such surcharge shall form' part of the revenues of the [Federation] <sup>4</sup>

1. Inserted by India (Estate Duty) Act, 1945(6 and 9 Geo. 6, Ch. 7), S. 1.

2. Substituted, by *ibid.*, by the word 'Dominion'.

4. Substituted, by *ibid.*, by the word 'Acceding'.

5. Substituted, by *ibid.*, by the word 'Dominion'.

**138. Taxes on income :-**

(1) Taxes on income other than agricultural income shall be levied and collected by the Federation, but a prescribed percentage of the net proceeds in any financial year of any such tax, except in so far as those proceeds represent proceeds attributable to Chief Commissioners' Provinces or to taxes payable in respect of [Federal]<sup>1</sup>emoluments, shall not form part of the revenues of the [Federation]<sup>1</sup>, but shall be assigned to the Provinces and to the

[Federated]<sup>3</sup>States, if any, within which that tax is leviable in that year, and shall be distributed among the Provinces and those States in such manner as may be prescribed<sup>4</sup>: Provided that-

(a) the percentage originally prescribed under this sub-section shall not be increased by any [subsequent Order in Council].<sup>5</sup>

(b) the [Federal<sup>1</sup>Legislature may at any time increase the said taxes by a surcharge for [Federal]<sup>1</sup>purposes and the whole proceeds of any such surcharge shall form part of the revenues of the [Federation:].<sup>19</sup>[For the purposes of this sub-section, in each financial year <sup>10</sup>[one per cent., or] such <sup>6</sup>[other] percentage as may be prescribed, of so much of the net proceeds of taxes on income as does not represent the net proceeds of taxes payable in respect of [Federal]<sup>1</sup>emoluments shall be deemed to represent proceeds attributable to the Chief Commissioners' Provinces]. .

(2) Notwithstanding anything in the preceding sub-section, the [Federation] <sup>1</sup>may retain out of the moneys assigned by that sub-section to Provinces and States-

(a) in each year of a prescribed period such sum as may be prescribed [or, <sup>5</sup>if it is so prescribed, the whole of those moneys] ; and

(b) in each year of a further prescribed period a sum less than that retained in the preceding year by an amount, being the same amount in each year, so calculated that the sum to be retained in the last year of the period will be equal to the amount of each such annual reduction: Provided that-

(i) neither of the periods originally prescribed shall be reduced by any subsequent' Order in Council;

(ii) the Governor-General in his discretion may in any year of the second prescribed period direct that the sum to be retained by the [Federation? in that year shall be the sum retained in the preceding year, and that the second prescribed period shall be correspondingly extended, but he shall not give any such direction except after consultation with such representatives of [Federal], <sup>1</sup>Provincial and State interest as he may think desirable, nor shall he give any such direction unless he is <sup>1</sup>Government requires him so to do.

(3) Where an Act of the [Federal]<sup>1</sup> Legislature imposes a surcharge for [Federal]<sup>1</sup> purposes under this section, the Act shall provide for the payment by each [Federated]<sup>1</sup> State in which taxes on income are not leviable by the Federation of a contribution to the revenues of the Federation assessed on such basis as may be prescribed with a view to securing that the contribution shall be the equivalent, as near as may be, of the net proceeds which it is estimated would result from the surcharge if it were leviable in that State, and the State shall become liable to pay that contribution accordingly.

(4) In this section- "taxes on income" does not include a corporation tax; "prescribed" means prescribed by [His Majesty in Council]<sup>20</sup> and "Federal emoluments" includes all emoluments and pensions payable out of the revenues of the [Federation]<sup>1</sup> or of the Federal Railway Authority in respect of which income-tax is chargeable.

1. Substituted, by *ibid.*, by the word 'Dominion'.
3. Substituted, by *ibid.*, by the word 'Acceding',.
4. See the Government of India (Distribution of Revenues) Order. 1936 (3-7-1936).
5. Substituted, by *ibid.*, by the words 'Order of the Governor-General'.
9. Inserted by the India and Burma (Miscellaneous Amendments) Act, 1940 (3 and 4 Geo 6, Ch.7), S.I.
10. Omitted, by the India (Provisional Constitution) Order, 1947,
20. Substituted, by *ibid.*, by the words 'Order of the Governor-General'.

### **139. Corporation tax :-**

(1) Corporation tax shall not be levied by the Federation in any Federated State until ten years have elapsed from the establishment of the Federation.

(2) Any Federal law providing for the levying of corporation tax shall contain provisions enabling the Ruler of any Federated State in which the tax would otherwise be leviable to elect that the tax shall not be levied in the State, but that in lieu thereof there shall be paid by the State to the revenues of the Federation a contribution as near as may be equivalent to the net proceeds which it is-estimated would result from the tax if it were levied in the .State.

(3) Where the Ruler of a State so elects as aforesaid, the officers of the Federation shall not call for any information or returns from any

corporation in the State, but it shall be the duty of the Ruler thereof to cause to be supplied to the Auditor-General of India such information as the Auditor-General may reasonably require to enable the amount of any such contribution to be determined. If the Ruler of a State is dissatisfied with the determination as to the amount of the contribution payable by his State in any financial year, he may appeal to the Federal Court, and if he establishes to the satisfaction of that Court that the amount determined is excessive, the Court shall reduce the amount accordingly and no appeal shall lie from the decision of the Court on the appeal].

**140. Salt duties, excise duties and export duties :-**

(1) Duties on salt, Federal duties of excise and export duties shall be levied and collected by the Federation, but, if an Act of the Federal Legislature so provides, there shall be paid out of the revenues of the Federation to the Provinces and to the Federated States, if any, to which the Act imposing the duty extends, sums equivalent to the whole or any part of the net proceeds of that duty, and those sums shall be distributed among the Provinces and those States in accordance with such principles of distribution as may be formulated by the Act.

(2) Notwithstanding anything in the preceding sub-section, [one half <sup>1</sup>, of the net proceeds in each year of any export duty on jute products shall not form part of the revenues of the Federation, but shall be assigned to the Provinces or Federated States in which jute is grown in proportion to the respective amounts of jute grown therein.

1. Substituted,, by *ibid.*, by the words 'such proportion as the Governor-General may by order determine'.

**141. Prior sanction of Governor-General-required to Bills affecting taxation in which Provinces are interested :-**

(1) No Bill or amendment which imposes or varies any tax or duty in which Provinces are interested or which varies the meaning of the expression "agricultural income" as defined for the purposes of the enactments relating to Indian income-tax, or which affects the principles on which under any of the foregoing provisions of this chapter moneys are or may be distributable to Provinces or States, or which imposes any such Federal surcharge as is mentioned in the foregoing provisions of this chapter, shall be introduced or moved in either Chamber of the Federal Legislature except with the

previous sanction of the Governor- General in his discretion.,

(2) The Governor-General shall not give his sanction to the introduction of any Bill or the moving of any amendment imposing in any year any such Federal surcharge as aforesaid unless he is satisfied that all practicable economies and all practicable measures for otherwise increasing the proceeds of Federal taxation or the portion thereof retainable by the Federation would not result in the balancing of Federal receipts and expenditure on revenue account in that year.

(3) In this section the expression "tax or duty in which Provinces are interested" means-

(a) a tax or duty the whole or part of the net proceeds whereof are assigned to any Province; or

(b) a tax or duty by reference to the net proceeds whereof sums are for the time being payable out of the revenues of the Federation to any Provinces.

#### **142. Grants from Federation to certain Provinces :-**

Such sums as may be prescribed by [His Majesty in Council]<sup>1</sup> shall be charged on the revenues of the Federation in each year as grants-in-aid- of the revenues of such Provinces as His Majesty may determine to be in need of assistance, and different sums may be prescribed for different Provinces: Provided that, except in the case of the North-West Frontier Province, no grant fixed under this section shall be increased by a subsequent Order, unless an address has been presented to the Governor-General by both Chambers of the Federal Legislature for submission to [His Majesty]<sup>2</sup> praying that the increase may be made.

1. Substituted, by *ibid.*, by the words 'Order of the Governor-General'.

2. Substituted, by *ibid.*, by the words 'the Governor-General'.

#### **142A. Taxes on professions, trades, callings and employments :-**

(1) Notwithstanding anything in section one hundred of this Act, no Provincial law relating to taxes for the benefit of a Province or of a municipality, district board, local board or other local authority therein in respect of professions, trades, callings or employments shall be invalid on the ground that it relates to a tax on income.

(2) The total amount payable in respect of any one person to the Province or to any one municipality, district board, local board, or other local authority in the Province by way of taxes on professions, trades, callings and employments shall not, after the thirty-first day of March nineteen hundred and thirty-nine, exceed fifty rupees per annum: Provided that, if in the financial year ending with that date there was in force in the case of any Province or any such municipality, board or authority a tax in professions, trades callings or employments the rate, or the maximum rate, of which exceeded fifty rupees per annum, the preceding provisions of this sub-section shall, unless for the time being provision to the contrary is made by a law of the Federal Legislature, have effect in relation to that Province, municipality, board or authority as if for the reference to fifty rupees per annum there -were substituted a reference to that rate or maximum rate, or such .lower rate, if any (being a rate greater than fifty rupees per annum), as may for the time being be fixed by a law of the Federal Legislature; and any law of the Federal Legislature made for any of the purposes of this proviso may be made either generally or in relation to any specified Provinces, municipalities, boards or authorities.

(3) The fact that the Provincial Legislature has power to make laws as aforesaid with respect to taxes on professions, trades, callings and employments shall not be construed as limiting, in relation to professions, trades, callings and employments, the generality of the entry in the Federal Legislative List relating to taxes on income].

### **143. Savings :-**

(1) Nothing in the foregoing provisions of this chapter affects any duties or taxes levied in any Federated State otherwise than by virtue of an Act of the Federal Legislature applying in the Stated

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[(1A) Nothing in the foregoing provisions of this chapter authorises the levy of any duty or tax by the Dominion in any Acceding State unless provision in that behalf is made in the Instrument of Accession of that State.]

(2) Any taxes, duties, cesses or fees which, immediately before the commencement of Part III of this Act, were being lawfully levied by any Provincial Government, municipality or other local authority or body for the purposes of the Province, municipality, district or other local area under a law in force on the first day of January, nineteen

hundred and thirty-five<sup>2</sup> , may, notwithstanding that those taxes ,duties, cesses or fees are mentioned in the Federal Legislative List, continue to be levied and to be applied to the same purposes until provision to the contrary is made by the Federal Legislature.

1. Sub-sec. (1A) was inserted, by the India (Provisional Constitution) Order, 1947.

2. To be construed as reference to the 1-4-1937 for a period of two years thereafter under the India and Burma (Transitory Provisions) Order, 1937, para, 3.

#### **144. Calculation of "net proceeds," etc :-**

(1) In the foregoing provisions of this chapter "net proceeds" means in relation to any tax or duty the proceeds thereof reduced by the cost of collection, and for the purposes of those provisions the net proceeds of any tax or duty, or of any part of any tax or duty, in or attributable to any area shall be ascertained and certified by the Auditor-General of India, whose certificates shall be final.

(2) Subject as aforesaid, and to any other express provision of this chapter, an Act of the Federal Legislature may, in any case where under

#### **145. Expenses of the Crown in connection with Indian States :-**

There shall be paid to His Majesty by the Federation in each 'year the sums stated by His Majesty's Representative for the exercise of the functions of the Crown in its relations with Indian States to be required, whether on revenue account or otherwise, for the discharge of those functions, including the making of any payments in respect of any customary allowances to members of the family or servants of any former Ruler of any territories in India.

#### **146. Payments from or by Indian States :-**

All cash contributions and payments in respect of loans and other payments due from or by any Indian State which, if this Act had not been passed, would have formed part of the revenues of India, shall be received by His Majesty, and shall if His Majesty has so directed, be placed at the disposal of the Federation, but nothing in this Act shall derogate from the right of His Majesty, if he thinks fit so to do, to remit at any time the whole or any part of any such contributions or payments.

#### **147. Remission of States contributions :-**

(1) Subject to the provisions of sub-section (3) of this section His Majesty may, in signifying his acceptance of the Instrument of Accession of a State, agree to remit over a period not exceeding twenty years from the date of the accession of the State to the Federation any cash contributions payable by that State.

(2) Subject as aforesaid, where any territories have been voluntarily ceded to the Crown by a Federated State before the passing of this Act-

(a) in return for specific military guarantees, or

(b) in return for the discharge of the State from obligations to provide military assistance, there shall, if His Majesty, in signifying his acceptance of the Instrument of Accession of that State, so directs be paid to that State, but in the first-mentioned case on condition that the said guarantees are waived, such sums as in the Opinion of His Majesty ought to be paid in respect of any such cession as aforesaid.

(3) Notwithstanding anything in this section-

(a) every such agreement or direction as aforesaid shall be such as to secure that no such remission or payment shall be made by virtue of the agreement or direction until the Provinces have begun to receive moneys under the section of this chapter relating to taxes on income, and, in the case of a remission, that the remission shall be complete before the expiration of twenty years from the date of the accession to the Federation of the State in question, or before the end of the second prescribed period referred to in sub-section (2) of the said section, whichever first occurs; and

(b) no contribution shall be remitted by virtue of any such agreement save in so far as it exceeds the value of any privilege or immunity enjoyed by the State; and

(c) in fixing the amount of any payments in respect of ceded territories, account shall be taken of the value of any such privilege or immunity.

(4) This section shall apply in the case of any cash contributions the liability for which has before the passing of this Act been discharged by payment of a capital sum or sums, and accordingly His Majesty may agree that the capital sum or sums so paid shall be repaid either by instalments or otherwise, and such repayments

shall be deemed to be remissions for the purposes of this section.

(5) In this chapter "cash contributions" means-

(a) periodical contributions in acknowledgment of the suzerainty of His Majesty, including contributions payable in connection with any arrangement for the aid and protection of a State by His Majesty, and contributions in commutation of any obligation of a State to provide military assistance to His Majesty, or in respect of the maintenance by His Majesty of a special force for service in connection with a State, or in respect of the maintenance of local military forces or police or in respect of the expenses of an agent;

(b) periodical contributions fixed on the creation or restoration of a State, or on a re-grant or increase of territory, including annual payments for grants of land on perpetual tenure or for equalisation of the value of exchanged territory;

(c) periodical contributions formerly payable to another State but now payable to His Majesty by right of conquest, assignment or lapse.

(6) In this chapter "privilege or immunity" means any such right, privilege, advantage or immunity of a financial character as is hereinafter mentioned, that is to say-

(a) rights, privileges or advantages in respect of, or connected with, the levying of sea customs or the production and sale of untaxed salt;

(b) sums receivable in respect of the abandonment or surrender of the right to levy internal customs duties, or to produce or manufacture salt, or to tax salt or other commodities or goods in transit, or sums receivable in lieu of grants of free salt;

(c) the annual value to the Ruler of any privilege or territory granted in respect of the abandonment or surrender of any such right as is mentioned in the last preceding paragraph;

(d) privileges in respect of free service stamps or the free carriage of State mails on government business:

(e) the privilege of entry free from customs duties of goods imported by sea and transported in bond to the State in question ;  
and

(f) the right to issue currency notes, not being a right, privilege,

advantage or immunity surrendered upon the accession of the State, or one which, in the opinion of His Majesty, for any other reason ought not to be taken into account for the purposes of this chapter.

(7) An Instrument of Accession of a State shall not be deemed to be suitable for acceptance by His Majesty, unless it contains such particulars as appear to His Majesty to be necessary to enable due effect to be given to the provisions of this and the next but one succeeding sections, and in particular provision for determining from time to time the value to be attributed for the purposes of those provisions to any privilege or immunity the value of which is fluctuating or uncertain.

**148. Certain payments to Federated States, etc., to be charged on Federal revenues :-**

Any payments made under the last preceding section and any payments heretofore made to any State by the Governor-General in Council or by any Local Government under any agreements made with that State before the passing of this Act, shall be charged on the revenues of the Federation or on the revenues of the corresponding Province under this Act, as the case may be.

**149. Value of privileges and immunities to be set off against share of taxes, etc., assigned to Federated States :-**

Where under the foregoing provisions of this chapter there is made in any year by the Federation to a Federated State any payment or distribution of, or calculated by reference to, the net proceeds of any duty or tax, the value in and for that year of any privilege or immunity enjoyed by that State in respect of any former or existing source of revenue from a similar duty or tax or from goods of the same kind, being a privilege or immunity which has not been otherwise taken into account shall, if and in so far as the Act of the Federal Legislature under which the payment or distribution is made so provides, be set against the payment or distribution.

**150. Expenditure defrayable out of Indian revenues :-**

(1) No burden shall be imposed on the revenues of the Federation or the Provinces except for the purposes of [India]<sup>1</sup> or some part of [India].

(2) Subject as aforesaid, the Federation or a Province may make grants for any purpose, notwithstanding that the purpose is not

one with respect to which the Federal or the Provincial Legislature, as the case may be, may make laws.

1. Substituted, by *ibid.*, by the word 'Dominion'.

**151. Provisions as to the custody of public moneys :-**

(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 moneys into the said account, the withdrawal of moneys therefrom, the custody of moneys therein, and any other matters connected with or ancillary to the matters aforesaid.

**1** [(2) In the exercise of his powers under this section the Governor-General or a Governor shall exercise his individual judgment].

1. Omitted, by *ibid.*

**152. Exercise by Governor-General of certain powers with respect to Reserve Bank :-**

The functions of the Governor-General with respect to the following matters shall be exercised by him in his discretion, that is to say-

(a) the appointment and removal from office of the Governor and Deputy Governors of the Reserve Bank of India, the approval of their terms of office;

(b) the appointment of an officiating Governor or Deputy Governor of the Bank;

(c) the supersession of the Central Board of the Bank and any action consequent thereon; and

(d) the liquidation of the Bank.

(e) In nominating directors of the Reserve Bank of India and in removing from office any director nominated by him, the Governor-General shall exercise his individual judgment.

**153. Previous sanction of Governor-General to legislation**

**with respect to Reserve Bank, currency and coinage :-**

No Bill or amendment which affects the coinage or currency of the Federation or the constitution or functions of the Reserve Bank of India shall be introduced into or moved in <sup>1</sup> [either Chamber] of the Federal Legislature without the previous sanction of the Governor-General in his discretion.

1. Omitted, by *ibid*.

**154. Exemption of certain public property, from taxation :-**

Property vested in His Majesty for purposes of the government of the Federation shall, save in so far as any Federal law may otherwise provide, be exempt from all taxes imposed by, or by any authority within, a Province or Federated State: Provided until any Federal law otherwise provides, any property so vested which was immediately before the commencement of Part III of this Act liable, or treated as liable, to any such tax, shall, so long as that tax continues, continue to be liable, or to be treated as liable, thereto.

**154A. Exemption from- taxes on electricity :-**

Save in so far as any Federal law may otherwise provide, no Provincial law or law of a Federated State shall impose, or authorise the imposition of, a tax on the consumption or sale of electricity (whether produced by a Government or other persons) which is-

(a) consumed by the Federal Government, or sold to the Federal Government for consumption by that Government; or

(b) consumed in the construction, maintenance or operation of a Federal Railway by <sup>1</sup>[the Federal Railway Authority or] a railway company operating that railway, or sold so <sup>1</sup> [that authority or] any such railway company for consumption in the construction, maintenance or operation of a Federal Railway; and any such law imposing, or authorising the imposition of a tax on the sale of electricity shall secure that the price of electricity sold to the Federal Government for consumption by that Government, or to the Federal Railway Authority or any such railway company as aforesaid for consumption in the construction, maintenance or operation of a Federal Railway, shall be less by the amount of the tax than the price charged to other consumers of a substantial quantity of electricity.]

1. Omitted, by *ibid*.

**155. Exemption of Provincial Governments and Rulers of**

## **Federated States in respect of Federal taxation :-**

(1) Subject as hereinafter provided, the Government of a Province and the Ruler of a Federated State shall not be liable to Federal taxation in respect of lands or buildings situate in <sup>1</sup> [British] India or income accruing, arising or received in British India; Provided that-

(a) where a trade or business of any kind is carried on by or on behalf

(b) nothing in this sub-section shall exempt a Ruler from any Federal taxation in respect of any lands, buildings or income being his personal property or personal income.

(2) Nothing in this Act affects any exemption from taxation enjoyed as of right at the passing of this Act by the Ruler of an Indian State in respect of any Indian Government securities issued before that date.

1. Omitted, by *ibid.*

## **156. Adjustment in respect of certain expenses and pensions :-**

Where under the provisions of this Act the expenses of any court or commission, or the pension payable to or in respect of a person - who has served under the Crown in India, are charged on the revenues of the Federation or the revenues of a Province, then if-

(a) in the case of a charge on the revenues of the Federation, the court or commission serves any of the separate needs of a Province, or the person has served wholly or in part in connection with the affairs of a Province; or

(b) in the case of charge on the revenues of a Province, the court or commission serves any of the separate needs of the Federation or another Province, or the person has served wholly or in part in connection with the affairs of the Federation or another Province. there shall be charged on and paid out of the revenues of the Province or, as the case may be, the revenues of the Federation or of the other Province, such contribution in respect of the expenses or pension as may be agreed, or as may in default of agreement be determined by an arbitrator to be appointed by the Chief Justice of India.

## **157. Duty of Federation and Provinces to supply Secretary of State with Funds :-**

(1) The Federation and every Province shall secure that there are from time to time in the hands of the Secretary of State sufficient moneys to enable him to make such payments as he may have to make in respect of liability which falls to be met out of the revenues of the Federation or of the Province as the case may be.

(2) Without prejudice to, their obligations under the preceding subsection, the Federation and every Province shall secure that there are from time to time in the hands of the Secretary of State and the High Commissioner sufficient moneys to enable payment to be made of all pensions payable out of the revenues of the Federation or the Province, as the case may be. in the United Kingdom or through officers accounting to the Secretary of State or to the High Commissioner.

**158. Provisions as to relation of Burma monetary system with India :-**

(1) His Majesty in Council may make such provision <sup>1</sup> as may appear to him to be necessary or proper for defining and regulating the relations between the monetary systems of India and Burma and for purposes connected with or ancillary to those purposes, and in particular, but without prejudice to the generality of this section, such provision as may appear to His Majesty to be necessary or proper for the purpose of giving effect to any arrangements with respect to the said matters made before the commencement of Part III of this Act with the approval of the Secretary of

(2) Any sums required by an Order under this section to be paid by the Federation shall be charged on the revenues of the Federation.

1. Omitted, by the India (Provisional Constitution) Order, 1947,

**159. Relief in respect of tax on income taxable both in India and Burma :-**

His Majesty in Council may make provision for the grant of relief from any Federal tax on income taxed or taxable in Burma.<sup>1</sup>

1. See the India and Burma (Burma Monetary Arrangements) Order, 1937 [18-3-1937].

**160. Provisions as to customs duties on India-Burma trade :-**

With a view to preventing undue disturbance of trade between India and Burma in the period immediately following the separation of India and Burma and with a view to safeguarding the economic

interests of Burma during that period, His Majesty may by Order in Council give such directions as he thinks fit for those purposes with respect to the duties which are, while the Order is in force, to be levied on goods imported into or exported from India or Burma and with respect to ancillary and related matters.

## CHAPTER 2

### BORROWING AND AUDIT

#### **161. Cessation of borrowing by Secretary of State in Council :-**

Upon the commencement of Part III of this Act all powers vested in the Secretary of State in Council of borrowing on the security of the revenues of India shall cease and determine, but nothing in this section affects the provisions of Part XIII of this Act with respect to borrowing in sterling by the Secretary of State.

#### **162. Borrowing by Federal Government :-**

<sup>1</sup> [Subject to the provisions of Part XIII of this Act with respect to borrowing in sterling], the executive authority of the Federation extends to' borrowing upon .the security of the revenues of the Federation within such limits, if any, as may from time to time be fixed by Act of the Federal Legislature and to the giving of guarantees within such limits, if any, as may be so fixed.

1. Omitted, by the India (Provisional Constitution) Order, 1947.

#### **163. Borrowing by Provincial Governments :-**

(1) Subject to the provisions of this section, the executive authority of a Province extends to borrowing upon the security of the revenues of the Province within such limits, if any, as may from time to time be fixed by the Act of the Provincial Legislature and to the giving of guarantees within such limits, if any, as may be so fixed.

(2) The Federation may, subject to such conditions, if any, as it may think fit to impose, make loans to, or, so long as any limits fixed under the last preceding section are not exceeded, give guarantees in respect of loans raised by, any Province and any sums required for the purpose of making loans to a Province-shall be charged on the revenues of the Federation.

(3) A Province may not without the consent of the Federation borrow outside India, nor without the like consent raise any loan if there is still

(4) A consent required by the last preceding sub-section shall not be unreasonably withheld, nor shall the Federation refuse, if sufficient cause is shown, to make a loan to, or to give a guarantee in respect of a loan raised by, a Province, or seek to impose in respect of any of the matters aforesaid any condition which is unreasonable, and, if any dispute arises whether a refusal of consent, or a refusal to make a loan or to give a guarantee, or any condition insisted upon, is or is not justifiable, the matter shall be referred to <sup>1</sup> [the Governor-General and the decision of the Governor-General in his discretion shall be final].

1. Substituted, by *ibid.*, by the words "an arbitrator appointed by the Chief Justice of India, whose decision shall be final",

**164. Loans by Federal Government to Federated States :-**

The Federation may, subject to such conditions, if any, as it may think fit to impose, make loans to, or so long as any limits fixed under the last but one preceding section are not exceeded, give guarantees in respect of loans raised by, any Federated State.

**165. Application of Colonial Stock Acts to stocks issued by Federation :-**

(1) Colonial Stock Acts, 1877, Colonial Stock Acts, 1900, shall, notwithstanding anything to the contrary in those Acts, apply in relation to sterling stock issued after the establishment of the Federation and forming part of the public debt of the Federation as they apply in relation to stock forming part of the public debt of any British Possession mentioned in those Acts, so however that nothing in section twenty of the Colonial Stock Act, 1877, shall be construed as compelling a person desirous of bringing proceedings to proceed in the manner therein specified and that, until Parliament otherwise determines, any conditions prescribed by the Treasury under section two of the Colonial Stock Act, 1900 shall be deemed to have been complied with respect to all such stock so issued by the Federation.

(2) The expression "colonial stock" in section eleven of the Trusts (Scotland) Act 1921 shall include any stock in relation to which the said Acts apply by virtue of this section.

(3) In paragraph (d) of sub-section (1) of section one of the Trustee Act, 1925, the words "or any other securities the interest in sterling whereon is payable out of, and chartered on. the revenues of India" shall be repealed: Provided that, notwithstanding anything

in this Act, any securities which by virtue of the said words were immediately before the commencement of Part III of this Act securities in which a trustee might invest trust funds shall continue to be securities in which a trustee may invest such funds.] Audit and Accounts.

**166. Auditor-General of India :-**

(1) There shall be an Auditor-General of India, who shall be appointed by <sup>1</sup>[His Majesty] and shall only be removed from office in like manner and on the like grounds as a judge of the Federal Court.

(2) The conditions of service of the Auditor-General shall be such <sup>2</sup>[His Majesty in Council] and he shall not be eligible for further office under the Crown in India after he has ceased to hold his office: Provided that neither the salary of an Auditor-General nor his rights in respect of leave of absence, pension or age of retirement shall be varied to his disadvantage after his appointment.

(3) The Auditor-General shall perform such duties and exercise such powers in relation to the accounts of the Federation and of the Provinces as may be prescribed by, or by rules made under, an Order of <sup>3</sup>[His Majesty in Council], or by any subsequent Act of the <sup>4</sup>[Federal] Legislature varying or extending such an Order: Provided that no Bill or amendment for the purpose aforesaid shall be introduced or moved without the previous sanction of the Governor-General in his discretion.

(4) The salary, allowances and pension payable to or in respect of an Auditor-General shall be charged on the revenues of the <sup>4</sup>[Federation], and the salaries, allowances and pensions payable to or in respect of members of his staff shall be paid out of those revenues.

1. Substituted, by *ibid.*, by the word 'Governor-General'.

2. Substituted, by *ibid.*, by the words 'Order of the Governor-General'.

3. Substituted, by *ibid.*, by the word 'Governor General'.

4. Substituted, by *ibid.*, by the words 'Dominion'.

**167. Provincial Auditor-General :-**

(1) If a Provincial Legislature <sup>1</sup>[after the expiration of two years from the commencement of Part III of this Act] charging the salary

of an Auditor General for that Province on the revenues of the Province, an Auditor-General of the Province may be appointed by [His Majesty] to perform the same duties and to exercise the same powers in relation to the audit of the accounts of the Province as would be performed and exercised by the Auditor-General of India, if an Auditor-General of the Province had not been appointed: Provided that no appointment of an Auditor-General in a Province shall be made until the expiration of at least three years from the date of the Act of the Provincial Legislature by which provision is made for an Auditor-General of that Province.

(2) The provisions of the last preceding section shall apply in relation to the Auditor-General of a Province and his staff as they apply in relation to the Auditor-General of India and his staff, subject to the following modifications, that is to say-

(a) a person who is, -or has been, Auditor-General of a Province shall be eligible for appointment as Auditor-General of India;

(b) in <sup>2</sup> [sub-section (3)1 of the said section, for the reference to the Federal Legislature there shall be substituted a reference to the Provincial Legislature, and for the reference to the Governor-General there shall be substituted a reference to the Governor; and

(c) in sub-section (4) of the said section for the reference to the revenue of the Federation there shall be substituted a reference to revenues of the Province: Provided that nothing in this section shall derogate from the power of the Auditor-General of India to give such directions in respect to the accounts of Provinces as are mentioned in the next succeeding section.

1. Omitted, by *ibid.*

2. Substituted, by *ibid.*, by the words "sub-sections (2) and (3)".

**168. Power of Auditor-General of India to - give directions as to accounts :-**

The accounts of the Federation shall be kept in such form as the Auditor-General of India may, with the approval of the Governor-General, prescribe and, in so far as the Auditor-General of India may, with the like approval, give any directions with regard to the methods or principles in accordance with which any accounts of Province ought to be kept, it shall be the duty of every Provincial Government to cause accounts to be kept accordingly.

**169. Auditor reports :-**

The reports of the Auditor-General of India relating to the accounts of the Federation shall be submitted to the Governor- General, who shall cause them to be laid before the Federal Legislature, and the reports of the Auditor-General of India or of the Auditor-General of the Province, as the case may be, relating to the accounts of a Province shall be submitted to the Governor of the Province, who shall cause them to be laid before the Provincial Legislature.

**170. Auditor of Indian Home Accounts :-**

(1) There shall be an Auditor of Indian Home Accounts who shall be appointed by the Governor- General in his discretion and shall only be removed from office in like manner and on the like grounds as a judge of the Federal Court.

(2) The conditions of service of the Auditor of Indian Home Accounts shall be such as may be prescribed by the Governor-General in his discretion: Provided that neither the salary of an Auditor of Indian Home Accounts nor his rights in respect of leave of absence, pension or age of retirement shall be varied to his disadvantage after his appointment.

(3) The Auditor of Indian Home Accounts shall perform such duties and exercise such powers in relation to transactions in the United Kingdom affecting the revenues of 'the Federation, of the Federal Railway Authority, or of any Province, as may be prescribed by, or by rules made under, an Order of His Majesty in Council, or by any Act of the Federal Legislature varying or extending such an Order: Provided that no Bill or amendment for the purpose aforesaid shall be introduced or moved without the prior sanction of the Governor-General in his discretion:

(4) The reports of the Auditor of Indian Home Accounts relating to such transactions as aforesaid shall be submitted to the Auditor-General of India, or, in the case of transactions affecting the revenues of a Province which has an Auditor-General, to the Auditor-General of the Province, and shall be included by any such Auditor-General in the reports which under this Part of this Act he is required to submit to the Governor-General or, as the case may be, to the Governor.

(5) The Auditor of Indian Home Accounts shall be subject to the general superintendence of the Auditor-General of India.

(6) The salary, allowances and pension payable to or in respect of

the Auditor of Indian Home Accounts shall be charged on the revenues of the Federation, and the salaries, allowances and pensions payable to or in respect of members of his staff shall be paid out of those revenues.

(7) His Majesty in Council may require the Auditor of Indian Home Accounts to perform in relation to Burma all or any of the functions which

**171. Audit of accounts relating to the discharge of the - functions of the Crown in relation to Indian States :-**

The accounts relating to the discharge of the functions of the Crown in its relations with Indian States shall be audited by the Auditor-General of India, or, in so far as those accounts concern transactions in the United Kingdom, by the Auditor of Indian Home Accounts acting on his behalf and under his general superintendence, and the Auditor-General of India shall make to the Secretary of State annual reports on the accounts so audited by him or on his behalf.

CHAPTER 3

PROPERTY, CONTRACTS, LIABILITIES AND SUITS

**172. Vesting of lands and buildings :-**

(1) All lands and buildings which immediately before the commencement of Part III of this Act were vested in His Majesty for the purposes of the government of India shall as from that date-

(a) in the case of lands and buildings which are situate in a Province, vest in His Majesty for the purposes of the government of that Province unless they were then used, otherwise than under a tenancy agreement between the Governor-General in Council and the Government of that Province, for purposes which thereafter will be purposes of the Federal Government or of His Majesty's Representative for the exercise of the functions of the Crown in its relations with Indian States, or unless they are lands and buildings formerly used for such purposes as aforesaid, or intended or formerly intended to be so used, and are certified by the Governor-General in Council, or, as the case may be, His Majesty's Representative, to have been retained for future use for such purposes, or to have been retained temporarily for the purpose of the more advantageous disposal by sale or otherwise;

(b) in the case of lands and buildings which are situate in a Province but do not by virtue of the preceding paragraph vest in His Majesty for the purposes of the government of that Province, and in the case of lands and buildings which are situate in India elsewhere than in a Province, vest in His Majesty for the purposes of the government of the Federation or for the purposes of the exercise of the functions of the Crown in its relations with Indian States, according to the purpose for which they were used immediately before the commencement of Part III of this Act; and

(c) in the case of lands and buildings which are situate elsewhere than in India (except lands and buildings situate in Burma or Aden), vest in His Majesty for the purposes of the government of the Federation or, if they were immediately before the commencement of Part III of this Act used for purposes of the department of the Secretary of State in Council, for the purposes of His Majesty's Government in the United Kingdom.

(2) Except with the consent of the Governor-General, effect shall not be given to any proposal for the sale of any lands or buildings which by virtue of this section are vested in His Majesty for the purposes of His Majesty's

(3) The lands and buildings vested in His Majesty by virtue of this section for the purpose of His Majesty's Government in the United Kingdom shall be under the management of the Commissioners of Works, and, subject to the provisions of sub-section (2) of this section, the provisions of the Acts relating to the Commissioners of Works shall apply in relation to those lands and buildings as if they had been acquired by the Commissioners in pursuance of those Acts.

(4) The provisions of this section shall apply in relation to the contents of buildings vested in His Majesty for the purposes of His Majesty's Government in the United Kingdom, other than any money or securities, as they apply in relation to the buildings themselves: Provided that, in the case of such articles and classes of articles as may be agreed upon between the Secretary of State and the Governor-General, the provisions of sub-section (2) of this section shall not apply and notwithstanding anything in sub-section (3) of this section, the contents of those buildings shall be under the control of the Secretary of State.

(5) Any question which may arise within the five years next

following the commencement of Part III of this Act as to the purposes for which any lands or buildings are by virtue of this section vested in His Majesty may be determined by His Majesty in Council.

**173. Provisions as to other property :-**

(1) Subject to the provisions of this and the last preceding section, all property vested in His Majesty which by virtue of the delegation from the Secretary of State in Council or otherwise is immediately before the commencement of Part III of this Act in the possession or under the control of, or held on account of, the Governor-General in Council or any Local Government shall, as from the commencement of Part III of this Act, vest in His Majesty-

(a) for the purposes of the Federation; or

(b) for the purposes of the exercise of the functions of the Crown in its relations with Indian States; or

(c) for the purposes of the Government of a Province, according as the purposes for which the property was held immediately before the commencement of Part III of this Act will thereafter be purposes of the Government of the Federation, purposes of His Majesty's Representative for the exercise of the said functions of the Crown or purposes of the Government of a Province: Provided that-

(i) all moneys which immediately before the commencement of Part III of this Act were in the public account of which the Governor-General in Council was custodian shall be vested in His Majesty for the purposes of the Government of the Federation;

(ii) all credits and debits of the Local Government of any Governor's Province (other than Burma) in account with the Governor-General in Council shall be deemed to be credits and debits of the corresponding Province under this Act in account with the Federation.

(2) Subject as' aforesaid, all other property vested in His Majesty and under the control of the Secretary of State in Council immediately 1. Omitted, by *ibid.* 230 before the commencement of Part III of this Act shall as from the commencement of Part III of this Act vest in His Majesty for the purposes of the Government of the Federation, for the purposes of the exercise of the functions of

the Crown in its relations with Indian States or for the purposes of the Government of a Province, according as the Secretary of State may determine having regard to the circumstances of the case) and the Secretary of State shall have power to and shall deal with the property accordingly.

(3) In this section "property" includes money, securities, bank balances and movable property of any description.

(4) Arrears of any taxes outstanding immediately before the commencement of Part III of this Act shall be deemed to be due to and may be recovered by the Federal Government or a Provincial Government according as the proceeds of any such tax imposed after the commencement of Part III of this Act would be due to and recoverable by the Federal Government or the Provincial Government.

(5) This section shall apply in relation to any equipment, stores, moneys, bank balances and other property held in connection with His Majesty's Indian forces stationed in Burma (not being forces raised in Burma) as it applies in relation to property held for purposes which will be purposes of the Government of the Federation, but, save as aforesaid, nothing in this section applies to any property situate in Burma or Aden, or to arrears of taxes in Burma or Aden, or to any property which by virtue of any delegation from the Secretary of State in Council or otherwise is, immediately before the commencement of Part III of this Act, in the possession or under the control of, or held on account of, the Local Government of Burma or Aden.

(6) Nothing in this section shall affect any adjustments made or to be made by or under this Act by reason of the creation before the commencement of Part III of this Act of the Provinces of Orissa and Sind.

**174. Property accruing by escheat or lapse, or as bona vacantia :-**

Subject as hereinafter provided, any property in India accruing to His Majesty by escheat or lapse, or as bona vacantia for want of a rightful owner, shall, if it is property situate in a Province, vest in His Majesty for the purposes of the government of that Province, and shall in any other case vest in His Majesty for the purpose of the government of the Federation. Provided that any property which at the date when it accrued to His Majesty was in the

possession or under the control of the Federal Government or the Government of a Province shall, according as the purposes for which it was then used or held were purposes of the Federation or of a Province, vest in His Majesty for the purposes of the Government of the Federation or for the purposes of the government of that Province.

**175. Power to acquire property and to make contracts, etc**

:-

(1) The executive authority of the Federation and of a Province shall extend, subject to any Act of the appropriate Legislature, to the grant, sale, disposition. or mortgage of any property vested in His Majesty for the purposes of the government of the Federation or of the Province, as the case may be, and to the purchase or acquisition of property on behalf of His Majesty for those purposes respectively, and to the making of contracts: <sup>1</sup>[Provided that any land or building used as an official residence of the Governor-General or a Governor shall not be sold) nor any change made in

(2) All property acquired for the purposes of the Federation or of a Province <sup>2</sup>[or of the exercise of the functions of the Crown in its relations with Indian State], as the case may be, shall vest in His Majesty for those purposes.

(3) <sup>2</sup> [Subject to the provisions of this Act with respect to the Federal Railway Authority], all contracts made in the exercise of the executive authority of the Federation or of a Province shall be, expressed to be made by the Governor-General, or by the Governor of the Province, as the case may be, and all such contracts and all assurances of property made in the exercise of that authority shall be executed on behalf of the Governor- General or Governor by such persons and in such manner as he may direct or authorise.

(4) Neither the Governor-General, nor the Governor of a Province, nor the Secretary of State shall be personally liable in respect of any contract or assurance made or executed for the purposes of this Act, or for the purposes of the Government of India Act or of any Act repealed thereby, nor shall any person making or executing any such contract or assurance on behalf of any of them be personally liable in respect thereof.

1. Omitted, by *ibid*

2. Omitted, by *ibid*.

## **176. Suits and proceedings :-**

(1) The Federation may sue or be sued by the name of the Federation of India and a Provincial Government may sue or be sued by the name of the Province, and, without prejudice to the subsequent Provisions of this chapter, may, subject to any provisions which may be made by Act of the Federal or a Provincial Legislature enacted by virtue of powers conferred on that Legislature by this Act, sue or be sued in relation to their respective affairs in the like cases as the Secretary of State in Council might have sued or been sued if this Act had not been passed.

**1** [(2) Rules of Court may provide that, where the Federation, the Federal Railway Authority, or a Province sue or are sued in the United Kingdom, service of all proceedings may be effected upon the High Commissioner for India or such other representative in the United Kingdom of the Federation, Authority or Province, as may be specified in the rules].

1. Omitted, by *ibid.*

## **177. Existing contracts of Secretary of State in Council :-**

(1) Without prejudice to the special provisions of the next succeeding section relating to loans, guarantees and other financial obligations, any contract made before the commencement of Part III of this Act by, or on behalf of, the Secretary of State in Council shall, as from that date-

(a) if it was made for purposes which will after the commencement of Part III of this Act be purposes of the Government of a Province, have effect as if it had been made in behalf of that Province; and

(b) in any other case have effect as if it had been made on behalf of the Federation, and references in any such contract to the Secretary of State in Council shall be construed accordingly, and any such contract may be enforced in accordance with the provisions of the next but one succeeding section.

(2) This section does not apply in relation to contracts solely in connection with the affairs of Burma or Aden. or solely for purposes which will after the commencement of Part III of this Act be purposes of His Majesty's

## **178. Special provisions as to existing loans, guarantees and**

## **other financial obligations :-**

**1**

[(1) All liabilities in respect of such loans, guarantees and other financial obligations of the Secretary of State in Council as are outstanding immediately before the commencement of Part III of this Act and were secured on the revenues of India shall, as from that date, be liabilities of the Federation and shall be secured upon the revenues of the Federation and of all the Provinces.

(2) All enactments relating to any such loans, guarantees and other financial obligations of the Secretary of State in Council as aforesaid shall, in relation to those loans, guarantees and obligations, continue to have effect with the substitution therein, except in so far as the context otherwise requires, of references to the Secretary of State for references to the Secretary of State in Council, and with such other modifications and such adaptations as His Majesty in Council may deem necessary].

(3) No deduction in respect of taxation imposed by or under any existing Indian law or any law of the Federal or a Provincial Legislature shall be made from any payment of principal or interest in respect of any securities, the interest whereon is payable in sterling, being a payment which would, but for the provisions of this Act,<sup>2</sup> have fallen to be made by the Secretary of State in Council.

(4) If in the case of any Local Government in India there are outstanding immediately before the commencement of Part III of this Act any loans or other financial obligations secured upon the revenues of the Province, all liabilities in respect of those loans and obligations shall, as from that date, be liabilities of the Government of and shall be secured upon the revenues of, the corresponding Province under this Act.

(5) Any liabilities in respect of any such loan, guarantee or financial obligation as is mentioned in this section may be enforced in accordance with the provisions of the next succeeding section.

(6) The provisions of this section apply to the liabilities of the Secretary of State in Council in respect of the Burma Railways three per cent. Debenture Stock, but, save as aforesaid, do not apply to any liability solely in connection with the affairs of Burma or Aden.

1. Omitted, by *ibid.*

2. The words 'and of the Indian Independence Act, 1947' were added, by *ibid.*

**179. Legal proceedings as to certain matters :-**

(1) Any proceedings which, if this Act had not been passed, might have been brought against the Secretary of State in Council may in the case of any liability arising before the commencement of Part III of this Act or arising under any contract or statute made or passed before that date, be brought against the Federation or a Province, according to the subject-matter of the proceedings, or, at the option of the person by whom the proceedings are brought, against the Secretary of State, and any sum ordered to be paid by way of debt, damages or costs in any such proceeding's, and any costs or expenses incurred in or in connection with the defence thereof, shall be paid out of the revenues of the Federation or the Province, as the case may be, or, if the proceedings are brought against the Secretary of State, out of such revenues as the Secretary of State may direct. The provisions of this sub-section shall apply with respect to proceedings arising under any contract declared by the terms thereof to be suppl-

(2) If at the commencement of Part III of this Act any legal proceedings are pending in the United Kingdom or in India to which the Secretary of State in Council is a party, the Secretary of State shall be deemed to be substituted in those proceedings for the Secretary of State in Council, and the provisions of sub-section (1) of this section shall apply in relation to sums ordered to be paid, and costs or expenses incurred, by the Secretary of State or the Secretary of State in Council in or in connection with any such proceedings as they apply in relation to sums ordered to be paid in, and costs or expenses incurred in or in connection with the defence of, proceedings brought against the Secretary of State under the said sub-section (1).

(3) Any contract made in respect of the affairs of the Federation or a Province by or on behalf of the Secretary of State after the commencement of Part III of this Act may provide that any proceedings under that contract shall be brought in the United Kingdom by or against the Secretary of State and any such proceedings may be brought accordingly, and any sum ordered to be paid by the Secretary of State by way of debt, damages or costs in any such proceedings, and any costs or expenses incurred by the Secretary of State in or in connection therewith, shall be paid out of

the revenues of the Federation or the Province, as the case may be.

(4) Nothing in this section shall be construed as imposing any liability upon, the exchequer of the United Kingdom in respect of any debt, damages, costs or expenses in or in connection with any proceedings brought or continued by or against the Secretary of State by virtue of this section, or as derogating from the provisions of sub-section (1) of the last preceding section.

(5) This section does not apply in relation to contracts or liabilities solely in connection with the affairs of Burma or Aden, other than liabilities which are by this Act liabilities of the Federation, or to contracts or liabilities for purposes which will, after the commencement of Part III of this Act, be purposes of His Majesty's Representative for the exercise of the functions of the Crown in its relations with Indian States.

**180. Contracts in connection with functions of Crown in its relations with Indian States :-**

(1) Any contract' made before' the commencement of Part III of this Act by or on behalf of the Secretary of State in Council solely in connection with the exercise of the functions of the Crown in its relations with Indian States shall, as from the commencement of Part III . of this Act, have effect as if it had been made on behalf of His Majesty and references in any such contract to the Secretary of State in Council shall be construed accordingly.

(2) Any proceedings which if this Act had not been passed might have been brought by or against the Secretary of State in Council in respect of any such contract as aforesaid may be brought by or against the Secretary of State and if at the commencement of Part III of this Act any proceedings in respect of any such contract are pending in the United Kingdom or in India to which the Secretary of State in Council is a party, the Secretary of State shall be deemed to be substituted in those proceedings for the Secretary of State in Council.

(3) Any contract made after the commencement of Part III of this Act on behalf of His Majesty solely in connection with the exercise of the said functions of the Crown shall, if it is such a contract as would have

(4) Any sums ordered to be paid by the Secretary of State by way of debt, damages or costs in any such proceedings as are

mentioned in this section and any costs or expenses incurred by him in or in connection with the prosecution or defence thereof shall be deemed to be sums required for the discharge of the functions of the Crown in its relations with Indian States, and any sum received by the Secretary of State by virtue of any such proceedings shall be paid or credited to the Federation.

#### PART 8

#### THE FEDERAL RAILWAY AUTHORITY

### **181. Executive authority in respect of railways to be exercised by. Federal Railway Authority :-**

(1) The executive authority of the Federation in respect of the regulation and the construction, maintenance and operation of railways shall be exercised by a Federal Railway Authority (hereinafter referred to as "the Authority"),

(2) The said executive authority extends to the carrying on in connection with any Federal railways of such undertakings as, in the opinion of the Authority, it is expedient should be carried on in connection therewith and to the making and carrying into effect of arrangements with other persons for the carrying on by those persons of such undertakings: Provided that, as respects their powers under this sub-section, the Authority shall be subject to any relevant provisions of any Federal, Provincial or existing Indian law, and to the relevant provisions of the law of any' Federated State, but nothing in this sub-section shall be construed as limiting the provisions of Part VI of this Act regulating the relations of the Federation with Provinces and States.

(3) Notwithstanding anything in this section, the Federal Government or its officers shall perform in regard to the construction, equipment, and operation of railways such functions for securing the safety both of members of the public and of persons operating the railways, including the holding of inquiries into the causes of accidents, as in the opinion of the Federal Government should be 'performed by persons independent of the Authority and of any railway administration. So much of Part X of this Act as provides that powers in relation to railway Services of the Federation shall be exercised by the Authority shall not apply in relation to officers of the Federal Government employed in the performance of any of the functions mentioned in this sub-section.

### **182. Composition, etc., of Railway Authority :-**

(1) Not less than three-sevenths of the members of the Authority shall be persons appointed by the Governor-General in his discretion, and the Governor-General shall in his discretion appoint a member of the Authority to be the President thereof.

(2) Subject as aforesaid, the provisions of the Eighth Schedule to this Act, as supplemented or amended by any Act of the Federal Legislature for the time being in force, shall have effect with respect to the appointment, qualifications and conditions of service of members of the Authority, and with respect to the Authority's proceedings, executive staff and liability to income-tax:

**183. Directions and principles to be observed by Railway Authority :-**

(1) The Authority in discharging their functions under this Act shall act on business principles, due regard being had by them to the interests of agriculture, industry, commerce and the general public, and in particular shall make proper provision for meeting out of their receipts on revenue account all-expenditure to which such receipts are applicable under the provisions of this Part of this Act.

(2) In the discharge of their said functions the Authority shall be guided by such instructions on questions of policy as may be given to them by the Federal Government. If any dispute arises under this sub-section between the Federal Government and the Authority as to whether a question is or not a question of policy, the decision of the Governor-General in his discretion shall be final.

(3) The provisions of sub-section (1) of this section shall apply in relation to the discharge by the Federal Government of their functions with respect to railways as they apply in relation to the functions of the Authority, but nothing in this sub-section shall be construed as limiting the powers of the Governor-General under the next succeeding sub-section.

(4) The provisions of this Act relating to the special responsibilities of the Governor-General, and to his duty as regards certain matters to exercise his functions in his discretion or to exercise his individual judgment, shall apply as regards matters entrusted to the Authority as if the executive authority of the Federation in regard to those matters were vested in him, and as if the functions of the Authority as regards those matters were the functions of ministers, and the Governor-General may issue to the Authority

such directions as he may deem necessary as regards any matter which appears to him to involve any of his special responsibilities, or as regards which he is by or under this Act required to act in his discretion or to exercise his individual judgment, and the Authority shall give effect to any directions so issued to them.

**184. Conduct of business between Railway Authority and Federal Government :-**

(1) The Governor-General exercising his individual judgment, but after consultation with the Authority, may make rules for the more convenient transaction of business arising out of the relations between the Federal Government and Authority.

(2) The rules shall include provisions requiring the Authority to transmit to the Federal Government all such information with respect to their business as may be specified in the rules, or as the Governor-General may otherwise require to be transmitted, and in particular provisions requiring the Authority and their chief executive officer to bring to the notice of the Governor-General and matter under consideration by the Authority or by that officer which involves, or appears to them or him likely to involve, any special responsibility of the Governor-General.

**185. Acquisition and sale of land, contracts and working agreements :-**

(1) Except in such classes of case as may be specified in regulations to be made by the Federal Government,, the Authority shall not acquire or dispose of any land, and, when it is necessary for the Authority to acquire compulsorily any land for the purposes of their functions, the Federal

(2) Contracts made by or on behalf of the Authority shall be enforceable by or against the Authority and not by or against the Federation, and, subject to any provision which may hereafter be made by Act of the Federal Legislature, the Authority may sue and be sued in the like manner and in the like cases as a company operating a railway may sue and be sued: Provided that this subsection does not apply in relation to any contract declared by its terms to be supplemental to a contract made before the establishment of the Authority, and any such supplemental contract may be enforced in any manner in which the principal contract may be enforced.

(3) The Authority may make working agreements with, and carry out working agreements made with, any Indian State or person owning or operating any railway in India, or in territories adjacent to India, with respect to the persons by whom and the terms on which any of the railways with which the parties are respectively concerned shall be operated.

**186. Finance of the Railway Authority :-**

(1) The Authority shall establish, maintain and control a fund (which shall be known as the "Railway Fund") and all moneys received as the Authority, whether on revenue account or on capital account, in the discharge of their functions and all moneys provided, whether on revenue account or on capital account, out of the revenues of the Federation to enable them to discharge those functions shall be paid into that Fund, and all expenditure, whether on revenue account or on capital account, required for the discharge of their functions shall be defrayed out of that Fund: Provided that nothing in this sub-section shall prevent the Authority from establishing and maintaining separate provident funds for the benefit of persons who are or have been employed in connection with railways.

(2) The receipts of the Authority on revenue account in any financial year shall be applied in-

(a) defraying working expenses;

(b) meeting payments due under contracts or agreements to railway undertakings;

(c) paying pensions, and contributions to provident funds;

(d) repaying to the revenues of the Federation so much of any pensions and contributions to provident funds charged by this Act on those revenues as is attributable to service on railways in India;

(e) making due provision for maintenance, renewals, improvements and depreciation;

(f) making to the revenues of the Federation any payments by way of interest which they are required by this Part of this Act to make; and (g) defraying other expenses properly chargeable against revenue in that year.

(3) Any surplus on revenue account, shown in the accounts of the

Authority shall be apportioned between the Federation and the Authority in accordance with a scheme to be prepared, and from time to time reviewed, by the Federal Government, or, until such a scheme has been prepared, in accordance with the principles which immediately before the establishment of the Authority regulated the application of surpluses in railway accounts, and any sum apportioned to the Federation under this Sub-

(4) The Federation may provide any moneys, whether on revenue account or capital account, for the purposes of the Railway Authority, but, where any moneys are so provided, the provision thereof shall be deemed to be expenditure and shall accordingly be shown as such in the estimates of expenditure laid before Chambers of the Legislature.

**187. Provisions as to certain obligations of the Railway Authority :-**

(1) There shall be deemed to be owing from the Authority to the Federation such sum as may be agreed or, in default of agreement, determined by the Governor-General in his discretion, to be equivalent to the amount of the money provided, whether before or after the passing of this Act, out of the revenues of India or of the Federation for capital purposes in connection with railways in India (exclusive of Burma) and the Authority shall out of their receipts on revenue account pay to the Federation interest on that amount at such rate as may be agreed or determined, and also make payments in reduction of the principal of that amount in accordance with a repayment scheme so agreed or determined. For the purposes of this sub-section, where the Secretary of State in Council has assumed or incurred any obligation in connection with any such railways, he shall be deemed to have provided for the said purposes an amount equal to the capital value of that obligation as shown in the accounts of the Government of India immediately before the establishment of the Authority. Nothing in this sub-section shall be construed as preventing the Authority from making payments to the Federation in reduction of the principal of any such amount as aforesaid out of moneys other than receipts on revenue account.

(2) It shall be an obligation of the Authority to repay to the Federation any sums defrayed out of the revenues of Federation in respect of any debt, damages, costs, or expenses in, or in connection with, any proceedings brought or continued by or

against the Federation or against the Secretary of State under Part VII of this Act in respect of railways in India.

(3) It shall be an obligation of the Authority to pay to any Province or Indian State such sums as may be equivalent to the expenses incurred by that Province or State in the provision of police required for the maintenance of order on Federal railway premises, and any question which may arise between the Authority and a Province or State as to the amount of any expenses so incurred shall be determined by the Governor-General in his discretion.

**188. Investment of funds of Railway Authority :-**

Subject to such conditions, if any, as may be prescribed by the Federal Government, the Authority may from time to time invest any moneys in the railway fund or any provident fund which are not for the time being required to meet expenses properly defrayable out of that fund, and may, subject as aforesaid, from time to time transfer and realise investments made by them.

**189. Special provisions as to certain existing funds :-**

(1) Nothing in the foregoing -provisions of this Part of this Act shall be construed as entitling the Authority to require that any moneys which immediately before the establishment of the Authority were held by the Governor-General in

(2) In this section references to any such fund as aforesaid shall be construed as references to so much of that fund as is not attributable to the railways of Burma.

**190. Audit and annual reports :-**

(1) The accounts of the receipts and expenditure of the Authority shall be audited and certified by, or on behalf of the Auditor-General of India.

(2) The Authority shall publish annually a report of their operations during the preceding year and a statement of accounts in a form approved by the Auditor-General.

**191. Railway Rates Committee :-**

The Governor-General may from time to time appoint a Railway Rates Committee to give advice to the Authority in connection with any dispute between persons using, or desiring to use, a railway and the Authority as to rates or traffic facilities which he may require the Authority to refer to the committee.

**192. Bills and amendments for regulating rates and fares to require recommendation of Governor-General :-**

A Bill or amendment making provision for regulating the rates or fares to be charged on any railway shall not be introduced or moved in either chamber of the Federal Legislature except on the recommendation of the Governor-General.

**193. Obligation of Railway Authority and Federated States to afford mutual traffic facilities and to avoid unfair discrimination, etc :-**

(1) It shall be the duty of the Authority and every Federated State so to exercise their powers in relation to the railways with which they are respectively concerned as to afford all reasonable facilities for the receiving, forwarding, and delivering of traffic upon and from those railways, including the receiving, forwarding and delivering of through rates, and as to secure that there shall be between one railway system and another no unfair discrimination, by the granting of undue preferences or otherwise, and no unfair or uneconomic competition.

(2) Any complaint by the Authority against a Federated State or by a Federated State against the Authority on the ground that the provisions of the preceding sub-section have not been complied with shall be made to and determined by the Railway Tribunal.

**194. Appeal by State to Railway Tribunal from certain directions of Railway Authority :-**

If the Authority, in the exercise of any executive authority of the Federation in relation to interchange of traffic, or maximum or minimum rates and fares, or station or service terminal charges, give any direction to a Federated State, the State may complain that the direction discriminates unfairly against, the railways of the State, or imposes on the State an obligation to afford facilities which are not in the circumstances reasonable, and any such complaint shall be determined by the Railway Tribunal.

**195. Construction and reconstruction of railways :-**

(1) The Governor-General acting in his discretion shall make rules requiring the Authority and any Federated State to give notice in such cases as the rules may prescribe of any proposal for constructing a railway or for altering the alignment or gauge of a railway, and to deposit plans.

(2) The rules so made shall contain provisions enabling objections to be lodged by the Authority or by a Federated State on the ground that the carrying out of the proposal will result in unfair or uneconomic Competition with a Federal railway or a State railway, as the case may be, and, if an objection so lodged is not Withdrawn within the prescribed time, the Governor-General shall refer to the Railway Tribunal the question whether the proposal ought to be carried into effect, either without modification or with such modification as the Tribunal may approve, and the proposal shall not be proceeded with save in accordance with the decision of the tribunal.

(3) This section shall not apply in any case where the Governor-General in his discretion certifies that for reasons connected with defence effect should, or should not, be given to a proposal.

### **196. Railway Tribunal :-**

(1) There shall be a Tribunal (in this Act referred to as "the Railway Tribunal") consisting of a President and two other persons to be selected to act in each case by the Governor-General in his discretion from a panel of eight persons appointed by him in his discretion, being persons with railway, administrative, or business experience.

(2) The President shall be such one of the Judges of the Federal Court as may be appointed for the purpose by the Governor-General in his discretion after consultation with the Chief Justice of India and shall hold office for such period of not less than five years as may be specified in the appointment, and shall be eligible for re-appointment for a further period of five years or any less period: Provided that, if the President ceases to be a Judge of the Federal Court, he shall thereupon cease to be President of the Tribunal and, if he is for any reason temporarily unable to act, the Governor-General in his discretion may after the like consultation appoint another Judge of the Federal Court to act for the time being in his place.

(3) It shall be the duty of the Railway Tribunal to exercise such jurisdiction as is conferred on it by this Act, and for that purpose the Tribunal may make such orders, including interim orders, orders varying or discharging a direction or order of the Authority, orders for the payment of compensation or damages and of costs and orders for the production of documents and the attendance of

witnesses, as the circumstances of the case may require, and it shall be the duty of the Authority and of every Federated State and of every other person or authority affected thereby to give effect to any such order.

(4) An appeal shall lie to the Federal Court from any decision of the Railway Tribunal on a question of law, but no appeal shall lie from the decision of the Federal Court on any such appeal.

(5) The Railway Tribunal or the Federal Court, as the case may be, may, on application made for the purpose, if satisfied that in view of an alteration in the circumstances it is proper so to do, vary or revoke any previous order made by it.

(6) The President of the Railway Tribunal may, with the approval of the Governor-General in his discretion, make rules regulating the practice and procedure of the Tribunal and the fees to be taken in proceedings before it.

(7) Subject to the provisions of this section relating to appeals to the Federal Court, no Court shall have any jurisdiction with respect to any matter with respect to which the Railway Tribunal has jurisdiction.

(8) There shall be paid out of the Federation to the members of the Railway Tribunal other than the President such remuneration as may be determined by the Governor-General in his discretion, and the administrative expenses of the Railway Tribunal, including any such remuneration as aforesaid, shall be charged on the revenues of the Federation, and any fees or other moneys taken by the Tribunal shall form part of those revenues. The Governor-General shall exercise his individual judgment as to the amount to be included in respect of the administrative expenses of the Railway Tribunal in any estimates of expenditure laid by him before the Chambers of the Federal Legislature.

### **197. Rights of railway companies in respect of arbitration under contracts :-**

(1) Without prejudice to the general provisions of this Act with respect to rights and liabilities under contracts made by or on behalf of the Secretary of State in Council, the provisions of this section shall have effect with respect to any contract so made with a railway company which immediately before the commencement of Part III of this Act was operating a railway in British India.

(2) If a dispute arises under any such contract between the railway company concerned and either the Authority or the Federal Government, and if the matter in dispute is of such a nature that under the contract the company might require or, but for some provision of this Act, might have required, it to be submitted to arbitration, the dispute shall be deemed to have arisen between the company and the Secretary of State, and the provisions of the contract relating to the determination of such a dispute shall have effect with the substitution of the Secretary of State for the Secretary of State in Council. Any award made in an arbitration under the foregoing provisions of this section and any settlement of the dispute agreed to by the Secretary of State with the concurrence of his advisers shall be binding on the Federal Government and the Authority, and any sum which the Secretary of State may become liable or may so agree to pay by way of debt, damage or costs, and any costs or expenses incurred by him in connection with the matter, shall be paid out of the revenues of the Federation and shall be charged on those revenues but shall be a debt due to the Federation from the Authority.

**198. Railways in Indian States which have not federated :-**

If and in so far as His Majesty's Representative for the exercise of the functions of the Crown in its relations with Indian States may entrust to the Authority the performance of any functions in relation to railways in an Indian State which is not a Federal State, the Authority shall undertake the performance of those functions.

**199. Official directors of Indian railway companies :-**

Any powers of the Secretary of State in Council with respect to the appointment of directors and deputy directors of Indian railway companies shall be exercised by the Governor-General in his discretion after consultation with the Authority.

PART 9

THE JUDICATURE

CHAPTER 1

THE FEDERAL COURT

**200. Establishment and constitution of Federal Court :-**

(1) There shall be a Federal Court consisting of a Chief Justice of India and such number of other judges as <sup>1</sup>[His Majesty] may deem necessary, but unless and until <sup>2</sup>an address has been presented by the Federal Legislature to the Governor-General for

submission to His Majesty praying for an increase in the number of judges, the number of puisne judges shall not exceed six.

(2) Every judge of the Federal Court shall be appointed by <sup>3</sup>[His Majesty by warrant under the Royal Sign Manual and shall hold office until he attains the age of sixty-five years: Provided that-

(a) a judge may by resignation under his hand addressed to the Governor-General resign his office;

(b) a judge may be removed from his office by <sup>3</sup>[His Majesty by warrant under the Royal Sign Manual] on the ground of misbehaviour or of infirmity of mind or body, if the Judicial Committee of the Privy Council, on reference being made to them by <sup>5</sup>[His Majesty], report that the judge ought on any such ground to be removed.

(3) A person shall not be qualified for appointment as a judge of the Federal Court unless he-

(a) has been for at least five years a judge of a High Court <sup>4</sup>[in British India or in a Federal State] ; or

(b) is a barrister of England or Northern Ireland of at least ten years standing, or a member of the Faculty of Advocates in Scotland of at least ten years standing; or

(c) has been for at least ten years a pleader of a High Court in British India or in a Federal State or of two or more such Courts in succession: Provided that- <sup>4</sup>

[(i) a person shall not be qualified for appointment as Chief Justice of India unless he is, or when first appointed to judicial office was, a barrister, a member of the Faculty of Advocates or a pleader; and]

(ii) in relation to the Chief Justice of India, for the references in paragraphs (b) and (c) of this sub-section to ten years there shall be substituted references to fifteen years. In computing for the purposes of this sub-section the standing of a barrister or a member of the Faculty of Advocates, or the period during which a person has been a pleader, any period during which a person has held judicial office after he became a barrister, a member of the Faculty of Advocates or a pleader, as the case may be, shall be included. <sup>8</sup>

(4) Every person appointed to be a judge of the Federal Court shall, before he enters upon his office, make and subscribe, before the Governor-General or some person appointed by him an oath according to the form set out in that behalf in the Fourth Schedule to this Act.

1. Substituted, by Wd., by the words "the Governor-General".

2. This Chapter except Ss 206 and 215 came into force on 1-10-1937. subject to proviso as to S. 205 under Government of India (Federal Court) Order, 1936, para. 3 [18-12-1936]. S. 215 has since come into force; see foot-remark under that section.

3. Substituted, by *ibid.*, by the words "order of the Governor-General"

5. Omitted, by *ibid.*

8. The following words were added, by *ibid.*, after sub-section (3)- "In this sub-section the expression 'High Court' includes a High Court in an acceding State and any Court which was a High Court in British India".

### **201. Salaries, etc., of judges :-**

The judges of the Federal Court shall be entitled to such salaries and allowances, including allowances for expenses in respect of equipment, and travelling upon appointment, and to such rights in respect of leave and pensions, as may from time to time be fixed by <sup>1</sup> [His Majesty in Council]: Provided that neither the salary of a judge nor his rights in respect of leave of absence or 'pension shall be varied to his disadvantage after his appointment.

1. The following words were added, by *ibid.*, after sub-section (3)- "In this sub-section the expression 'High Court' includes a High Court in an acceding State and any Court which was a High Court in British India".

### **202. Temporary appointment of acting Chief Justice :-**

(1) If the office of Chief Justice of India becomes vacant, or if the Chief Justice is, by reason of absence or for any other reason, unable to perform the duties of his office, these duties shall, until some person <sup>1</sup> [appointed by His Majesty] to the vacant office has entered on the duties thereof, or until the Chief Justice has resumed his duties, as the case may be, be performed by such one of the other judges of the Court as the Governor-General may in his discretion appoint <sup>2</sup> [for the purpose].

**3**

[(2) If the office of any other judge of the Federal Court becomes

vacant, or if any such judge is appointed to act temporarily as Chief Justice of India or is by reason of absence, or for any other reason, unable to perform the duties of his office, the Governor-General may in his discretion appoint a judge of a High Court who is duly qualified for appointment as a judge of the Federal Court to act temporarily as a judge of that court, and the person so appointed shall, unless the Governor-General in his discretion thinks fit to revoke his appointment, be deemed to be a judge of the federal Court until some person <sup>1</sup>[appointed by His Majesty] to the vacant office has entered on the duties thereof, or until the permanent judge has resumed his duties.]

## **5**

[(3) If the Governor-General in his discretion is satisfied, after considering a report from the Chief Justice of India-

(a) that in view of some personal interest which any judge of the Federal Court has in the decision of any particular case, or of some part

(b) that without that judge there are not sufficient judges of the Federal Court available to sit for that purpose, the Governor-General may in his discretion appoint a judge of a High Court who is duly qualified for appointment as judge of the Federal Court to act temporarily as a judge of that Court and the person so appointed shall, unless the Governor-General in his discretion thinks fit to revoke his appointment, be deemed to be a judge of the Federal Court until that case has been heard and determined by the Federal Court].

1. Substituted, by *ibid.*, by the words 'permanently appointed'.

2. Substituted, by the words 'as acting Chief Justice'.

3. Inserted by the India and Burma (Miscellaneous Amendment) Act, 1940 (3 and 4 Geo.6,Ch.5)S,5.

5. Added by the India (Federal Court Judges) Act, 1942 (5 and 6 Geo. 6, Ch, 7), S. 1 (with retrospective effect),

### **203. Seat of Federal Court :-**

(1) The Federal Court shall be a court of record and shall sit in Delhi and at such other place or places, if any, as the Chief Justice of India may, with the approval of the Governor-General, from time to time appoint.

### **204. Original jurisdiction of Federal Court :-**

(1) Subject to the provisions of this Act, the Federal Court shall, to the exclusion of any other court, have an original jurisdiction in any dispute between any two or more of the following parties, that is to say, the Federation, any of the Provinces or any of the Federated States, if and in so far as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends: Provided that the said jurisdiction shall not extend to-

(a) a dispute to which a State is a party, unless the dispute-

(i) concerns the interpretation of this Act or of an Order in Council made thereunder<sup>1</sup>, or the extent of the legislative or executive authority vested in the Federation by virtue of the Instrument of Accession of that State; or

(ii) arises under an agreement made under Part VI of this Act in relation to the administration in that State of a law of the Federal Legislature, or otherwise concerns some matter with respect to which the Federal Legislature has power to make laws for that State; or

<sup>2</sup> [(iii) arises under an agreement made after the establishment of the Federation, with the approval of His Majesty's Representative for -the exercise of the functions of the Crown in its relations with Indian States, between that State and the Federation or a Province, being an agreement which expressly provides that the said jurisdiction shall extend to such a dispute] ;

(b) a dispute arising under any agreement which expressly provides that the said jurisdiction shall not extend to such a dispute

(2) The Federal Court in the exercise of its original jurisdiction shall not pronounce any judgment other than a declaratory judgment.

1. After this, inserted, by *ibid.*, the words- "Before the date of the establishment of the Dominion or of an order made thereunder on or after that date, or concerns the interpretation of the Indian Independence Act, 1947, or of any order made thereunder".

2. Substituted, by *ibid.*, by the following: "(iii) arises under an agreement between that State and the Dominion or a Province, being an agreement which expressly provides that the said jurisdiction shall extend to such a dispute, and in the case of an agreement with a Province, has been made with the approval of the Governor-General;"

## **205. Appellate jurisdiction of Federal Court in appeals from**

## **High Courts in British India :-**

(1) An appeal shall lie to the Federal Court from any judgment, decree or final order of a High Court <sup>1</sup> [in British India], if the High Court certifies that the case involves a substantial question of law as to interpretation of the Act or any Order in Council made thereunder, and it shall be the duty of every High Court in British India to consider in every case whether or not any such question is involved and of its own motion to give or to withhold a certificate accordingly.

(2) Where such a certificate is given, any party in the case may appeal to the Federal Court on the ground that any such question as aforesaid has been wrongly decided, and on any ground on which that party could have appealed without special leave to His Majesty in Council if no such certificate had been given, and, with the leave of the Federal Court, on any other ground, and no direct appeal shall lie to His Majesty in Council, either with or without special leave.

1. Omitted, by *ibid*.

## **206. Power of Federal Legislature to enlarge appellate jurisdiction :-**

(1) The Federal Legislature may by Act provide that in such civil cases as may be specified in the Act an appeal shall lie to the Federal Court from a judgment, decree or final order of a High Court <sup>1</sup>[in British India] without any such certificate as aforesaid, <sup>1</sup>[but no appeal shall lie under any such Act unless-

(a) the amount or value of the subject matter of the dispute in the court of first instance and still in dispute on appeal was and is not less than fifty thousand rupees or such other sum not less than fifteen thousand rupees as may be specified by the Act, or the judgment, decree or final order involves directly or indirectly some claim or question respecting property of the like amount or value; or

(b) the Federal Court gives special leave to appeal.]

(2) If the Federal Legislature makes such provision as is mentioned in the last preceding sub-section, consequential provision may also be made by Act of the Federal Legislature for the abolition in whole or in part of direct appeals in civil cases from High Courts <sup>1</sup>[in

British India] to His Majesty in Council, either with or without special leave.

(3) A Bill or amendment for any of the purposes specified in this section shall not be introduced into, or moved in, <sup>1</sup>[either Chamber of] the Federal Legislature without the previous sanction of the Governor-General <sup>1</sup> [in his discretion].

1. Omitted, by *ibid*.

### **207. Appellate jurisdiction of Federal Court in appeals from High Courts in Federated States :-**

(1) An appeal shall lie to the Federal Court from a High Court in a Federated State on the ground that a question of law has been wrongly decided, being a question which concerns the interpretation of this Act or of an Order in Council made thereunder <sup>1</sup> [or] the extent of the legislative or executive authority vested in the Federation by virtue of the Instrument of Accession of that State, or arises under an

(2) An appeal under this section shall be by way of special case to be stated for the opinion of the Federal Court by the High Court, and the Federal Court may require a case to be so stated, and may return any case so stated in order that further facts may be stated therein.

1. Substituted, by *ibid*, by the words- "before the date of the establishment of the Dominion or of an order made thereunder on or after that date, or concerns the interpretation of the Indian Independence Act, 1947, or of an order made thereunder or concerns".

### **208. Appeals to His Majesty in Council :-**

An appeal may be brought to His Majesty in Council from a decision of the Federal Court-

(a) from any judgment of the Federal Court given in the exercise of its original jurisdiction in any dispute which concerns the interpretation of this Act or of an Order in Council made thereunder, <sup>1</sup> [or] the extent of the legislative or executive authority vested in the Federation by virtue of the Instrument of Accession of any State, or arises under an agreement made under Part VI of this Act in relation to the administration in any State of a law of the Federal Legislature, without leave; and

(b) in any other case, by leave of the Federal Court or of His

Majesty in Council.

1. Substituted, by *ibid.*, by the words- "before the date of the establishment of the Dominion or of an order made thereunder on or after that date, or concerns the interpretation of the Indian Independence Act, 1947, or of an order made thereunder or concerns".

**209. Form of judgment on appeal :-**

(1) The Federal Court shall, where it allows an appeal, remit the case to the court from which the appeal was brought with a declaration as to the judgment, decree or order which is to be substituted for the judgment, decree or order appealed against, and the court from which the appeal was brought shall give effect to the decision of the Federal Court.

(2) Where the Federal Court upon any appeal makes any order as to the costs of the proceedings in the Federal Court, it shall, as soon as the amount of the costs to be paid is ascertained, transmit its order for the payment of that sum to the court from which the appeal was brought and that court shall give effect to the order.

(3) The Federal Court may, subject to such terms or conditions as it may think fit to impose, order a stay of execution in any case under appeal to the Court, pending the hearing of the appeal, and execution shall be stayed accordingly.

**210. Enforcement of decrees and orders of Federal Court and orders as to discovery, etc :-**

(1) All authorities, civil and judicial, throughout the Federation, shall act in aid of the Federal Court.

(2) The Federal Court shall, as respects <sup>1</sup>[British India and the Federal States], have power to make any order for the purpose of securing the attendance of any person, the discovery or production of any documents or the investigation or punishment of any contempt of court, which any High Court <sup>1</sup>[in British India] has power to make as respects the territory- within its jurisdiction, and any such orders, and any orders of the Federal Court as to the costs of and incidental to any proceedings therein, shall be enforceable by all courts and authorities in every part of <sup>3</sup> [British India or of any Federated] State as if they were orders duly made by the highest court exercising civil or criminal jurisdiction, as the case may be, in that part.

(3) Nothing in this section-

(a) shall apply to any such order with respect to costs as is mentioned in sub-section (2) of the last preceding section; or

(b) shall as regards a Federated State, apply in relation to any jurisdiction exercisable by the Federal Court by reason only of the making by the Federal legislature of such provision as is mentioned in this chapter for enlarging the appellate jurisdiction of the Federal Court.

1. Omitted by *ibid.*

3. Substituted, by *ibid.*, by the words- "a Governor's Province, Chief Commissioner's Province or of any Acceding".

**211. Letters of request to Federated States :-**

Where in any case the Federal Court require a special case to be stated or re-stated by, or remit a case to, or order a stay of execution in a case from, a High Court in a Federated State, or require the aid of the civil or judicial authorities in a Federated State the Federal Court shall cause letters of request in that behalf to be sent to the Ruler of the State, and the Ruler shall cause such communication to be made to the High Court or to any judicial or civil authority as the circumstances may require.

**212. Law declared by Federal Court and Privy Council to be binding on courts :-**

The law declared by Federal Court and by any judgment of the Privy Council shall, so far as applicable, be recognised as binding on and shall be followed by all courts in <sup>1</sup>[British India], and, so far as respects the application and interpretation of this Act or any Order in Council <sup>2</sup> [thereunder] or any matter with respect to which the Federal Legislature has power to make laws in relation to the State, in any Federated State.

1. Substituted in *ibid.*, by the words- "any Governor's Province or Chief Commissioner's Province".

2. Substituted, by *ibid.*, by the words- "or order thereunder, or of the Indian Independence Act, 1947, or of any order thereunder".

**213. Power of Governor-General to consult Federal Courts :-**

(1) If at any time it appears to the Governor-General that a question of law has arisen, or is likely to arise, which is of such a nature and of such public importance that it is expedient to obtain

the opinion of the Federal Court upon it, he may <sup>1</sup> [in his discretion] refer the question to that court for consideration, and the court may, after such hearing as they think fit, report to the Governor-General thereon.

(2) No report shall be made under this section save in accordance with an opinion delivered in open court with the concurrence of a majority of the judges present at the hearing of the case, but nothing in this sub-section shall be deemed to prevent a judge who does not concur from delivering a dissenting opinion.

1. Omitted by *ibid*.

#### **214. Rules of court, etc :-**

(1) The Federal Court may from time to time, with the approval of the Governor-General in his discretion, make rules <sup>1</sup> of court for regulating generally the practice and procedure of the court, including rules as to the persons practising before the court, as to the time within which appeals to the court, are to be entered, as to the costs of and incidental to any proceedings in the court, and as to the fees to be charged in respect of proceedings therein, and in particular may make rules providing for the summary determination of any appeal which appears to the Court to be frivolous or vexatious or brought for the purpose, of delay.

(2) Rules, made under this section may fix the minimum number of Judges who are to sit for any purposes, so however that no case shall be decided by less than three Judges: Provided that, if the Federal legislature makes such provision as is mentioned in this chapter for enlarging the appellate jurisdiction of the court, the rules shall provide for the constitution of a special division of the court for the purpose of deciding all cases which would have been within the jurisdiction of the court even if its jurisdiction had not been so enlarged.

(3) Subject to the provisions of any rules of court, the Chief Justice of India shall determine what Judges are to constitute any division of the court and what Judges are to sit for any purpose.

(4) No judgment shall be delivered by the Federal Court save in open court and with the concurrence of a majority of the judges present at the hearing of the case, but nothing in this sub-section shall be deemed to prevent a Judge who does not concur from delivering a dissenting judgment.

(5) All proceedings in the Federal Court shall be in the English language.

1. See the Federal Court Rules, 1942, published in the Gazette of India, 1942, Part I, page 1228.

**215. Ancillary powers of Federal Court :-**

The Federal Legislature may make provision by Act for conferring upon the Federal Court such supplemental powers not inconsistent with any of the provisions of this Act as may appear to be necessary or desirable for the purpose of enabling the court more effectively to exercise the jurisdiction conferred upon it by or under this-Act.

**216. Expenses of Federal Court :-**

(1) The administrative expenses of the Federal Court, including all salaries, allowances and pension payable to or in respect of the officers and servants of the court, shall be charged upon the revenues of the Federation, and any fees or other moneys taken by the court shall form part of those revenues.

**1**

[(2) The Governor-General shall exercise his individual judgment as to the amount to be included in respect of the administrative expenses of the Federal Court in any estimates of expenditure laid by him before the chambers of the Federal Legislature.]

1. Omitted, by *ibid.*

**217. Construction of references to High Courts in States :-**

References in any provision of this Part of this Act to a High Court in a Federated State shall be construed as reference to any court which **1** [His Majesty] may, after communication with the Ruler of the State, declare to be a High Court for the purposes of that provision.

1. Substituted, by *ibid.*, by the word- "Governor-General".

**218. Savings :-**

Nothing in this chapter shall be construed as confer- ring, or empowering the Federal Legislature to confer, any right of appeal to the the Federal Court in any case in which a High Court **1**[British India] is exercising jurisdiction on appeal from a court outside **1** [British] .India, or as affecting any right of appeal in any such case to His Majesty in Council with or without leave.

1. Omitted, by *ibid.*

## CHAPTER 2

### THE HIGH COURTS IN 1a [BRITISH] INDIA

#### **219. Meaning of "High Court :-**

".-

(1) The following courts shall in relation to British India be deemed to be High Courts for the purposes of this Act, that is to say, the High Courts in Calcutta, Madras, Bombay, Allahabad, <sup>1</sup>[Lahore and Patna, the Chief Court in Oudh, the Judicial Commissioner's Courts in the Central Provinces and Berar, in the North-West Frontier Province and in Sind], any other court in British India constituted or reconstituted under the chapter as a High Court, and any other comparable court in British India which <sup>2</sup>[His Majesty in Council] may declare to be a High Court for the purposes of this Act: <sup>3</sup>[Provided that, if provision <sup>4</sup>(has been made, whether before or after the commencement of Part III of this Act-

(a) by His Majesty by Letters Patent for the establishment of a High Court to replace any Courts mentioned in this sub-section; or

(b) by the appropriate Legislature in India for the establishment of a Chief Court to replace the Judicial Commissioner's Court in the North-West Frontier Province, or the Judicial Commissioner's Court in Sind, then, as from the establishment of the new court, this section shall have effect as if the new court were mentioned therein in lieu of the court or courts so replaced.]

(2) The provisions of this chapter shall apply to every High Court in British India. <sup>5</sup>

1. Substituted, by *ibid.*, by the following- . "Patna and Nagpur, the High Court of East Punjab, the Chief Court in Oudh".

2. Substituted, by *ibid.*, by the words- "an Art of the appropriate Legislature".

3. Substituted by the India and Burma (Miscellaneous Amendments) Act, 1940 (3 and 4 Geo. 6. Ch. 5), S. 6.

4. Substituted, by *ibid.*, by the words- "is made by His Majesty by Letters Patent for the establishment of a High Court to replace any Court or Courts mentioned in this sub-section, then, as from".

5. Sub-sec. (3) was added, by *ibid.*, as follows- "In this Chapter, India means the territories comprised in the Governors' Provinces and Chief Commissioners' Provinces, and does not include any Acceding State".

#### **220. Constitution of High Courts :-**

(1) Every High Court shall be a court of record and shall consist of a chief justice and such other judges as <sup>1</sup>[His Majesty] may from time to time deem it necessary to appoint: Provided that the judges so appointed together with any additional judges appointed by the Governor-General in accordance with the following provisions <sup>2</sup>[His Majesty in Council may] fix in relation to that court. <sup>3</sup>

(2) Every judge of a High Court shall be appointed by <sup>4</sup>[His Majesty by warrant under the Royal Sign Manual] and shall hold office until he attains the age of sixty years: Provided that-

(a) a judge may, by resignation under his hand addressed to Governor resign his office:

(b) a judge may be removed from his office by <sup>4</sup>[His Majesty by warrant under the Royal Sign Manual] on the ground of misbehaviour or of infirmity of mind or body if the Judicial Committee of the Privy Council, on reference being made to them <sup>6</sup>[by His Majesty], report that the judge ought on any such ground to be removed.

<sup>7</sup>[(c) the office of a judge shall be vacated by his being appointed <sup>5</sup>[by His Majesty] to be a judge of the Federal Court or of another High Court.]

(3) A person shall not be qualified for appointment as a judge of a High Court unless he-

(a) is a barrister of England or Northern Ireland, of at least ten years standing, or a member of the Faculty of Advocates in Scotland of at least ten years standing, or

(b) is a member of the Indian Civil Service of at least ten years standing, who has for at least three years served as, or exercised the powers of, a district Judge; or

(c) has for at least five years held a judicial office in British India not inferior to that of a subordinate judge, or judge of a small cause court: or

(d) has for at least ten years been a pleader or of any High Court, or of two or more such Courts in succession: <sup>5</sup>[Provided that a person shall not, unless he is, or when first appointed to judicial office was, a barrister, a member of the Faculty of Advocates or a pleader, be qualified for appointment as Chief Justice of any High

Court constituted by letters patent until he has served for not less than three years as a Judge of a High Court.] [In computing for the purposes of this sub-section the standing of a barrister or a member of the Faculty of Advocates, or the period during which a person has been a pleader, any period during which the person has held judicial office after he became a barrister, a member of the Faculty of Advocates, or a pleader, as the case may be, shall be included.] **10**

(4) Every person appointed to be a judge of a High Court shall, before he enters upon his office, make and subscribe before the Governor or some person appointed by him an oath according to the form set out in that behalf in the Fourth Schedule to this Act.

1. Substituted, by *ibid.*, by the words "Governor-General".
2. Substituted, 'by *ibid.*, by the words-"the Governor-General may by order fix".
3. See the Government of India (High Court Judges) Order, 1987 [16-3-1937].
4. Substituted, by *ibid.*, by the words "Governor-General".
6. Omitted, by *ibid.*
7. Added and deemed to have been so added immediately before the passing of the Act by the India (Miscellaneous Provisions) Act, 1944 (7 and 8 Geo. 6, Ch. 38), Ss. 2 and 6(1).
10. Inserted, by *ibid.*, after this- "and.-in computing the period during which a person has served as a judge of a High Court, or been a pleader of a High Court, or held judicial office in India, any period before the establishment of the Dominion during which the person has served as a judge or been a pleader of a High Court in British India or has held judicial office in India, as the case may be, shall be included".

### **221. Salaries, etc., of Judges :-**

The judges of the several High Courts shall be entitled to such salaries and allowances, including allowances for expenses in respect of equipment and travelling upon appointment, and to such rights in respect of leave and pensions, as may from time to time be fixed by <sup>1</sup>[His Majesty in Council]:<sup>1</sup> Provided that neither the salary of a judge, nor his rights in respect of leave of absence or pension, shall be varied to his disadvantage after his appointment.

1. See the Government of India (High Court Judges) Order, 1937 [18-3-1937].

### **222. Temporary and additional judges :-**

(1) If the office of chief justice of a High Court becomes vacant, or

if any such chief justice is by reason of absence, or for any other reason, unable to perform the duties, of his office, those duties shall, until some person <sup>1</sup>[appointed by His Majesty] to the vacant office has entered on the duties thereof, or until the chief justice has resumed his duties, as the case may be, be performed by such one of the other judges of the Court as the Governor-General may <sup>2</sup>[in his discretion] think fit to appoint <sup>3</sup>[for the purpose].

(2) If the office of any other judge of a High Court becomes vacant, or if any such judge is appointed to act temporarily as a chief justice, or is by reason of absence, or for any other reason, unable to perform the duties of his office, the Governor-General may <sup>2</sup>[in his discretion] appoint a person duly qualified for appointment as a judge to act as a judge of that Court, and the person so appointed shall, unless the Governor-General <sup>2</sup>[in his discretion] thinks fit to revoke his appointment, be deemed to be a judge of that Court until some person <sup>1</sup>[appointed by His Majesty] to the vacant office has entered on the duties thereof, until the permanent judge has resumed his duties.

(3) If by reason of any temporary increase in the business of any High Court or by reason of arrears of work in any such Court it appears to the Governor-General that the number of the judges of the Court should be for the time being increased, the Governor-General <sup>2</sup> [in his discretion] may, subject to the foregoing provisions of this chapter with respect to the maximum number of judges, appoint persons duly qualified for appointment as judges to the additional judges of the Court for such period not exceeding two years as he may specify.

1. Substituted, by the India (Provisional Constitution) Order, 1947, by the words- 'permanently appointed'.

2. Omitted, by *ibid.*

3. Substituted, by *ibid.*, by the words "as acting chief justice".

### **223. Jurisdiction of existing High Courts :-**

Subject to the provisions of this Part of this Act, to the provisions of any Order in Council made under this or any other Act and to the provisions of any Act of the appropriate Legislature enacted by virtue of powers conferred on that Legislature by this Act, the jurisdiction of and the law administered in, any existing High Court, and the respective powers of the judges thereof in relation to the administration of justice in the court, including any power to make rules of Court and to regulate the sittings of the Court and of

members thereof sitting alone or in division courts, shall be the same as immediately before the commencement of Part III of this Act.

**224. Administrative functions of High Courts :-**

(1) Every High Court shall have superintendence over all courts in India for the time being subject to its appellate jurisdiction, and may do any of the following things, that is to say,-

(a) call for returns;

(b) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts;

(c) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts; and

(d) settle tables of fees to be allowed to the sheriff, attorneys, and all clerks and officers of courts: Provided that such rules, forms and tables shall not be inconsistent with the provision of any law for the time being in force, and shall require the previous approval of the Governor.

(2) Nothing in this section shall be construed as giving to a High Court any jurisdiction to question any judgment of any inferior court which is not otherwise subject to appeal or revision.

**225. Transfer of certain cases to High Court for trial :-**

(1) If on an application made in accordance with the provisions of this section a High Court is satisfied that a case-pending in an inferior court, being a case which the High Court has power to transfer to itself for trial, involves or is likely to involve the question of the validity of any Federal or Provincial Act, it shall exercise that power.

(2) An application for the purposes of this section shall not be made, except in relation to a Federal Act, by the Advocate-General, for the Federation and, in relation to a Provincial Act, by the Advocate-General for the Federation or the Advocate-General for the Province.

**226. Jurisdiction in revenue matters :-**

(1) Until otherwise provided by Act of the appropriate legislature, no High Court shall have any original jurisdiction in any matter

concerning the revenue, or concerning any act ordered or done in the collection thereof according to the usage and practice of the country or the law for the time being in force.

(2) A Bill or amendment for making such provision as aforesaid shall not be introduced into or moved in a Chamber of the Federal or a Provincial Legislature without the previous sanction of the Governor-General in his discretion or, as the case may be, of the Governor in his discretion.

**227. Proceedings of High Courts to be in English :-**

All proceedings in every High Court shall be in the English language.

**228. Expenses of High Courts :-**

(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 revenue of the Province, and any fees or other moneys taken by the Court shall form part of those revenues.

<sup>1</sup> [(2) The Governor shall 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].

1. Omitted by the India (Provisional Constitution) Order, 1947,

**229. Power of His Majesty to constitute or reconstitute High Court by letters patent :-**

(1) His Majesty, if the Chamber or Chambers of the Legislature of any Province present an address in that behalf to the Governor of the Province for submission to His Majesty, may by letters patent constitute a High Court for that Province or any part thereof or reconstitute

(2) Where any Court is reconstituted, or two Courts are amalgamated, as aforesaid, the letters patent shall provide for the continuance in their respective offices of the existing judges, officers and servants of the Court or Courts, and for the carrying on before the reconstituted Court or the new Court of all pending matters, and may contain such other provisions as may appear to His Majesty to be necessary by reason of the reconstitution or amalgamation.

### **230. Extra provincial jurisdiction of High Courts :-**

(1) <sup>1</sup>[His Majesty in Council] may, if satisfied that an agreement in that behalf has been made between the Governments concerned, "extend the jurisdiction of a High Court in any Province to any area in <sup>2</sup> [British] India not forming part of that Province, and the High Court shall thereupon have the same jurisdiction in relation to that area as it has in relation to any other in relation to which it exercises jurisdiction.

(2) Nothing in this section affects the provisions of any law or letters patent in force immediately before the commencement of Part III of this Act empowering any High Court to exercise jurisdiction in relation to more than one Province or in relation to a Province and an -area not forming part of any Province.

(3) Where a High Court exercises jurisdiction in relation to any area or areas outside the Province in which it has its principal seat, nothing in this Act shall be construed-

(a) as empowering the Legislature of the Province in which the Court has its principal seat to increase, restrict or abolish that jurisdiction; or

(b) as preventing the Legislature having power to make laws in that behalf for any such area from passing such laws with respect to the jurisdiction of the Court in relation to that area as it would be competent to pass if the principal seat of the Court were in that area.

1. Substituted, by *ibid.*, by the word 'Governor-General'.

2. Omitted by the India (Provisional Constitution) Order, 1947.

### **231. Saving and definitions :-**

(1) Any judge appointed before the commencement of Part III of this Act to any High Court shall continue in office and shall be deemed to have been appointed under this Part of this Act, but shall not by virtue of this Act be required to relinquish his office at any earlier age than he would have been required so to do, if this Act had not been passed.

(2) Where a High Court exercises jurisdiction in relation to more than one Province or in relation to a Province and an area not forming part of a Province, references in this chapter to the Governor in relation to the judges <sup>1</sup> [and expenses] of a High Court

and references to the revenues of the Province shall be construed as references to the Governor and the revenues of the Province in which the Court has its principal seat, and the reference to the approval by the Governor of rules, forms and tables for subordinate courts shall be construed as a reference to the approval thereof by the Governor of the Province in which the subordinate court is situate, or; if it is situate in an area not forming part of a Province, by the Governor-General.

1. Omitted by the India (Provisional Constitution) Order, 1947.

#### PART 10

#### THE SERVICES OF THE CROWN IN INDIA

#### CHAPTER 1

#### DEFENCE SERVICES

#### **232. Pay, etc., of Commander-in-Chief :-**

The pay and allowances of the Commander-in-Chief of His Majesty's Forces in India and the other conditions of his service shall be such as His Majesty-in Council may direct.

#### **233. Control of His Majesty as to Defence appointments :-**

(1) His Majesty in Council may require that appointments to such offices connected with defence as he may specify shall be made by him or in such manner as he may direct.<sup>1</sup>

(2) Nothing in this section derogates from any power vested in His Majesty by virtue of any Act or by virtue of his Royal Prerogative.

1. Later, omitted by the India (Provisional Constitution) Order, 1947,

#### **234. Eligibility for commissions in Indian Forces :-**

The power of His Majesty, and of any person authorised in that behalf by His Majesty, to grant commissions in any naval, military or air force raised in India extends to the granting of a commission in any such force to any person who might be, or has been, lawfully enlisted or enrolled in that force.

#### **235. Control of Secretary of State with respect to conditions of service :-**

Without prejudice to the generality of the powers conferred on him by this Act, the Secretary of State may, acting with the concurrence of his advisers, from time to time specify what rules, regulations and orders affecting the conditions of service of all or any of His Majesty's Forces in India shall be made only with his

previous approval.

**236. Saving of rights of appeal :-**

Nothing in this Act affects any right of appeal which members of His Majesty's Forces in India enjoyed immediately before the passing of this Act, and the Secretary of State may entertain any such memorial from a member of those Forces as the Secretary of State, or the Secretary of State in Council might previously have entertained.

**237. Pay, etc., of members of forces to be charged on Federal revenues :-**

Any sums payable out of the revenues of the Federation in respect of pay, allowances, pensions or other sums payable to, or in respect of, persons who are serving, or have served, in His Majesty's forces shall be charged on those revenues, but nothing herein contained shall be construed as limiting the interpretation of the general provisions of this Act charging on the said revenues expenditure with respect to defence.

**238. Provisions as to certain civilian personnel :-**

The provisions of the three last preceding sections shall apply in relation to persons who, not being members of His Majesty's forces hold, or have held, posts in India connected with the equipment or administration of those forces or otherwise connected with defence, as they apply in relation to persons who are, or have been, members of those forces.

**239. Kings India cadetships :-**

In the appointment of officers to His Majesty's army the same provision as heretofore, or equal provision, shall be made for the appointment of sons of persons who have served in India in the military or civil service of the Crown. In this section the reference to persons who have served in India in the military or civil service of the Crown includes persons who have so served in Burma or in Aden before their respective separations from India.

CHAPTER 2

CIVIL SERVICES-GENERAL PROVISIONS

**240. Tenure of office of persons employed in civil capacities in India :-**

(1) Except as expressly provided by this Act, every person who is a member of a civil service of the Crown in India, or holds any civil

post under the Crown in India, holds office during His Majesty's pleasure.

(2) No such person as aforesaid shall be dismissed from the service of His Majesty by any authority subordinate to that by which he was appointed.

(3) No such person as aforesaid shall be dismissed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him: Provided that this sub-section shall not apply-

(a) where a person is 'dismissed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where an authority empowered to dismiss a person or reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to give to that person an opportunity of showing cause.

(4) Notwithstanding that a person holding a civil post under the Crown in India holds office during His Majesty's pleasure, any contract under which a person, not being a member of a civil service of the Crown in India, is appointed under this Act to hold such a post may, if the Governor-General, or, as the case may be, the Governor, deems it necessary in order to secure the services of a person having special qualifications, provide for the payment to him of compensation, if before the expiration of an agreed period that post is abolished or he is, for reasons not connected with any misconduct on his part, required to vacate that post.

#### **241. Recruitment and conditions of service :-**

(1) Except as expressly provided by this Act. appointments to the civil services of, and civil posts under the Crown in India, shall, <sup>1</sup>[after the commencement of Part III of this Act], be made-

(a) in the case of services of the Federation, and posts in connection

(b) in the case of services of a Province, and posts in connection with the affairs of a Province, by the Governor or such person as he may direct.

(2) Except as expressly provided by this Act, the conditions of service of persons serving His Majesty in a civil capacity <sup>2</sup>[in India]

shall, subject to the provisions of this section, be such as may be prescribed-

(a) in the case of persons serving in connection with the affairs of the Federation, by rules made by the Governor-General or by some person or persons authorised by the Governor-General to make rules for the purpose;

(b) in the case of persons serving in connection with the affairs of a Province, by rules made by the Governor of the Province or by some person or persons authorised by the Governor to- make rules for the purpose: Provided that it shall not be necessary to make rules regulating the conditions of service of persons employed temporarily on the terms that their employment may be terminated on one month's' notice or less, and nothing in this sub-section shall be construed as requiring the rules regulating the conditions of service of any class of persons to extend to any matter which appears to the rule-making authority to be a matter not suitable for regulation by rule in the case of that class.

(3) The said rules shall be so framed as to secure-

(a) that, in the case of a person who before the commencement of Part III of this Act was serving His Majesty, in a civil capacity <sup>2</sup>[in India], no order which alters or interprets to his disadvantage any rule by which his conditions of service are regulated shall be made except by an authority which would have been competent to make such an order on the eighth day of March, nineteen hundred and twenty-six, or by <sup>4</sup>[some person empowered by the Secretary of State to give directions in that respect] ;

(b) that every such person as aforesaid shall have the same rights of appeal to the same authorities from any order which-

(i) punishes or formally censures him; or

(ii) alters or interprets to his disadvantage any rule by which his conditions of service are regulated; or

(iii) terminates his appointment otherwise than upon his reaching the age fixed for superannuation, as he would have had immediately before the commencement of Part III of this Act, or such similar rights of appeal .to such corresponding authorities as may be directed by <sup>3</sup>[the Secretary of State or by some person empowered by the Secretary of State to give directions in that

respect] ;

(c) that every other person serving His Majesty in a civil capacity<sup>2</sup>[in India] shall have at least one appeal against any such order as aforesaid, not being an order of the Governor-General or a Governor.

(4) Notwithstanding anything in this section, but subject to any other provision of this Act, Acts of the appropriate Legislature in India may regulate the conditions of service of persons serving His Majesty in a civil capacity in India and any rules made under this section -shall have effect subject to the provisions of any such Act. Provided that nothing in any such Act shall have effect so as to deprive any person of any rights required to be given to him by the provisions of the last preceding sub-section.

(5) No rules made. under this section and no Act of any Legislature<sup>7</sup>[in India] shall be construed to limit or abridge the power of the Governor- General or a Governor to deal with the case of any person serving His Majesty in a civil capacity<sup>4</sup> [in India] in such manner as may appear to him to be just and equitable: Provided that, where any such rule or Act is applicable to the case of any person, the case shall not be dealt with in any manner less favourable to him than that provided by that rule or Act.

1. Omitted, by *ibid*,

2. Omitted, by *ibid*

4. Substituted, by *ibid.*, the words- "the Governor-General or the Governor as the case may be".

7. Omitted, by *ibid*.

## **242. Application of preceding section to railway, customs, postal and telegraph services and officials of courts :-**

**1**

[(1) In its application to appointments to, and to persons serving in, the railway services of the Federation, the last preceding section shall have effect as if for any reference to the Governor-General in paragraph (a) of sub-section (1), in paragraph (a) of .sub-section (2) and in sub-section (5) there were substituted a reference to the Federal Railway Authority].

**1**

[(2) In framing rules for the regulation of recruitment to superior railway posts, the Federal Railway Authority shall consult the

Federal Public Service Commission, and in recruitment to such posts and in recruitment generally for railway purposes shall have due regard to the past association of the Anglo-Indian community with railway services in India, and particularly to the specific class, character and numerical percentages of the posts hitherto held by members of that community and the remuneration attaching to such posts, and shall give effect to any instructions which may be issued by the Governor-General for the purpose of securing, so far as practicable to each community in India a fair representation in the railway services of the Federation, but, save as aforesaid, it shall not be obligatory on the Authority to consult with, or otherwise avail themselves of the services of the Federal Public Service Commission].

(3) In framing the rules for the regulation of recruitment to posts in the<sup>3</sup> customs, postal and telegraph services, the Governor-General or person authorised by him in that behalf shall have due regard to the past association of the Anglo-Indian community with the said services, and particularly to the specific class, character and numerical percentages of the posts previously held in the said services by members of the said community and to the remuneration attaching to such posts.

(4) In its application to appointments to, and to persons serving on, the staff attached to the Federal Court or the staff attached to a High Court, the said section shall have effect as if, in the case of the Federal Court, for any reference to the Governor-General in paragraph (a) of sub-section (1), in paragraph (o) of sub-section (2) and in sub-section (5) there were substituted a reference to the Chief Justice of India and as if, in the case of a High Court, for any reference to the Governor in paragraph (b) of

(a) in the case of the Federal Court, the Governor-General' and, in the case of a High Court, the Governor may in his discretion. require that in such cases as he may in his discretion direct no person not already attached to the Court shall be appointed to any office connected with the Court save after consultation with the Federal Public Service Commission, or the Provincial Public Service Commission, as the case may be;

(b) rules made under the said sub-section (2) by a Chief Justice shall, so far as they relate to salaries, allowances, leave or pensions, require the approval of the Governor-General or, as the case may be, the Governor.

1. Omitted, by *ibid.*
3. Inserted, by *ibid.*, the word 'railway'.

**243. Special provisions as to police :-**

Notwithstanding anything in the foregoing provisions of this chapter, the conditions of service of the subordinate ranks of the various police forces in India shall be such as may be determined by or under the Acts relating to those forces respectively.

**244. Services recruited by Secretary of State :-**

(1) As from the commencement of Part III of this Act appointments to the civil services known as the Indian Civil Service, the Indian Medical Service (Civil), and the Indian Police Service (which last mentioned service shall thereafter be known as "the Indian Police") shall, until Parliament otherwise determines, be made by the Secretary of State.

(2) Until Parliament otherwise determines, the Secretary of State may also make appointments to any service or services which at any time after the said date he may deem it necessary to establish for the purpose of securing the recruitment of suitable persons to fill civil posts in connection with the discharge of any functions of the Governor-General which the Governor-General is by or under this Act required to exercise in his discretion.

(3) The respective strengths of the said services shall be such as the Secretary of State may from time to time prescribe, and the Secretary of State shall in each year cause to be laid before each House of Parliament a statement of the appointments made thereto and the vacancies therein.

(4) It shall be the duty of the Governor-General to keep the Secretary of State informed as to the operation of this section, and he may after the expiration of such period as he thinks fit make recommendations for the modification thereof. In discharging his functions under this sub-section, the Governor General shall act in his discretion].

**245. Special provision as to irrigation :-**

Until Parliament otherwise determines, the Secretary of State may for the purpose of securing efficiency in irrigation in any Province, appoint persons to any civil service of, or civil post under, the Crown in India concerned with irrigation].

**246. Reserved posts :-**

(1) The Secretary of State shall make rules specifying the number and character of the civil posts under the Crown (other than posts in connection with any functions of the Governor-General which the Governor-General is by or under this Act required to exercise in

(a) be kept vacant for more than three months; or

(b) be filled otherwise than by the appointment of such a person as aforesaid; or

(c) be held Jointly with any other such post.

(2) Appointments and postings to the said posts (hereinafter in this Part of this Act referred to as "reserved posts") shall-

(a) in the case of posts in connection with the affairs of the Federation, be made by the Governor-General, exercising his individual judgment;

(b) 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.

(3) All rules made. under this section shall, so soon as may be after they are made, be laid before each House of Parliament and, if either House of Parliament within the next subsequent twenty-eight days on which that House has sat after any such rule has been laid before it resolves that the rule shall be annulled, the rule shall thenceforth be void but without prejudice to the validity of anything previously done thereunder or to the making of a new rule].

**247. Conditions of service, pensions, etc., of persons recruited by Secretary of State :-**

(1) The conditions of service of all persons appointed to a civil service or a civil post by the Secretary of State shall-

(a) as respects pay, leave and pensions, and general rights in regard to medical attendance, be such as may be prescribed by rules to be made by the Secretary of State.

(b) as respects other matters with respect to which express provision is not made by this chapter, be such as may be prescribed by rules to be made by the Secretary of State in so far

as he thinks fit to make such rules, and, in so far and so long as provision is not made by such rules, by rules to be made as respects persons serving in connection with the affairs of the Federation, by the Governor-General or some person or persons authorised by the Governor-General to make rules for the

(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 shall, if he is serving in connection with the affairs of the Federation, be made by the Governor-General exercising his individual judgment and, if he is serving in connection with the affairs of a Province, be made by the Governor exercising his individual judgment.

(3) If any such person as aforesaid 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-General exercising his individual judgment or, as the case may be, by the Governor exercising his individual judgment,

(4) The salary and allowances of any such person as aforesaid shall, if he is serving in connection with the affairs of the Federation, be charged on the revenues of the Federation and, if he is serving in connection with the affairs of a Province, be charged on the revenues of the Province: Provided that, if any such person is serving in connection with the railway in India, so much only of his salary and allowances shall be charged on the revenues of the Federation as is not paid out of the Railway Fund.

(5) Pensions payable to or in respect of any such person as aforesaid, and government contributions in, respect of any such person to any pension fund or provident fund, shall be charged on the revenues of the Federation.

(6) No award of a pension less than the maximum pension allowable under rules made under the section shall be made, except in each case with the consent of the Secretary of State.

(7) No rules made under this section shall be construed to limit or abridge the power of the Secretary of State to deal with the case of any person serving His Majesty in a civil capacity in India in such manner as may appear to him to be just and equitable, and no rules made under this section by any person other than the Secretary of State shall be construed to limit or abridge the power

of the Governor-General or, as the case may be, the Governor of a Province to deal with the case of any such person in such manner as may appear to him to be just and equitable: Provided that, where any rule made under this section is applicable to the case of any person, the case shall not be dealt with in any manner less favourable to him than that provided by the rule.

**248. Rights in respect of complaints, appeals, etc :-**

(1) If any person appointed to a civil service 'or a civil post by the Secretary of State is aggrieved by an order affecting his conditions of service and on due application to the person by whom the order was made does not receive the redress to which he considers himself entitled, he may, without prejudice to any

(2) No order which punishes or formally censures any such person as aforesaid, or affects adversely his emoluments or rights in respect of 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 the Federation, by the Governor-General, exercising his individual judgment; or, if he is serving in connection with the affairs of a Province, by the Governor of that Province, exercising his individual judgment.

(3) Any person appointed to a civil service or a civil post by the Secretary of State may appeal to the Secretary of State against any order made by any authority in India which punishes or formally censures him, or alters or interprets to his disadvantage any rule by which his conditions of service are regulated.

(4) Any sums ordered to be paid out of the revenues of the Federation or a Province to or in respect of any such person as aforesaid on an appeal made under this section shall be charged on those revenues.

**249. Compensation :-**

(1) If by reason of anything done under this Act the conditions of service of any person appointed to a civil service or a civil post by the Secretary of State have been adversely affected, or if for any other reason it appears to the Secretary of State that compensation ought to be granted to, or in respect of, any such person, he or his representatives shall be entitled to receive from the revenues of the Federation, or if the Secretary of State so directs, from the revenues of a Province, such compensation as the Secretary of

State may consider just and equitable.

(2) Any sum payable under this section from the revenues of the Federation or the revenues of a Province shall be charged on the revenues of the Federation or, as the case may be, that Province.

(3) For the avoidance of doubt it is hereby declared that the foregoing provisions of this section in no way prohibit expenditure by the Governor-General, or, as the case may be, the Governor, from the revenues of the Federation or a Province by way of compensation to persons who are serving or have served His Majesty in India in cases to which those provisions do not apply. Provisions as to persons appointed by Secretary of State in Council, persons holding reserved posts and commissioned officers in civil employment.

**250. Application of four last preceding sections to persons appointed by Secretary of State in Council, and certain other persons :-**

(1) Subject to the provisions of this section, the provisions of the four last preceding sections and any rules made thereunder shall apply in relation to any person who was appointed before the commencement of Part III of this Act by the Secretary of State in Council to a civil service of, or a civil under, the Crown in India as they apply in relation to persons appointed to a civil service or civil post by the Secretary of State.

(2) Subject to the provisions of this section, the said sections and

(a) not being a person appointed as aforesaid by the Secretary of State or the Secretary of State in Council, holds or has held a reserved post; and

(b) holds or has held any civil post under the Crown in India and is, or was when he was first appointed to such a post, an officer in His Majesty's forces.

(3) In relation to any person who was appointed before the commencement of Part III of this Act to a civil service of, or to a civil post under, the Crown in India, the provision contained in the sections aforesaid that no rule as to conditions of service shall have effect so as to give to any person less favourable terms as regards remuneration or pension than were given to him by the rules in force on the date on which he was first appointed to his service or

was appointed to his post, shall be construed as a provision that no such rule shall have effect so as to give to any person less favourable terms as respects the said matters than were given to him by the rules in force immediately before the coming into operation of the rule.

(4) In its application, by virtue of this section, to persons serving in the railway services of the Federation, the second of the four last preceding sections (which relates to the conditions of service, pensions, etc., of persons recruited by the Secretary of State) shall have effect as if for any reference to the Governor-General in paragraph (b) of sub-section (1) thereof and in sub-sections (2), (3) and (7) thereof there was substituted a reference to the Federal Railway Authority.

(5) Any liability of the Federation or of any Province to or in respect of any person appointed before the commencement of Part III of this Act by the Secretary of State in Council to a civil service of, or a civil post under, the Crown in India, being a liability to pay a pension granted to or in respect of any such person or any other liability of such a nature as to have been enforceable in legal proceedings against the Secretary of State in Council if this Act had not been passed, shall, notwithstanding anything in this Act, be deemed, for the purposes of the provisions of Part VII of this Act, relating to legal proceedings, to be a liability, arising under a statute passed before the commencement of Part III of this Act. Special provisions as to staffs of the High Commissioner for India and the Auditor of Indian Home Accounts.

### **251. Staff of High Commissioner and Auditor of Indian Home Accounts :-**

1The provisions of this Part of this Act shall apply in relation to appointments to, and to persons serving on, the staffs of the High Commissioner for India and the Auditor of Indian Home Accounts as if the service of members of those staffs were service rendered in India:- Provided that-

(a) appointments to the staff of the Auditor of Indian Home Accounts shall be made by him subject, as respects numbers, salaries and qualifications, to the approval of the Governor-General in his discretion; and

(b) in relation to that staff the functions-of the Governor-General under this Part of this Act shall be exercised by him in his

discretion.

**252. Conditions of service of existing staff of High Commissioner and Auditor of Indian Home Accounts :-**

(1) All persons who immediately before the commencement of Part III of this Act were members of the staff of the High Commissioner for India, or members of the staff of the Auditor of the accounts of the Secretary of State in Council, shall continue to be or shall become, members of the staff of the High Commissioner for India or, as the case may be, of the Auditor of Indian Home Accounts.

(2) All such persons as aforesaid shall hold their offices or posts subject to like conditions of service as to remuneration, . pensions or otherwise, as therefore, or not less favourable conditions, and shall be entitled to reckon for purposes of pension any service which they would have been entitled to reckon if this Act had not been passed.

(3) The salaries, allowances and pensions-payable to, or in respect of, such of the persons aforesaid as were members of the staff of the Auditor of the accounts of the Secretary of State in Council shall be charged on the revenues of the Federation, and the salaries, allowances and pensions payable to, or in respect of, other such persons as aforesaid shall be so charged in so far as those salaries, allowances and pensions would, but for the passing of this Act, have been payable without being submitted to the vote of the Legislative Assembly of the Indian Legislature.

**253. Judges of the Federal Court and High Courts :-**

(1) The provisions of this chapter shall not apply to the judges of the Federal Court or of any High Court: Provided that-

(a) for the purposes of this section a member of any of the civil services of the Crown in India who is acting temporarily as a judge of a High Court shall not be deemed to be a judge of that Court;

(b) nothing in this section shall be construed as preventing the <sup>1</sup>[Orders in Council] relating to the salaries, leave and pensions of judges of the Federal Court, or of any High Court, from applying to such of those judges as were, before they were appointed judges, members of a civil service of the Crown in India, such of the rules relating to that service as may appear to <sup>2</sup>[His Majesty] to be properly applicable in relation to them;

(c) nothing in this section shall be construed as excluding the office of judge of the Federal Court or of a High Court from the operation of the provisions of this chapter with respect to the eligibility for civil office of persons who are not British subjects.

(2) Any pension which under the rules in force immediately before the commencement of Part III of this Act was payable to or in respect of any person who, having been a judge of a High Court within the meaning of this Act<sup>1</sup> or of the High Court at Rangoon, retired before the commencement of the said Part III shall, notwithstanding anything in this Act or the Government of Burma Act, 1935) continue to be payable in accordance with those rules and shall be charged 'on the revenues of the Federation.

#### **4**

[(3) Any liability of the Federation or of any Province to or in respect of any person who is, at the commencement of Part III of this Act, a judge of a High Court within the meaning of this Act, or to or in respect of any such person as is mentioned in sub-section (2) of this section, being a liability to pay a pension granted to or in respect of any such person or any other liability of such a nature as to have been enforceable in legal proceedings against the Secretary of State in Council if this Act had not been passed, shall, notwithstanding anything in this Act or the Government of Burma Act, 1935, be deemed, for the purposes of the provisions of Part VII of this Act relating to legal proceedings, to be a liability arising under a statute passed before the commencement of Part III of this Act].

1. Substituted, by *ibid.*, by the words 'orders of the Governor-General'.

2. Substituted, by *ibid.*, by the words "the Governor-General".

4. Omitted, by *ibid.*,

#### **254. District judges, etc :-**

(1) Appointments of persons to be, and the posting and promotion of, district judges in any province shall be made by the Governor of the Province, exercising his individual judgment, and the High Court shall be consulted before a recommendation as to the making of any such appointment is submitted to the Governor.

(2) A person not already in the service of His Majesty shall only be eligible to be appointed a district judge if he has been for not less than five years a barrister, a member of the Faculty of Advocates in

Scotland, or a pleader and is recommended by the High Court for appointment.

(3) In this and the next succeeding section the expression "district judge". includes additional district, judge, joint district judge, assistant district judge, chief judge of a small cause court, chief presidency magistrate, sessions judge, additional sessions judge, and assistant sessions judge.

**255. Subordinate civil judicial service :-**

(1) The Governor of each Province shall, after consultation with the Provincial Public Service Commission and with the High Court, make rules defining the standard of qualifications to be attained by persons desirous of entering the subordinate civil judicial service of a Province. In this section, the expression subordinate civil judicial service means a service consisting exclusively of persons intended to fill civil judicial posts inferior to the post of district judge.

(2) The Provincial Public Service Commission for each Province, after holding such examinations, if any, as the Governor may think necessary, shall from time to time out of the candidates for appointment to the subordinate civil judicial service of the Province make a list or lists of the persons whom they consider fit for appointment to that service, and appointments to that service shall be made by the Governor from the persons included in the list or lists in accordance with such regulations as may from time to time be made by him as to the number of persons in the said service who are to belong to the different communities in the Province.

(3) The posting and promotion of, and the grant of leave to, persons belonging to the subordinate civil judicial service of a Province and holding any post inferior to the post of district judge, shall be in the hands of the High Court, but nothing in this section shall be construed as taking away from any such person the right of appeal required to be given to him by the foregoing provisions of this chapter, or as authorising the High Court to deal with any such person otherwise than in accordance with the conditions of his service prescribed thereunder.

**256. Subordinate criminal magistracy :-**

No recommendation shall be made for the grant of magisterial powers or of enhanced magisterial powers to, or the withdrawal of any magisterial powers from, any person save after consultation - with the district magistrate of the district in which he is working, or

with the Chief Presidency Magistrate, as the case may be.

**257. Officers of political department :-**

(1) Subject to the provisions of this section the provisions of this Part of this Act shall not apply in relation to persons wholly or mainly employed in connection with the exercise of the functions of the Crown in its relations with Indian States.

(2) Notwithstanding anything in the preceding sub-section, all persons so employed immediately before the commencement of Part III of this Act shall hold their offices or posts subject to the like conditions of service as to remuneration, pensions or otherwise as theretofore or not less favourable conditions, and in relation to those persons anything which might, but for the passing of this Act, have been done by or in relation to the Secretary of State in Council shall be done by or in relation to the Secretary of State, acting with the concurrence of his advisers.

(3) Nothing in this section shall be construed as affecting the application to such persons of the rule of law that, except as otherwise provided by statute, every person employed under the Crown holds office during His Majesty's pleasure.

**258. Provision for protection of existing officers of certain Services :-**

(1) No civil post which, immediately before the commencement of Part III of this Act, was a post in, or a post required to be held by some member of, a Central Service Class I, a Central Service Class II, a Railway Service Class I, a Railway Service Class 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-

(a) in the case of a post in connection with the affairs of the Federation, by the Governor-General exercising his individual judgment;

(b) in the case of a post in connection with the affairs of a Province, by the Governor of the Province exercising his individual judgment.

(2) No rule or other 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-

(a) in the case of a person who is serving or has served in connection with the affairs of the Federation, by the Governor-General exercising his individual judgment ;

(b) 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.

(3) In relation to any person mentioned in this section who was appointed to a civil service of, or civil post under, the Crown in India by the Secretary of State or the Secretary of State in Council, or is an officer in His Majesty's forces, the foregoing provisions of this section shall have

**259. Provisions as to certain persons serving in or before 1924. :-**

(1) The salary and allowances of any person who was appointed before the first day of April, nineteen hundred and twenty four, otherwise than by the Secretary of State in Council, to a service or a post which at any time between that date and the coming into operation of this Part of this Act was classified as a superior service or post shall be charged, if he is serving in connection with the affairs of the Federation, on the revenues of the Federation and, if he is serving in connection with the affairs of/a. Province, on the revenues of that Province : Provided that, if any such person as aforesaid is serving in connection with the railways in India, so much only of his salary and allowances shall be charged on the revenues of the Federation as is not paid out of the railway fund.

(2) Any pension payable to or in respect of a person appointed as aforesaid, and any government contributions to any provident fund or pensions fund in respect of any such person, shall be charged on the revenues of the Federation.

(3) The provisions of the last preceding sub-section shall also apply in relation to persons who retired before the first day of April, nineteen hundred and twenty-four, and before they retired belonged to services or held posts which were as from the said date classified as superior services or posts, or which are declared by the Secretary of State to have been services or posts equivalent in character to services or posts so classified.

**260. General provisions as to persons retiring before commencement of Part III :-**

(1) Except as otherwise expressly provided in this chapter, any pension payable to or in respect of any person who, having been appointed to a civil service of, or a civil post under, the Crown in India, retired from the service of His Majesty before the<sup>1</sup> [commencement of Part III of this Act shall, if it would have been payable by the Local Government in any Province if this Act had not been passed, be paid out of the revenues of the corresponding Province and in any other case shall be paid out of the revenues of the Federation].

(2) Any pension payable to or in respect of any person who, having served in Burma or Aden, retired from an All-India Service, a Central Service Class I, a Central Service Class II, a Railway Service Class I, or a Railway Service Class II, before the commencement of Part III of this Act shall be paid out of the revenues of the Federation, but save as aforesaid nothing in this section applies to any person who retired after service in Burma or Aden.

1. Substituted, by *ibid.*, by the following- "establishment of the Dominion shall, if it would have been payable by the Government of any Province if the Indian Independence Act, 1947, had not been passed, be paid out of the revenues of that Province, of, if that Province has ceased to exist, of such new Province as may be determined by orders made under that Act, and in any other case shall be paid out of the revenues of the Dominion of India or Pakistan as may be so determined".

**261. Secretary of State to act with concurrence of his advisers :-**

"..- The powers conferred by this and the subsequent chapters of this Part of this Act on the Secretary of State shall not be exercisable by him except with the concurrence of his advisers..

**262. Eligibility for office of persons who are not British subjects :-**

(1) The Ruler or a subject of a Federated States shall be eligible to hold any civil office under the Crown in India in connection with the affairs of the Federation, and the Governor-General may declare that the Ruler or<sup>1</sup> [the subjects, or any named subject, of a specified Indian State] which is not a Federated State, or<sup>2</sup> [the natives, or any named native, of a specified tribal area or territory

adjacent to India], shall be eligible to hold any such office, <sup>3</sup>[\* \* \*].

(2) The Governor of a Province may declare that the Ruler or <sup>3</sup>[the subjects or any named subject, of a specified Indian State or <sup>2</sup>[the natives or any named 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 <sup>2</sup>[\* \* \*].

<sup>1</sup>[(3) The Secretary of State may declare that any named subject of an Indian State, or any named native of a tribal area or territory adjacent to India, shall be eligible for appointments, and any person who, having been so declared eligible, is appointed to such a service, shall be eligible-to hold any civil office under the Crown in India].

(4) Subject as aforesaid and to any other express provisions of this Act, no person who is not a British subject shall be eligible to hold any office under the Crown in India : Provided that-

<sup>8</sup>[(a) a person who at the end of March nineteen hundred and forty <sup>9</sup>[is in the permanent service of the Crown in India] shall not be ineligible to hold any office -under the Crown in India by reason that he is not a British subject: and]

<sup>5</sup>[(b) the Governor-General or, in relation to a Province, the Governor may authorise the temporary employment for any purpose of a person who is not a British subject].

<sup>1</sup> [(5) In the discharge of his functions under this section the Governor- General or the Governor of a Province shall exercise his individual judgment] .

1. Substituted by the India and Burma (Miscellaneous Amendments) Act, 1940 (3 and 4 Geo. 6, ch. 5), S. 9, for "any subject of a specified Indian State" [ effective from 1.4.1943].

2. Substituted, *ibid.*, for "any named native of a tribal area or territory to India".

3. The words "being an office specified in the declaration" were omitted, by *ibid.*, [effective from 1-4-1940].

8. Inserted, by *ibid* [effective from 1-4-1940].

9. Substituted, by *ibid.*, the following- "was in the permanent service of the Crown in India (within the meaning of this Act as originally enacted),"

### **263. Joint services and posts :-**

If an agreement is made between the Federation and one or more Provinces, or between two or more Provinces, for the maintenance or creation of a service common to the Federation and one or more Provinces, or common to two or more Provinces or for the maintenance or creation of a post the functions whereof are not restricted to the affairs of the Federation or one Province, the agreement may make provision that the Governor-General or any Governor, or any Public Service Commission, shall do in relation to that service or post anything which under the provisions of this chapter be done by the Governor or the Provincial Public Service Commission if the service or post was a service or post in connection with the affairs of one Province only.

### CHAPTER 3

#### PUBLIC SERVICE COMMISSIONS

#### **264. Public Service Commissions :-**

(1) Subject to the provisions of this section, there shall be a Public Service Commission for the Federation and a Public Service Commission for each Province.

(2) Two or more Provinces may agree-

(a) that there shall be one Public Service Commission for that group of Provinces; or

(b) that the Public Service Commission for one of the Provinces shall serve the needs of all the Provinces, and any such agreement may contain such incidental and consequential provisions as may appear necessary or desirable for giving effect to the purposes of the agreement and shall, in the case of an agreement that there shall be one Commission for a group of Provinces, specify by what Governor or Governors the functions which are under this Part of this Act to be discharged by the Governor of a Province are to be discharged.

(3) The Public Service Commission for the Federation if requested so to do by the Governor of a Province may, with the approval of the Governor-General, agree to serve all or any of the needs of the Province.

(4) References in this Act to the Federal Public Service Commission or a Provincial Public Service Commission shall, Unless the context otherwise requires, be construed as references to the Commission serving the needs of the Federation or, as the case may be, the

Province as respects the particular matter in question.

**265. Composition and staff of Commissions :-**

(1) The chairman and other members of a Public Service Commission shall be appointed, in the case of the Federal Commission by the Governor-General in his discretion, and in the case of a Provincial Commission, by the Governor of the Province in his discretion: Provided that at least one-half of the members of every Public Service Commission shall be persons who at the dates of their respective appointments have held office for at least ten years under the Crown <sup>1</sup> [in India].

(2) In the case of the Federal Commission, the Governor-General in his discretion and, in the case of a Provincial Commission, the Governor of the Province in his discretion, may by regulations-

(a) determine the number of members of the commission, their tenure of office and their conditions of service; and

(b) make provision with respect to the numbers of staff of the commission and their conditions of service.

(3) On ceasing to hold office-

(a) the chairman of the Federal Commission shall be ineligible for further employment under the Crown in India;

(b) the chairman of a Provincial Commission shall be eligible for appointment as the chairman or a member of the Federal Commission, or as the chairman of another Provincial Commission, but not for any other employment under the Crown in India;

(c) no other member of the Federal or of any Provincial Commission shall be eligible for any other appointment under the Crown in India without the approval, in the case of an appointment in connection with the affairs of a Province, of the Governor of the Province in his discretion and, in the case of any other appointment, of the Governor-General in his discretion.

1. Omitted, by the India (Provisional Constitution) Order, 1947.

**266. Functions of Public Service Commissions :-**

(1) It shall be the duty of the Federal and the Provincial Public Service Commissions to conduct examinations for appointments to the services of the Federation and the services of the Province

respectively.

(2) It shall also be the duty of the Federal Public Service Commission, if requested by any two or more Provinces so to do, to assist those Provinces in framing and operating schemes of joint recruitment for their forest services, and any other services for which candidates possessing special qualifications are required.

(3) <sup>1</sup>[The Secretary of State as respects services and posts to which appointments are made by him,], the Governor-General in his discretion as respects <sup>1</sup>[other] services and posts in connection with the affairs of the Federation, and the Governor in his discretion as respects other services and posts in connection with the affairs of a Province, may make regulations specifying the matters on which either generally, or in any particular class of case or in any particular circumstances, it shall not be necessary for a Public Service Commission to be consulted but, subject to regulations so made and to the provisions of the next succeeding sub-section the Federal Commission or, as the case may be, the Provincial Commission shall be consulted-

(a) on all matters, relating to methods of recruitment to civil services and for civil posts;

(b) on the principles to be followed in making appointments to civil services and posts and in making promotions and transfers from one service to another and on the suitability of candidates for such appointments, promotions or transfers;

(c) on all disciplinary matters affecting a person serving His Majesty in a civil capacity in India, including memorials or petitions relating to such matters;

(d) on any claim by or in respect of a person who is serving or has served His Majesty in a civil capacity in India that any costs incurred by him in defending legal proceedings instituted against him in respect of acts done or purporting to be done in the execution of his duty should be paid out of the revenues of the Federation or, as the case may be, Province;

(e) on any claim for the award of a pension in respect of injuries sustained by a person while serving His Majesty in civil capacity in India, and any question as to the amount of any such award. and it shall be the duty of a Public Service Commission to advise on any matter so referred to them and on any other . matter which the

Governor-General in his discretion, or, as the case may be, the Governor in his discretion, may refer to them.

(4) Nothing in this section shall require a Public Service Commission to be consulted as respects the manner in which appointments and posts are <sup>3</sup> [the various communities in the Federation or a Province or, in the case of the subordinate ranks of the various police forces in India], as respects any of the matters mentioned in paragraphs (a), (b) and (c) of sub-section (3) of this section.

1. Omitted, by the India (Provisional Constitution) Order, 1947.

3. Substituted, by *ibid.*, by the following- 'communities or in the case of the subordinate ranks of police forces'.

### **267. Power to extend functions of Public Service Commission :-**

Subject to the provisions of this section, an Act of the Federal Legislature or the Provincial Legislature may provide for the exercise of additional functions by the Federal Public Service Commission or, as the case may be, by the Provincial Public Service Commission: Provided that-

(a) no Bill or amendment for the purposes aforesaid shall be introduced or moved without the previous sanction of the Governor-General in his discretion, or as the case may be, of the Governor <sup>1</sup> [in his discretion] ; and

(b) it shall be a term of every such Act that the functions conferred by it shall not be exercisable-

(i) in relation to any person appointed to a service or a post by the Secretary of State or the Secretary of State in Council, any officer in His Majesty's Forces, or any holder of a reserved post, except with the consent of the Secretary of State; or

(ii) Where the Act is a provincial Act, in relation to any person who is not a member of one of the services of the Province, except with the consent of the Governor-General].

1. Omitted, by the India (Provisional Constitution) Order, 1947.

### **268. Expenses of Public Service Commissions :-**

The expenses of the Federal or a Provincial Public Service Commission, including any salaries, allowances and pensions payable to or in respect of the members or staff of the Commission, shall be charged on the revenues of the Federation or, as the case

may be, the Province. Provided that nothing in this section shall charge on the revenues of a Province any pension which is by virtue of the provisions of chapter II of this Part of this Act charged on the revenues of the Federation.

CHAPTER 4  
CHAPLAINS.

**269. Provisions as to chaplains :-**

(1) There may, as heretofore, be an establishment of chaplains to minister in India to be appointed by the Secretary of State and the provisions of chapter II of this Part of this Act shall, with any necessary modifications, apply in relation to that establishment and to persons appointed as chaplains by the Secretary of State or by the Secretary of State in Council, as they apply in relation to the civil services to which appointments are to be made by the Secretary of State and to persons appointed to a civil service under the Crown in India by the Secretary of State or by the Secretary of State, in Council, and for the purposes of the provisions of chapter II relating to persons who retired

(2) So long as an establishment of chaplains is maintained in the Province of Bengal, two members of that establishment in the Province must always be ministers of the Church of Scotland and shall be entitled to have out of the revenues of the Federation such salary as is from time to time allotted to the military chaplains in that Province. This sub-section applies to the Province of Madras and to the Province of Bombay as it applies to the Province of Bengal.

(3) The ministers of the Church of Scotland so appointed chaplains must be ordained and inducted by the Presbytery of Edinburgh according to the forms and solemnities used in the Church of Scotland, and shall be subject to the spiritual and ecclesiastical jurisdiction in all things of the Presbytery of Edinburgh, whose judgments shall be subject to dissent, protest and appeal to the Provincial Synod of Lothian and Tweeddale and to the General Assembly of the Church of Scotland.

CHAPTER 5  
GENERAL

**270. Indemnity for past acts :-**

(1) No proceedings civil or criminal shall be instituted against any

person in respect of any act done or purporting to be done in the execution of his duty as a servant of the Crown in India or Burma before the relevant date, except with the consent, in the case of a person who was employed in connection with the affairs of the Government of India or the affairs of Burma, of the Governor-General in his discretion, and in the case of a person employed in connection with the affairs of a Province, of the Governor of that Province in his discretion.

(2) Any civil or criminal proceedings instituted, whether before or after the coming into operation of this Part of this Act, against any person in respect of any act done or purporting to be done in the execution of his duty as a servant of the Crown in India or Burma before the relevant date shall be dismissed unless the court is satisfied that the acts complained of were not done in good faith, and, where any such proceedings are dismissed, the costs incurred by the defendant shall, in so far as they are not recoverable from the persons instituting the proceedings, be charged) in the case of persons employed in connection with the functions of the Governor-General in Council or the affairs of Burma, on the revenues of the Federation, and in the case of persons employed in connection with the affairs of a Province, on the revenues of that Province.

(3) For the purposes of this section- the expression "the relevant date" means, in relation to acts done by persons employed about the affairs of a Province or about the affairs of Burma, the commencement of Part III of this Act and, in relation to acts done by persons employed about the affairs of the Federation, the date of the establishment of the Federation ; references to persons employed in connection with the functions of the Governor-General in Council include reference to persons employed in connection with the affairs of any Chief Commissioner's Province ;

### **271. Protection of public servants against prosecution and suits :-**

(1) No Bill or amendment to abolish or restrict the protection afforded to certain servants of the Crown in India by section one hundred and ninety- seven of the <sup>1</sup>[Indian] Code of Criminal Procedure<sup>1</sup>, or by sections eighty to eighty-two of the <sup>1</sup>[Indian] Code of Civil Procedure<sup>1</sup> shall be introduced or moved in <sup>1</sup>[either Chamber of] the Federal Legislature without the previous sanction of the Governor-General in his discretion, or in a Chamber of a

Provincial Legislature without the previous sanction of the Governor in his discretion.

<sup>1</sup>[(2) The powers conferred upon a Local Government by the said section one hundred and ninety-seven with respect to the sanctioning of prosecutions and the determination of the Court before which, the person by whom and the manner in which, a public servant is to be tried, shall be exercisable only-

(a) in the case of a person employed in connection with the affairs of the Federation by the Governor-General exercising his individual judgment; and

(b) in the case of a person employed in connection with the affairs of a Province, by the Governor of that Province exercising his individual judgment: Provided that nothing in this sub-section shall be construed as restricting the power of the Federal or a Provincial Legislature to amend the said section by a Bill or amendment introduced or moved with such previous sanction as is mentioned in sub-section (1) of this section].

(3) Where a civil suit is instituted against a public officer, within the meaning of that expression as used in the <sup>1</sup>[Indian] Code of Civil Procedure<sup>8</sup>, in respect of any act purporting to be done by him in his official capacity, the whole or any part of the costs incurred by him and of any damages or costs ordered to be paid by him shall, if the Governor-General exercising his individual judgment so directs in the case of a person employed in connection with the affairs of the Federation, or 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 the revenues of the Federation or of the Province as the case may be.

1. Inserted, by *ibid.*, '1898'.

8. Inserted, by *ibid.*, '1908',

**272. Provisions as to payment of certain pensions and exemption of those pensions from taxation in India :-**

Any pension payable to or in respect of a person who-

(a) before the commencement of Part III of this Act had served His Majesty in India, Burma or Aden, or elsewhere under the Governor-General in Council; or

(b) after the commencement of Part III of this Act-

(i) serves in India as an officer of His Majesty's forces; or

(ii) is appointed to a civil service of, or to an office or post under, the Crown in India by His Majesty or the Secretary of State; or

(iii) holds a reserved post, shall, if the person to whom the pension is payable is residing permanently outside India, be paid on behalf of the Federation or the Province, as the case may be, by, or in accordance with arrangements' made with, the Secretary of State, and be exempt from all taxation imposed by or under any existing Indian law, or any law of the Federal or of a Provincial Legislature.

**273. Provisions as to family pension funds :-**

(1) His Majesty may by Order in Council provide for the vesting in Commissioners to be appointed under the Order of-

(a) the Indian Military Widows and Orphans Fund;

(b) the Superior Services (India) Family Pension Fund;

(c) a fund to be formed out of the moneys contributed and to be contributed under the Indian Military Service Family Pension Regulations for the purpose of paying pensions payable under those regulations;

(d) a fund to be formed out of the moneys contributed and to be contributed under the Indian Civil Services Family Pension Rules for the purpose of paying pensions payable under those rules. For the investment of the said funds by the Commissioners, in such manner as, subject to the provisions of the Order, they think fit, for the administration of the said funds in other respects by the Secretary of State, for the remuneration of the Commissioners out of the said funds, and for any other matters incidental to or consequential on the purposes of the Order; and if any such Order is made, then, as from such date as may be specified in the Order, any pensions payable under the said regulations and rules, shall, subject to the provisions of sub-section (3) of this section be payable out of the appropriate fund in the hands of the Commissioners, and not otherwise. Before recommending His Majesty to make any Order in Council under this sub-section the Secretary of State shall consider any representations made to him by any of the existing subscribers and beneficiaries or by any persons appearing to him to represent any body of those

subscribers or beneficiaries.

(2) Any such Order as aforesaid shall provide that <sup>1</sup>[the balance in the hands of the Secretary of State in Council on the thirty-first day of March nineteen hundred and thirty-seven] ; in respect of the Indian Military Widows and Orphans Fund and the Superior Services (India) Family Pension Fund, and in respect of the moneys theretofore contributed under the Indian Military Service Family Pension Regulations and the Indian Civil Service Family Pension Rules shall, subject to the provisions of sub-section (3) of this section, be transferred to the Commissioners before the expiration of <sup>2</sup>[two years] from the said date either all at one time or by instalments, together with such interest as may be prescribed by or under the Order: Provided that His Majesty in Council may, if it appears to him necessary so to do, extend the said period of <sup>2</sup>[two years].

(3) Any such order as aforesaid shall provide for the making of objections by and on behalf of existing subscribers and beneficiaries to the vesting of any such fund as aforesaid in the Commissioners and, if any objection is so made in the manner and within the time limited by the Order-

(a) So much of any money in the hands of <sup>4</sup> [The Secretary of State in Council] as represents the interest of the objector shall not be transferred to the Commissioners, but shall be dealt with as part of the revenues of the Federation; and

(b) in lieu of any pensions which might be payable out of the said funds to or in respect of the objectors there shall be payable out of the revenues of the Federation to and in respect of the said persons such pensions on such conditions as may be specified in rules to be made by the Secretary of State.

(4) Any such Order as aforesaid may, notwithstanding anything in this Part of this Act or in the regulations or rules relating to the fund in question, provide for the making of such alterations in any pensions payable out of the fund to which the Order relates as may be reasonably necessary in consequence of the transfer effected under the Order.

(5) Any interest or dividends received by the Commissioners on sums forming part of any fund vested in them under this section shall be exempt from income-tax in the United Kingdom, and

estate duty shall not be payable in Great Britain, nor, if the Parliament of Northern Ireland, so provides in Northern Ireland, in respect of any pension payable under the regulations or rules relating to any such fund.

(6) In this section- references to the Indian Military Service Family Pension Regulations or the Indian Civil Service Family Pension Rules shall be construed as including references to any regulations or rules which may be substituted therefor; the expression "existing subscribers and beneficiaries" means, in relation to the Indian Military Widows and Orphans Fund and the Superior Services (India) Family Pension Fund, persons who have subscribed to, or, are or have been in receipt of pensions from, those funds and, in relation to the funds to be formed out of the moneys contributed under the Indian Military Service Family Pension Regulations and the Indian Civil Service Family Pension Rules, persons who have contributed under, or are or have been in receipt of pensions payable under, the regulations or rules, not being persons who have surrendered or forfeited their interest in the fund or, as the case may be, their interest under the regulations or rules: references to pensions payable under the said regulations or the said rules do not include references to any pension or portion of a pension payable otherwise than out of the moneys contributed and to be contributed under those regulations or rules ; references to moneys so contributed, or to be so contributed, include references to interest upon such moneys.

(7) Notwithstanding anything in this Act, and in particular notwithstanding the separation of Burma and Aden from India, the provisions of this section shall apply in relation to persons who, before the commencement of Part III of this Act, were serving His Majesty in India, Burma or Aden, and after the commencement thereof continue to serve His Majesty in Burma or Aden, as they apply in relation to other persons who are serving

1. Substituted by the India and Burma (Miscellaneous Amendments) Act, 1940 (3 and 4 Geo. 6, ch. 5), S. 10, for the balance in the hands of the Governor-General on the thirty-first day of March next following the passing of this Act".

2. Substituted, *ibid.*, for three years.

4. Substituted, *ibid.*, for "the Governor-General".

#### **274. Saving for certain Funds Acts :-**

Notwithstanding anything in this Art, the Military Funds Act, 1866, the East India Annuity Funds Act, 1874, and the Bombay Civil Fund

Act, 1882, shall continue to have effect but subject to the following adaptations, that is to say, that anything to be done under the said Acts by or to <sup>1</sup> [the Secretary of State in Council] shall, after the commencement of Part III of this Act, be done by or to the Secretary of State, and for any reference in the said Acts to the revenues of India there shall be substituted a reference to the revenues of the Federation.

1. Substituted, *ibid.*, for "the Governor-General".

**275. Persons not to be disqualified by sex for holding certain offices :-**

A person shall not be disqualified by sex for being appointed to any civil service of, or civil post under, the Crown in India other than such a service or .post as may be specified by any general or special order made-

(a) by the Governor-General in the case of services and posts in connection with the affairs of the Federation;

(b) by the Governor of a Province in the case of services and posts in connection with the affairs of the Province;

(c) by <sup>1</sup> [the Secretary of State] in relation to appointments made by him. Provided that any such agreement with respect to joint services and posts as is mentioned in chapter II of this Part of this Act may provide for the powers conferred by this section on the Governor-General and the Governor of a Province being exercised, with respect to the services or posts to which the agreement applies, by the Governor-General or a specified Governor.

1. Substituted, *ibid.*, for "the Governor-General".

**276. Transitional Provisions :-**

Until other provision is made under the appropriate provisions of this Part of this Act, any rules made under the Government of India Act relating to the civil services of, or civil posts under, the Crown in India which were in force immediately before the commencement o,f Part III of this Act, shall, notwithstanding the repeal of that Act, continue in force so far as consistent with this Act, and shall be deemed to be rules made under the appropriate provisions of this Act.

**277. 277 :-**

(1) In this Part of this Act- the expressions "All-India Service",

"Central Service Class I" "Central Service Class II," "Railway Service Class I," "Railway Service Class II" and "Provincial Service" mean respectively the services which were immediately before the commencement of Part III of this Act, so described respectively in the classification rules then in force under section ninety-six B of the Government of India Act; and references to dismissal from His Majesty's service include references to removal from His Majesty's service.

**1** [(2) References in this Part of this Act to persons appointed to a civil service of, or a civil post under, the Crown in India-

(a) include references to persons who, after service in India, Burma or Aden, retired from the service of His Majesty before the commencement of Part III of this Act;

(b) do not include references to persons so appointed who, after the commencement of Part III of this Act, become members of a civil service of, or hold civil posts under, the Crown in Burma or Aden].

**1** [(3) The inclusion in this Part of this Act of provisions expressly requiring the Governor-General or a Governor to exercise his individual judgment with respect to any matter shall not be construed as derogating from the special responsibility of the Governor-General and the Governors for 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].

1. Omitted, by the India (Provisional Constitution) Order, 1947.

#### PART 11

THE SECRETARY OF STATE, HIS ADVISERS AND HIS DEPARTMENT

### **278. Advisers to Secretary of State :-**

(1) There shall be a body of persons appointed by the Secretary of State, not being less than three nor more than six in number, as the Secretary of State may from time to time determine, whose duty it shall be to advise the Secretary of State on any matter relating to India on which he may desire their advice.

(2) One-half at least of the persons for the time being holding office under this section as advisers of the Secretary of State shall be persons who have held office for at least ten years under the

Crown in India and have not last ceased to perform in India official duties under the Crown more than two years before the date of their respective appointments as advisers under this section.

(3) Any person appointed as an adviser to the Secretary of State shall hold office for a term. of five years and shall not be eligible for reappointment: Provided that-

(a) any person so appointed may by writing under his hand resign his office to the Secretary of State;

(b) the Secretary of State may, if he is satisfied that any person so appointed has by reason of infirmity of mind or body become unfit to continue to hold his office, by order remove him from his office.

(4) A person for the time being holding office as adviser to the Secretary of State shall not be capable of sitting or voting in either House of Parliament.

(5) There shall be paid out of moneys provided by Parliament to each of the advisers of the Secretary of State a salary of thirteen hundred and fifty .pounds a year, and also to any of them who at the date of his

.

(6) Except as otherwise expressly provided in this Act, it shall be in the discretion of the Secretary of State whether or not he consults with his advisers on any matter, and, if so, whether he consults with them collectively or with one or more of them individually, and whether or not he acts in accordance with any advice given to him by them.

(7) Any provision of this Act which requires that the Secretary of State shall obtain the concurrence of his advisers shall be deemed to be satisfied if at a meeting of his advisers he obtains the concurrence of at least one-half of those present at the meeting, or if such notice and opportunity for objection as may be prescribed has been given to those advisers and none of them has required that a meeting shall be held for discussion of the matter. In this sub-section "prescribed" means prescribed by rules of business made by the Secretary of State after obtaining at a meeting of his advisers the concurrence of at least one-half of those present at the meeting.

(8) The Council of India as existing immediately before the

commencement of Part III of this Act shall be dissolved.

(9) Notwithstanding anything in the foregoing provisions of this section, a person who immediately before the commencement of Part III of this Act was a member of the Council of India may be appointed under this section as an adviser to the Secretary of State to hold office as such for such period less than five years as the Secretary of State may think fit.

**279. Existing accounts of Secretary of State in Council with Bank of England. :-**

(1) All stock or money standing to the credit of the Secretary of State in Council in the books of the Bank of England at the commencement of Part III of this Act shall, as from that date, be transferred to the credit of the Secretary of State, and any order or instrument with respect to that stock or money executed by the Secretary of State or by such person as may be authorised in writing by the Secretary of State for the purpose, either generally or specially, shall be a sufficient authority and discharge to the Bank in respect of anything done by the Bank in accordance therewith.

(2) Any directions, authority or power-of-attorney given or executed by or on behalf of the Secretary of State in Council and in force at the commencement of Part III of this Act shall continue in force until countermanded or revoked by the Secretary of State.

**280. Organisation and expenses of India Office. :-**

(1) As from the commencement of Part III of this Act the salary of the Secretary of State and the expenses of his department, including the salaries and remuneration of the staff thereof, shall be paid out of moneys provided by Parliament.

(2) Subject to the provisions of the next succeeding section with respect to the transfer of certain existing officers and servants, the Secretary of State may appoint such officers and servants as he, subject to the consent of the Treasury as to numbers, may think fit and there shall be paid to persons so appointed such salaries or remuneration as the Treasury may from time to time determine.

(3) There shall be charged on and paid out of the revenues of the Federation into the Exchequer such periodical or other sums as may from

**281. Transfer for existing personnel :-**

(1) All persons who immediately before the commencement of Part III of this Act were officers or servants on the permanent establishment of the Secretary of State in Council shall on that date be transferred to the department of the Secretary of State and shall be deemed to be permanent Civil Servants of the State.

(2) Subject as hereinafter provided, the provisions of the Superannuation Acts, 1834, Superannuation Acts 1935, and of any orders, rules and regulations made thereunder shall apply in relation to a person so transferred as aforesaid as they apply in relation to a person entering the Civil Service with a certificate from the Civil Service Commissioners, and for the purposes of those Acts, orders, rules and regulations his service shall be reckoned as if service on the permanent establishment of, and employment by, the Secretary of State in Council had at all times been service or employment in a public department the expenses whereof were wholly defrayed out of moneys provided by Parliament. Provided that neither the Superannuation Act, 1909, nor section four of the Superannuation Act, 1935, shall apply in relation to any person so transferred unless that Act, or, as the case may be, that section (as applicable to persons on the permanent establishment of the Secretary of State in Council) would have applied in relation to him if this Act had not been passed.

(3) His Majesty may by Order in Council direct that in their application to any person so transferred the said Acts, orders, rules and regulations shall have effect subject to any such modifications as may appear to His Majesty to be necessary for securing that the case of any such person shall not be dealt with in any manner less favourable to him than it would have been dealt with if this Act had not been passed and he had continued to serve on the establishment of the Secretary of State in Council.

(4) All persons who, not being on the permanent establishment of the Secretary of State in Council, were immediately before the commencement of Part III of this Act officers or servants employed in the United Kingdom by the Secretary of State in Council shall on that date be transferred to the department of the Secretary of State and, for the purposes of the Superannuation Acts, 1834, Superannuation Acts 1935, and the orders, rules and regulations made thereunder, employment by the Secretary of State in Council shall be treated as if it had been employment by

the Secretary of State.

(5) If the conditions of service of any person to whom the last preceding sub-section applies included a condition as to eligibility for a retiring allowance in consideration of meritorious service, the Treasury may, if they think fit, grant to him such an allowance on his retirement.

(6) Notwithstanding anything in the Pensions Commutation Acts, 1877 Pensions Commutation Acts, 1882, it shall be lawful for the Treasury to commute for a capital sum so much of any superannuation, compensation or retiring allowance as is payable out of moneys provided by Parliament to a person so transferred as aforesaid and for the Secretary of State so to commute so much of any such allowance as is payable to such a person out of the revenues of the Federation.

### **282. Contributions from revenues of Federation :-**

(1) So much of any superannuation allowances, compensation allowances, retiring allowances, additional allowances or gratuities which may become payable to or in respect of officers and servants transferred by the last preceding section to the department of the secretary of State as His Majesty in Council may determine to represent the proportion of such allowances or gratuities attributable to service before the date of transfer shall be paid out of the revenues of the Federation: Provided that account shall not be taken of any service before the date of transfer in respect of which such an allowance or gratuity payable out of moneys provided by Parliament might, if this Act had not been passed, have been awarded under the Superannuation Acts, 1834, Superannuation Acts, 1935.

(2) If any officer or servant so transferred to the department of the Secretary of State, or any person who, having been previously on the establishment of the Secretary of State in Council, was immediately before the commencement of Part III of this Act a member of the staff of the High Commissioner for India, or any person who immediately before the commencement of Part III of this Act was the Auditor of the Accounts of the Secretary of State in Council or a member of his staff, loses his employment by reason of the abolition of his office or post, or by reason of any reorganisation of the department or of his office, where such abolition or reorganisation results in the opinion of the Secretary of State from

the operation of this Act or the Government of Burma Act, 1935, the Secretary of State shall award to that officer or servant out of the revenues of the Federation such compensation as he may think just and equitable in augmentation of any allowance or gratuity for which that officer or servant may be otherwise eligible.

(3) Any payments directed by this section to be made out of the revenues of the Federation shall be charged upon those revenues.

**283. Liability for pensions in respect of service before commencement of Part III :-**

(1) The liability for payment of any superannuation allowances, compensation allowances, retiring allowances additional allowances and gratuities which immediately before the commencement of Part III of this Act were payable to or in respect of persons in respect of service on the establishment of the Secretary of State in Council, or in respect of service as Auditor of the Accounts of the Secretary of State in Council, or in respect of service as member of that Auditor's staff, or partly in respect of service on the establishment of the Secretary of State in Council or as a member' of that Auditor's staff and partly in respect of service as a member of the staff of the High Commissioner for India shall be a liability of the Government of the Federation, and these allowances and gratuities shall be charged upon the revenues of the Federation.

(2) The provisions of sub-section (1) of this section shall also apply to so much of any superannuation allowances, compensation allowances, retiring allowances, additional allowances, and gratuities awarded after the commencement of Part III of this Act to persons not transferred by the last but one preceding section as is attributable to such service before the commencement of Part HI of this Act as is mentioned in the said subsection (1).

**284. Provision as to certain India Office provident funds :-**

Any sums which, if this Act had not been passed, would have been payable, whether as of right or not, by the Secretary of State in Council Out of the revenues of India to or in respect of a person who was a subscriber to the Regular Widows' Fund, the Elders Widows' Fund, or the India Office Provident Fund, shall be paid out of the revenues of the Federation and charged on those revenues.

**284A. Confirmation of appointments to India Office staff and staff of Auditor of Indian Home Accounts :-**

(1) Any appointment which the Secretary of State in Council has purported to make to his permanent establishment before the commencement of Part III of this Act, and any increases which he has purported to make in the salaries of persons on that establishment, shall for all purposes be deemed to have been validly made notwithstanding that the making thereof was not sanctioned by an Order of His Majesty in Council as provided by section seventeen of the Government of India Act.

(2) Any appointments which the Auditor of the accounts of the Secretary of State in Council has purported to make to his staff before the commencement of the said Part III shall be deemed to have been validly made notwithstanding that the making thereof was not authorised by such a warrant of His Majesty as is mentioned in section twenty-seven of the Government of India Act, and all salaries paid to any person on the said Auditor's staff shall be deemed to have been duly paid notwithstanding that they were not so authorised.

#### CHAPTER 12

#### MISCELLANEOUS AND GENERAL

#### **285. Saving for rights and obligations of the Crown in its relations with Indian States :-**

Subject in the case of a Federal State to the provisions of the Instrument of Accession of that State, nothing in this Act affects the rights and obligations of the Crown in relation to any Indian State.

#### **286. Use of His Majesty's forces in connection with discharge of the functions of the Crown in its relations with Indian States :-**

(1) If His Majesty's Representative for the exercise of the functions of the Crown in its relations with Indian States requests the assistance of armed forces for the due discharge of those functions, it shall be the duty of the Governor-General in the exercise of the executive authority of the Federation to cause the necessary forces to be employed accordingly, but the net additional expense, if any, incurred in connection with those forces by reason of that employment shall be deemed to be expenses of His Majesty incurred in discharging the said functions of the Crown.

(2) In discharging his functions under this section the Governor-General shall act in his discretion.

**287. Arrangement for Governors and Provincial staff to assist in discharging functions of Political Department :-**

Arrangements may be made between His Majesty's Representative for the exercise of the functions of the Crown in its relations with Indian States and the Governor of any Province for the discharge by the Governor and officers serving in connection with the affairs of the Province of powers and duties in connection with the exercise of the said functions of the Crown.

**288. Aden :-**

(1) On such date as His Majesty may by Order in Council appoint (in this section referred to as "the appointed day") the then existing Chief Commissioner's Province of Aden (in this section referred to as "Aden") shall cease to be a part of British India.

(2) At any time after the passing of this Act it shall be lawful for His Majesty in Council to make such provision as he deems proper for the government of Aden after the appointed day, and any such Order in Council may delegate to any person or persons within Aden power to make laws for the peace, order and good government of Aden, without prejudice to the power of His Majesty in Council, notwithstanding such delegation, from time to time to make laws for any of the purposes aforesaid.

(3) An Order made by His Majesty in Council by virtue of the preceding sub-section may, without prejudice to the generality of the words of that sub-section, contain provisions with respect to-

(a) the continuing validity of all Acts, orders, ordinances and regulations in force in Aden immediately before the appointed day;

(b) the continuing validity of lawful acts done by any authority in Aden before the appointed day;

(c) the validity and continuance of proceedings commenced before the appointed day in any Court of justice in, or having jurisdiction in, Aden; and

(d) the enforcement by or against the Government of Aden of claims which, if this Act had not been passed, might have been enforced by or against the Secretary of State in Council in connection with the administration of Aden.

(4) If any such Order is made, it shall confer appellate jurisdiction from courts in Aden upon such court in India as may be specified in

the Order, and it shall be the duty of any court in India upon which jurisdiction is so conferred to exercise that jurisdiction, and such contribution, if any, as His Majesty in Council may determine shall be paid out of the revenues of Aden towards the expenses of that court. The Order shall also make provision specifying the cases in which an appeal from that court in India may be brought to His Majesty in Council.

(5) Any property which immediately before the separation of Aden from India was vested in His Majesty for the purposes of the Government of India and either was then situate in Aden, or, by virtue of any delegation from the Secretary of State in Council or otherwise, was then in the possession, or under the control of, held on account of, the Local Government of Aden, shall, as from the said separation, vest in His Majesty for the purposes of the Government of Aden, and any contract made or liability, incurred by or on behalf of the Secretary of State in Council before the said separation solely for a purpose which will after the separation be a purpose of the Government of Aden shall, as from the separation, have effect as if it had been made or incurred by or on behalf of the Government of Aden.

### **289. Creation of new Provinces of Sind and Orissa :-**

(1) As from such date<sup>1</sup> as His Majesty may by Order in Council appoint-

(a) Sind shall be separated from the Presidency of Bombay and shall form a Governor's Province to be known as the Province of Sind;

(b) Orissa and such other areas in the Province of Bihar and Orissa as may be specified in the Order of His Majesty shall be separated from that Province, and such areas as may be separated from the Presidency of Madras and the Central Provinces respectively, and Orissa and the other areas so separated shall together form a Governor's Province to be known as the Province of Orissa; and

(c) the Province formerly known as Bihar and Orissa shall be known as the Province of Bihar.

(2) An Order in Council made under this section shall define the boundaries of the Provinces of Sind and Orissa and may contain-

(a) such provisions for their government and administration during

the period before Part III of this Act comes into operation;

(b) such provisions for varying during the said period the composition of the Local Legislature of any Presidency or Province the boundaries of which are altered under this section;

(c) such provisions with respect to the laws which, subject to amendment or repeal by the Provincial or, as the case may be, the Federal Legislature, are to be in force in, or in any part of Sind or Orissa respectively;

(d) in the case of Orissa, such provisions with respect to the jurisdiction therein of any court theretofore exercising the jurisdiction of a High Court, either generally or for any particular purpose, in any area to be included in the Province;

(e) such provisions with respect to apportionments and adjustments of and in respect of assets and liabilities; and

(f) such supplemental, incidental and consequential provisions, as His Majesty may deem necessary or proper.

(3) Subject to the provisions of any such Order as aforesaid, the Governor-General in Council may, until the date on which Part III of this Act comes into operation, exercise in relation to the provinces of Sind and Orissa and any Presidency or Province the boundaries of which are altered under this section any powers which he might have exercised if the said new Provinces had been constituted, or those boundaries had been altered, under the provisions in that behalf contained in the Government of India Act.

(4) In this Act the expression "the Legislative Council of the Province" when used in relation to a date before the commencement of Part III of this Act shall in the case of Sind and Orissa be deemed to refer to the Legislative Councils of Bombay and of Bihar or Bihar and Orissa respectively.

1. 1-4-1936, see the Government of India (Constitution of Sind) Order, 1936 [3-3-1936] and the Government of India (Constitution of Orissa) Order, 1936 [3-3-1936], paras 4, Gazette of India, 1936, Pt. I pp. 364 and 349 respectively.

## **290. Creation of new Provinces and alterations of boundaries of Provinces :-**

(1) Subject to the provisions of this section, <sup>1</sup>[His Majesty may by order in Council]-

(a) create a new Province;

(b) increase the area of any Province;

(c) diminish the area of any Province;

(d) alter the boundaries of any Province; Provided that, " [before the draft of any such Order is laid before Parliament, the Secretary of State shall take such steps as His Majesty may direct for ascertaining the views of the Federal Government and the Chambers of the Federal Legislature and the views of the Government and the Chamber or Chambers of the Legislature] of any Province which will be affected by the Order, both with respect to the proposal to make- the Order and with respect to the provisions to be inserted therein.

**2** [(2) An order made under this section may contain such provisions for varying the representation in the Federal Legislature of any Governor's Province the boundaries of which are altered by the Order and for varying the composition of the Legislature of any such Province, such provisions with respect to apportionments and adjustments of and in respect of assets and liabilities, and such other supplemental, incidental and consequential provisions as His Majesty may deem necessary or proper: Provided that no such Order shall vary the total membership of either Chamber -of the Federal Legislature.]

(3) In this section the expression "Province" means either a Governor's Province or a Chief Commissioner's Province.

1. Substituted by the India (Provisional Constitution) Order, 1947, by the words- "the Governor-General may by Order".

2. Substituted, by *ibid.*, as follows- "(2) An Order made under this sub-section may contain such provisions as the Governor-General may deem necessary or proper- (a) for varying the representation in the Dominion Legislature of any Governor's Province the boundaries of which are altered by the Order; (b) for varying the composition of the Legislature of any such Province: (c) where a new Governor's Province is created, for constituting the Legislature thereof; (d) for apportionments and adjustments of and in respect of assets and liabilities; and (e) for other supplemental, incidental and consequential matters".

**291. Power of His Majesty to make provision with respect to franchises and elections :-**

In so far as provision with respect to the matters hereinafter mentioned is not made by this Act," [His Majesty in Council may

from time to time make provision]<sup>1</sup> with respect to those matters or any of them, that is to say-

(a) the delimitation of territorial constituencies for the purpose of elections under this Act;

(b) the qualifications entitling persons to vote in territorial or other constituencies at such elections, and the preparation of electoral rolls;

(c) the qualifications for being elected at such elections as a member of a legislative body;

(d) the filling of casual vacancies in any such body;

(e) the conduct of elections under this Act and the methods of voting thereat.

(f) the expenses of candidates at such elections;

(g) corrupt practices and other offences at or in connection with such elections;

(h) the decision of doubts and disputes arising out of, or in connection with such elections;

(i) matters ancillary to any such matter as aforesaid. Provisions as to certain legal matters.

1. See the following Orders in Council:- "(1) the Government of India (Provincial Legislative Assemblies) Order, 1956. (2) the Government of India (Provincial Legislative Councils) Order, 1936. (3) the Government of India (Provincial Elections) (Corrupt Practices and Election Petitions) Order, 1936. (4) the Government of India (Provincial Legislatures) (Miscellaneous Provisions) Order, 1936."

### **292. Existing law of India to continue in force :-**

Notwithstanding the repeal by this Act of the Government of India Act, but subject to the other provisions of this Act, all the law in force in British India immediately before the Commencement of Part III of this Act shall continue in force in British India until altered or repealed or amended by a competent Legislature or other competent authority.

### **293. Adaptation of existing Indian laws, etc :-**

His Majesty may by Order in Council<sup>1</sup> [to be made at any time after the passing of this Act provide that, as from such date as may

be specified in the Order, any law in force in British India or in any part of British India shall, until repealed or amended by a competent Legislature or other competent authority have effect subject to such adaptations and modifications as appear to His Majesty to be necessary or expedient for bringing the provisions of that law into accord with the provisions of this Act and, in particular, into accord with the provisions thereof which reconstitute under different names governments and authorities in India and prescribe the distribution of legislative and executive powers between the Federation and the Provinces: Provided that no such law as aforesaid shall be made applicable to any Federated State by an Order in Council made under this section. In this section the expression "law" does not include an Act of Parliament, but includes any ordinance, order, bye-law, rule or regulation having in British India the force of law.

1. Omitted by the India (Provisional Constitution) Order, 1947.

#### **294. Foreign jurisdiction :-**

(1) Neither the executive authority of the Federation nor the legislative power of the Federal Legislature shall extend to any area in a Federated State which His Majesty in signifying his acceptance of the Instrument of Accession of that State may declare to be an area theretofore administered by or on behalf of His Majesty to which it is expedient that the provisions of this subsection should apply, and references in this Act to a Federated State shall not be construed as including references to any such area: Provided that-

(a) a declaration shall not be made under this sub-section with respect to any area unless, before the execution by the Ruler of the Instrument of Accession, notice has been given to him of His Majesty's intention to make that declaration;

(b) if His Majesty with the assent of the Ruler of the State relinquishes his powers and jurisdiction in relation to any such area or any part of any such area, the fore-going provisions of this subsection shall cease to apply to that area or part, and the executive authority of the Federation and the legislative power of the Federal Legislature shall extend thereto in respect of such matters and subject to such limitations as may be specified in a supplementary Instrument of Accession for the State. Nothing in this sub-section applies to any area if it appears to His Majesty that jurisdiction to administer the area was granted to him solely in connection with a

railway.

(2) Subject as aforesaid and to the following provisions of this section, if, after the accession of a State becomes effective, power or jurisdiction therein with respect to any matter is, by virtue of the Instrument of Accession of the State, exercisable, either generally or subject to limits, by the Federation, the Federal Legislature, the Federal Court, the Federal Railway Authority, or a Court or an authority exercising the power or jurisdiction by virtue of an Act of the Federal Legislature, or is, by virtue of an agreement made under Part VI of this Act in relation to the administration of a law of the Federal Legislature, exercisable, either generally or subject to limits, by the Ruler or his officers, then any power or jurisdiction formerly exercisable on His Majesty's behalf in that State, whether by virtue of the Foreign Jurisdiction Act, 1890, or otherwise, shall not be exercisable in that State with respect to that matter or, as the case may be, with respect to that matter within those limits.

(3) So much of any law as by virtue of any power exercised by or on behalf of His Majesty to make laws in a State is in force in a Federated State immediately before that accession of the State becomes effective and. might by virtue of the Instrument of Accession of the State be re-

(4) Subject as aforesaid, the powers and jurisdiction exercisable by or on behalf of His Majesty before the commencement of Part III of this Act in Indian States shall continue to be exercisable, and any Order in Council with respect to the said powers or jurisdiction made under the Foreign Jurisdiction Act, 1890, or otherwise, and all delegations, rules and orders made under any such Order, shall continue to be of full force and effect until the Order is amended or revoked by a subsequent Order. Provided that nothing in this subsection shall be construed as prohibiting His Majesty from relinquishing any power or jurisdiction in any Indian State.

(5) An Order in Council made by virtue and in exercise of the powers by the Foreign Jurisdiction Act 1890, or otherwise in His Majesty vested, empowering any person to make rules and orders in respect of courts of administrative authorities acting for any territory shall not be invalid by reason only that it confers, or delegates powers to confer, on courts or administrative authorities power to sit or act outside the territory in respect of which they have jurisdiction or functions or that it confers, or delegates power to confer, appellate jurisdiction or functions on courts or

administrative authorities sitting or acting outside the territory.

(6) In the Foreign Jurisdiction Act, 1890, the expression "a British Court in a foreign country" shall in relation to any part of India outside British India, include any person duly exercising on behalf of His Majesty any jurisdiction, civil or criminal, original or appellate, whether by virtue of an Order in Council or not, and for the purposes of section nine of that Act the Federal Court shall, as respects appellate jurisdiction in cases tried by a British Court in a Federated State, be deemed to be a Court held in a British Possession or under the authority of His Majesty.

(7) Nothing in this Act shall be construed as limiting any right of His Majesty to determine by what courts British subjects and subjects of foreign countries shall be tried in respect of offences committed in Indian States.

(8) Nothing in this section affects the provisions of this Act with respect to Berar.

**295. Provisions as to death sentences :-**

**1**

[(1) Where any person has been sentenced to death in a Province, the Governor-General in his decision shall have all such powers of suspension, remission or commutation of sentence as were vested in the Governor-General in Council immediately before the commencement of Part III of this Act, but save as aforesaid no authority in India outside a Province shall have any power to suspend, remit or commute the sentence of any person convicted in the Province. Provided that nothing in this sub-section affects any power of any officer of His Majesty's forces to suspend, remit or commute a sentence passed by a court-martial.]

(2) Nothing in this Act shall derogate from the right of His Majesty, or of the Governor-General, if any, such right is delegated to him by His Majesty, to grant pardons, reprieves, respites or remissions of punishment.

1. Omitted by the India (Provisional Constitution) Order, 1947.

**296. Courts of Appeal in revenue matters :-**

(1) No member of the Federal or a Provincial Legislature shall be a member of any tribunal in <sup>1</sup> [British India] having jurisdiction to entertain appeals or revise decisions in revenue cases.

(2) If in any Province any such jurisdiction as aforesaid was, immediately before the commencement of Part III of this Act, vested in the Local Government, the Governor shall constitute a tribunal, consisting of such person or persons as he, exercising his individual judgment, may think fit, to 'exercise the same jurisdiction until other provision in that behalf is made by Act of the Provincial Legislature.

(3) There shall be paid to the members of any tribunal constituted under the last preceding sub-section, such salaries and allowances as the Governor exercising his individual judgment may determine, and those salaries and allowances shall be charged on the revenues of the Province.

1. Substituted, by *ibid.*, by the words- 'a Governor's or Chief Commissioner's Province'. Act, 1942 (5 and 6 Geo. 6 Ch. 31), S. 4 (retrospectively).

**297. Prohibition of certain restrictions on internal trade :-**

(1) No Provincial Legislature or Government shall-

(a) by virtue of the entry in the Provincial Legislative List relating to trade and commerce within the Province, or the entry in that list relating to the production, supply, and distribution of commodities, have power to pass any law or take any executive action prohibiting or restricting the entry into, or export from, the Province of goods of any class or description; or

(b) by virtue of anything in this Act have power to impose any tax, cess, toll, or due which, as between goods manufactured or produced in the Province and similar goods not so manufactured or produced, discriminates in favour of the former, or which, in the case of goods manufactured or produced outside that Province, discriminates between goods manufactured or produced in one locality and similar goods manufactured or produced in another locality.

(2) Any law passed in contravention of this section shall, to the extent of the contravention, be invalid.

**298. Persons not to be subjected to disability by reason of race, religion etc :-**

(1) No subject of His Majesty domiciled in India shall on grounds only of religion, place of birth, descent, colour or any of them be

ineligible for office under the Crown in India, or be prohibited on any such grounds from acquiring, holding or disposing of property or carrying on any occupation, trade, business or profession in <sup>1</sup>[British India].

(2) Nothing in this section shall affect the operation of any law which-

<sup>1</sup>[(a) prohibits, either absolutely or subject to exceptions, dispospositions of agricultural land situate in any particular area

(b) recognises the existence of some right, privilege or disability attaching to members of a community by virtue of some personal law or custom having the force of law.

<sup>3</sup>[(3) Nothing in this section shall be construed as derogating from the special responsibility of the Governor-General or of a Governor for the safeguarding of the legitimate interests of minorities.]

<sup>4</sup> [(4) In paragraph (a) of sub-section (2) of this section, 'agricultural land' in relation to any area where there is in force immediately before the commencement of Part III of this Act any law the operation of which is to any extent saved by the said paragraph (a), includes all such property and rights in or over property as are included in the expression land' as defined for the purposes of that law as them in force.]

1. Substituted, by *ibid.*, by the words- 'a Governor's or Chief Commissioner's Province'. Act, 1942 (5 and 6 Geo. 6 Ch. 31), S. 4 (retrospectively).

3. Omitted, by the India (Provisional Constitution) Order, 1947.

4. Added, by *ibid* (retrospectively).

### **299. Compulsory acquisition of land, etc :-**

(1) No person shall be deprived of his property in <sup>1</sup>[British India] save by authority of law

.

(2) Neither the Federal nor a Provincial Legislature shall have power to make any law authorising the compulsory acquisition for public purposes of any land, or any commercial or industrial undertaking, or any interest in, or in any company owning, any commercial or industrial undertaking, unless the law provides for the payment of compensation for the property acquired and either fixes the amount

of the compensation, or specifies the principles on which, and the manner in which, it is to be determined.

(3) No Bill or amendment making provision for the transference to public ownership of any land or for the extinguishment or modification of rights therein, including rights or-privileges in respect of land revenue, shall be introduced or moved in <sup>1</sup> [either Chamber of] the Federal Legislature without the previous sanction of the Governor-General -in his discretion, or in a Chamber of a Provincial Legislature 'without the previous sanction of the Governor in his discretion.

(4) Nothing in this section shall affect the provisions of any law in force at the date of the .passing of this Act.

(5) In this section "land" includes immovable property of every kind and any rights in or over such property, and "undertaking" includes part of an undertaking.

1. Omitted, by the India (Provisional Constitution) Order, 1947.

### **300. Protection for certain rights, privileges, and pensions**

:-

(1) The executive authority of the Federation or of a Province shall not be exercised, save on an order of the Governor-General or Governor, as the case may be, 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 or confirmation made before the first day of January, one thousand eight hundred and seventy, or made on or after that date for services rendered.

(2) No pension granted or customarily payable before the commence-

(3) Nothing in this section affects any remedy for a breach of any condition on which a grant was made.

### **301. Repeal of S. 18 of 21 Geo. 3. c. 70 and S. 12 of 37 Geo. c. 142** :-

Section eighteen of the Company Act, 1780, and section twelve of the East India Act, 1797 (being absolute enactments containing savings for native law and custom) are hereby repealed.

### **302. High Commissioner for India** :-

(1) There shall be a High Commissioner for India in the United Kingdom who shall be appointed, and whose salary and conditions of service shall be prescribed, by the Governor-General, exercising his individual judgment,

(2) The High Commissioner shall perform on behalf of the Federation such functions in connection with the business of the Federation, and, in particular, in relation to the making of contracts as the Governor-General may from time to time direct.

(3) The High Commissioner may, with the approval of the Governor-General and on such terms as may be agreed, undertake to perform on behalf of a Province or Federated State, or on behalf of Burma functions similar to those which he performs on behalf of the Federation.

### **303. Provisions as to Sheriff of Calcutta :-**

(1) The Sheriff of Calcutta shall be appointed annually by the Governor of Bengal from a panel of three persons to be nominated on the occasion of each vacancy by the High Court in Calcutta.

(2) The Sheriff shall hold office during the pleasure of the Governor and shall be entitled to such remuneration as the Governor may determine and no other remuneration.

**1** [(3) In exercising his powers with respect to the appointment and dismissal of the Sheriff and with respect to the determination of his remuneration, the Governor shall exercise his individual judgment].

1. Omitted, by the India (Provisional Constitution) Order, 1947.

### **304. Persons acting as Governor-General or Governor :-**

Any person appointed by His Majesty to act as Governor-General or as the Governor of a Province during the absence of the Governor-General or the Governor from India, or during any period during which the Governor-General or the Governor is for any reason unable to perform the duties of his office shall during, and in respect of the period while he is so acting have all the powers and immunities, and be subject to all the duties of, the Governor-General or Governor, as the case may be, and, if he holds any other office, shall not act therein or be entitled to the salary and allowances appertaining thereto while he is acting as Governor-General or Governor.

### **305. Secretarial staff of Governor-General and Governor :-**

(1) The Governor-General and every Governor shall have his own secretarial staff to be appointed by him in his discretion.

(2) The salaries and allowances of persons so appointed and the office accommodation and other facilities to be provided for them shall be such as the Governor-General or, as the case may be the Governor may in his discretion determine, and the said salaries and allowances and the expenses incurred in providing the said accommodation and facilities shall be charged on the revenues of the Federation or, as the case may be, the Province.

### **305A. Provisions as to pensions of home civil servants appointed to offices in India :-**

(1) Where a civil servant, as defined by section twelve of the Superannuation Act, 1887 (50 and 51 Vict. c. 67), is appointed by His Majesty or by the Governor-General in his discretion to any office under the Crown in India, the Secretary of State may direct that his service in that office shall qualify for the grant of a pension or gratuity as if it were service rendered in the office held by him as a civil servant immediately before his appointment to service in India, and there shall be paid to, or in respect of, him out of the revenues of the Federation, and shall be charged on those revenues, in respect of his service, in that office in India a pension or gratuity calculated in accordance with the Superannuation Acts, 1834 Superannuation Acts, 1935, and the orders) rules and regulations made thereunder, but on the basis of the salary of the office last held by him as a civil servant before his appointment to service in India: Provided that nothing in the said Acts, orders, rules or regulations shall operate to prevent the grant of a pension to him with effect from the date on which he may relinquish office in India, notwithstanding that at that date he may not have attained the age of sixty.

(2) No such direction as aforesaid shall be given in relation to service in any office if the service of the person in question in that office would qualify for the grant of a pension without any such direction.

(3) This section shall apply to appointments made before the passing of this Act as well as to appointments made thereafter, and in relation to appointments made before the commencement of Part III of this Act the reference to the Secretary of State shall be

construed as a reference to the Secretary of State in Council.]

**306. Protection of Governor-General, Governor or Secretary of State :-**

(1) No proceedings whatsoever shall lie in, and no process whatsoever shall issue from, any court in India against the Governor-General,<sup>1</sup> against the Governor of a Province,<sup>2</sup> [or against the Secretary of State], whether in a personal capacity or otherwise, and, except with the sanction of<sup>3</sup> [His Majesty in Council] no proceedings whatsoever, shall lie in any court in India against any person who has been the Governor-General, the Governor of Province, or the Secretary of State in respect of anything done or omitted to be done by any of them during his term of office in performance or purported performance of the duties thereof.<sup>4</sup> [or the Secretary of State] such proceedings as are mentioned in chapter III of Part VII of this Act.

(2) The provisions of the preceding sub-section shall apply in relation to His Majesty's Representative for the exercise of the functions of the Crown in its relations with Indian States as they apply in relation to the Governor-General.

1. The word 'or' inserted by the India (Provisional Constitution) Order, 1947.

2. Substituted, by *ibid.*, the word 'Governor-General'.

3. Inserted, by *ibid.*, the words- "His Majesty's Representative for the exercise of the functions of the Crown in its relations with India States".

4. Omitted, by *ibid.*

**307. Removal of certain disqualifications on the occasion of the first elections to Legislature :-**

For the purposes of the first elections of persons to serve as members of the Federal Legislature and of Provincial Legislatures, no person shall be subject to any disqualification by reason only of the fact that he holds-

(a) an office of profit as a non-official member of the Executive Council of the Governor-General or a Governor, as a minister in a Province;

(b) an office which is not a whole time office remunerated either by salary or by fees.

**308. Procedure as respects proposals for amendment of**

## **certain provisions of Act and Orders in Council :-**

(1) Subject to the provisions of this section, if the Federal Legislature or any Provincial Legislature, on motions proposed in each Chamber by a minister on behalf of the council of ministers, pass a resolution recommending any such amendment of this Act or of an Order in Council made thereunder as is hereinafter mentioned, and on motion proposed in like manner, present to' the Governor-General or, as the case may be, to the Governor an address for submission to His Majesty praying that His Majesty may be pleased to communicate the resolution to Parliament, the Secretary of State shall, within six months after the resolution is so communicated, cause to be laid before both Houses of Parliament a statement of any action which it may be proposed to take thereon. The Governor-General or the Governor, as the case may be, when forwarding any such resolution and address to the Secretary of State shall transmit therewith a statement of his opinion as to the proposed amendment and, in particular, as to the effect which it would have on the interests of any minority, together with a report as to the views of any minority likely to be affected by the proposed amendment and as to whether a majority of the representatives of that minority in the Federal, or, as the case may be, the Provincial Legislature support the proposal, and the Secretary of State shall cause such statement and report to be laid before Parliament. In performing his duties under this sub-section the Governor-General or the Governor, as the case may be, shall act in his discretion.

(2) The amendments referred to in the preceding sub-section are-

(a) any amendment of the provisions relating to the size or composition of the Chambers of the Federal Legislature, or to the method of choosing or the qualifications of members of that Legislature, not being an amendment which would vary the proportion between the number of seats in the Council of State and the number of seats in the Federal Assembly, or would vary, either as regards the Council of State or the

(b) any amendment of the provisions relating to the number of Chambers in a Provincial Legislature or the size or composition of the Chamber, or of either Chamber of a Provincial Legislature, or to the method of choosing or the qualifications of members of a Provincial Legislature;

(c) any amendment providing that, in the case of women, literacy shall be substituted for any higher educational standard for the time being required as a qualification for the franchise, or providing that women, if duly qualified, shall be entered on electoral rolls without any application being made for the purpose by them or on their behalf; and

(d) any other amendment of the provisions relating to the qualifications entitling persons to be registered as voters for the purposes of elections.

(3) So far as regards any such amendment as is mentioned in paragraph (c) of the last preceding sub-section, the provisions of sub-section (1) of this section shall apply to a resolution of a Provincial Legislature whenever passed, but, save as aforesaid, those provisions shall not apply to any resolution passed before the expiration of ten years, in the case of a resolution of the Federal Legislature, from the establishment of the Federation, and in the case of a resolution of a Provincial Legislature, from the commencement of Part III of this Act.

(4) His Majesty in Council <sup>1</sup> may at any time before or after the commencement of Part III of this Act, whether the ten years referred to in the last preceding sub-section have elapsed, or not, and whether any such address as is mentioned in the section has been submitted to His Majesty or not, make in the provisions of this Act any such amendment as is referred to in sub-section (2) of this section; Provided that-

(i) If no such address has been submitted to His Majesty, then, before the draft of any Order which it is proposed to submit to His Majesty is laid before Parliament, the Secretary of State shall, unless it appears to him that the proposed amendment is of a minor or drafting nature, take such steps as His Majesty may direct for ascertaining the views of the Governments and Legislatures in India who would be affected by the proposed amendment and the 'views of any minority likely to be so affected, and whether a majority of the representatives of that minority in the Federal or as the case may be, the Provincial Legislature support the proposal;

(ii) the provisions of Part II of the First Schedule to this Act shall be amended without the consent of the Ruler of any State which will be affected by the amendment.

1. See the Government of India (Provincial Legislative Assemblies) Order, 1936 [130-4-1936]; and the Government of India (Federal Legislature Amendment) Order, 1936 [18-12-1936].

### **309. Orders in Council :-**

(1) Any power<sup>1</sup> conferred by this Act on His Majesty in Council shall be exercisable only by Order in Council, and

(2) Subject to any express provision of this Act, His Majesty in Council may by a subsequent Order, made in accordance with the provisions of the preceding sub-section, revoke or vary any Order previously made by him in Council under this Act.

(3) Nothing in this section applies to any Order of His Majesty in Council made in connection with any appeal to His Majesty in Council, or to any order of His Majesty in Council sanctioning the taking of proceedings against a person who has been the Governor-General, His Majesty's Representative for the exercise of the functions of the Crown in its relations with Indian States, the Governor of a Province or the Secretary of State.

1. For like power conferred on Governor-General, see the India and Burma (Emergency Provisions) Act, 1940 (3 and 4 Geo. 6, Ch. 33).

### **310. Power of His Majesty in Council to remove difficulties :-**

(1) Whereas difficulties may arise in relation to the transition from the provisions of the Government of India Act to the provisions of this Act, and in relation to the transition from the provisions of Part XIII of this Act to the provisions of Part II of this Act: And whereas the nature of those difficulties, and if the provision which should be made for meeting them, cannot at the date of the passing of this Act be fully foreseen: Now therefore, for the purpose of facilitating each of the said transitions His Majesty may by Order in Council<sup>1</sup> -

(a) direct that this Act and any provisions of the Government of India Act still in force shall, during such limited period as may be specified in the Order, have effect subject to such adaptations and modifications as may be so specified;

(b) make, with respect to a limited period so specified such temporary provision as he thinks fit for ensuring that, while the transaction is being effected and during the period immediately

(c) make such other temporary provisions for the purpose of removing any such difficulties as aforesaid as may be specified in the Order.

(2) No order in Council in relation to the transition from the provisions of Part XIII of this Act to the provisions of Part II of this Act shall be made under this section after the expiration of six months from the establishment of the Federation, and no other Order in Council shall be made under this section after the expiration of six months from the commencement of Part III of this Act.

1. See the following Orders in Council:- "(1) the Government of India (Commencement and Transitory Provisions) Order, 1936; (2) Do. (No. 2) Order, 1936; (3) the Government of India (Provincial Legislatures) (Miscellaneous Provisions) Order, 1936; (4) India and Burma (Transitory Provisions) Order, 1937; (5) Do. (Taxation) Order, 1937."

### **311. Interpretation, etc :-**

**1**(1) In this Act and, unless the context otherwise requires, in any other Act the following expressions have the meanings hereby respectively assigned to them that is to say. "British India" means all territories for the time being comprised within the Governors' Provinces and the Chief Commissioners' Provinces. "India" means British India together with all territories of any Indian Ruler under the suzerainty of His Majesty, all territories under the suzerainty of such an Indian Ruler, the tribal areas, and, any other territories which His Majesty in Council may, from time to time, after ascertaining the views of the Federal Government and the Federal Legislature, declare to be part of India. "Burma" includes (subject to the exercise by His Majesty of any powers vested in him with respect to the alteration of the boundaries thereof) all territories which were immediately before the commencement of Part III of this Act comprised in India being territories lying to the east of Bengal, the State of Manipur, Assam, and any tribal areas connected with Assam; "British Burma" means so much of Burma as belongs to His Majesty; "Tribal areas" means the areas along the frontiers of India or in Baluchistan which are not part of British India or of Burma or of any Indian State or of any foreign State: **2**["Indian State" means any territory, not being part of British India, which His Majesty recognises as being such a State, whether described as a State, an Estate, a Jagir or otherwise;] "Ruler" in

relation to a State means the Prince, Chief or other person recognised by His Majesty as the Ruler of the State].

(2) In this Act, unless the context otherwise require, the following expressions have the meanings hereby respectively assigned to them, that is to say:- "agricultural income" means agricultural income as defined for the purposes of the enactments relating to Indian income tax; "borrow" includes the raising of money by the grant of annuities and "loan" shall be construed accordingly; "chief justice" includes in relation to a High Court a chief judge or judicial commissioner and "judge" includes an additional judicial commissioner ; <sup>3</sup>[corporation tax" means any tax on income, so far as that tax is payable by companies and is a tax in the case of which the following conditions are fulfilled:-

(a) that it is not chargeable in respect of agricultural income;

(b) that no deduction in respect of the tax paid by companies is, by any enactments which may apply to the tax, authorised to be made from dividends payable by the companies to individuals;

(c) that no provision exists for taking the tax so paid into account in computing for the purposes of Indian income-tax the total income of individuals receiving such dividends, or in computing the Indian income-tax payable by, or refundable to, such individuals.]

"corresponding Province" means in case of doubt such Province as may be determined by <sup>4</sup>[His Majesty in Council ] to be the corresponding Province for the particular purpose in question;

"debt" includes any liability in respect of any obligation to repay capital sums by way of annuities and any liability under any guarantee, and "debt charges" shall be construed accordingly;

<sup>5</sup>["Estate duty" means a duty to be assessed on or by reference to the principal value, ascertained in accordance with such rules as may be prescribed by or under the Federal or Provincial Laws relating to the duty, of all property passing upon death or deemed, under the provisions of the said laws, so to pass"] ; "existing Indian law" means -any law, ordinance, order, bye-law, rule or regulation passed or made before the <sup>6</sup>[commencement of Part III of the Act]

by any legislature, authority or person in any territories' for the time being comprised in British India, being a legislature, authority or person having power to make such a law, ordinance, order, bye-law, rule or regulation: "goods" including all materials, commodities, and articles: "guarantee" includes any obligation

undertaken before the commencement of Part III of this Act to make payments in the event of the profits of an undertaking falling short of a specified amount; "High Court" does not, except where it is expressly so provided, include a High Court in a Federated State; "Local Government" means any such Governor In Council, Governor acting with ministers, Lieutenant-Governor in Council, Lieutenant Governor or Chief Commissioner as was at the relevant time a Local Government for the purposes of the Government of India Act or any Act repealed by that Act, but does not, save where the context otherwise requires, include any Local Government in Burma or Aden; "pension" in relation to persons in or formerly in the service of the Crown <sup>6</sup>[in India, Burma or Aden] means a pension, whether contributory or not of any kind whatsoever payable to or in respect of any such person, and includes retired pay so payable, a gratuity so payable, and any sum or sums so payable by way of the return, with or without interest thereon or any other addition thereto, of subscriptions to a provident fund; "pleader" includes advocate; "Provincial Act" and "Provincial law" mean, subject to the provisions <sup>7</sup>["tax on income" a tax in the nature of an excess profits tax;] "railway" includes a tramway not wholly within a municipal area; "federal railway" does not include an Indian State railway but, save as aforesaid, includes any railway not being a minor railway; "Indian State railway" means a railway owned by a State and either operated by the State, or operated on behalf of the State otherwise than in accordance with a contract made with the State by or on behalf of the Secretary of State in Council, the Federal Government <sup>8</sup>the Federal Railway Authority] or any company operating a federal railway; "minor railway" means a railway which is wholly situate in one unit and does not form a continuous line of communication with a federal railway, whether of the same gauge or not; and . "unit" means a Governor's Province, a Chief Commissioner's Province or a Federated State.

<sup>8</sup>[(3) No Indian State shall, for the purpose of any reference in this Act to Federated States, be deemed to have become a Federated State until the establishment of the Federation.

(4) In paragraph (3) of section eighteen the <sup>10</sup>Interpretation Act, 1889 (which paragraph defines the expression "colony") for the words "exclusive of the British Islands and of British India" there shall be substituted the words "exclusive of the British Islands and of British India and of British Burma."

(5) Any Act of Parliament containing references to India or any part thereof, to countries other than or situate outside India or other than or situate outside British India, to His Majesty's dominions, to a British possession, to the Secretary of State in Council, to the Governor-General in Council, to a Governor in Council or to Legislatures, courts, or authorities in, or to matters relating to the government or administration of, India or British India shall have effect subject to such adaptations and modifications as His Majesty in Council may direct,<sup>11</sup> being adaptations and modifications which appear to His Majesty in Council to be necessary or expedient in consequence of the provisions of the Act or the Government of Burma Act, 1935. Any power of any legislature under this Act to repeal or amend any Act adapted or modified by an Order in Council under this sub-section shall extend to the repeal or amendment of that Order, and any reference in this Act to an Act of Parliament shall be construed as including a reference to any such Order.]

1. Omitted, by the India (Provisional Constitution) Order, 1947.
2. Substituted by the India and Burma (Miscellaneous Amendments) Act, 1940 (3 and 4 Geo. 6, Ch. 5), S. 8.
3. Substituted by *ibid.*, s. 1.
4. Substituted, by *ibid.*, by the words 'the Governor-General'.
5. Inserted by the India (Estate Duty) Act, 1945 (8 and 9 Geo. 6, ch. 7), s.1(3).
6. Substituted, by *ibid.*, by the words-'establishment of the Dominion'.
7. Inserted by the India and Burma (Miscellaneous Amendments) Act, 1940 (3 and 4 Geo. 6. ch. 5), s. 1.
8. Omitted, by the India (Provisional Constitution) Order, 1947.
10. (1889) 52 and 53 vict.. c 63.
11. See the Aden Colony Order, 1916. and the Government of India (Adaptation of Acts of Parliament) Order, 1937.

#### PART 13

##### Transitional Provisions

### **312. Operation of Part XIII :-**

The provisions of this Part of this Act shall apply with respect to the period elapsing between the commencement of Part III of this Act and the establishment of the Federation.

### **313. Executive Government :-**

(1) Subject to the provisions of this Act for the time being in force, such executive authority as is hereinafter mentioned shall be exercised on behalf of His Majesty by the Governor-General in

Council, either directly or through officers subordinate to him, but nothing in this section shall prevent the Indian Legislature from conferring functions upon subordinate authorities, or be deemed to transfer to the Governor-General in Council any functions conferred by any existing Indian law on any court, judge or officer, or on any local or other authority.

(2) Subject to the provisions of this Act for the time being in force, the said executive authority extends-

(a) to the matters with respect to which the Indian Legislature has under the said 'provisions' power to make laws;

(b) to the raising in British India on behalf of His Majesty of naval, military or air forces, and to the governance of His Majesty's forces borne on the Indian establishment;

(c) to the exercise of such rights, authority and jurisdiction as are exercisable by His Majesty by treaty, grant, usage, sufferance or otherwise in and in relation to the tribal areas; Provided that-

(i) the said authority does not, save as expressly provided in the provisions of this Act for the time being in force, extend in any Province to matters with respect to which the Provincial Legislature has power to make laws ;

(ii) the said authority does not extend to the enlistment or enrolment in any force raised in British India of any person unless he is either a subject of His Majesty, or a native of India or of territories adjacent thereto, and

(iii) commissions in any such forces shall be granted by His Majesty, save in so far as he may be pleased to delegate that 'power by virtue of the provisions of Part I of this Act or otherwise.

(3) References in the provisions of this Act for the time being in force to the Governor-General and the Federal Government shall, except

(a) any reference to the revenues of the Federation shall be construed as a reference to the revenue of the Governor-General in Council;

(b) the revenues of the Governor-General in Council shall, subject to the provisions of chapter I of Part VII of this Act with respect to the assignment of the whole or part of the net proceeds of certain

taxes and duties to Provinces and to the provisions' of this Act with respect to the Federal Railway Authority (so far as any such provisions are for the time being in force), include all revenues and public moneys raised or received either by the Governor-General in Council or by the Governor-General;

(c) the expenses of the Governor-General in discharging his functions as respects matters with respect to which he is required by the provisions of this Act for the time being in force to act in his discretion shall be defrayed out of the revenues of the Governor-General in Council.

(4) Any requirement in this Act that the Governor-General shall exercise his individual judgment with respect to any matter shall not come into force, until the establishment of the Federation, but, notwithstanding that Part II of this Act has not come into operation, the following provisions of this Act, that is to say-

(a) the provisions requiring the prior sanction of the Governor-General for certain legislative proposals;

(b) the provisions relating to broadcasting;

(c) the provisions relating to directions to, and principles to be observed by, the Federal Railway Authority; and

(d) the provisions relating to civil services to be recruited by the Secretary of State, shall have effect in relation to defence, ecclesiastical affairs, external affairs and the tribal areas as they have effect in relation to matters or functions with respect to, or in the exercise of which the Governor-General is by the provisions of this Act for the time being in force required to act in his discretion, and any reference in any of the provisions of this Act for the time being in force to the special responsibilities of the Governor-General shall be construed as a reference to the special responsibilities which he will have when Part II of this Act comes into operation.

(5) Nothing in this section shall be construed as conferring on the Governor-General in Council any functions connected with the exercise of the functions of the Crown in its relations with Indian States.

### **314. Control of the Secretary of State :-**

(1) The Governor-General in Council and the Governor-General, both as respects matters with respect to which he is required by or

under this Act to act in his discretion and as respects other matters, shall be under the general control of, and comply with such particular directions, if any, as may from time to time be given by, the Secretary of State, but the validity of anything done by the Governor- General in Council or the Governor-General shall not be called in question

(2) The Secretary of State shall not give any direction to the Governor- General in Council with respect to any grant or appropriation of any part of the revenues of the Governor-General in Council except with the concurrence of his advisers.

(3) While this Part of this Act is in operation, the advisers of the Secretary of State shall not be more than twelve, nor less than [<sup>1</sup> five], in number, and, notwithstanding anything in Part XI of this Act with respect to their term of Office, on the establishment of the Federation such of the advisers as the Secretary of State may direct shall cease to hold office.

1. Substituted, by the India (Miscellaneous Provisions) Act, 1944 (7 and 8 Geo. 6, ch. 38) ,8. 3, for "eight".

### **315. Sterling loans :-**

(1) While this Part of this Act is in operation, no sterling loans shall be contracted by the Governor-General in Council, but in lieu thereof, if provision is made in that behalf by an East India Loans Act of the Parliament of the United Kingdom, the Secretary of State may, within such limits as may be prescribed by the Act, contract such loans on behalf of the Governor-General in Council.

(2) The Secretary of State shall not exercise any such powers of borrowing as are mentioned in this section unless at a meeting of the Secretary of State and his advisers the borrowing has been approved by a majority of the persons present.

(3) There shall be inserted-

(a) in paragraph (d) of sub-section (1) of section one of the Trustee Act, 1925, after the words on the revenues of India"; and

(b) at the end of sub-paragraph (9) of paragraph (a) of section ten of the Trusts (Scotland) Act, 1921, the words "or in any sterling loans raised by the Secretary of State on behalf of the Governor-General of Indian in Council under the provisions of Government of India Act, 1935 ".

(4) No deduction in respect of taxes imposed by or under any existing Indian law or any law of the- Indian, the Federal, or a Provincial Legislature shall be made, either before or after the establishment of the Federation, from any payment of principal or interest in respect of any loan contracted under this section.

(5) Any legal proceedings in respect of any loan raised under this section may, either before or after the establishment of the Federation, be brought in the United Kingdom, against the Secretary of State, but nothing in this section shall be construed as imposing any liability on the Exchequer of the United Kingdom.

**316. Legislature :-**

The powers conferred by the provisions of this Act for the time being in force on the Federal Legislature shall be exercisable by the Indian Legislature, and accordingly references in those provisions to the Federal Legislature and Federal Laws shall be construed as references to the Indian Legislature and laws of the Indian Legislature, and references in those provisions to Federal taxes shall be construed as references to taxes imposed by laws of the Indian Legislature : Provided that nothing in this section shall empower the Indian Legislature to impose limits on the power of the Governor-General in Council to borrow money.

**317. Continuance of certain provisions of Government of India Act :-**

(1) The provisions of the Government of India Act set out, with amendments \* 2\* \* \*, in the Ninth Schedule to this Act (being certain of the provisions of that Act relating to the Governor-General, the Commander- in-Chief, the Governor-General's Executive Council and the Indian Legislature and provisions supplemental to those provisions) shall, subject to those amendments, continue to have effect notwithstanding the repeal of that Act by this Act: Provided that nothing in the said provisions shall affect the provisions of the last but one preceding section.

(2) In the said provisions, the expression "this Act" means the said provisions.

(3) The substitution in the said provisions of references to the Secretary of State for references to the Secretary of State in Council shall not render invalid anything done thereunder by the Secretary of State in Council before the commencement of Part III of this Act.

**318. Provisions as to Federal Court and certain other Federal authorities :-**

(1) Notwithstanding that the Federation has not yet been established, the Federal Court and the Federal Public Service Commission and the Federal Railway Authority shall come into existence and be known by those names, and shall perform, in relation to British India the like functions as they are by or under this Act to perform in relation to the Federation when established.

(2) Nothing in this section affects any power of His Majesty in Council to fix a date later than the commencement of Part III of this Act for the coming into operation, either generally or for particular purposes, of any of the provisions of this Act relating to the Federal Court, the Federal Public Service Commission or the Federal Railway Authority.

**319. Rights and liabilities of Governor-General in Council and Governor-General to continue after establishment of Federation :-**

(1) Any rights acquired by, or liabilities incurred by or on behalf of, the Governor-General in Council or the Governor-General between the commencement of Part III of this Act, and the establishment of the Federation shall, after the establishment of the Federation, be rights and liabilities of the Federation, and any legal proceedings pending at the establishment of the Federation by or against the Governor-General in Council or the Governor-General shall, after the establishment of the Federation, be continued by or against the Federation.

(2) The provisions of sub-section (1) of this section shall apply in relation to rights and liabilities of the Secretary of State in Council which have, by virtue of the provisions of this Act, become rights or liabilities of the Governor-General in Council as they apply in relation to the rights or liabilities of the Governor-General in Council as they apply in relation to the rights and liabilities therein mentioned.

**PART 14**

Commencement, Repeals, etc

**320. Commencement :-**

(1) Part II of this Act shall come into force on such date as His

Majesty may appoint by the Proclamation establishing the Federation and the date so appointed is the date referred to in this Act as the date of the establishment of the Federation.

(2) The remainder of this Act shall, subject to any express provision to the country, come into force on such date<sup>1</sup> as His Majesty in Council may appoint and the said date is the date referred to in this Act as the commencement of Part III of this Act.

(3) If it appears to His Majesty in Council that it will not be practicable or convenient that all the provisions of this Act which are under the forgoing provisions of this section to come into force on a date therein mentioned should come into operation simultaneously on that date. His Majesty in Council may, notwithstanding anything in this section, fix an earlier or a later date for the coming into operation, either generally or for particular purposes, of any particular provisions of this Act.

1. Part III and certain provisions (other than those of Parts II and VIII, [except s.181 (2)], Chapter I of Part IX, the eighth sch. and s. 232) came into force on 1-4-1937; see the Government of India (Commencement and Transitory Provisions) Order, 1936, para 3; see also paras 11 and 12.

### **321. Repeals :-**

The Government of India Act shall be repealed<sup>1</sup> and the other Acts mentioned in the Tenth Schedule to this Act shall also be repealed to the extent specified in the third column of that Schedule. Provided that-

(a) nothing in this section shall affect the Preamble to the Government of India Act, 1919.<sup>2</sup>

(b) without prejudice to any other provisions of this Act, to the provisions of the Government of Burma Act, 1935<sup>3</sup>, and to the provisions of the Interpretation Act, 1889,<sup>4</sup> relating to the effect of repeals, this repeal shall not affect any appointment made under any enactment so repealed to any office, and such appointment shall have effect as if it were an appointment to the corresponding office under this Act or the Government of Burma Act, 1935.

1. Except portion of s. 67 (2), see Government of India (Commencement and Transitory Provisions) Order, 1936, para. 12, which has retained the said section in force till the establishment of the Federation.

2. (1919) 9 and 10 Geo. V, C. 101.

3. (1935) 26 Geo. V and 1 Edw. VIII, C. 3.

4. (1889) 52 and 53 Vict, C. 63.

#### SCHEDULE 1

#### COMPOSITION OF THE FEDERAL LEGISLATURE

##### **1. . :-**

The allocation to Indian States of seats in the Federal legislature shall be as shown in the Table appended to this Part of this Schedule, hereinafter referred to as the "Table of Seats," and persons to represent Indian States in that Legislature shall be chosen and appointed in accordance with the provisions hereinafter contained.

##### **2. . :-**

In the case of the Council of State, there shall be allotted to each State or, as the case may be, to each group of States specified in the first column of the Table of Seats, the number of seats specified in the second column of the said Table opposite to that State or. to that group of States,

##### **3. . :-**

In the case of the Federal Assembly, there shall be allotted to each State or, as the case may 'be, to each group of States specified in the third column of the Table of Seats, the number of seats specified in the fourth column of the said Table opposite to that State or to that group of States.

##### **4. . :-**

A person shall not be qualified to be appointed under this Part of this Schedule to fill a seat in either Chamber of the Federal Legislature unless he-

(i) is a British subject or the Ruler or a subject of an Indian State which has acceded to the Federation; and

(iii) is, in the case of a seat in the Council of State, not less than thirty years of age and, in the case of a seat in the Federal Assembly, not less than twenty-five years of age : Provided that-

(a) the: Governor-General may in his discretion declare as respects any State, the Ruler of which at the date of the establishment of the Federation was by reason of his minority not exercising ruling powers, that subparagraph (i) of this paragraph shall not apply to any named subject, or to subjects generally, of that State until, that State comes under the rule of a Ruler who is of an age to

exercise ruling powers; and

(b) sub-paragraph (ii) of this paragraph shall not apply to a Ruler who is exercising ruling powers.

**5. . :-**

Upon the expiration of the term for which he is appointed to serve as a member of the Federal Legislature, a person, if otherwise duly qualified, shall be eligible to be appointed to serve for a further term.

**6. . :-**

Subject to the special provisions hereinafter contained with respect to the appointment of persons to represent certain States and groups of States comprised in Divisions XVI and XVII of the Table of seats,-

(i) the Rulers of the States constituting a group of States to which a seat in the Council of State is allotted shall in rotation appoint a person to fill that seat; and

(ii) the Rulers of States constituting a group of States to which a seat in the Federal Assembly is allotted shall appoint jointly a person to fill that seat : Provided that the Rulers of two or more States entitled to appoint in rotation a person to fill a seat in the Council of State allotted to a group of States may by agreement, and with the approval of the Governor-General in his discretion, appoint jointly a person to fill that seat.

**7. . :-**

The period for which a person shall be appointed to fill a seat shall be-

(i) in the case of a person appointed to fill a seat in the Council of State-

(a) by the Ruler of a State entitled to separate representation, nine years;

(b) jointly by the Rules of all the States in a group which have acceded to the Federation, three years ;

(c) by the Ruler of State appointing in rotation, one year subject, however, to the special provisions of the next succeeding paragraph with respect to certain States therein mentioned;

(d) jointly by Rulers of some only of the States in a group which

have acceded to the Federation, a period equal to the aggregate of the periods; for which each of them might in rotation have appointed a person to hold that seat or three years whichever may be the shorter period;

(e) in any other manner, three years; and

(ii) in the case of a person appointed to fill a seat in the Federal Assembly until the dissolution of the Assembly Provided that-

(i) a person appointed to fill a seat upon the occurrence of a casual vacancy shall be appointed to fill that seat for the remainder of the period for which his predecessor was appointed;

(ii) in the case of first appointments to fill seats in the Council of State the Governor-General in his discretion shall make by order provision for securing that approximately one-third of the persons appointed by Rulers entitled to separate representation shall 'be appointed to fill seats for three years only, approximately one-third to fill seats for six years only and approximately one-third to fill seats for nine years.

**8. . :-**

The Ruler of a State mentioned in this paragraph when appointing in rotation a person to fill a seat in the Council of State shall, notwithstanding anything in the preceding paragraph be entitled to appoint that person to fill the seat-

(a) in the case of the Rulers of Panna and of Mayurbhanj, for two years; and

(b) in the case of the Ruler of Pudukkottai, for three years.

**9. . :-**

Subject as hereinafter provided, the Rulers of two or more States forming a group to which one seat in either Chamber of the Federal Legislature is allotted shall, in choosing a person to be appointed by them jointly to fill that seat, each have one vote, and in the case of an equality of votes the choice shall be determined by lot or otherwise in such other manner as may be prescribed : Provided that in choosing a person to be appointed the Ruler of a State mentioned in sub-paragraph (a) of the preceding paragraph shall be entitled to two votes and the Ruler of the State mentioned in sub-paragraph (b) of that paragraph shall be entitled to three votes.

**10.** . :-

A seat in either Chamber allotted to a single State shall remain unfilled until the Ruler of that State has acceded to the Federation, and a seat in either Chamber which is the only seat therein allotted to a group of States shall remain unfilled until the Rulers of at least one-half of those States have so acceded but, subject as hereinafter provided, so long as one-tenth of the seats in either Chamber allotted either to single States or to groups of States remain unfilled by reason of the non-accession of a State or States, whether such non-accession be due to the minority of a Ruler or to any other cause, the persons appointed by the Rulers of States to fill seats in that Chamber may from time to time in the prescribed manner appointed persons, not exceeding one-half of the number of seats so unfilled to additional members of that Chamber: Provided that the right to appoint such additional members, shall not be exercised after the expiration of twenty years from the establishment of the Federation. A person appointed under this paragraph as an additional member of either Chamber shall be appointed to fill his seat for a period of one year only.

**11.** . :-

Persons to fill the seats in the Federal Assembly allotted to any group of States mentioned in Division XVI of the Table of Seats as entitled to appoint persons to fill three such seats shall be appointed in the prescribed manner by the Rulers of such of the States in the group as have acceded to the Federation: Provide that-

(a) until the Rulers of two of those States have so acceded, all the three seats shall remain unfilled ; and

(b) until the Rulers of four of those States have so acceded, two of the three seats shall remain unfilled; and

(c) until the Rulers of six of those States have so acceded, one of the three seats shall remain unfilled. Seats in the Federal Assembly remaining unfilled by reason of the provisions of this paragraph shall be treated as seats remaining unfilled for the purposes of the last preceding paragraph.

**12.** . :-

The provisions of the paragraph shall apply with respect to the two seats in the Council of State and the five seats in the Federal Assembly allotted to the States comprised in Division XVII of the

## Table of Seats :-

(a) the States in question are such States, being States which on the first day of January, nineteen hundred and thirty five, were included in the Western India States Agency, the Gujarat States Agency, the Deccan States Agency, the Eastern States Agency, the Central India Agency or the Rajputana Agency, or were in political relations with the Government of the Punjab or the Government of Assam, as may be enumerated in rules made by the Governor-General in his discretion;

(b) the Governor-General shall, in the rules so made by him divide the said States into five groups, and of the five seats in the Federal Assembly allotted to those States one shall be deemed to be allotted to each of the group;

(c) a seat in the Federal Assembly allotted to one of the said groups shall remain unfilled until the Rulers of at least one-half of the States in the group have acceded to the Federation, but, save as aforesaid a person to fill such a seat shall be appointed in the prescribed manner by the Rulers of such of the States in the group as have acceded to the Federation

;

(d) persons to fill the two seats in the Council of State allotted to the States comprised in the said Division shall be appointed in the prescribed manner by the persons appointed under the preceding sub-paragraph to fill seats in the Federal Assembly: Provided that so long as three of the five-seats in the Federal Assembly remain unfilled, one of the two seats in the Council of State shall also remain unfilled;

(e) seats in the Federal Assembly of Council of State remaining unfilled by reason of the provisions of this paragraph shall be treated as seats remaining unfilled for the purposes of the last but one preceding paragraph. <sup>1</sup> [This paragraph shall have effect as if the State of Khaniadhana had been included in the Central India Agency on the first day of January nineteen hundred and thirty-five.]

1. Added by the India and Burma (Miscellaneous Amendments) Acts, 1940 (3 and 4 Geo. 6, Ch. 5); Sch., Part 1.

## **13.** . :-

His Majesty in Council may by order vary the Table of Seats by

transferring any State from one group of States specified in column one or column three of that Table to another group of States specified in the same column, if he deems it expedient so to do-

(a) with a view to reducing the number of seats which by reason of the non-accession of a State or States would otherwise remain unfilled; or

(b) with a view to associating in separate groups States whose rules do, and States whose rulers do not, desire to make appointments jointly instead of in rotation, and is satisfied that such variation will not adversely affect the rights and interest of any State : Provided that a State mentioned in paragraph eight of this Schedule shall not be transferred to another group unless the Ruler of the State has agreed to relinquish the privileges enjoyed by him under the said paragraph and under paragraph nine. Where an order varying the Table of Seats is made under this paragraph, references (whether express or implied) in the foregoing provisions of this Part of this Schedule to the Table shall be construed as references to the Table as so varied

.

**14. . :-**

In so far as provision in that behalf is not made by His Majesty in Council, the Governor-General may in his discretion make rules for carrying into effect the provisions of this Part of this Schedule and in particular, but without prejudice to the generality of the foregoing words, with respect to-

(a) the times at which and the manner in which appointments are to be made, the order in which Rulers entitled to make appointments in rotation are to make them and the date from which appointments are to take effect;

(b) the filling of casual vacancies in seats;

(c) the decision of doubts or disputes arising out of or in connection with any appointment; and

(d) the manner in which the rules are to be carried into effect. In this Part of this Schedule the expression "prescribed" means prescribed by His Majesty in Council or by rules made under this paragraph.

**15. . :-**

For the purposes of sub-section (2) of section five of this Act-

(i) if the Rulers of at least one half of the States included in any group to which one seat in the Council of State is allotted accede to the, Federation, the Rulers so acceding shall be reckoned as being entitled together to choose one member of .the Council of State;

(ii) if, of the Rulers of States included in the groups to be formed out of the States comprised in Division XVII of the Table of Seats, sufficient accede to the Federation to entitle them to appoint one member or two members of the Federal Assembly, the Rulers so acceding shall be reckoned as being entitled together to choose one member of the Council of State and, if sufficient accede to entitle them to appoint three or more members of the Federal Assembly, the Rulers so acceding shall be reckoned as being entitled together to choose two members of the Council of State; and

(iii) the population of a State shall be taken to be the population attributed thereto in column five of the Table of Seat or, if it 'is one of the States comprised in the said Division XVII of the Table such figures as the Governor-General may in his discretion determine, and the total population of the States shall be taken to be the total population thereof as stated at the end of the Table.

**16.** . :-

Upon the first constitution of the Council of State two of the persons to be chosen by the Governor-General shall be chosen to serve for three years only, two shall be chosen to serve for six years only and two shall be chosen to serve for nine years.

**17.** . :-

The allocation of seats in the Federal Assembly other than seats allotted to Indian States, shall be as shown in the relevant Table of Seats appended to this Part of this Schedule.

**18.** . :-

To each Governor's Province and Chief Commissioner's Province specified in the first column of the Table there shall be allotted the number of seats specified in the second 'column opposite to that Province, and of those seats-

(i) the number specified in the column shall be general seats, of which the number specified in the fourth column shall be reserved for members of the scheduled castes;

(ii) the numbers specified in the next columns shall be the numbers of seats to be filled respectively by persons chosen to represent (a) the Sikh community, (b) the Muhammadan community; (c) the Anglo-Indian community; (d) the European community ; (e) the Indian Christian community ; (f) the interests of commerce and industry; (g) landholders; and (h) the interests of labour, and

(iii) the number specified in the thirteenth column shall be number of seats reserved to women. There shall also be in Federal Assembly four seats not allotted to any Province, of which three shall be seats to be filled by representatives of commerce and industry and one shall be a seat to be filled by a representative of labour.

**19.** . :-

Subject to the provisions of the next succeeding paragraph, persons to fill the Federal Assembly allotted to a Governor's Province as general seats, sikh seats of Muhammadan seats shall be chosen by electorates consisting of such of the members of the Legislative Assembly of the Province as hold therein general seats, Sikh seats or Muhammadan seats respectively, voting in the case of a general election in accordance with the principle of proportional representation by means of the single transferable vote: Provided that in the North-West Frontier Province the holders of Sikh seats, and in any Province in which seats are reserved for representatives of backward areas or backward tribes the holders of those seats, shall, for the purposes of this paragraph, be deemed to hold general seats.

**20.** . :-

The provisions of this paragraph shall have effect with respect to the general seats reserved in any Governor's Province for members of the scheduled castes:- For the purposes of a general election of members of the Federal Assembly-

(a) there shall be primary electorate consisting of all persons who were successful candidates at the primary elections held, in accordance with the provisions of the Fifth Schedule to' this Act, on the occasion of the last general election of members of the Legislative Assembly of the Province for the purpose or selecting candidates for seats reserved for members of the scheduled castes;

(b) the members of the primary electorate so constituted shall be entitled to take part in a primary election held for the purpose of

electing four candidates for each seat so reserved ; and

(c) no person who is not so elected as a candidate shall be qualified to be chosen to fill such a seat. Rules made under this Part of this Schedule shall make provisions as to the manner in which a casual vacancy occurring in a seat to which this paragraph applies is to be filled.

**21.** . :-

For the purpose of choosing persons to fill the women's seats in the Federal Assembly there shall be for British India an electoral college consisting of such women as are members of the Legislative Assembly of any Governor's Province, and the person to fill a women's seats allotted to any particular Province shall be chosen by the members of the college. Rules regulating the conduct of elections by the women's electoral college shall be such as to secure that, of the nine women's seats allotted to Provinces, at least two are held by Muhammadans and at least one by an Indian Christian.

**22.** . :-

For the purpose of choosing persons to fill the Anglo-Indian, European and Indian Christian seats in the Federal Assembly, there shall be for the British India three electoral colleges consisting respectively of such persons as hold an Anglo-Indian, a European or an Indian Christian seat in the Legislative Assembly of any Governor's Province, and the person to fill an Anglo-Indian, European or Indian Christian seat allotted to any particular Province shall be chosen by the members of the appropriate electoral college. In choosing at a general election the persons to fill the Indian Christian seats allotted to the Province of Madras, the Indian Christian electoral college shall vote in accordance with the principle of proportional representation by means of the single transferable vote.

**23.** . :-

Persons to fill the seats in the Federal Assembly which are to be filled by representative of commerce and industry, landholders and representations of labour shall be chosen-

(a) in the case of a seat allotted to a Province which is to be filled by a representative of commerce and industry, by such chambers of commerce and similar associations voting in such manner as may be prescribed.

(b) in the case of a seat allotted to a Province which is to be filled by a landholder, by such persons voting in such territorial constituencies and in such manner as may be prescribed;

(c) in the case of a seat allotted to a Province which is to be filled by a representative of labour, by such organisations, or in such constituencies, and in accordance with such manner of voting as may be prescribed.

(d) in the case of one of the non-provincial seats which are to be filled by representatives of commerce and industry, by such Associated Chambers of Commerce, in the case of another such seat by such Federated Chambers of Commerce and in the case of the third such seat by such commercial bodies in Northern India voting in each case in such manner as may be prescribed; and

(e) in the case of the non-provincial seat which is to be filled by a representative of labour, by such organisations voting in such manner as may be prescribed

**24. . :-**

Persons to fill the seats in the Federal Assembly allotted to Chief Commissioners' Provinces as general seats or Muhammadan seats shall be chosen-

(a) in the case of Coorg, by the members of the Legislative Council; and

(b) in other cases in such manner as may be prescribed.

**25. . :-**

A person shall not be qualified to hold a seat in the Federal Assembly, unless-

(i) in the case of a general seat, a Sikh seat, a Muhammadan seat, an Anglo- indian seat, a European seat, an Indian Christian seat or a woman's seat allotted to a Governor's Province or the Province of Coorg, he is qualified to hold seat of of the Same class in the Legislative Assembly, or, in the case of Coorg, the Legislative Council, of that Province

;

(ii) in the case of any other seat, he possesses such qualifications as may be prescribed.

**26. . :-**

(1) In the foregoing provisions of this Schedule the following expressions have the meanings hereby assigned to them, that is to say:- "a European" means a person whose father or any of whose other male progenitors in the male line is or was of European descent and who is not a native of India; "an Anglo-Indian" means a person whose father or any of whose other male progenitors in the male line is or was of European descent but who is a native of India; "an Indian Christian" means, a person who professes any form of the Christian religion and is not a European or an Anglo-Indian; "the scheduled castes" means such castes, races or tribes, or parts of or groups within castes, races or tribes being castes, races, tribes, parts or groups which appear to His Majesty in Council to correspond to the classes of persons formerly known as "the depressed classes", as His Majesty in Council may specify; and "prescribed" means prescribed by His Majesty in Council or, so far as regards any matter which under this Act the Federal Legislature or the Governor-General are competent to regulate, prescribed by an Act of that Legislature or by a rule made under the next succeeding paragraph.

(2) In this paragraph the expression "native of India" has the same meaning as it had for the purposes of Section 6 of the Government of India Act, 1870, and accordingly it includes any person born and domiciled within the dominions of His Majesty in India or Burma of parents habitually resident in India or Burma and not established there for temporary purposes only.

**27.** . :-

In so far as provision with respect to any matter is not, made by this Act or by His Majesty in Council or, after the constitution of the Federal Legislature, by Act of that Legislature (where the matter is one with respect to which that Legislature is competent to make laws), the 'Governor-General, exercising his individual judgment, may make rules for carrying into effect the foregoing provisions of this part of this Schedule and for securing the due constitution of the Council of State and the Federal Assembly and, in particular, but without prejudice to the generality of the foregoing words, with respect to-

(i) the notification of vacancies, including casual vacancies and the proceedings to be taken for filling vacancies;

(ii) the nomination of candidates;

(iii) the conduct of elections, including the application to elections of the principle Of proportional representation by means of the single transferable vote, and the rules to regulate elections where certain of the seats to be filled are to be filled by persons to be chosen to serve for different terms, or are reserved for members of the scheduled castes;

(iv) the expenses of candidates at elections'

(v) corrupt practices and other offences at or in connection with - elections;

(vi) the decision of doubts and disputes arising out of or in connection with the choice of persons to fill seats in the Council of State or the Federal Assembly; and

(vii) the manner in which rules aye. to be carried into effect.

**1. . :-**

The allocation to Indian States of seats in the Federal legislature shall be as shown in the Table appended to this Part of this Schedule, hereinafter referred to as the "Table of Seats," and persons to represent Indian States in that Legislature shall be chosen and appointed in accordance with the provisions hereinafter contained.

**2. . :-**

In the case of the Council of State, there shall be allotted to each State or, as the case may be, to each group of States specified in the first column of the Table of Seats, the number of seats specified in the second column of the said Table opposite to that State or. to that group of States,

**3. . :-**

In the case of the Federal Assembly, there shall be allotted to each State or, as the case may 'be, to each group of States specified in the third column of the Table of Seats, the number of seats specified in the fourth column of the said Table opposite to that State or to that group of States.

**4. . :-**

A person shall not be qualified to be appointed under this Part of this Schedule to fill a seat in either Chamber of the Federal Legislature unless he-

(i) is a British subject or the Ruler or a subject of an Indian State

which has acceded to the Federation; and

(iii) is, in the case of a seat in the Council of State, not less than thirty years of age and, in the case of a seat in the Federal Assembly, not less than twenty-five years of age : Provided that-

(a) the: Governor-General may in his discretion declare as respects any State, the Ruler of which at the date of the establishment of the Federation was by reason of his minority not exercising ruling powers, that subparagraph (i) of this paragraph shall not apply to any named subject, or to subjects generally, of that State until, that State comes under the rule of a Ruler who is of an age to exercise ruling powers; and

(b) sub-paragraph (ii) of this paragraph shall not apply to a Ruler who is exercising ruling powers.

**5. . :-**

Upon the expiration of the term for which he is appointed to serve as a member of the Federal Legislature, a person, if otherwise duly qualified, shall be eligible to be appointed to serve for a further term.

**6. . :-**

Subject to the special provisions hereinafter contained with respect to the appointment of persons to represent certain States and groups of States comprised in Divisions XVI and XVII of the Table of seats,-

(i) the Rulers of the States constituting a group of States to which a seat in the Council of State is allotted shall in rotation appoint a person to fill that seat; and

(ii) the Rulers of States constituting a group of States to which a seat in the Federal Assembly is allotted shall appoint jointly a person to fill that seat : Provided that the Rulers of two or more States entitled to appoint in rotation a person to fill a seat in the Council of State allotted to a group of States may by agreement, and with the approval of the Governor-General in his discretion, appoint jointly a person to fill that seat.

**7. . :-**

The period for which a person shall be appointed to fill a seat shall be-

(i) in the case of a person appointed to fill a seat in the Council of

State-

(a) by the Ruler of a State entitled to separate representation, nine years;

(b) jointly by the Rulers of all the States in a group which have acceded to the Federation, three years ;

(c) by the Ruler of State appointing in rotation, one year subject, however, to the special provisions of the next succeeding paragraph with respect to certain States therein mentioned;

(d) jointly by Rulers of some only of the States in a group which have acceded to the Federation, a period equal to the aggregate of the periods; for which each of them might in rotation have appointed a person to hold that seat or three years whichever may be the shorter period;

(e) in any other manner, three years; and

(ii) in the case of a person appointed to fill a seat in the Federal Assembly until the dissolution of the Assembly Provided that-

(i) a person appointed to fill a seat upon the occurrence of a casual vacancy shall be appointed to fill that seat for the remainder of the period for which his predecessor was appointed;

(ii) in the case of first appointments to fill seats in the Council of State the Governor-General in his discretion shall make by order provision for securing that approximately one-third of the persons appointed by Rulers entitled to separate representation shall 'be appointed to fill seats for three years only, approximately one- third to fill seats for six years only and approximately one-third to fill seats for nine years.

**8. . :-**

The Ruler of a State mentioned in this paragraph when appointing in rotation a person to fill a seat in the Council of State shall, notwithstanding anything in the preceding paragraph be entitled to appoint that person to fill the seat-

(a) in the case of the Rulers of Panna and of Mayurbhanj, for two years; and

(b) in the case of the Ruler of Pudukkottai, for three years.

**9. . :-**

Subject as hereinafter provided, the Rulers of two or more States forming a group to which one seat in either Chamber of the Federal Legislature is allotted shall, in choosing a person to be appointed by them jointly to fill that seat, each have one vote, and in the case of an equality of votes the choice shall be determined by lot or otherwise in such other manner as may be prescribed : Provided that in choosing a person to be appointed the Ruler of a State mentioned in sub-paragraph (a) of the preceding paragraph shall be entitled to two votes and the Ruler of the State mentioned in sub-paragraph (b) of that paragraph shall be entitled to three votes.

**10.** . :-

A seat in either Chamber allotted to a single State shall remain unfilled until the Ruler of that State has acceded to the Federation, and a seat in either Chamber which is the only seat therein allotted to a group of States shall remain unfilled until the Rulers of at least one-half of those States have so acceded but, subject as hereinafter provided, so long as one-tenth of the seats in either Chamber allotted either to single States or to groups of States remain unfilled by reason of the non-accession of a State or States, whether such non-accession be due to the minority of a Ruler or to any other cause, the persons appointed by the Rulers of States to fill seats in that Chamber may from time to time in the prescribed manner appointed persons, not exceeding one- half of the number of seats so unfilled to additional members of that Chamber: Provided that the right to appoint such additional members, shall not be exercised after the expiration of twenty years from the establishment of the Federation. A person appointed under this paragraph as an additional member of either Chamber shall be appointed to fill his seat for a period of one year only.

**11.** . :-

Persons to fill the seats in the Federal Assembly allotted to any group of States mentioned in Division XVI of the Table of Seats as entitled to appoint persons to fill three such seats shall be appointed in the prescribed manner by the Rulers of such of the States in the group as have acceded to the Federation: Provide that-

(a) until the Rulers of two of those States have so acceded, all the three seats shall remain unfilled ; and

(b) until the Rulers of four of those States have so acceded, two of

the three seats shall remain unfilled; and

(c) until the Rulers of six of those States have so acceded, one of the three seats shall remain unfilled. Seats in the Federal Assembly remaining unfilled by reason of the provisions of this paragraph shall be treated as seats remaining unfilled for the purposes of the last preceding paragraph.

**12. . :-**

The provisions of the paragraph shall apply with respect to the two seats in the Council of State and the five seats in the Federal Assembly allotted to the States comprised in Division XVII of the Table of Seats :-

(a) the States in question are such States, being States which on the first day of January, nineteen hundred and thirty five, were included in the Western India States Agency, the Gujarat States Agency, the Deccan States Agency, the Eastern States Agency, the Central India Agency or the Rajputana Agency, or were in political relations with the Government of the Punjab or the Government of Assam, as may be enumerated in rules made by the Governor-General in his discretion;

(b) the Governor-General shall, in the rules so made by him divide the said States into five groups, and of the five seats in the Federal Assembly allotted to those States one shall be deemed to be allotted to each of the group;

(c) a seat in the Federal Assembly allotted to one of the said groups shall remain unfilled until the Rulers of at least one-half of the States in the group have acceded to the Federation, but, save as aforesaid a person to fill such a seat shall be appointed in the prescribed manner by the Rulers of such of the States in the group as have acceded to the Federation

;

(d) persons to fill the two seats in the Council of State allotted to the States comprised in the said Division shall be appointed in the prescribed manner by the persons appointed under the preceding sub-paragraph to fill seats in the Federal Assembly: Provided that so long as three of the five-seats in the Federal Assembly remain unfilled, one of the two seats in the Council of State shall also remain unfilled;

(e) seats in the Federal Assembly of Council of State remaining

unfilled by reason of the provisions of this paragraph shall be treated as seats remaining unfilled for the purposes of the last but one preceding paragraph. <sup>1</sup> [This paragraph shall have effect as if the State of Khaniadhana had been included in the Central India Agency on the first day of January nineteen hundred and thirty-five.]

1. Added by the India and Burma (Miscellaneous Amendments) Acts, 1940 (3 and 4 Geo. 6, Ch. 5); Sch., Part 1.

**13. . :-**

His Majesty in Council may by order vary the Table of Seats by transferring any State from one group of States specified in column one or column three of that Table to another group of States specified in the same column, if he deems it expedient so to do-

(a) with a view to reducing the number of seats which by reason of the non-accession of a State or States would otherwise remain unfilled; or

(b) with a view to associating in separate groups States whose rules do, and States whose rulers do not, desire to make appointments jointly instead of in rotation, and is satisfied that such variation will not adversely affect the rights and interest of any State : Provided that a State mentioned in paragraph eight of this Schedule shall not be transferred to another group unless the Ruler of the State has agreed to relinquish the privileges enjoyed by him under the said paragraph and under paragraph nine. Where an order varying the Table of Seats is made under this paragraph, references (whether express or implied) in the foregoing provisions of this Part of this Schedule to the Table shall be construed as references to the Table as so varied

.

**14. . :-**

In so far as provision in that behalf is not made by His Majesty in Council, the Governor-General may in his discretion make rules for carrying into effect the provisions of this Part of this Schedule and in particular, but without prejudice to the generality of the foregoing words, with respect to-

(a) the times at which and the manner in which appointments are to be made, the order in which Rulers entitled to make appointments in rotation are to make them and the date from

which appointments are to take effect;

(b) the filling of casual vacancies in seats;

(c) the decision of doubts or disputes arising out of or in connection with any appointment; and

(d) the manner in which the rules are to be carried into effect. In this Part of this Schedule the expression "prescribed" means prescribed by His Majesty in Council or by rules made under this paragraph.

**15. . :-**

For the purposes of sub-section (2) of section five of this Act-

(i) if the Rulers of at least one half of the States included in any group to which one seat in the Council of State is allotted accede to the, Federation, the Rulers so acceding shall be reckoned as being entitled together to choose one member of .the Council of State;

(ii) if, of the Rulers of States included in the groups to be formed out of the States comprised in Division XVII of the Table of Seats, sufficient accede to the Federation to entitle them to appoint one member or two members of the Federal Assembly, the Rulers so acceding shall be reckoned as being entitled together to choose one member of the Council of State and, if sufficient accede to entitle them to appoint three or more members of the Federal Assembly, the Rulers so acceding shall be reckoned as being entitled together to choose two members of the Council of State; and

(iii) the population of a State shall be taken to be the population attributed thereto in column five of the Table of Seat or, if it 'is one of the States comprised in the said Division XVII of the Table such figures as the Governor-General may in his discretion determine, and the total population of the States shall be taken to be the total population thereof as stated at the end of the Table.

SCHEDULE 2

SCHEDULE

(Section 6.) Provisions of the Act which may be amended without affecting the Accession of a State. Part I.-In so far as it relates to the Commander-in-Chief. Part II, chapter II.-Save with respect to the exercise by the Governor-General on behalf of His Majesty of the executive authority of the Federation, and the definition of the functions of the Governor-General; the executive authority of the Federation; the functions of the council of ministers, and the choosing and summoning of ministers and their tenure of office; the power of the Governor-General to decide whether he is entitled

to act in his discretion or exercise his individual judgment; the functions of the Governor-General with respect to external affairs and defence; the special responsibilities of the Governor-General relating to the peace or tranquillity of India or any part thereof, the financial stability and credit of the Federal Government, the right of Indian States and the rights and dignity of their Rulers, and the discharge of his functions by or under the Act in his discretion or in the exercise of his individual judgment; His Majesty's instrument of Instructions to the Governor-General; the superintendence of the Secretary of States, and the making of rules by the Governor-General in his discretion for the transaction of, and the securing of transmission to him of information with respect to, the business of the Federal Government. Part II, Chapter III.-Save with respect to the number of the representatives of British India and of the Indian States in the Council of State and the Federal Assembly and the manner in which the representatives of Indian States are to be chosen; the disqualifications for membership of a Chamber of the Federal Legislature in relation to the representatives of the States; the procedure for the introduction and passing of Bills; joint sittings of the two Chambers, the assent to Bills, or the withholding assent from Bills, by the Governor-General; the reservation, of bills for the signification of His Majesty's pleasure; the annual financial statement; the charging on the revenues of the Federation of the salaries allowances and pension payable to or in respect of judges of the Federal Court, of expenditure for the purpose of the discharge by the Governor-General of his functions with respect to external affairs, defence, and the administration of any territory in the direction and control of which he is required to act in his discretion and of the sums payable to His Majesty in respect of the expenses incurred in discharging the functions of the Crown in its relations with Indian States; the procedure with respect to estimates and demands for grants; supplementary financial statements' the making of rules by the Governor-General for regulating the procedure of and the conduct of business in the Legislature in relation to matters where he acts in his discretion or exercises his individual judgment, and for prohibiting the discussion of, or the asking of questions on, any matter connected with or the personal conduct of the Ruler or ruling family of any Indian State; the making of rules by the Governor-General as to the procedure with respect to joint sittings of, and communication between, the two chambers and the protection of judges of the Federal Court and State High Courts from discussion in the Legislature of their conduct. Part II, chapter IV.-Save with respect to the power of the Governor-General to promulgate ordinances in his discretion or in the exercise of his individual judgment, or to enact Governor-General's Acts. Part III, chapter 1.-The whole chapter. Part III, chapter II.-Save with respect to the special responsibilities of the Governor relating to the rights of Indian States and the rights and dignity of the Rulers thereof and to the execution of orders or directions of the Governor-General, and the superintendence of the Governor-General in relation to those responsibilities. Part III, chapter III.-Save with respect to the making of rules by the Governor for prohibiting the discussion of, or the asking of questions on, any matter connected with or the personal conduct of the Ruler or ruling family of any Indian State, and the protection of judges of the Federal Court and State High Courts from discussion in the Legislature of their conduct. Part III, chapter IV- The whole chapter. Part III, chapter V.- The whole chapter. Part III, chapter VI.-The whole chapter. Part IV.-The whole Part. Part V, chapter 1.-Save with respect to the power of the Federal Legislature to make laws for a State; the power of the Governor-General to empower either the Federal Legislature or Provincial Legislature to enact a law with respect to any matter not enumerated in any of the Lists in the

Seventh Schedule to this Act; any power of a State to repeal a Federal law, and the effect of inconsistencies between a Federal law and a State law. Part V, chapter II.-Save with respect to the previous sanction of the Governor-General to the introduction or moving of any Bill or amendment affecting matters as respects which the Governor-General is required to act in his discretion; the power of Parliament to legislate for British India or any part thereof, or the restrictions on the power of the Federal Legislature and of Provincial Legislatures to make laws on certain matters. Part V, chapter III.-The whole chapter. Part VI.-Save in so far as the provisions of that Part relate to Indian States, or empower the Governor-General to issue orders to the Governor of a Province for preventing any grave menace to the peace or tranquillity of India or any part thereof. Part VII, chapter 1.-In so far as it relates to Burma. Part VII, chapter II.-Save with respect to loans and guarantees in Federated States and the appointment, removal and conditions of service of the Auditor-General. Part VII, chapter III.-Save in so far as it affects suits against the Federation by a Federated State. Part VIII.-Save with respect to the constitution and functions of the Federal Railway Authority; the conduct of business between the Authority and the Federal Government, and the Railway Tribunal and any matter with respect to which it has jurisdiction. Part IX chapter I.-In so far as it relates to appeals to the Federal Court from High Courts in British India; the power of the Federal Legislature to confer further powers upon the Federal Court for the purpose of enabling it more effectively to exercise the powers conferred upon it by this Act. Part IX, chapter II.-The whole Chapter. Part X.-Save with respect to the eligibility of Rules and subjects of Federated States for civil Federal office. Part, XI- The whole Part. Part XII.-Save with respect to the saving for rights and obligations of the Crown in its relation with Indian States; the use of His Majesty's force in connection with the discharge of the functions of the Crown in its said relations; the limitation in relation to Federated States of His Majesty's power to adapt and modify existing Indian laws: His Majesty's powers and jurisdiction in Federated States, and resolutions of the Federal Legislature or any Provincial legislature recommending amendments of this Act or Orders in Council made thereunder; and save also the provisions relating to the interpretation of this Act so far as they apply to provisions of this Act which may not be amended without affecting the accession of a State. Part XIII.-The whole Part. First Schedule.-The whole Schedule, except Part II thereof. Fourth Schedule.-Save with respect to the oath or affirmation to be taken or made by the Ruler or subject of an Indian State. Fifth Schedule- The whole Schedule. Sixth Schedule--The whole Schedule. Seventh Schedule.-Any entry in the Legislative Lists in so far as the matters to which it relates have not been accepted by the State in question as matters with respect to which the Federal' Legislature may make laws for that State. Eighth Schedule-The whole Schedule. Ninth Schedule.-The whole Schedule. Tenth Schedule-The whole Schedule.

### SCHEDULE 3

PROVISIONS AS TO GOVERNOR-GENERAL AND GOVERNORS OF PROVINCES.

#### **1. . :-**

There shall be paid to the Governor-General and to the Governors of the Provinces the following annual salaries, that is to say: The Governor-General . . . . . 250,800 rupees. The Governor of Madras The Governor of Bombay . . . . . 120,000 rupees. The Governor of Bengal The Governor of the United Provinces . . 66,000

rupees. The Governor of Bihar . . . . } 100,000 rupees. The Governor of the Punjab . . . . The Governor of Central Provinces and Berar . . 72,000 rupees. The Governor of Assam ..... The Governor of the North-West Frontier Province The Governor of Orissa ..... The Governor of Sind .....

**2. . :-**

There shall be paid to the Governor-General and to the Governors such allowances for expenses in respect of equipment and travelling upon appointment and such allowances during their terms of office as may from time to time be fixed by His Majesty in Council, and such provision shall 'be made for enabling the Governor-General and the Governors to discharge conveniently and with dignity the duties of their offices as may be determined by His Majesty in Council.

**3. . :-**

While the Governor-General' or a Governor is absent on leave, he shall in lieu of his salary be entitled to such leave allowance as may be fixed by His Majesty in Council.

**4. . :-**

There shall be granted to and in respect of the Governor-General and the Governor of every Province such customs privileges as may be specified by Order in Council. <sup>1</sup>

1. See India and Burma (Transitory Provisions) Order, 1937.

**5. . :-**

While any person appointed by His Majesty to act as Governor-General or as a Governor is so acting he shall' be entitled to the same salary and, save as may be otherwise provided by His Majesty in Council the same allowances and privileges as the Governor-General or that Governor.

**6. . :-**

Any sums required to give effect to the provisions of this Schedule shall, in the case of the Governor-General or a person acting as such, be paid out of and charged on the revenues of the Federation and, in the case of a Governor or a person acting as such, be paid out of and charged on the revenues of the Province.

SCHEDULE 4

FORMS OF OATHS OR AFFIRMATIONS

**1. . :-**

Form of oath or affirmation to be taken or made 'by a member of a Legislature who is a British subject:- I. A.B., having been elected [or nominated or appointed] a member of this Council [or Assembly], do solemnly swear [or affirm] that I will be faithful and bear true allegiance to His Majesty the King, Emperor of India, His heirs and successors, and that I will faithfully discharge the duty upon which I am about to enter."

**2. . :-**

Form of oath or affirmation to be taken or made by a member of a Legislature who is the Ruler of an Indian State:- "I, AB" having been elected [or nominated or appointed] a member of this Council [or Assembly], do solemnly swear [or affirm] that I will be faithful and bear true allegiance in my capacity as Member of this Council [or Assembly] to His Majesty the King, Emperor of India, His heirs and successors, and that I will faithfully discharge the duty upon which I am about to enter."

**3. . :-**

Form of oath or affirmation to be taken or made by a member of a Legislature who is a subject of the Ruler of an Indian State:- "I, A.B., having been selected [or nominated or appointed] a member of this Council [or Assembly], do solemnly swear [or affirm] that saving the faith and allegiance which I owe to C.D., his heirs and successors, I will be faithful and bear true allegiance in my capacity as Member of this Council [or Assembly] to His Majesty the King, Emperor of India, His heirs and successors, and that I will faithfully discharge the duty upon which I am about to enter."

**4. . :-**

Form of judicial oath or affirmation to be taken or made by a British subject:- "I, A.B., having been appointed Chief Justice [or a judge] of the Court do solemnly swear [or affirm] that I will be faithful and bear true allegiance to His Majesty the King, Emperor of India, His heirs and successors and that I will faithfully perform the duties of my office to the best of my ability, knowledge and judgment."

**5. . :-**

Form of judicial oath or affirmation to be taken or made by a subject of the Ruler of an Indian State:- "I, A.B., having 'been appointed Chief Justice [or a judge] of the Court do solemnly swear [or affirm] that saving the faith and allegiance which I owe to C.D., his heirs and successors, I will be faithful and bear true allegiance in my judicial capacity to His Majesty the King, Emperor of India,

His heirs and successors, and that I will faithfully perform the duties of my office to the best of my ability, knowledge and judgment."

#### SCHEDULE 5

#### COMPOSITION OF PROVINCIAL LEGISLATURES

##### **1. . :-**

A person shall not be qualified to be chosen to fill a seat in a Provincial Legislature unless he-

(a) is a British subject or the Ruler or a subject of an Indian State which has acceded to the Federation or, if it is so prescribed with respect to any Province the Ruler or a subject of any prescribed Indian State; and

(b) is, in the case of a seat in a Legislative Assembly, not less than twenty-five years of age, and in the case of a seat in a Legislative Council, not less than thirty years of age; and

(c) possesses such, if any, of the other qualifications specified in, or prescribed under, this Schedule as may be appropriate in his case.

##### **2. . :-**

Upon the expiration of the term for which he is chosen to serve as a member of a Provincial Legislature, a person, if otherwise duly qualified, shall be eligible to be chosen to serve for a further term.

##### **3. . :-**

The allocation of seats in Provincial Legislative Assemblies shall be as shown in the relevant Table of Seats appended to this Schedule.

##### **4. . :-**

In the Legislative Assembly of each Province specified in the first column of the Table of Seats there shall be the number of seats specified in the second column opposite to that Province, and of those seats-

(i) the number specified in the third column shall be general seats, of which the number specified in the fourth column shall be reserved for members of the scheduled castes and, in the case of Bombay, seven shall be reserved for Marathas;

(ii) the numbers specified in the next ten columns shall be the numbers of seats to be filled by persons chosen to represent respectively-(a) backward areas and backward tribes; (b) the Sikh community; (c) the Muhammadan community, (d) the Anglo-Indian

community; (e) the European community, (f) the Indian Christian community; (g) the interests of commerce, industry, mining and planting; (k) landholders; (i) universities; and (j) the interests of labour; and

(iii) the numbers specified in the last five columns shall be the numbers of seats (being either general seats, Sikh seats, Muhammadan seats, Anglo-Indian seats or Indian Christian seats) reserved for women. In the Punjab one of the landholders' seats shall be a seat to be filled by a Tumandar.

**5. . :-**

A Province, exclusive of any portion thereof which His Majesty in Council may deem unsuitable for inclusion in any constituency or in any constituency of any particular class, shall be divided into territorial constituencies-

(i) for the election of persons to fill the general seats;

(ii) for the election of persons to fill the Sikh seats, if any;

(iii) for the election of persons to fill the Muhammadan seats;

(iv) for the election of persons to fill the Anglo-Indian seats, if any;

(v) for the election of persons to fill the European seats, if any; and

(vi) except in the case of Bihar, for the election of persons to fill the Indian Christian seats, if any, or, if as respects any class of constituency it is so, prescribed, may form one territorial constituency.

In the case of each such class of constituency as aforesaid the total number of seats available shall be distributed between the constituencies by the assignment of one or more of those seats to each constituency.

**6. . :-**

The required number of general seats to be reserved for members of the schedule castes, and in the Province of Bombay for Marathas, shall be reserved by reserving for members of those castes or, as the case may be, for Marathas one or more seats in each of so many of the general territorial constituencies as may be necessary, so, however, that in each. such constituency there shall be at least one unreserved seat.

**7. . :-**

In a province in which any general seats are reserved for members of the scheduled castes, all members of those castes, who are entitled to vote in a constituency in which any seat is so reserved shall be entitled to take part in a primary election held for the purpose of electing four candidates for each seat so reserved and no member of those castes not elected as a candidate at such an election shall be qualified to hold-

(a) a seat so reserved in that constituency;

(b) if it is so prescribed as respects that Province, any seat in that constituency. In relation to bye-elections this paragraph shall have effect with such adaptations and modifications as may be prescribed.

**8.** . :-

The persons to fill the seats specified in columns fifteen to nineteen of the Table of Seats as seats to be filled by women shall be chosen in territorial constituencies, which shall be either:-

(a) constituencies formed under paragraph five of this Schedule; or

(b) constituencies specially formed for the purpose of electing women members.

**9.** . :-

The provisions of the Sixth Schedule to this Act shall have effect with respect to the persons who are entitled to vote at elections in the territorial constituencies mentioned in paragraphs five and eight of this Schedule.

**10.** . :-

In a Province in which any seats are to be filled by representatives of backward areas or backward tribes, representatives of commerce, industry, mining and planting, representatives of landholders, representatives of universities or representatives of labour, persons to fill those seats, and in Bihar the person to fill the Indian Christian seat, shall be chosen in such manner as may be prescribed; Provided that in a Province in which any seats are to be filled by representatives of backward areas or backward tribes some or all 'of those seats may, if it is so prescribed, be treated in the prescribed manner as additional general seats to be reserved for representatives of such areas or tribes.

**11.** . :-

In the Punjab the landholder's seat to be filled by a Tumandar shall be assigned to such constituency as may be prescribed.

**12. . :-**

A person <sup>1</sup> [shall not be qualified to be chosen to fill a seat] in the Legislative Assembly of a Province unless-

(a) in the case of a seat to be filled by a woman, by a European, by an Indian Christian, by a representative of backward areas or backward tribes, by a representative of commerce, industry, mining and planting, by a representative of universities or by a representative of labour, he possesses such qualifications as may be prescribed; and

1. Effective from 1-4-1937 under the Government of India (Commencement and Transitory Provisions) Order, 1936, para. 3.

**13. . :-**

The allocation of seats in the Legislative Councils of Provinces having such Councils shall be as shown in the relevant Table on Seats appended to this Schedule.

**14. . :-**

In the Legislative Council of each Province specified in the first column of the Table of Seats there shall be the number of seats specified in the second column opposite to that Province, and of those seats-

(a) the number specified in the third column shall be general seats;

(b) the number specified in the fourth, fifth and sixth columns shall be seats to be filled by persons chosen to represent respectively the Muhammadan community, the European community and the Indian Christian community;

(c) the number specified in the seventh column shall be seats to be filled by persons elected by the members of the Legislative Assembly of the Province in accordance with the system of proportional representation by means of the single transferable vote; and

(d) the number specified in the eighth column shall be seats to be filled by persons chosen by the Governor in his discretion.

**15. . :-**

A Province, exclusive of any portion thereof which His Majesty in Council may deem unsuitable for inclusion in any constituency or in

any constituency of any particular class, shall be divided into territorial constituencies-

(i) for the purpose of electing persons to fill the general seats;

(ii) for the purpose of electing persons to fill the Muhammadan seats

;

(iii) for the purpose of electing persons to fill the European seats;

(iv) for the purpose of electing persons to fill the Indian Christian seats, if any, of if as respects any class of constituency it is so prescribed, map form one territorial constituency. In the case of each such class of constituency as aforesaid the total number of seats available shall be distributed between the constituencies by the assignment of one or more of those to each constituency.

**16.** . :-

At an election in a constituency to fill a general seat, persons entitled to vote in a Muhammadan constituency, a European constituency, or an Indian Christian constituency shall not be entitled to vote. In the case of a Muhammadan constituency, a European constituency, or an Indian Christian constituency no person shall be entitled to vote who is not, as the case may be, a Muhammadan, a European, or an Indian Christian.

**17.** . :-

The qualification entitling a person to vote in territorial constituencies at elections of members of a Provincial Legislative Council, and the qualifications to be possessed by members of such Council, shall be such as may be prescribed.

**18.** . :-

The term of office of a member of the Legislative Council of a Province, other than a member chosen to fill a casual vacancy, shall be nine years, but upon the first constitution of the Council the Governor in his discretion shall make by order such provisions as he thinks fit, by curtailing the term of office of some of the members then chosen, for securing that, as nearly as may be, one-third of the members holding seats of each class shall retire in every third year thereafter. A member chosen to fill a casual vacancy shall be chosen to serve for the remainder of his predecessor's term of office.

**19. . :-**

In the foregoing provisions of the Schedule the following expression have the meanings hereby assigned to them, that is to say,- "a European," "an Anglo-Indian," "an Indian Christian" and the scheduled caste" have the same meanings respectively as they have in Part I of the First Schedule to this Act; "backward areas" and "backward tribes" mean respectively such areas and tribes as His Majesty in Council may from time to time declare to be areas and tribes to which a special system of representation is more appropriate; and "prescribed" means prescribed by His Majesty in Council or, so far as regards any matter which under this Act the Provincial Legislature or the Governor are competent to regulate, prescribed by an Act of that Legislature or by a rule made under the next succeeding paragraph.

**20. . :-**

In so far as provisions with respect to any matter is not made by this Act or by His Majesty in Council or, after the constitution of the Provincial Legislature, by Act of Legislature (where the matter is one with respect to which that Legislature is competent to make laws), the Governor, exercising his individual judgment, may make rules for carrying into effect the foregoing provisions of this Schedule and the provisions of the Sixth Schedule and securing the due constitution of the Provincial Legislature and in particular, but without prejudice to the generality of the foregoing words, with respect to-

(i) the notification of vacancies, including casual vacancies, and the proceedings to be taken for filling vacancies;

(ii) the nomination of candidates;

(iii) the conduct of elections, including the application to elections of the principle of proportional representation by means of the single transferable vote and the rules to regulate elections where certain of the seats to be filled are reserved for members of the scheduled classes, or in the case of Bombay for Marathas, or where certain of the seats allotted to any community must be held by a woman or by a specified type of landholder;

(iv) the expenses of candidates at elections

;

(v) corrupt practices and other offences at or in connection with

elections;

(vi) the decision of doubts and disputes arising out of or in connection with elections; and

(viii) the manner in which the rules are to be carried into effect.

#### SCHEDULE 6

#### PROVISIONS AS TO FRANCHISE

#### PART

#### GENERAL

#### **1.** . :-

This Act may be cited as the Government of India Act, 1935.

#### **2.** . :-

(1) All rights, authority and jurisdiction heretofore belonging to His Majesty the King, Emperor of India, which appertain or are incidental to the Government of the territories in India for the time being vested in him, and all rights, authority and jurisdiction exercisable by him in or in relation to any other territories in India, are exercisable by His Majesty, except in so far as may be otherwise provided by or under this Act, or as may be otherwise directed by His Majesty: Provided that any powers connected with the exercise of the functions of the Crown in its relations with Indian States shall in India, if not exercised by His Majesty, be exercised only by, or by persons acting under the authority of, His Majesty's Representative for the exercise of those functions of the Crown.

(2) The said rights, authority and jurisdiction shall include any rights, authority or jurisdiction heretofore exercisable in or in relation to any territories in India by the Secretary of State, the Secretary of State in Council, the Governor-General, the Governor-General in Council, any Governor or any Local Government, whether by delegation from His Majesty or otherwise.

#### **3.** . :-

(1) The Governor-General of India is appointed by His Majesty by a Commission under the Royal Sign Manual<sup>1</sup>[and has-

(a) all such powers and duties as are conferred or imposed on him by or under this Act; and

(b) such other powers of His Majesty, not being powers connected

(2) <sup>2</sup> [His 'Majesty's Representative for the exercise of the functions of the Crown in its relations with Indian States] is appointed by His Majesty in like manner and has such powers and duties in connection with the exercise of those functions (not being powers or duties conferred or imposed by or under this Act on the Governor-General) as His Majesty may be pleased to assign to him.

(3) It shall be lawful for His Majesty to appoint one person to fill both the said offices].

1. The words commencing from 'and' up to the end of the section were omitted by *ibid*.

2. The office was known as "Crown Representative" with effect from 1-4-1937. See notification No. 144-Fed. dated the 4th March 1937, Gazette of India, Pt. I, p. 436.

**4. . :-**

There shall be a Commander-in-Chief of His Majesty's Forces in India appointed by Warrant under the Royal Sign Manual.

**5. . :-**

**6. . :-**

**7. . :-**

**8. . :-**

**9. . :-**

**10. . :-**

**11. . :-**

**12. . :-**

**13. . :-**

PART  
MADRAS

**1. . :-**

**2. . :-**

**3. . :-**

**4. . :-**

**5. . :-**

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**8.** . . :-

**9.** . . :-

**9A.** . . :-

**10.** . . :-

**11.** . . :-

**12.** . . :-

PART  
BOMBAY

**1.** . . :-

**2.** . . :-

**3.** . . :-

**4.** . . :-

**5.** . . :-

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**7.** . . :-

**8.** . . :-

**9.** . . :-

**10.** . . :-

**11.** . . :-

PART  
BENGAL

**1.** . . :-

**2.** . . :-

**3.** . . :-

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**10.** . . :-

**11.** . . :-

**12.** . . :-

**13.** . . :-

**14.** . . :-

PART

THE UNITED PROVINCES

**1.** . . :-

**2.** . . :-

**3.** . . :-

**4.** . . :-

**5.** . . :-

**6.** . . :-

**7.** . . :-

**8.** . . :-

**9.** . . :-

**10.** . . :-

**11.** . . :-

PART

THE PUNJAB

**1.** . . :-

**2.** . . :-

**3.** . . :-

**4.** . . :-

**5.** . . :-

**6.** . . :-

**7.** . . :-

**8.** . . :-

**9.** . . :-

**10.** . . :-

PART

Bihar

**1.** . . :-

**2.** . . :-

**3.** . . :-

**4.** . . :-

**5.** . . :-

**6.** . . :-

**7.** . . :-

**8.** . . :-

**9.** . . :-

PART

THE CENTRAL PROVINCES AND BERAR

**1.** . . :-

**2.** . . :-

**3.** . . :-

**4.** . . :-

**5.** . . :-

**6.** . . :-

**7.** . . :-

**8.** . . :-

**9.** . . :-

**10.** . :-

PART  
ASSAM

**1.** . :-

**2.** . :-

**3.** . :-

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**6.** . :-

**7.** . :-

**8.** . :-

**9.** . :-

**9A.** . :-

**10.** . :-

**11.** . :-

PART  
THE NORTH-WEST FRONTIER PROVINCE

**1.** . :-

**2.** . :-

**3.** . :-

**4.** . :-

**5.** . :-

**6.** . :-

**7.** . :-

**8.** . :-

**9.** . :-

PART  
ORISSA

**1.** . :-

**2.** . . :-

**3.** . . :-

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**5.** . . :-

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**8.** . . :-

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**10.** . . :-

**11.** . . :-

PART

SIND

**1.** . . :-

**2.** . . :-

**3.** . . :-

**4.** . . :-

**5.** . . :-

**6.** . . :-

**7.** . . :-

**8.** . . :-

**9.** . . :-

**10.** . . :-

SCHEDULE 7

Legislative Lists

SCHEDULE 8

THE FEDERAL RAILWAY AUTHORITY

**1.** . . :-

**2.** . . :-

**3.** . . :-

**4.** . :-

**5.** . :-

**6.** . :-

**7.** . :-

**8.** . :-

**9.** . :-

**10.** . :-

**11.** . :-

**12.** . :-

**13.** . :-

**14.** . :-

**15.** . :-

**16.** . :-

**SCHEDULE 9**

PROVISIONS OF GOVERNMENT OF INDIA ACT CONTINUED IN FORCE WITH AMENDMENTS UNTIL THE ESTABLISHMENT OF THE FEDERATION

**36.** **Members of Council :-**

**37.** **Rank and precedence of Commander-in-Chief :-**

**38.** **Vice-President of Council Meetings :-**

**39.** . :-

**40.** **Business of Governor-General in Council :-**

**41.** **Procedure in case of difference of opinion :-**

**42.** **Provisions for absence of Governor-General from meetings of Council :-**

**43.** **Powers of Governor-General in absence from Council :-**

**63.** **Indian legislature :-**

**63A.** **Council of State :-**

**63B.** **Legislative Assembly :-**

**63C.** **President of Legislative Assembly :-**

**65D. Duration and sessions of Legislative Assembly and Council of State :-**

**63E. Membership of both chambers :-**

**64. Supplementary provisions as to composition of Legislative Assembly and Council of State :-**

**67. Business and proceedings in Indian legislature :-**

**67A. Indian Budget :-**

**67B. Provision for case of failure to pass legislation :-**

**68. Assent of Governor-General to Bills :-**

(1) When a Bill has been passed by both chambers of the Indian Legislature, the Governor-General may declare that he assents to the Bill, or that he withholds assent from the Bill, or that he reserves the Bill for the signification of His Majesty's pleasure thereon.

(2) A Bill passed by both chambers of the Indian legislature shall not become an Act until the Governor-General has declared his assent thereto, or, in the case of a Bill reserved for the signification of his Majesty's pleasure, until His Majesty in Council has signified his assent and that assent has been notified by the Governor-General.

**69. Power of Crown to disallow Acts :-**

(1) When an Act of the Indian legislature has been assented to by the Governor-General, he shall send to the Secretary of State an authentic copy thereof, and it shall be lawful for his Majesty in Council to signify his disallowance of any such Act.

(2) Where the disallowance of any such Act has been so signified, the Governor-General shall forthwith notify the disallowance, and thereupon the Act, as from the date of notification, shall become void accordingly.

**72. Power to make ordinances in cases of emergency :-**

The Governor-General may, in cases of emergency, make and promulgate ordinances for the peace and good government of British India or any part thereof, and any ordinance so made shall, <sup>1</sup> for the space of not more than six months from its promulgation] have the like force of law as an Act passed by the Indian

legislature; but the power of making ordinances under this section is subject to the like restrictions as the power of the Indian legislature to make laws; and any ordinance made under this section is subject to the like disallowance as an Act passed by the Indian legislature, and may be controlled or superseded by any such Act.

1. Operation of the words in italics and within brackets was suspended from 27-6-1940 to 1-4-1946. See the India and Burma (Emergency Provisions) Act, 1940 (3 and 4 Geo. VI, Ch. 33), S.1 (3). and S. 3 and the India and Burma (Termination of Emergency) Order, 1946, para. 2, Gazette of India, Extraordinary, 1-4-1946, p. 256.

### **85. Salaries and allowances of Governor-General and certain other officials in India :-**

(1) There shall be paid to the Governor-General of India, to the Commander-in- Chief of His Majesty's Forces in India and to the members of the Governor-General's Executive Council (other than the Commander-in-Chief), out of the revenues of the Governor-General in Council, such salaries and such allowances (if any) for equipment and voyage as the Secretary of State may by order fix in that behalf and subject to or in default of any such order as are payable at the commencement of Part III of the Government of India Act, 1935; but salary of the Governor-General shall not exceed two hundred and fifty-six thousand rupees annually, the salary of the Commander-in- Chief shall not exceed one hundred thousand rupees annually and the salary of members of the Governor-General's Executive Council (other than the Commander-in-Chief) shall not exceed eighty thousand rupees annually.

(2) Provided as follows,-

(a) the Secretary of State shall not make any order affecting salaries of members of the Governor-General's Executive Council except after consulting his advisers and with the concurrence of at least one-half of them;

(b) if any person to whom this section applies holds or enjoys any pension or salary or any office of profit under the Crown or under any public office, his salary under this section shall be reduced by the amount of the pension, salary or profits of office so held or enjoyed by him;

(c) nothing in the provisions of this section with respect to

allowances shall authorise the imposition of any additional charge on the revenues of the Governor- General in Council..

(3) The remuneration payable to a person under this section shall commence on his taking upon himself the execution of his office and shall be the whole profit or advantage which he shall enjoy from his office during his continuance therein: Provided that nothing in this section shall apply to the allowances or other forms of profit and advantage which may have been sanctioned for such persons before the commencement of part III of the Government of India Act, 1935, by the Secretary of State in Council or may thereafter have been sanctioned by the Secretary of State. 86, Power to grant leave of absence to Governor-General, etc.-(1) The Secretary of State may grant to the Governor-General and, on the recommendation of the

(2) The Governor-General in Council may grant to any member of his Executive Council (other than the Commander-in-Chief) leave of absence for urgent reasons of health or of private affairs.

(3) Leave of absence shall not be granted to any person in pursuance of this section <sup>1</sup>[for urgent reasons of health or of private affairs] for any period exceeding four months nor more than once during his tenure of office: Provided that the Secretary of State may, if he thinks fit, extend any period of leave so granted, but in any such case the reasons for the extension shall be set forth in a minute signed by the Secretary of State and laid before both Houses of Parliament.

(4) Where leave of absence is granted to any person in pursuance of this section, he shall retain his office during the period of leave as originally granted, or, if that period is extended by the Secretary of State during the period as so extended, but, if his absence exceeds that period, his office shall be deemed to have become vacant in the case of a person granted leave for urgent reasons of public interest as from the termination of that period and in any other case as from the commencement of his absence.

(5) Where a person obtains leave of absence in pursuance of this section, he shall be entitled to receive during his absence such leave allowances as may be prescribed by rules made by the Secretary of State, but, if he does not resume his duties upon the termination of the period of the leave, he shall, unless the Secretary of State otherwise directs, repay, in such manner as may

be prescribed as aforesaid, any leave allowances received under this sub-section.

**2** [(6) If the Governor-General or the Commander-in-Chief is granted leave for urgent reasons of public interest, the Secretary of State may-

(a) direct that he shall be entitled to receive during his absence his salary as fixed under the last foregoing section in lieu of the leave allowances to which he would otherwise be entitled under the last foregoing sub-section;

(b) grant to him, in addition to his salary as so fixed or any leave allowances, as the case may be, such allowances or further allowances in respect of travelling expenses as the Secretary of State may think fit

(7) Rules made under this section shall be laid before both Houses of Parliament as soon as may be after they are made.

1. Inserted by the India (Miscellaneous Provisions) Act, 1944 (7and8 Geo. VI, Ch. 38), S. 4.

2. Substituted, *ibid.*

**87. Acting appointments during the absence of the Governor-General etc., on leave :-**

(1) Where, in pursuance of the last foregoing section leave is granted to the Governor-General for any reason or to the Commander-in-Chief for urgent reasons of health or of private affairs, a person shall be appointed to act in his place during his absence, and where leave is so granted to the Commander-in-Chief for urgent reasons of public interest, a person may be appointed to act in his place during his absence.

(2) Any such appointment shall be made by His Majesty by warrant under the Royal Sign Manual.

(3) A person appointed under this section to act in the place of the Commander- in-Chief may, if the Commander-in-Chief was a member of the Executive Council of the Governor-General, be also appointed by the Governor-General in Council to be a temporary member of that Council.

(4) A person appointed under this section shall, until the return to duty of the permanent holder of the office or, if he does not return, until a successor arrives, hold and execute the office to which he

has been appointed and shall have and may exercise all the rights and powers thereof and shall be entitled to receive the emoluments and advantages appertaining to the office, foregoing the emoluments and advantages (if any) to which he was entitled at the time of his being appointed to that office.

**89. Power for Governor-General to exercise powers before taking seat :-**

(1) If any person appointed to the office of Governor-General is in India on or after the event on which he is to succeed, and thinks it necessary to exercise the powers of Governor-General before he takes his seat in Council, he may make known, by notification his appointment and his intention to assume the office of Governor-General.

(2) After the notification, and thenceforth until he repairs to the place where the Council may assemble, he may exercise alone all or any of the powers which might be exercised by the Governor-General in Council.

(3) All acts done in the Council after the date of the notification, but before the communication thereof to the Council, shall be valid, subject, nevertheless, to revocation or alteration by the persons who has so assumed the office of Governor-General.

(4) When the office of Governor-General is assumed under the foregoing provision, the vice-president, or if he is absent, the senior member of the Council (other than the Commander-in-Chief then present shall preside therein, with the same powers as the Governor-General would have had if present.

**90. Temporary vacancy in office of Governor-General :-**

(1) If a vacancy occurs in the office of Governor-General when there is no successor in India to supply the vacancy, that one of the following governors, that is to say, the Governor of Madras, the Governor of Bombay and the Governor of Bengal, who was first appointed to the office of governor by His Majesty shall hold and execute the office of Governor-General until a successor arrives or until some person in India is duly appointed thereto.

(2) Every such acting Governor-General, while acting as such, shall have and may exercise all the rights and powers of the office of Governor-General, and shall be entitled to receive the emoluments

and advantages appertaining to the office, foregoing the salary and allowances appertaining, to his office of Governor, and shall not act in his office of Governor.

(3) If on the vacancy occurring, it appears to the governor, who by virtue of this section holds and executes the office of Governor-General, necessary to exercise the powers thereof before he takes his seat in Council, he may make known by notification his appointment and his intention to assume the office of Governor-General, and thereupon the provisions of section eighty-nine of this Act shall apply.

(4) Until such a governor has assumed the office of Governor-General, if no successor is on the spot to supply such vacancy, the vice-president, or, if he is absent, the senior member of the Executive Council (other than the Commander-in-Chief) shall hold and execute the office of Governor-General until the vacancy is filled in accordance with the provisions of this Act.

(5) Every vice-president or other member of Council so acting as Governor-General, while so acting, shall have and may exercise all the rights and powers of the office of Governor-General and shall be entitled to receive the emoluments and advantages appertaining to the office, foregoing his salary and allowances as members of Council for that period.

## **92. Temporary vacancy in office of member of the Executive Council :-**

(1) If a vacancy occurs in the office of a member of the Executive Council of the Governor-General (other than the Commander-in-Chief), and there is no successor present on the spot, the Governor-General in Council shall supply the vacancy by appointing a temporary member of Council.

(2) Until a successor arrives, the person so appointed shall hold and execute the office to which he has been appointed, and shall have and may exercise all the rights and powers thereof, and shall be entitled to receive the emoluments and advantages appertaining to the office, foregoing all emoluments and advantages to which he was entitled at the time of his being appointed to that office

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(3) If a member of the Executive Council of the Governor-General (other than the Commander-in-Chief) is, by infirmity or otherwise,

rendered incapable of acting or of attending to act as such, or is absent on leave or special duty, the Governor-General in Council shall appoint some person to be a temporary member of Council.

(4) Until the return to duty of the member so incapable or absent, the person temporarily appointed shall hold and execute the office to which he has been appointed, and shall have and may exercise all the rights and powers thereof, and shall be entitled to receive the emoluments and advantages appertaining to the office, foregoing the emoluments and advantages (if any) to which he was entitled at the time of his being appointed to that office.

(4A) When a member of the Executive Council is by infirmity or otherwise rendered incapable of acting or attending to act as such and a temporary member of council is appointed in his place, the absent member shall be entitled to receive half his salary for the period of his absence.

(5) Provided as follows:-

(a) no person may be appointed a temporary member of Council who might not have been appointed to fill the vacancy supplied by the temporary appointment; and

(b) if the Secretary of State informs the Governor-General that it is not the intention of His Majesty to fill a vacancy in the Governor-General's Executive Council, no temporary appointment may be made under this section to fill the vacancy, and, if any such temporary appointment has been made before the date of the receipt of the information by the Governor-General, the tenure of the person temporarily appointed shall cease from that date.

### **93. Vacancies in Legislative Councils :-**

(1) A nominated or elected member of either chamber of the Indian Legislature may resign his office to the Governor-General, and on the acceptance of the resignation the office shall become vacant.

(2) If for a period of two consecutive months any such member is absent from India or unable to attend to the duties of his office the Governor-General may, by notification published in the Government gazette declare that the seat in council of that member has become vacant.

### **129A. Provisions as to rules :-**

ENACTMENTS REPEALED

1TENTH SCHEDULE.		
(Section 321.)		
ENACTMENTS REPEALED.		
Session and Chapter of Act	Title.	Extent of Repeal.
21 Geo. 3, c. 70	The East India Company Act, 1780	Section eighteen.
37 Geo. 3, c. 142	The East India Act, 1797. ..	Section twelve.
16 & 17 Vict, c. 107 .	The Customs Consolidation Act, 1853	Section three hundred and twenty-nine.
23 & 24 Vict., c. 89 ..	An Act to extend in certain cases the provisions of the Superannuator. Act, 1859. ... ..	The whole Act.
47 & 48 Vict., c. 38 ..	The Indian Marine Service Act, 1884	The whole Act.
56 & 57 Vict., c. 62 .	The Madras and Bombay Armies Act 1893. ..	The whole Act.
5 & 6 Geo. 5, c. 61 ..	The Government of India Act, 1915	The whole Act.2
6 & 7 Geo. 5, c. 37 ..	The Government of India (Amend ment) Act, 1916. ... ..	The whole Act except sections six and eight.
9 & 10 Geo. 5, c. 101 ..	The Government of India Act, 1915	The whole Act except the Preamble and Sub-S. (1) of section forty-seven.
12 & 13 Geo. 5, c. 20 ..	The Indian High Courts Act, 1922. . .	The whole Act.
14 & 15 Geo. 5, c. 28 . .	Jibe Government of India (Leave ol Absence) Act, 1924...	The whole Act.
15 & 16 Geo. 5, c. 88 ..	The Government of India (Civl Services) Act, 1925. . . . .	The whole Act.
17 & 18 Geo. 5, c. 8 ..	The Government of India (Indian Navy) Act, 1927. ... ..	The whole Act except section two and

		sub-s.
		(1) of section four.
17 & 18 Geo. 5, c. 24 ..	The Government of India (Statutory Commission) Act, 1927. ...	The whole Act.
20 & 21 Geo. 5, c. 2 .	The Government of India (Aden) Act, 1929 ..	The whole Act.-
23 & 24 Geo. 5, c. 23 ...	The Government of India (Amendment) Act, 1933. ..	The whole Act.
23 & 24 Geo. 5, c. 36 ..	The Administration of Justice (Miscellaneous Provisions) Act, 1933. . .	In the First Schedule
		the words "5 & 6 Geo.
		5, c. 61; the Govern-
		ment of India Act; sec-
		tion one hundred and
		twenty-seven."